

# **Report of the Commonwealth Expert Team**

## **SRI LANKA PRESIDENTIAL ELECTION**

26 January 2010



**COMMONWEALTH SECRETARIAT**

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# Chapter 1

## Introduction

At the invitation of the Sri Lankan Commissioner of Elections, the Commonwealth Secretary-General, Mr Kamallesh Sharma, constituted an Expert Team for the Sri Lanka Presidential Election of 26 January 2010. The Team was led by Mr KD Knight, former Foreign Minister of Jamaica, and comprised five persons in total. The Expert Team was supported by a four-member staff team from the Commonwealth Secretariat (See Annex 1 for full Team list)

### Terms of Reference

*"The Group is established by the Commonwealth Secretary-General at the invitation of the Sri Lanka Commissioner of Elections.*

*The Team is to assess the overall conduct of the electoral process and the environment in which the election is conducted, according to the standards for democratic elections to which the country has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.*

*The Team is to act impartially and independently. It has no executive role; its function is not to supervise but to observe and assess the process as a whole and to form a judgement accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections.*

*The Team is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Sri Lanka, the Commissioner of Elections, political parties and thereafter to all Commonwealth Governments."*

### Activities

The Expert Team was present in Sri Lanka from 19 January 2010. During four days of briefings, the Team met with the Commissioner for Elections, political party representatives, civil society groups, media, Commonwealth High Commissioners, the United Nations, and domestic observer groups.

The Expert Team was deployed around the country on 24 January, reporting from five Provinces: Northern, Southern, Eastern, Western and Central. During the deployment phase Experts met with election officials at the Polling Station, District and Provincial levels, security officials, representatives of political parties, voters and domestic observers in order to build up a comprehensive picture of the conduct of the process.

On the basis of the Team's findings, the Chairperson issued a post-election Press Release on 27 January (Annex 2). The Team's Report was completed in Colombo and thereafter transmitted to the Commonwealth Secretary-General.



## Chapter 2

### Political Background

#### Context

The Sri Lankan Government concluded its military campaign against the Liberation Tigers of Tamil Eelam (LTTE) in May 2009. The deaths of Vellupillai Prabhakaran, the leader of the LTTE, and his senior colleagues, announced by the Government on 19 May, appeared to mark the end of one of Asia's longest civil wars.

Incumbent President Mahinda Rajapaksa's six-year term in office was due to expire in November 2011. However, he announced in late November 2009 that he would call a Presidential Election almost two years early, as permitted under the Constitution. [see Chapter 3, below]. This was widely perceived as a bid on his part to capitalise on the wave of popularity following the military defeat of the LTTE.

However, President Rajapaksa's plans of gaining an easy electoral endorsement as Commander-in-Chief of the armed forces suffered a setback when General (retd.) Sarath Fonseka announced his own candidature on 29 November. General Fonseka, as the previous Commander of the Army, had led the military campaign against the LTTE.

General Fonseka had publicly fallen out with President Rajapaksa following the end of the war. A move by the President to seemingly side-line his army chief by moving him to a newly created post of Chief of Defence Staff was perceived by Fonseka as an attempt to divert credit for the military victory to the civilian leader. For his part, President Rajapaksa was reportedly concerned about the level of General Fonseka's personal political ambition, particularly after Fonseka was reported to be holding discussions with opposition leaders.

General Fonseka tendered his resignation to the President on 12 November, expressing his disappointment at the manner in which he had been treated following the war. He also alleged politicisation of the army and deteriorating standards, and criticised the government's treatment of internally displaced persons. Although Fonseka asked for his resignation to take effect from 1 December 2009, President Rajapaksa granted it with immediate effect.

#### The Opposition

The United National Party (UNP) - a centre-right party and the country's main opposition party - believed that its best chance of success would be to field a candidate whose appeal to voters would be made on the same claim of military victory as President Rajapaksa. It therefore decided against fielding its own leader Ranil Wickremesinghe as a presidential candidate.

Subsequently, the ideologically opposed Janatha Vimukthi Peramuna (JVP) - a far-left party, also agreed to support the General, with the sole purpose of trying to defeat the incumbent President.

In early January 2010, the Tamil National Alliance (TNA) – a major political grouping of Tamil parties, announced that it too would support General Fonseka, although it was reported that a number of TNA MPs were unhappy with the decision.

An arrangement was reached whereby General Fonseka would contest as a common opposition candidate, but not on either a UNP or JVP ticket, as this would have been unacceptable to those parties, which occupy opposite ends of the political spectrum. General Fonseka therefore registered as a member of the New Democratic Front – a relatively minor party which had not been politically active for some time.

## **Candidates**

Twenty-two candidates, the highest number yet in a Sri Lankan Presidential Election, handed in their nominations on 17 December 2009. Despite the large number of candidates, the contest was universally accepted as being a two-horse race between President Rajapaksa and Sarath Fonseka.

In the days prior to election day, three candidates withdrew their candidature in favour of the main candidates<sup>1</sup>, but their names remained on the ballot paper.

## **Political Parties/Alliances**

Since independence in 1948, the Sri Lanka Freedom Party (SLFP) and UNP have historically alternated in Government. Both these parties have had a tendency to form governments in coalition with a raft of small, often ethnically-based parties. The United People's Freedom Alliance (UPFA), the incumbent governing coalition, currently comprises the SLFP – a centre-left party - plus over 14 other parties. These include the National Freedom Front (Jathika Nidahas Pakshaya or JNP); Jathika Hela Urumaya (JHU) – a nationalist Buddhist party; Sri Lanka Communist Party, Lanka Sama Samaja Party – a Socialist party; Mahajana Eksath Peramuna; National Unity Alliance – a Muslim party; Ceylon Workers Congress (CWC) and Up-Country People's Front – representing Tamil tea estate workers of Indian origin; and the Eelam People's Democratic Party (EPDP)- a former paramilitary Tamil group.

In addition to the parties which formally comprise the UPFA, the Thamil Makkal Viduthalai Pulikal (TMVP) – the paramilitary group formed by breakaway LTTE leader 'Karuna' and now controlled by his former deputy Sivanesathurai Chandrakanthan, aka Pillayan, also supported the candidature of the President. Karuna himself had joined the SLFP and had been given a ministerial portfolio as well as the role of Senior Vice-President of the party, while Pillayan had been appointed Chief Minister of the Eastern Province following provincial elections in May 2008. Continuing political rivalry between 'Karuna' and Pillayan generated tensions in the Eastern Province in the run-up to the Presidential Election.

The United National Front (UNF), with the UNP as its major constituent party, was the opposition electoral alliance formed to support General Fonseka's bid. Other members of the UNF include the Sri Lanka Muslim Congress (SLMC) – led by Rauf Hakeem, the Sri Lanka Freedom Party (Mahajana) (formed by former senior adviser to President Rajapaksa, Mangala Samaraweera), and the Democratic People's Front – a Tamil party led by Mano Ganesan.

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<sup>1</sup> Two announced their support for President Rajapaksa, while the third asked his supporters to vote for General Fonseka.

As mentioned, the TNA also decided to support Fonseka. The TNA, established in 2001, comprises the All Ceylon Tamil Congress, Tamil United Liberation Front (TULF), Eelam People's Revolutionary Liberation Front (EPRLF-Suresh), and Tamil Eelam Liberation Organisation (TELO).

### **Internally Displaced Persons (IDPs)**

At the end of the military campaign against the LTTE, almost 300,000 IDPs were placed in detention camps or "welfare villages" as the Government called them. Following considerable pressure from the UN and the international community and after the announcement of the presidential election in late November, the Government announced that from 1 December 2009, those detained in the camps would have limited freedom of movement to visit relatives. The Government subsequently also speeded up the process of resettlement of IDPs. However, at the time of election, over 100,000 people still remained in the camps<sup>2</sup>, while others had been re-settled in their areas of origin, or with relatives in other areas. This raised concerns that there would be formidable practical obstacles to the exercise of their franchise. [see below – Chapter 3].

### **The Manifestos**

President Rajapaksa's manifesto, the *Mahinda Chinthana-A Vision for the Future* stressed the need to maintain a unitary state. It promised public consultations on reform of the existing Provincial Council system, which would be re-established in the North. The President's manifesto did not appear to envisage moving beyond the existing Constitutional provisions so far as extending greater decision-making powers to the North were concerned. However, Rajapaksa announced his intention to re-establish an Upper House of Parliament and proposed to exercise the Presidency as a "Trusteeship", following discussions with all political parties. A number of large development projects throughout the country, with particular emphasis on the North, ("the Northern Spring") were also announced. Measures to approve provision of Tamil language education and to increase employment opportunities for Tamils were also included in the President's manifesto.

Sarath Fonseka's manifesto - "*Believable Change*," - promised to abolish the executive presidency, restore the rule of law, implement the Seventeenth Amendment to the Constitution, constitute the Constitutional Council [see Chapter 3] and provide greater freedom to the media. With regard to national reconciliation, Fonseka vowed to "promote and foster" a Sri Lankan identity based on the population's ethnic, religious and cultural diversity but did not specify a proposed approach to a durable, political reconciliation. However, he vowed to appoint a Caretaker Government to oversee Parliamentary Elections, following the required dissolution of Parliament by April 2010.

Both candidates promised to create more jobs, raise welfare allowances, increase subsidies for essential food stuffs and agriculture, institute numerous large-scale public works projects, and raise salaries for public-sector employees. Details of how these proposals would be funded were not immediately evident.

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<sup>2</sup>UNCHR figures as of 15 January 2010.





## Chapter 3

# The Electoral Framework and Election Administration

### Legal Framework for the Elections

Under the Constitution (1978), Sri Lanka is a unitary state and is a free, sovereign, independent and democratic socialist republic.

Basic freedoms are provided for, including freedom of speech, assembly, association and movement.

Sri Lanka has signed and ratified key international instruments relating to the conduct of elections, including the UN Declaration of Human Rights; International Covenant on Civil and Political Rights; Convention on the Elimination of Discrimination Against Women; and, the Convention for the Elimination of Racial Discrimination.

Sri Lanka's election-related legislation reflects its international obligations and the key laws governing the conduct of the Presidential poll are:

- The Constitution of the Democratic Socialist Republic of Sri Lanka (1978, as amended)
- The Presidential Elections Act (No. 15, 1981, as amended)
- In addition the Commissioner of Elections issued a number of guidelines, such as on media coverage of the campaign

Overall the regular legal framework provides the basic conditions for genuine competitive elections. However, Sri Lanka has been governed under emergency powers since 2005, which have some implications for the electoral environment.<sup>3</sup>

### The President

The 1978 Constitution established the Executive Presidency in Sri Lanka, whereby the President is the Head of State as well as the Head of the Executive, Head of Government and the Commander in Chief of the Armed Forces. The President is also the Head of the Cabinet of Ministers and appoints the Prime Minister and other Ministers from among elected members of Parliament.

The President serves a maximum 6-year term, with a limit of two terms only. However, the President can call for an election at any time once he/she has served four years of the commencement of the first term.

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<sup>3</sup> In 2005, the Emergency (Miscellaneous Provisions and Powers) Regulation was adopted. The following year, the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation was promulgated. The effect of these Emergency Regulations has been to create a broad and ambiguous array of offences which, inter alia, undermine constitutional freedoms, reverse the burden of proof and delegate sweeping powers to military personnel as opposed to law enforcement officials. Parliament is required to authorise the extension of the emergency on a monthly basis.

For this election the incumbent President called for an election shortly after completing his first four years in office, in accordance with Article 31 of the Constitution and the date was set by the Commissioner of Elections as 26 January 2010.

## **Electoral System**

The President is directly elected using a single-round system of preferential voting (also known as a supplementary vote).

Each voter can express up to three preferences on the ballot, indicating their 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> preferences.

If a candidate receives more than 50% of the valid votes cast, as expressed in the first preferences, he/she will be declared elected to the office of President.

If no candidate receives more than 50%, then all but the top two candidates are rejected and the remaining preferences on the ballots for the rejected candidates are taken into account. The total preferences for the top two candidates are then added up and the candidate with the most votes is the winner.

## **Election Administration**

The 17<sup>th</sup> Amendment to the Constitution provides for the establishment of an independent election commission with wide ranging powers. However, the 17<sup>th</sup> Amendment of 2001 is yet to be implemented with regard to the establishment of an Election Commission (see Issue 1 below). The Supreme Court ruled that the powers foreseen in the 17<sup>th</sup> Amendment for the election commission, could in the meantime be assumed by Mr Dissanayake, the Commissioner of Elections<sup>4</sup>.

The Commissioner is to conduct "free and fair elections" and is charged with securing the enforcement of all laws relating to the holding of the election. It is the duty of all state authorities to co-operate to secure enforcement.

As well as the more regular powers of administering the process, conducting voter registration, appointing officials as outlined below and being responsible for the final result, the Commissioner also has the power, under the 17th Amendment, to:

- Prohibit the use of state/public property for use by any candidate/party
- Provide binding media guidelines for public broadcasters
- Appoint a 'Competent Authority' to take over management of public broadcasters in the event of a violation
- Notify the Inspector General of Police of required numbers of police for election duties and instruct on deployment
- Recommend to the President on deployment of armed forces as required

Legal challenges against the decisions of the Commissioner are to be heard by the Supreme Court.

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<sup>4</sup> These powers were explicitly vested in the person of the current Commissioner, Mr Dissanayake, and not the office per se.

The Commissioner of Elections is supported by both Additional and Deputy Commissioners and also by an Elections Secretariat.

A Returning Officer is appointed for each of the 22 Electoral Districts. The Returning Officer is appointed by the Commissioner from among Government Agents / District Secretaries.

Assistant Commissioners are also appointed for each of the 22 Electoral Districts. They act as Assistant Returning Officers and are in charge of organising the election in the District as the representative of the Commissioner of Elections.

For the purpose of this election, 11,098 polling stations were established. Returning Officers appoint a Presiding Officer to be in charge of each polling station, supported by polling staff. In addition, 888 Counting Centres were established with counting officials to manage the process.

### **Voter Eligibility and Registration**

To be eligible to vote in an election a person must be a citizen of Sri Lanka, at least 18 years of age and ordinarily resident at their designated address. For this election, the total number of voters was 14,088,500.

The voter register is revised each year based on a house-to-house enumeration exercise conducted by a Registering Officer of the District. The electoral register used for the January 2010 elections was the operative electoral register of 2008.

Due to the prevailing conflict at the time, normal enumeration could not be conducted in the Northern Province and parts of the Eastern Province. Therefore the names in the existing register were used for the updated register. District Registering Offices did provide a period for submitting claims and objections and in addition the names of deceased persons – where known – were deleted from the list.

There are no statutory limitations on a woman's right to register to vote.

### **Candidate Eligibility and Nomination**

Any person who is qualified to be an elector can be nominated as a candidate at a Presidential election<sup>5</sup>, but in addition to the qualifications stipulated for voters, a candidate must also be at least 30 years of age.

Candidates can be nominated by a recognised party or an unrecognised party or by a fellow citizen. A candidate nominated by a recognised party must pay a deposit of 50,000 Rs (c. £278), while other candidates must pay a deposit of Rs 75,000 (c. £417). If the number of votes secured by a candidate does not exceed 1/8 of votes cast he/she will forfeit the deposit.

For the 2010 Presidential Election there were 23 nominated candidates but only 22 of these qualified as registered candidates.

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<sup>5</sup> On the day of the election it emerged that the main opposition candidate, General Fonseka, was not registered to vote. A representative of the ruling party made a claim that this made him ineligible to be a candidate. However, the law is clear, and requires a person only to be "qualified as an elector" not actually registered. The Commissioner of Elections made a clear statement on this affirming General Fonseka's eligibility as a candidate on the basis that he is "qualified" to be a voter.

There are no statutory limitations on women's participation as a candidate. However, for the 2010 election no woman stood as a candidate.

## **Issues**

### **1 The 17<sup>th</sup> Amendment**

The 17<sup>th</sup> Amendment was unanimously enacted by parliament in October 2001. However, neither of the two Presidents serving since then has fully implemented it. As a consequence, the election commission foreseen in the amendment has never been established. The other commissions were established but have subsequently lapsed and not been properly re-appointed, instead being unilaterally appointed by the President.

The 17<sup>th</sup> Amendment provides for the establishment of a Constitutional Council, which is to recommend<sup>6</sup> to the President, Chairs and Members for an: Election Commission; Public Service Commission; National Police Commission; Human Rights Commission; Permanent Commission to Investigate Bribery and Corruption; Finance Commission; and, a Delimitation Commission.

It is clear that the creation of such independent oversight commissions would increase confidence in the electoral and democratic processes by facilitating the creation of necessary conditions for a level playing field for the elections and a fair campaign environment.

This failure to fully and properly implement the Amendment has serious consequences for the conduct of the election and has helped to create the conditions for the abuse of state resources and the distinctly unfair environment for the election campaign. It has also created a perception among some of bias on the part of the police in certain instances.

Further, the Commissioner of Elections publicly stated that he was not receiving the full cooperation of certain state institutions, which were not complying with his guidelines and directives. He particularly cited problems with bias on the part of state media and abuse of state resources by certain state institutions (Discussed in more detail in Chapter 4). The creation of an independent election commission and proper oversight commissions for state/public institutions would enable the proper control of the electoral environment by the designated election management body.

### **2 Voter Registration for Internally Displaced Persons and in Conflict-Affected Areas**

The situation prevailing in the Northern Province and in parts of the Eastern Province prevented a full updating of the voter register in those areas. Further, the registers for the Northern Province in particular have not been properly updated for some years.

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<sup>6</sup> In addition, the Constitutional Council is to approve Presidential appointments for: Chief Justice and Judges of the Supreme Court; President and Judges of the Court of Appeal; Members of the Judicial Services Commission; Attorney General; Auditor General; Inspector General of Police; Ombudsman; and, Secretary-General of Parliament.

As a consequence there are two distinct problems: Firstly, the number of persons indicated as being resident and registered in the Northern Province is probably inflated, as it does not, for example, properly take account of all persons having left the country or deceased.

Secondly, persons having been displaced had to have special arrangements put in place to try to secure their updated registration. While the provision of special arrangements is to be commended, it is likely that not everybody was aware of the procedures or able or willing, for a variety of reasons, to engage with the authorities to update their registration. It is to be remembered that this process was happening fairly soon after the cessation of hostilities and while some were still living in camps in poor conditions.

Some IDPs had registered just prior to the camp being opened. Thus some had moved to another place of 'residence' outside of the camp, meaning at the time of the election they were not in the place at which they had registered.

So, overall, while the election administration made great efforts to try to put in place registration procedures – and later voting procedures – for these communities there were clearly still problems and challenges which will ultimately only be solved by the normalisation of their living arrangements.

## **Recommendations**

- 1 The 17<sup>th</sup> Amendment to the Constitution needs to be fully implemented to provide for the establishment of all the independent oversight commissions identified in the Amendment.
- 2 There needs to be a review of voter registration procedures, to identify the most suitable and effective process for the country. The registers in many areas appear to be reasonably accurate, but it is clear that in certain areas substantial updating is required. Further, procedures, possibly through the increased use of IT, should be considered so that the cut-off point for additions to the list is closer to the date of an election. For instance, the register to be used for the forthcoming 2010 parliamentary elections is the 2008 one, which means that no person turning 18 after this date is provided with the right to vote.



## Chapter 4

### Election Campaign and Media Coverage

#### The Campaign Environment

General Fonseka's candidacy generated considerable interest among the electorate and transformed the election campaign, which was earlier expected to be a walkover for the incumbent President, into a real contest. In many ways, both the General and the President appealed to the same core Sinhala nationalist vote, both claiming to be the architect of the military victory against the LTTE.

As the Opposition forces aligned behind the General, the perception of a close race grew, and the electoral campaign soon degenerated into personal accusations and counter-accusations. On 13 December 2009, General Fonseka alleged in an interview with the *Sunday Leader* newspaper that a journalist embedded with the army in the area of operations had told him that the Defence Secretary had ordered the army commander in the region to kill three surrendering LTTE leaders in the final days of the military campaign. The Government immediately denied the allegations and sought to use this against Fonseka, asserting that through such allegations he was being treasonous and betraying his former troops. This explosive allegation backfired on Fonseka, whose political backers made him issue a 'clarification' the following day.

Subsequently, the President's campaign sought to assert that Fonseka had signed a secret agreement with the TNA which sought to implement features of an autonomous state, including the re-merging of the Northern and Eastern Provinces. General Fonseka and his supporters were compelled to issue denials of this allegation.

The President's campaign asserted through advertisements and comments by government ministers that a vote for Fonseka would lead to military rule in Sri Lanka. Advertisements in favour of the President also cautioned that voting for Fonseka would amount to giving up the gains of the military victory. The state-run media routinely compared General Fonseka to notorious military dictators in other countries.

In the run-up to the polls, these allegations were accompanied by reports that caches of arms had been discovered in temples and other places. Fears were expressed by Government ministers that the opposition planned to respond with violence should the result go against General Fonseka. Allegations were made in the press and to the Expert Team that groups of army deserters and army personnel in civilian clothes planned to unleash violence following the poll. The Opposition, for its part, asserted that the President and his family members would refuse to relinquish power in the event of a loss, and that tanks had been moved to the capital in anticipation of quelling popular protests.

This charged atmosphere, fed in no small part by the state-owned media, created a pre-election environment full of rumour, speculation and uncertainty.



## **Legal Provisions**

Campaign posters, billboards and “cut-outs” depicting the candidates were technically banned under electoral legislation (see Chapter 3), except in the immediate vicinity of party offices. However, this prohibition was widely flouted, particularly in the case of the ruling party candidate. The law also stated that all permitted election posters had to be removed on 23 January, but an Elections Department official was quoted in the press as saying that billboards and posters remained in place across the country, and it was unlikely that any action could be taken regarding this.

The pasting of campaign posters appeared to be a trigger for many incidents of violence. General Fonseka’s supporters complained that their party offices were regularly attacked by UPFA supporters, while in most areas of the country, posters of the President far outnumbered those of his main challenger.

The electoral legislation also provided for campaigning by candidates to end on 23 January, including political coverage and advertising on television and radio. However, the print media was not bound by the same restrictions. Political rallies and meetings were prohibited for seven days following the election.

## **Campaign Issues**

### *Corruption allegations*

The two main candidates traded allegations of corruption. General Fonseka asserted that the appointment by President Rajapaksa of many family members to key posts in government and state bodies constituted an abuse of power.

The Government alleged that General Fonseka’s son-in-law had wrongfully obtained arms contracts while the former was still the army chief. General Fonseka denied this allegation, clarifying that the overseas-registered company his son-in-law was involved with was not the Sri Lankan company of the same name which had benefited from the contract in question. In the run-up to election day, the Criminal Investigations Division (CID) was reported to be pursuing enquiries into the matter.

### *Abuse of Incumbency*

The Expert Team heard numerous assertions that the incumbent’s campaign had made illegal use of public property and resources for the electoral campaign. The Team was told that although this had also been an unfortunate feature of past electoral campaigns in Sri Lanka, the extent to which public sector employees and property were utilised for the incumbent’s campaign in this election was unprecedented.

The Programme for the Protection of Public Resources (PPPR) - an initiative of Transparency International Sri Lanka - documented instances of abuse of public resources throughout the electoral campaign. Among the specific instances PPPR identified in a series of regular reports were: the use of the President’s official residence for the entertainment of large numbers of people from different occupations/sectors; the use of Government buildings, printing presses and transport (helicopters, trucks, buses) for campaign purposes; the use of public sector employees for campaign work; and the use of the state media to almost exclusively promote the President’s campaign.

A striking example cited by PPPR was the use of public funds by a state-run youth organisation called *Tharunayata Hetak* run by the President's son, for advertisements promoting the President's campaign. PPPR reported that the organisation had spent over SLR160 million on broadcast and print media slots promoting the President.

Another example of the utilisation of public officials in the President's campaign was the appearance of serving military personnel on state-run television to campaign for the President and against General Fonseka. Many people cited this as a strikingly retrograde development.

On 1 January 2010, all mobile phone users in the country received an unsolicited, partisan SMS New Year greeting from President Rajapaksa. The Expert Team was informed that the Telecommunication Regulatory Commission had instructed all five mobile phone operators to carry the message free of charge. Despite calls by civil society groups for an investigation into the matter, it appears no action was taken.

In a highly unusual act, a 1000 Rupee note for general circulation bearing the image of the servicing President was issued in May 2009 to commemorate the end of the military campaign against the LTTE.

## **Other Features of the Campaign**

### *Campaign Financing*

The continuing absence of legislation on limits to and any disclosure requirements on campaign financing enabled the two main candidates to spend relatively large amounts on the election campaign. In a joint press briefing two days prior to the election, a group of leading NGOs estimated that the costs of direct advertising alone on behalf of the incumbent totalled SLR 378 million (USD 3.3 million), while the Fonseka campaign spent SLR 80 million (USD 0.7 million).

### *Election-Related Violence*

Elections in Sri Lanka have historically been violent events. Political parties seem willing to tolerate the use of violence by their supporters against each other. Unfortunately, this election proved to be no exception.

According to figures released by the Police Elections Desk,<sup>7</sup> by 25 January, election-related incidents cumulatively numbered 809, of which 55% were classified as Major Incidents, including 5 murders, 99 acts of assault and 108 instances of threat and intimidation. In comparison, 48% of incidents in the 1999 presidential election, and 37% in the 2005 presidential election were classed as Major. On 21 January, the Secretaries-General of the UPFA and UNP issued a joint statement calling on their supporters to desist from violence. This was a welcome act, although it came too late to make any tangible difference to the actions of their supporters in the campaign period.

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<sup>7</sup> The Police Elections Desk documented and publicised these figures, as did the Centre for Monitoring Election Violence (CMEV).

On 22 January, the residence of Mr Tiran Alles, the General Secretary of the SLFP (Mahajana), was the target of a petrol bomb attack. The President condemned the incident and ordered an inquiry.

It was alleged to the Expert Team that the SLFP youth wing, known as *Nil Balakaya*, was responsible for acts of intimidation against voters. However, Government representatives denied that and told the Expert Team that the *Nil Balakaya* engaged solely in fundraising and legitimate campaign activities.

### *Role of the Police*

The Expert Team was told by political parties and civil society representatives that the police were partisan. The absence of an independent police commission to oversee appointments was held to have led to a police force beholden to the incumbent. Complaints against the police in the context of the election ranged from their intimidation of opposition supporters to their involvement in preventing posters of the President from being removed.

The opposition alleged a systematic attempt by the Government to harass and intimidate opposition leaders through police searches and questioning. This included an attempt to search the office of opposition leader Ranil Wickremesinghe, allegedly on grounds of illegal weapons being stored there. However a court refused permission to the police to carry out the search on the eve of the election.

## **The Media**

The media play a central part, for good or evil, in the democratic or undemocratic nature of each country's development and reputation. Consequently, no time is more crucial for making an assessment of any country's media than in the period leading up to an election.

There are numerous daily and weekly newspapers published in the country's three languages, Sinhala, Tamil and English. These carry a variety of political perspectives. State-owned media have the widest reach throughout the country, and the state-run newspaper titles enjoy the highest circulation. However, the view was expressed to the Expert Team that although the pro-Government bias in the state media could not be condoned, the determined citizen in urban Sri Lanka could access publications covering the entire political spectrum.

However, media freedoms have been particularly affected by the Emergency Regulations [see Chapter 3]. The Regulations have established broad criminal offences, including the spreading of rumours or false statements likely to cause public alarm or public disorder<sup>8</sup> and other offences aimed at limiting the communication and possession of information "prejudicial to national security." The effect of these Regulations has been to discourage journalists from investigating allegations of war crimes by the Sri Lankan military, encourage self-censorship, and drive a number of journalists into exile following threats and harassment directed at them and their families. According to the Committee to Protect Journalists, in 2009, Sri Lanka had the highest number of journalists in exile in the world.

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<sup>8</sup> Regulation 28, Emergency Regulation 2005.

Any consideration of the nature of election coverage by the Sri Lankan media must also be viewed in the context of an environment over the last two years where journalists have reportedly been systematically attacked, intimidated and killed by the LTTE, paramilitary groups, and agents of the state. This has clearly reduced the space for critical comment or effective investigative journalism. Even after the completion of the military campaign against the LTTE in May 2009, this environment of intimidation of journalists has continued. Self-censorship is believed to be common among journalists: investigative journalism has been a particular victim of this intimidatory atmosphere.

#### *Immediate Pre-Election Environment*

On 13 January 2010, armed police raided the premises of the *Sunday Leader* newspaper, alleging that the newspaper's printing presses were being used to produce illegal election posters attacking the President. Nothing incriminating was found, and the IGP eventually apologised to the newspaper, stating that the search had not been sanctioned by Police Headquarters. The News Editor and Investigations Desk Editor also received death threats from an organisation calling itself the National Patriotic Force. This was the latest in a series of death threats received by the editors of the *Sunday Leader*.

On 24 January, Prageeth Ekmaligoda, a journalist from Lanka E-News website went missing, shortly after he had written an article comparing the two main presidential candidates, and expressing a preference for General Fonseka. The Lanka E-News website was closed down and its offices raided. Mr Ekmaligoda was still missing six days later, at the time of writing of this report.

#### *Media Coverage*

The press and broadcast media in Sri Lanka are politically polarised. Successive governments have treated the state-owned media as a propaganda tool. Associated Newspapers of Ceylon Ltd (commonly known as Lake House) publishes a variety of titles in the three official languages. One of the major complaints from opposition parties was the extent of bias in the state-owned media. The Expert Team was told that under President Rajapaksa control over the state-owned media had become particularly overt. In an unprecedented blurring of the lines between party and state, senior positions at all three state-owned broadcasters are held by regional political organisers for the ruling party.<sup>9</sup> In December 2009, it was reported in the privately-owned press that the state-owned broadcaster had been instructed not to carry coverage of General Fonseka's campaign. However, it was asserted by the state-run electronic media to the Expert Team that their attempts to cover General Fonseka's campaign rallies had been rebuffed and their reporters assaulted. They claimed that their attempt to invite the main opposition candidate for an interview had also been turned down. The opposition parties denied these claims.

On 17 December 2009, the Commissioner of Elections issued guidelines to electronic and print media regarding election coverage. On 5 January the Commissioner exercised his power to appoint a Competent Authority to monitor the election-related coverage of the state television and radio stations, by naming a retired civil servant to the post.

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<sup>9</sup> The Chairman of the Sri Lanka Broadcasting Corporation is also the SLFP organiser for Colombo West; the Deputy General Manager of the Independent Television Network is also the SLFP organiser for Kurunegala District; and the Chief Executive Officer of the Rupavahini Corporation is also SLFP organiser for Ratnapura District. Source: PPPR Report No 1.

On 6 January, the Commissioner instructed *Rupavahini*, the state television station, to cease broadcasting five programmes about which the opposition parties had complained to the Commissioner.

On 15 January, ruling on a fundamental rights petition filed by Gen. Fonseka, the Supreme Court directed the state-owned media to follow the guidelines issued by the Commissioner of Elections.

On 19 January, stating that the disregard of his instructions by the state-run broadcast media made it impossible for the Competent Authority to fulfil his duties, the Commissioner withdrew the individual from his duties. The opposition political parties protested this action, but to no avail.

On 21 January, *The Island* newspaper reported that a newly formed group called the State and Independent Media Organisations Alliance held a meeting to protest the partisan use of the state-owned media. Employees of Lake House press asserted that the newspaper organisation's management had decided not to charge President Rajapaksa's campaign for the printing of campaign posters and publishing of campaign advertisements. It also quoted a representative from *Rupavahini* television as saying that the Secretary of the Media Ministry had instructed employees to disregard the Supreme Court ruling, while an employee of the Sri Lanka Broadcasting Corporation (SLBC) asserted that the Corporation's Chairman had caused the organisation to become highly politicised.

On 26 January *Reporters Sans Frontieres* (RSF) issued the results of its monitoring of election coverage by the state-owned media. This revealed that over a seven day period ending on 24 January, 96.7% of news and current affairs coverage on television stations *Rupavahini* and *ITN* was favourable to the President. This amounted to around 25 hours of airtime. General Fonseka and the Opposition parties received just 3.3% of coverage.

It was reported by other media monitoring organisations and Opposition parties that what coverage there was of General Fonseka's campaign by the state media had been overwhelmingly negative in nature. Given that state-run television and radio have the widest reach in Sri Lanka, the Expert Team was particularly concerned at the possible impact of this bias.

The privately-owned media is also seen to be politically partisan, with the political leanings of their owners believed to be an important factor. It was stated to the Expert Team that political pressures could also be brought to bear on media proprietors to discourage publication or halt the broadcast of a story deemed sensitive. Privately-owned newspapers in many cases have taken an editorial view tending towards one party or another. The level of this imbalance is nowhere approaching that of the state media which has operated a virtual black-out of any mention of any opposition party unless the item consists of adverse coverage.

During the period of its observation, the Expert Team noted that there was acceptable balance in the election coverage of several private print and electronic media houses (some better than others). However, the performance of the State-owned newspapers and broadcasting organisations failed to meet acceptable standards and practices for publicly-owned media. The decision of the Commissioner of Elections to withdraw his Competent Authority after being unable to persuade the state-owned media to abide by the terms of his media guidelines, speaks for itself.

The state-owned Lake House group of newspapers including the *Daily News* and the *Sunday Observer* set a very poor example. A detailed analysis of the front page of one issue of the *Sunday Observer* on sale just two weeks before the election provided clear evidence of this. Of thirteen items, twelve were of direct electoral benefit to the incumbent presidential candidate, being either totally positive to his campaign or totally to the disadvantage of his main challenger. The space given to one candidate on the front of this newspaper therefore amounted to well over 90% with not one word of electoral advantage to any other candidate.

The same is true for state-run radio and television whose editors allocated a huge proportion of airtime to one party to the virtual exclusion of all others. All voters in a democracy have the right to receive via the national broadcasters a broad picture of the statements, policies, promises of all candidates – particularly of the leading contestants. This broad delivery of informative pre-election coverage is required to give each listener or viewer the opportunity to make an informed choice at the ballot box. Clearly, the powerful state radio and television, that claim to exist to serve all the people of Sri Lanka, were used for the almost exclusive benefit of one candidate.

#### *Use of Social Media for Election Campaign*

This election campaign saw the two main candidates and their supporters make wide use of social media sites such as Facebook, Youtube and Twitter, as well as unsolicited SMS messages and pre-recorded phone messages. Although the reach of social media websites is generally limited to Colombo and a few of the larger towns, and primarily confined to a younger, English-literate demographic, both candidates enthusiastically reached out to this group of voters, many of whom were likely first time voters.

In a less positive development, websites were also used by supporters of President Rajapaksa and, to a lesser extent, General Fonseka, to spread defamatory allegations and rumours about their candidate's opponent. There were reports that websites masquerading as official Sarath Fonseka websites had published negative allegations about the candidate, while it was reported on 23 January that the UNP website had been hacked into and fake opinion poll results predicting a loss for General Fonseka had been published. A variety of unsubstantiated rumours, including about the house arrest of the Commissioner of Elections, were also spread the day after the election, while the initial results were being announced. This was done via SMS, with the possible intent of inflaming emotions.

#### **The Authority of the Commissioner of Elections**

The failure of the Government to implement the Seventeenth Amendment to the Constitution has had many negative consequences for the rule of law and the credibility of key institutions. Of particular relevance to the Presidential Election is the continued absence of an Independent Election Commission (IEC). Under a Supreme Court judgement in 2003, the incumbent Commissioner of Elections, who was due to retire in 2002 was granted delegated powers that would otherwise be exercised by a duly constituted IEC. The 2010 Presidential Election was the third national election that the incumbent Commissioner had been compelled to administer after his due retirement date.

The Expert Team was struck, in the week preceding the election, by comments made by the Commissioner to political parties, and widely reported in the press, to the effect that his guidelines and instructions to the police, government ministries and state-owned media

were being ignored. On 19 January the Commissioner was reported in the press as stating that he would give up his post the day after the election.

It was notable that the Commissioner of Elections was forced to express his frustration so publicly.

On the other hand, the Commissioner of Elections was more successful in preventing the appointment, transfer and promotion of public servants after the date of announcement of the election.

There were several reports of transfers of senior police and military personnel in violation of the direction, which the Commissioner successfully moved to rescind. For instance, on 2 January, Mr Dissanayake directed the Inspector-General of Police to stop the transfer of a Superintendent from Ampara (in the Eastern Province) to Kilinochchi (in the Northern Province). It was alleged that the Government had ordered the transfer of the particular police officer because he had acted to implement orders of the Commissioner of Elections to remove illegal giant cut-out figures of President Rajapaksa in Ampara town.

Similarly, the day before the election, it was reported that the Senior Deputy Inspector-General (DIG) for the Northern Province had been directed by the Inspector General of Police (IGP) to carry out his duties from Colombo. The Officer in Charge of Vavuniya Police Headquarters, also in the North, had been transferred to the Police Welfare Division. However, on instructions of the Commissioner of Elections, the IGP cancelled the transfers.

In fact, the Commissioner also intervened in a case involving the transfer of a number of senior army commanders from the North on 18 January, to halt this seemingly political move.

## **Recommendations**

- 1 Political parties must address the issue of violence carried out by their supporters. They could consider agreeing on a code of conduct amongst themselves at the start of the election campaign with an aim to eradicate election violence.
- 2 A mechanism needs to be found to prevent the widespread abuse of state resources during election campaigns. The implementation of the Seventeenth Amendment may help in this regard, as would more effective enforcement of existing guidelines issued by the election management body.
- 3 The increasing politicisation of the armed forces and civil service is a disturbing trend, which must be reversed.
- 4 In the interests of accountability and transparency in election campaign financing, consideration should be given to the introduction of legislation to regulate campaign financing and expenditure, with appropriate sanctions for any breach.
- 5 The democratisation of public media would be greatly strengthened by the transfer of state-run radio and television to a non-political statutory body. This removal of state control would address the very substantial imbalance noted in this report.

- 6 The introduction of an independent media association or council made up entirely of professionals from both private media and the new statutory body responsible for public media. This would nurture permanent, consistent journalistic ethics. Before each election, this group would be involved with a new independent Elections Commission in devising a democratic, feasible Media Code of Conduct. This would create a measure of self-regulation that would hopefully ensure the commitment by the media to providing an appropriate level of voter education. It would also facilitate a clear balance by the public media in the interests of all citizens and a reasonable measure of balance by the private sector regardless of each media house's editorial political preference.





## Chapter 5

### Voting, Counting and Results

The 2010 Sri Lanka Presidential Elections were held on 26 January. There was a 48-hour period of campaign silence mandated prior to polling day. For the purpose of voting 11,088 polling stations had been established, including a series of cluster polling stations for displaced persons in the Northern and Eastern Provinces. Polling materials had been delivered throughout the country in the days before the election, and the night before were taken to polling stations and guarded by police and the station's Presiding Officer overnight.

#### The Process – Legal and Administrative Provisions

Polling stations opened at 07.00 on the day of the election, and were to remain open until 16.00. In order to be able to vote a person is required to be on the voter list and to provide suitable photo ID, such as a National ID Card, Passport, Driving License<sup>10</sup>. Voter cards were distributed for information purposes, but these were not required to vote and could not be used for ID purposes.

Polling Agents (representatives of candidates and political parties) are allowed to be present for in the polling stations to observe the voting<sup>11</sup>.

When a voter arrived at a polling station they were to be checked for indelible ink by poll officials, which is applied to all voters and their name called out and ID inspected. The voter's number was written on the ballot paper counterfoil, and then the ballot – bearing the official stamp – was presented to the voter. The voter register was then marked against the name of the voter.

Voters were directed to a voting booth and were to vote in secret. However, if a person required assistance, for example if they were blind or illiterate, then they were assisted by the Presiding Officer or senior polling official. If a voter spoiled their ballot they could request a replacement.

Polling stations closed at 16.00, but any persons waiting in a queue at 16.00 were to be allowed to vote.

Votes were not counted at the station. Once voting was completed the ballot boxes were sealed and the ballot paper account paperwork completed. Polling Agents were also able to apply their seals to the ballot box. The Ballot boxes and paper work were then delivered by the Presiding Officer and police escort to the relevant counting centre<sup>12</sup>

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<sup>10</sup> In a meeting with the Expert Team, the Commissioner of Elections identified the following as acceptable forms of ID for voting: National ID Card; Passport; Driving Licence; Special Clergy ID; Senior Citizens Card; Pensioners Card; Special Temporary ID Issued by Elections Secretariat.

<sup>11</sup> They had copies of the voter register for the polling stations and were mostly concerned with the identity of the voters and the overall number of persons voting.

<sup>12</sup> A counting centre was established for each grouping of approximately 12-15 polling stations in a polling division within a District. There were 888 in total.

Members of the security forces, police, staff of public transport services and public servants assigned for election duties were allowed to vote in advance by post. Such votes were held by the relevant Returning Officer and counted separately at a Counting Centre after the close of polls.

For the regular counting process, the Counting Centre checked the accuracy of the paper work from each of their designated polling stations and thereafter counted the votes and reported the tabulated result to their respective Returning Officers. The Returning Officers in turn tabulated the votes from their District and reported to the Commissioner of Elections in Colombo, who is mandated to announce the final result.

Polling Agents were allowed in each Counting Centre, as were accredited international observers. However national observers were not allowed at the count.

### **CET Assessment of Voting and Counting**

Overall, the Expert Team viewed very positively the conduct of voting, commenting that in polling stations visited the process was carefully and properly managed and voters were free to express their will.

#### *Opening and Voting*

Polling stations were well prepared to open on time and polling officials were familiar with the tasks and responsibilities and administered the process in a professional manner. Voters were processed efficiently and at a good rate, with ID cards properly checked. Candidate Agents and Observers were static in polling stations but were present in good numbers and followed the processing of voters carefully.

A large number of polling officials were female, though it was noted that the overwhelming majority of Senior Presiding Officers was male<sup>13</sup>.

The use of photo IDs was an important safeguard. In instances where there may have been a small discrepancy between the ID number and the number indicated in the register the Senior Presiding Officer made a decision on the eligibility of the voter.

There is a concern, reflecting the findings of the 2005 Expert Team, that the secrecy of the vote is not adequately provided for in many instances. This is largely due to the layout of the polling station. In many instances the voting booths were positioned in a way that made them overly visible to the polling officials or persons seated close by. It was also due in some instances to the flow of voters from booth to box to exit, which took them closely behind persons voting. It is not claimed that this was being abused but rather that it is avoidable, and should be guarded against in order to avoid the possibility for mis-use.

Overall the Team reported positively on the role of the police, as being helpful and discreet. However, in some instances police were inside the polling station, even assisting polling staff

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<sup>13</sup> In the Northern Province for example the Expert Team was told this is because Presiding Officers have to be present overnight prior to the commencement of voting to help guard the materials and this, it was explained, is not conducive to the selection of women.

in their duties. Again, the spirit of this was judged to be benign, but it is a poor practice and outside the parameters of the regulations.

There were some more serious concerns in Jaffna, where a series of explosions occurred in the early hours prior to polling. Local interlocutors claimed these were designed to deter people from voting. On the day of the election it was calm in these areas and turnout was comparable to elsewhere in the Province.

In Vavuniya it was reported that the transportation for IDPs proved inadequate, as 10 of the 30 buses arranged to transport persons to cluster polling stations were not available. We are also cognisant of reports of difficulties faced by IDPs in some areas beyond those Team visited, reflecting problems with registration and ID cards but particularly transportation. In Killinochchi for example, it was reported that several hundred IDPs faced a long wait for transportation resulting in them arriving at the polling station too late to vote and then being stranded with no means of returning home<sup>14</sup>.

The Team also noted credible reports from some observer organisations and media of isolated problems linked to a limited number of violent incidents and malpractices. However, in most instances the voting process appears to have been well conducted.

Materials were delivered to counting centres in an orderly and secure manner, with boxes being properly sealed and accompanied by poll officials, police and candidate agents throughout.

### *Counting and Results*

The counting process was again professionally conducted and transparent as candidate agents were present throughout. But, it is regrettable that national observers are precluded from this part of the process and we can see no good reason for this and indeed their presence would add to transparency. The Expert Team reported that counting officials worked extremely hard but often in very cramped and hot conditions. It is a very positive aspect that agents from the three top candidates at each counting centre were provided a copy of the result protocol, which provides for transparency.

The process was conducted in a manner that ensured the Commissioner of Elections had the results in a timely manner, allowing him to announce the result on the day after the election. The result was transparent, with a full breakdown of the vote totals for each candidate by Province.

In the days after the election the Commissioner of Elections raised some concerns about pressure being brought-to-bear on election officials, including at the counting centres, in some areas. In particular he stated: "Regional leaders harassed my team and I in several areas such as Puttalam, Anuradhapura, Matale Districts, they even bothered the counting centres. This is not a good trend...". There were also some allegations by the opposition of fraud in the results process. However, the Commissioner of Elections explained to the CET that the problems at the identified Counting Centres were resolved fairly promptly and the allegations of fraud in the results process were denied by the Commissioner of Elections and, as of the time of writing, had not been substantiated by the claimants.

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<sup>14</sup> Centre for Monitoring Election Violence Briefing Paper, 26 January 2010

## Result of the 2010 Presidential Election

Results were carried on various media as they came in providing a steady update on the results as they became available, these included for example the web-site of the Island newspaper and state media outlets.

The Commissioner of Elections announced the national result late afternoon on 27 January, in a televised meeting attended by a number of the candidates or their representatives.

The following is an overview of the result<sup>15</sup>

President Mahinda Rajapaksa (UPFA)	6,015,934 votes (57.88%)
Gen (Retd) Sarath Fonseka (NDF)	4,173,185 votes (40.15%)
Other candidates	(1.97%)
Total valid votes cast	10,393,613
Invalid votes	101,838 (0.96%)
Total Turnout	10,495,451 (74.50%)

## Post-Election Developments

The day after the election General (Retd) Fonseka, the opposition candidate, moved into a major hotel in Colombo, claiming that he feared for his security. Shortly afterwards the hotel was surrounded by a large number of armed police and military, amidst a claim attributed to a senior military officer that the General had a large number of army deserters with him in the hotel.

It was the same hotel as that being used by the international media, and the situation received widespread coverage nationally and internationally as the General also held a press conference to highlight his concerns for his safety and his claim of widespread electoral malpractices. In the evening the General eventually left the hotel and returned to his home. It is understood that a small number of his associates were arrested as they were alleged to be army deserters.

On 29 January, General Fonseka's Colombo party office was raided by police and the road around it sealed off. Police claimed they were searching for deserters and illegal weapons. At the same time during this post-election period there were numerous claims and counter claims between the opposition and government of plans to commit attacks, a coup or assassinations.

In addition on 30 January five major media organisations expressed what they characterised as their deep concern over increasing media suppression in the post-election period, including threatening behaviour against some media outlets, blocking of certain news websites and the arrest of a chief editor of a private newspaper.

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<sup>15</sup> Twenty of the 22 candidates lost their deposit as they did not pass the threshold.

There were reports of some post-election violent incidents between party activists, resulting in one death and some injuries.

Given these developments, Buddhist and Christian clergy were moved to call for calm, an Archbishop also calling for the electoral victor to be 'humble in victory'.

Such a post-election environment was extremely regrettable and created a very bad impression in the wake of the poll. Such tensions damage the democratic environment, particularly as Parliamentary elections are scheduled to be held by April.

Further, these practices, coupled with the concerns expressed regarding the pre-election environment, serve to undermine the integrity of the democratic process in the eyes of the population. They are incessantly fed allegation, vitriol and rumour by their political leaders from all sides of the political spectrum. This undermines confidence and trust in the process.

## **Recommendations**

- 1 Polling stations should be laid out in a manner that ensures the secrecy of the vote. This requires that polling booths are angled in a way that prevents any person from being able to see inside and that the flow of voters inside the polling stations is designed so as to avoid people walking behind the booths.
- 2 The role of police at the polling station needs to be clarified to both polling staff and police officers. Police should not be present inside a polling station unless required for the maintenance of order and they should have no role in the conduct of the vote or count.
- 3 The situation for IDPs needs to be normalised as far as possible and as swiftly as possible. This will help to facilitate the accurate registering of voters, notably in the Northern and Eastern Provinces and the issuing of ID cards. If it is again required to use cluster polling stations for the forthcoming parliamentary elections then adequate transport arrangements need to be put in place to ensure all voters can enjoy their right to vote.
- 4 It must be ensured that voter information at the polling station is clear. It was noted that the information on the definition of an invalid vote was somewhat mis-leading.
- 5 National observers should be allowed to observe the count. Exclusion of national observers from this key part of the process is against international standards and decreases transparency. If there are issues of regulating numbers of persons present at counting centres, then limits can be placed that not more than one or two observers from any one accredited national observer organisation should be present at the same time.



## Chapter 6

### Conclusions and Recommendations

#### Conclusions

Sri Lanka has a long tradition of organising elections, and overall the administrative arrangements for voting and counting in this election reflected this, having been well conducted. The Commissioner for Elections and his staff across the country expended great effort to put in place procedures to ensure Sri Lankans were able to cast their ballots. There were some reports of violent incidents on the day of the election, notably in the Northern Province, and malpractices in isolated areas.

In addition, in the wake of the election there were some allegations of pressure against officials at some count centres and of fraud during the results process, though the Commissioner of Elections told the Expert Team that the problems at the affected count centres had been promptly resolved and he denied the claims of fraud, which do remain unsubstantiated.

The main problems facing this election, as for a number of previous elections, were encountered during the pre-election period. The Commissioner of Elections publicly expressed his frustration at the failure of some state institutions, notably state media, to comply with his guidelines and directives as they are legally obliged to do. In addition, there were widespread credible reports that state resources were being mis-used during the campaign in favour of the incumbent.

Many of these problems emanate from the failure to properly implement the 17<sup>th</sup> Amendment of the Constitution, adopted by parliament over eight years ago, which would help to de-politicise state institutions through the creation of independent oversight commissions and the necessary conditions for a level playing field for the elections and a fair campaign environment. The 17<sup>th</sup> Amendment provides, *inter alia*, for the creation of an independent election commission and it is clear that the process requires an electoral body which can fully assert its control of the process.

Further, there is concern at the violent clashes between party activists during the campaign period, as well as some incidents on the day of the election and just after. The call for calm by ruling and main opposition parties was welcome but came too late; just two days before the end of the campaign. While the level of violence compared relatively well to some previous elections, it is a concern that such clashes and incidents involving party activists have come to characterise election campaigns in Sri Lanka. It is hoped that political parties can address this problem before it becomes endemic to elections in Sri Lanka.

There was also a serious development on the day after the election, when armed military and police surrounded the hotel where the main opposition candidate was based. On 29 January, his campaign office in Colombo was raided by police special forces and a number of media reported being under pressure. Whilst the circumstances of these incidents are not clear it is extraordinary for an opposition candidate to be put in such a situation and at the very least these incidents created a very bad impression for the democratic environment.



Special arrangements were put in place for Internally Displaced Persons (IDPs) to update their registration and provide them the right to vote. However, some problems were reported, including problems in registering a transient community, ID card issues and transportation problems on election day for some of those needing to travel to cluster polling stations. As the situation for these communities further normalises, the electoral arrangements for them will hopefully also become more regular.

Overall, there are starkly contrasting aspects to the electoral process in Sri Lanka. There is an experienced and professional election administration that strives to properly manage the process of voting and counting. However, there is a compromised pre-election environment, including the election management body being unable to fully ensure respect for the rule of law; a failure of some state institutions to respect legal provisions and guidelines, resulting in an abuse of state resources and a failure by state media to meet its legal and moral responsibilities; and, incidences of violence.

Previous reports on elections in Sri Lanka – including the Commonwealth Expert Team for the 2005 elections - have clearly identified similar problems and offered suggestions as to how they might be addressed. Further, Sri Lanka's own parliament unanimously adopted the 17<sup>th</sup> Amendment to the Constitution in October 2001, which would go some way to creating improved conditions. The key is that necessary changes need not be just suggested but actually implemented. Otherwise elections will continue to fail to fully meet international standards for democratic elections.

As a consequence, even though on the day of the election voters were free to express their will, shortcomings primarily in the pre-election period meant that overall the 2010 Presidential elections in Sri Lanka did not fully meet key benchmarks for democratic elections.

Some of the problems during the election, notably abuses by state institutions, increasing politicisation of the military and non-adherence to the rule of law, raise serious concerns. Further, the cumulative effect of the pre-election problems and the post-election incidents and environment serve to undermine the integrity of the democratic process in the eyes of the population and could undermine public confidence and trust in elections and politics in Sri Lanka. It is in these areas that we find there is the greatest need for improvement.

## **Recommendations**

### **Electoral Framework and Election Administration**

- 1 The 17<sup>th</sup> Amendment to the Constitution needs to be fully implemented to provide for the establishment of all the independent oversight commissions identified in the Amendment.
- 2 There needs to be a review of voter registration procedures, to identify the most suitable and effective process for the country. The registers in many areas appear to be reasonably accurate, but it is clear that in certain areas substantial updating is required. Further, procedures, possibly through the increased use of IT, should be considered so that the cut-off point for additions to the list is closer to the date of an

election. For instance, the register to be used for the forthcoming 2010 parliamentary elections is the 2008 one, which means that no person turning 18 after this date is provided with the right to vote.

### **Election Campaign and Media**

- 3 Political parties must address the issue of violence carried out by their supporters. They could consider agreeing on a code of conduct amongst themselves at the start of the election campaign with an aim to eradicate election violence.
- 4 A mechanism needs to be found to prevent the widespread abuse of state resources during election campaigns. The implementation of the 17th Amendment may help in this regard, as would more effective enforcement of existing guidelines issued by the election management body.
- 5 The increasing politicisation of the armed forces and civil service is a disturbing trend, which must be reversed.
- 6 In the interests of accountability and transparency in election campaign financing, consideration should be given to the introduction of legislation to regulate campaign financing and expenditure, with appropriate sanctions for any breach.
- 7 The democratisation of public media would be greatly strengthened by the transfer of state-run radio and television to a non-political statutory body. This removal of state control would address the very substantial imbalance noted in this report.
- 8 The introduction of an independent media association or council made up entirely of professionals from both private media and the new statutory body responsible for public media. This would nurture permanent, consistent journalistic ethics. Before each election, this group would be involved with a new independent Elections Commission in devising a democratic, feasible Media Code of Conduct. This would create a measure of self-regulation that would hopefully ensure the commitment by the media to providing an appropriate level of voter education. It would also facilitate a clear balance by the public media in the interests of all citizens and a reasonable measure of balance by the private sector regardless of each media house's editorial political preference.

### **Voting, Counting and Results**

- 9 Polling stations should be laid out in a manner that ensures the secrecy of the vote. This requires that polling booths are angled in a way that prevents any person from being able to see inside and that the flow of voters inside the polling stations is designed so as to avoid people walking behind the booths.
- 10 The role of police at the polling station needs to be clarified to both polling staff and police officers. Police should not be present inside a polling station unless required for the maintenance of order and they should have no role in the conduct of the vote or count.

- 11 The situation for IDPs needs to be normalised as far as possible and as swiftly as possible. This will help to facilitate the accurate registering of voters, notably in the Northern and Eastern Provinces and the issuing of ID cards. If it is again required to use cluster polling stations for the forthcoming parliamentary elections then adequate transport arrangements need to be put in place to ensure all voters can enjoy their right to vote.
- 12 It must be ensured that voter information at the polling station is clear. It was noted that the information on the definition of an invalid vote was somewhat mis-leading.
- 13 National observers should be allowed to observe the count. Exclusion of national observers from this key part of the process is against international standards and decreases transparency. If there are issues of regulating numbers of persons present at counting centres, then limits can be placed that not more than one or two observers from any one accredited national observer organisation should be present at the same time.

# Annex 1

## Composition of the Team

**Senator Keith Desmond (KD) Knight, QC (Jamaica)** is a former Minister of Foreign Affairs and Minister of National Security and Justice of Jamaica. He is a lawyer by profession and currently serves as a Senator of the Jamaican House of Assembly. He has served on a number of Commonwealth Observer and Expert missions most recently in Fiji and Belize.

**Ms Cynthia Barrow-Giles (St Lucia)** is a lecturer in political science at the Cave Hill Campus, University of West Indies, Barbados. She has served as Head of Department of Government, Sociology and Social work, 2004-2006 and Deputy Dean of the Faculty of Social Sciences 1994-1996. Ms Barrow-Giles has authored, edited and co-edited a number of books and articles including "General elections and voting in the English speaking Caribbean 1992-2005, published in 2006. She currently serves as a member of the St Lucia Constitution Reform Commission.

**Dr I V Subba Rao (India)** is a member of the Indian Administrative Service (IAS). He is currently Chief Electoral Officer in Andhra Pradesh. As the head of election administration in one of the larger Indian states (population: 80 million), Dr Rao has successfully conducted three major elections during the last two years. He has also initiated a number of measures intended to make voter registration more citizen-friendly and enhance the integrity of the electoral process.

### **Mr Tim Neale (United Kingdom)**

Tim Neale worked for the BBC from 1956. In the early years he served in the African Service during which he was seconded for two and a half years to Malawi to help launch that country's national radio following independence. Later roles included managing radio stations and running the BBC's Radio Training department. Since 1994, working as a freelance media consultant for several international organisations including the Commonwealth Secretariat, he has trained journalists in twenty developing countries, concentrating particular on coverage of elections

### **Ms Jane Michuki (Kenya)**

Ms Jane Michuki is a lawyer and an elections expert as well as an advocate of the High Court of Kenya. She is an immediate former Chairperson of the Institute for Education in Democracy in Kenya. She has observed elections in Kenya, Tanzania, South Africa and Zimbabwe. She served as a technical adviser on legal and constitutional frameworks for elections on behalf of the International Foundation on Electoral Systems (IFES) for the 2000 elections in Zanzibar and Zimbabwe 2002.

### Secretariat Staff

Mr Mark Stevens, Democracy Section

Mr Pavan Kapoor, Asia Section

Ms Nishana Jayawickrama, Asia Section

Ms Zippy Ojago, Democracy Section



## **Annex 2**

### **Deployment Plan**

<b>Location</b>	<b>Team</b>
Western Province - Colombo	Senator KD Knight Pavan Kapoor Nishana Jayawickrama Zippy Ojago
Northern Province – Jaffna	Dr I V Subba Rao Ms Jane Michuki
Southern Province – Matara	Ms Cynthia Barrow-Giles
Eastern Province – Batticaloa	Mr Tim Neale
Central Province – Kandy	Mark Stevens



## **Annex 3**



# **Commonwealth Expert Team Sri Lanka Presidential Election**

**26 January 2010**

## **PRESS RELEASE**

**Mr. KD Knight, Chair of the Commonwealth Expert Team**

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**A generally well-administered election day but shortcomings in the pre-election period and incidences of inter-party violence taint election**

The Commonwealth was invited to observe the 26 January Presidential Elections by the Commissioner for Elections. The Secretary-General of the Commonwealth deployed a five-person Expert Team supported by a staff team from the Secretariat. Our team has been present in the country since 18 January, meeting with representatives of political parties, civil society, media and Commonwealth High Commissions as well as observing the voting and counting in five provinces.

This statement is preliminary and reflects an initial overview of some of the main issues raised during our stay and through our observations. We will issue a final report of detailed findings and conclusions at a later stage.

Sri Lanka has a long tradition of organising elections, and overall the administrative arrangements for voting and counting in this election reflect this, having been well conducted. The Commissioner for Elections and his staff across the country expended great effort to put in place procedures to ensure Sri Lankans were able to cast their ballots and the ballots were properly counted. There have been some reports of violent-incidents, notably in Northern Province, and malpractice in isolated areas, and we hope that all such instances are properly investigated. But based on our team reports and reports from other observers it appears that overall voting and counting have proceeded reasonably well in most areas.

The Commissioner for Elections assured us that every effort had been made to provide Internally Displaced Persons (IDPs) the right to vote. However, some problems were reported, including ID card issues and transportation problems for some of those needing to travel to cluster polling stations. As the situation for these communities further normalises, the electoral arrangements for them will hopefully also become more regular.



The main problems facing this election, as for a number of previous elections, were encountered during the pre-election period. The Commissioner for Elections publicly expressed his frustration at the failure of some state institutions, notably state media, to comply with his guidelines and directives as they are legally obliged to do so. In addition, there were widespread credible reports that state resources were being mis-used during the campaign in favour of the incumbent.

Many of these problems emanate from the failure to properly implement the 17<sup>th</sup> Amendment of the Constitution, adopted by parliament over eight years ago, which would help to de-politicise state institutions through the creation of independent oversight commissions and the necessary conditions for a level playing field for the elections and a fair campaign environment. The 17<sup>th</sup> Amendment provides for the creation of an independent election commission and it is clear that the process requires an electoral body which can fully assert its control of the process.

Further, there is concern at the reported violent clashes between party activists during the campaign period, as well as some incidents on the day of the election. The call for calm by ruling and main opposition parties was welcome but came too late; just two days before the end of the campaign. It is a concern that such clashes and incidents involving party activists have come to characterise election campaigns in Sri Lanka and political parties are urged to address this in good time for the forthcoming parliamentary elections.

Overall, there are starkly contrasting aspects to the electoral process in Sri Lanka. There is an experienced and professional election administration that strives to properly manage the process of voting and counting. However, there is a compromised pre-election environment, including the election management body unable to fully ensure respect for the rule of law; a failure of some state institutions to respect legal provisions and guidelines; infractions of some campaign regulations; and, incidences of violence. Until such problems are addressed the electoral process in Sri Lanka will not fully meet key benchmarks for democratic elections.

The final stages of the process are still continuing and we will follow these. Our team will now start compiling its final detailed report which will include a series of recommendations, where required, for potential changes to strengthen the electoral process and the environment for the elections. However, during previous elections, many international and national observer groups have clearly identified problems and offered suggestions as to how they might be addressed. Further, Sri Lanka's own parliament unanimously adopted the 17<sup>th</sup> Amendment to the Constitution in October 2001, which would go some way to creating improved conditions. The key is that necessary changes need not be just suggested but actually implemented.

**Colombo, 27 January 2010**

## **Declaration of Principles for International Election Observation**

The Commonwealth Secretariat is a signatory to both the Declaration of Principles for International Election Observation and the associated Code of Conduct for International Election Observation Missions, which were commemorated on 27 October 2005 at the United Nations in New York.

Commonwealth Observer Groups are organised and conducted in accordance with the Declaration and Commonwealth Observers undertake their duties in accordance with the Code of Conduct.