



**EUROPEAN UNION
ELECTION OBSERVATION MISSION**

SRI LANKA PRESIDENTIAL ELECTION

17 NOVEMBER 2005

FINAL REPORT

TABLE OF CONTENTS

INTRODUCTION.....	1
1. EXECUTIVE SUMMARY AND RECOMMENDATIONS.....	1
1.1. Executive summary.....	1
1.2. Recommendations.....	3
2. POLITICAL BACKGROUND.....	8
2.1. Main political forces.....	8
2.2. The 2004 Parliamentary elections.....	9
2.3. The 2005 Presidential election and candidates.....	11
3. LEGAL FRAMEWORK.....	12
3.1. The shape of the Institutions.....	12
3.2. The 17th Amendment to the Constitution.....	13
3.3. The Presidential Elections Act and Special Provisions.....	13
3.4. Fundamental Rights applications before the Supreme Court.....	14
3.5. Electoral System.....	15
3.6. Legal framework for media.....	15
4. ELECTION ADMINISTRATION.....	16
4.1. Voter Registration.....	17
4.2. Nomination of candidates.....	19
4.3. Cluster polling stations.....	19
4.4. Policing of Elections.....	20
5. MAIN FEATURES ON THE CAMPAIGN.....	20
5.1. Campaign in the media.....	21
5.2. Election related violence.....	28
6. POLLING AND COUNTING.....	30
6.1. Postal vote.....	30
6.2. Polling and counting on election day.....	30
6.3. Election results.....	32
7. ENFORCEMENT OF ELECTORAL RIGHTS.....	33
7.1. Complaints and Appeals.....	33
7.2. Annulment and re polling.....	34
7.3. Petitions and Fundamental Rights Applications.....	36
8. WOMEN'S PARTICIPATION.....	37
9. DOMESTIC AND OTHER INTERNATIONAL OBSERVERS.....	38
10. ACKNOWLEDGMENTS.....	38
ANNEXES.....	40
1. EU EOM statement of preliminary findings and conclusions.....	40
2. Media Monitoring data.....	46

INTRODUCTION

In response to an invitation from Sri Lanka's Commissioner of Elections, Mr Dayananda Dissanayake, a European Union Election Observation mission (EU EOM), led by Chief Observer John Cushnahan, a former Member of the European Parliament who had been Chief Observer for the elections in 2000, 2001 and 2004 was sent to Sri Lanka for the 17th November Presidential election. The mission consisted of 7 Core Team members who arrived in Colombo on the 23rd October 2005 and they were later joined by 22 long term observers and 51 short-term observers. These observers were drawn from 21 Member States of the European Union, as well as from Switzerland. Observers were deployed in all 22 electoral districts including LTTE controlled areas.

The EU EOM maintained a presence in the country until December 4 to observe the post-election situation

The conclusions of the EU EOM are in accordance with the international standards for genuine democratic elections as stated in the Universal Declaration of Human rights (1948), the International Covenant on Civil and Political Rights (1966) and the Declaration of Principles for International Election Observation (2005).

The EU EOM also took into consideration other conventions ratified by Sri Lanka on specific issues including the Convention on the Elimination of all Forms of Discriminations Against Women (CEDAW, 1979) and the International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families (MWC, 1990).

1. EXECUTIVE SUMMARY AND RECOMMENDATIONS

1.1. EXECUTIVE SUMMARY

As it was the fourth occasion since 2000, that an EU EOM had been deployed in Sri Lanka, a further opportunity was provided to assess what progress had been made towards achieving recognised international standards for democratic elections and the further consolidation of democracy in Sri Lanka.

While the 17th November presidential election was conducted in a much improved election environment in the South of the country, a markedly contrasting situation was to be found in the North and East. In areas in which the LTTE either controlled or exercised influence, there was little tangible evidence to show that an election process had actually taken place. Political campaigning was non-existent and voters were prevented from exercising their franchise because of an enforced boycott by the LTTE and its proxies. Regrettably the distortion of the electoral process in these areas was not a new phenomenon and therefore cannot be ignored.

Previous EU EOM'S to Sri Lanka have made a number of recommendations but most of them have not yet been implemented. These are put forward again as they remain essential ingredients for strengthening the electoral process. However, on their own, they are insufficient to address the fundamental malaise that exists in those areas of the North and East where voters have consistently been denied the opportunity to fully participate in the democratic process. It is clear that more radical measures are necessary to transform this

situation and in this regard we recommend that an international body, acceptable to both parties to the peace process, is invited to administer and supervise the electoral process in this part of Sri Lanka.

A) Summary of main findings and recommendations

Amendment 17 which provides for the establishment of a number of independent commissions including an independent Election Commission has not yet been fully implemented. This should happen without any further procrastination. Further improvements to the Legal Framework are also necessary in the areas of complaints and appeals procedures, the use of a national identity document for voting, the rights of migrant workers, transparency regarding campaign expenditure and the introduction of limits, the rights of 18 year old first time voters and the right of domestic observers to be present in counting centres as well as polling stations. Additionally the law in relation to annulling election results lacks clarity and needs to be overhauled. The Supreme Court Interim order of 9th November introduces “de facto” discriminatory measures against voters in LTTE controlled areas and should be brought into line with international standards for universal and equal suffrage.

The overall performance of the Election Administration was highly professional. The Commissioner of Elections enjoyed the confidence of political parties in the country and is well respected. The regular meetings he held with the political parties were open to international and domestic observers, increasing the transparency and general confidence in the work of the election administration. He met all the legal deadlines for the technical preparations of the election and at district level, the Returning Officers and his staff were well organized and well prepared. This report recommends the introduction of several technical improvements.

The voter registration process contains fundamental deficiencies which need to be addressed as a matter of urgency. The EU EOM recommends that the voter register is fully computerised and centralised and systematically updated including LTTE controlled areas.

Apart from the particular problems of the North and East, the campaign was conducted in a much calmer atmosphere compared to previous elections.

Throughout the campaign period, the state controlled print and electronic media showed substantial bias in favour of the Prime Minister. Conversely the private media demonstrated partiality towards the UNP candidate. While this situation might have provided a measure of equilibrium, it cannot be ignored that state media have particular obligations to act impartially and if they do not then earlier action should be taken by the Election Administration to establish a Competent Authority to oversee the state media. In the view of the EU EOM an Independent Authority should be set up with a clear mandate to establish clear guidelines for all media which would apply at all times and not simply during an election campaign.

The EU EOM received a number of complaints regarding the misuse of public resources for the purpose of election activities. These reports mainly related to the unlawful use of state owned vehicles by the authorities and the deployment of employees of state institutions for the UPFA campaign activities. As well as receiving complaints from third parties, the EU EOM directly observed a number of abuses e.g. advertisements, both in the State-owned and private newspapers, sponsored by State Corporations and Statutory Boards, with the clear intention of promoting the candidature of Mahinda Rajapakse. The EU EOM also directly witnessed state buses being used for campaign purposes in the Hambantota district.

Due to the LTTE'S enforced boycott, there was an extremely low voter turnout in both LTTE-controlled areas and in government-controlled areas in the North and East where Tamil voters reside.

EU EOM observers reported increased levels of violence on polling day. In Batticaola, grenades or bombs were thrown at polling stations, the main district counting centre, a bus for the transportation of voters from the LTTE controlled areas and at a police check-point. Observers witnessed protests at the lines of control in Jaffna, Vavuniya and Batticaloa where groups had gathered and in some cases burned voter cards. In the government controlled areas of Jaffna and Batticaloa, the atmosphere had also been reported as tense resulting in deserted streets.

In Colombo there were a considerable number of people who arrived at polling stations to find that their names had been removed from the register. Subsequent complaints on this problem were also received at mission headquarters.

In all other regions, polling and counting on 17 November generally took place in an orderly manner. The EU EOM observed polling stations and counting centres throughout all 22 districts and the general impression was of a well-administered process with voters participating in large numbers.

The two main domestic organizations, the Centre for Monitoring Election Violence (CMEV) and People's Action for Free and Fair Elections (PAFFREL) played an important role in observing this election. They were accredited to observe polling activity and the EU EOM strongly supports their right to be able to observe the count as well. The EU EOM appreciates the co-operation and assistance it received from these and other civil society organizations.

1.2. RECOMMENDATIONS

Although the election process in the South of the country proceeded reasonably satisfactorily, considerable improvements as detailed below still need to be implemented. However the problems encountered in the North and East were of a more fundamental nature. The conditions that existed in the areas, which the LTTE either control or exercise considerable influence, were not consistent with what is expected in a genuinely democratic election. No normal political campaigning was able to take place and voters were also denied their fundamental right to vote. This was not a new development. It has been a constant feature in all the elections observed by successive EU EOM's.

Consequently, we therefore restate the recommendations made in 2000, 2001 and 2004 which should be implemented without delay to strengthen the democratic process. However, in addition to these, more radical measures are required to address the situation in the North and East.

A) Creating a countrywide democratic election process

In order to ensure that all future elections are held throughout the entire country on the basis of internationally recognised principles for genuine democratic elections, elections in LTTE controlled areas in the North and East should be administered and supervised by an international body acceptable to both parties to the peace process (see section 5.2 - election related violence). This would take place for an agreed transitional period.

B) Improvement and enforcement of the legal framework

- All provisions of the 17th Amendment should be fully implemented without further delay.
- The Supreme Court interim order of 9 November should be reviewed to bring it into line with internationally recognised standards for universal and equal suffrage.
- Effective and timely procedures should be specified by law regarding the complaints and appeals process. These should include:
 - Streamlining all the election-related complaints into a single process.
 - Ensuring that the system is transparent and publicly accountable. Voters, parties and other organisations should be able to defend their electoral rights by submitting a complaint or appeal to a clearly identified competent body.
 - Any issue involving criminal liability should be referred through the court system.
 - Complaints and appeals should be responded to within a reasonable and given time-period. However adequate time must be allowed for the gathering of information on which the decision will be based.
 - A centralised record of all complaints and appeals, and their outcomes, should be kept. Reports should be regularly produced and made public.
 - Clear information should be provided to the public about the process and how to make a complaint or appeal effectively.
- Consideration should be given as to what should be the appropriate length of the interval between the declaration of the election result and the holding of the subsequent inauguration. Insufficient time for receipt and investigation of complaints can result in the complaints process being compromised, which in turn could undermine public confidence in the election. Therefore sufficient time should be allowed in order for complaints to be received and addressed and electoral decisions to be implemented.
- If elections are held again before a national identity document scheme is fully implemented, clarification and enforcement is needed on the procedure for establishing each voter's identity. Currently the polling instructions allow presiding officers to refuse a ballot to a voter if they are "certain" the person is not who they claim to be and no opportunity is given to sign the Declaration of Identity. This clearly contradicts the election law that specifies that voters whose identity is in doubt should be required to sign the Declaration of Identity in order to be issued a ballot. While the instructions may prevent impersonation, they may also result in undue disenfranchisement and clearly have no legal basis.
- When national identity cards have been issued to all citizens, the law should be amended so that all voters are required to produce their card in order to cast their ballot.
- Sri Lanka should honour the commitment it has made on the rights of migrant workers to vote, as specified in the International Convention on the Protection of the Right of All Migrant Workers and Members of Their Families¹ (signed by Sri Lanka in 1996). Therefore a voting system should be introduced that allows Sri Lankan migrant workers and members of their families temporarily living abroad to vote for national elections. This should be enshrined in the law.

¹ Art 41

- The law should also be amended to facilitate voting for those voters confined to their homes or an institution due to serious illness or disability.
- The Constitution and/or the Presidential Election Act should be amended to include the developments in the jurisprudence of the Supreme Court concerning election related matters. In particular:
 - The right of voters to freely elect their representatives
 - The SC jurisprudence on Article 46A of the PEA, increasing the number and range of cases when the Commissioner of Elections should annul the results of a polling station and order a re-poll.
- More specific criteria must be established as to when consideration might be given to annulling the results of an entire election. Currently, the law lacks clarity.² Reference should be made in the election laws to annulment being applied in cases where the magnitude of the problem is assessed to be serious enough to potentially alter the outcome of the overall election.
- Rules for the publication of political parties' accounts, including campaign contributions, should be introduced. Consideration should be given to limiting campaign expenditure.
- The inconsistency between the Constitution and the Registration of Electors Act should be clarified to enable all citizens who have reached 18 years of age to be able, not only to register, but also to vote.

Due to the flexibility over potential electoral dates, the EU EOM recommends that Sri Lankans be able to register at 17 years. The birth date should be included in the voter register so voters would only be able to vote when reaching 18 on the day of the elections. This would ensure that if an election falls before the next enumeration phase, those having attained the age of 18 would be able to exercise their right to vote.

- The right of domestic observers to be present at the polling stations and counting centres should be included in the Presidential Election Act.

C) Election Administration Issues

Improvements of procedures on Election Day

- The procedural arrangements, whereby each voter's registration number is marked on the ballot counterfoil, results in all completed ballot papers being traceable. While this may be intended as a fraud-prevention mechanism, it fundamentally undermines the secrecy of the ballot. Therefore there should be no recording of registration numbers, or any other identifying information, so that each ballot paper remains untraceable.
- The process of counting should be developed in the following ways:
 - Counting centres should be located in larger spaces/rooms to allow for adequate working conditions and the presence of party agents and domestic observers.

² For example, an annulment can be declared based on "a corrupt practice or illegal practice [*that*] was committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate." PEA, Section 91c. Another example of unclear guidance is found in Section 91a, which refers to circumstances that may have prevented "the majority of electors....from electing the candidate of their choice." However there is no guidance on what is meant by "the majority".

- Efforts must be maintained to ensure that all counting staff are fully aware of the criteria for ballot validity. This is necessary in order to make sure there is no variation between different count locations which would allow for allegations of distorting the process.
- The counting process would be made more efficient by commencing the count upon the arrival of a sufficient minimum number of boxes at the count centre. This would prevent delay and frustration that can arise from unnecessary delay.
- The quality and consistency of the ink must be improved if it is to be an effective safeguard in which there is public confidence.
- Certain procedural practices related to polling need to be improved through clear instructions and training of the polling staff. In particular:
 - The checking all the fingers of every voter for signs of electoral ink.
 - The secrecy of the vote must be improved by ensuring that all electoral staff understand the importance of the concept and the respective arrangements that need to be implemented in each polling station (i.e. paying particular attention to the positioning of the booth).
- The application process for casting of a postal ballot should be clarified and simplified so that voters are clear on their eligibility and the procedure involved. Time should be allowed for an appeal to any rejected application for postal voting. There should be a time limit on the implementation of postal polling, so that there can be a stronger observation presence by agents and observers. Those administering the postal voting in their places of work should receive more adequate training and should also be more subject to monitoring from the local election administration. Records should be kept at a district and central level of all applications, rejections, appeals and the turnout in the postal voting process.

D) Necessary improvements to the Voter Register

- The fundamental deficiencies in the voter registration system should be addressed as a matter of urgency. This can be implemented by either using census data (1) or developing the active system of registration currently in use (2).
 - (1) Introducing a passive system of registration based on census data: the data is in electronic form and is currently collected every 10 years. To provide an adequate basis for a voter list, the census would need to be rolling or updated every year.
 - (2) If the system of an on-going active registration is maintained, rather than creating an entirely new register each year, the one from the previous year should be used as a basis from which adjustments (additions/deletions) are made.
- The voter register should be fully computerised and centralised and should be updated, including in the LTTE controlled areas. This would help prevent duplication and the process of registering people who move from one part of the country to another.
- Registration should be systematised to reduce the potential for the work of enumerators to go un-checked. This requires development of training, accountability and monitoring of the work of Grama Niladhari, Special Enumerators or others tasked to do the ground-level

data collection. Furthermore public consciousness should be raised about the importance of keeping a registration receipt (as proof of registration) and of the checking of entries during the display period.

- Additional efforts should be made to ensure that Internally Displaced People are accurately recorded in the voter register in their new location. A pro-active approach is needed to ensure that even those not previously registered, now have the opportunity to register and to vote.

E) Necessary steps to ensure a non-violent, transparent, fair and equal campaign

- There should be a meeting, initially at leadership level, of political parties with the objective of forming an agreement, relating to conduct for all future elections. This code of conduct should include commitments being made on non-violence, prevention of intimidation, fair and equal conditions for campaigning which include a commitment not to use public resources and appropriate behaviour by polling agents. Subsequent proposals should be enforced by either internal party discipline or the law, whichever is appropriate.
- The declaration of assets required from elected officials should be open to public scrutiny. Furthermore an effective mechanism should be introduced to ensure that declarations of assets are checked, so that any malpractice identified is addressed.

F) Recommendations on media

- An independent Authority should be put in place with a clear mandate. It should be in charge of establishing rules for all print and electronic media (state-owned and private). These rules should be valid at all times and not only during an election campaign. The Authority should also be given the resources and training to constantly monitor in order to assess the conduct of all media. Monitoring provides evidence of any malpractice and thus enables the appropriate action to be taken.
- Broadcasting frequencies are public resources according to two decisions of the Supreme Court ("*Sri Lanka Broadcasting Authority Bill*" reported in *Supreme Court Special Determination*, vol. 2, page 2, 1997 and "*Fernando v. The Sri Lanka Broadcasting Corporation and others*" reported in *Sri Lanka Law Reports*, vol. 1, page 157, 1998). Therefore, all broadcasting media should be required to provide a public service, at least during the length of the election campaign. As a consequence, guidelines from the Commissioner of Elections should be enforced on both state and private media.
- Regulations regarding electoral silence in Sri Lanka are ambiguous and therefore need to be clarified in order to make them more precise. The silence period for electronic media appears to be excessively long (72 hours) and it does not affect paid propaganda broadcasts. Electoral silence should be the same for all the media.

G) Recommendations on women's participation

- The election administration should disaggregate data in order to provide a breakdown by gender of workers at all levels of the election administration. Efforts should be made to employ women at all levels of the election administration. This may involve additional resources, such as providing transport home on election night for senior presiding officers. The election administration should keep localised and centralised records on registration

and turn-out by gender. Voter education and additional resources could then be targeted accordingly.

- Parties and coalitions/alliances, should promote women in politics by increasing the proportion of senior party positions that are held by women. They should also increase resources to encourage women to become involved at all levels of party activity. Similarly gender-sensitive campaign activities should be emphasized.

2. POLITICAL BACKGROUND

2.1. MAIN POLITICAL FORCES

Sri Lanka has a multi-party system, but two main parties whose main support is drawn from the majority Sinhalese community dominate the political landscape as part of opposing political coalitions that alternate in power. These are the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP).

The **United People Freedom Alliance** (UPFA) consists of the former People's Alliance (PA), the JVP, and a range of leftist and smaller parties, and the NUA (one of the two officially recognised parties representing the Muslim minority community).

Within the PA, the **Sri Lanka Freedom Party (SLFP)**, the outgoing President's party, represents the main force within the whole UPFA. The SLFP governed the country between 1956-65, 1970-77 and it came into power again in 1994, ending 17 years of UNP rule. It governed in coalition with the NUA and EPDP (see below). With a strong base at community level, the SLFP is strong in most of the provinces, except in the Northern and Eastern regions.

The **People's Liberation Front (JVP)** is a Sinhalese-nationalist-Marxist-oriented party that grew out of disaffected educated Sinhalese youth in the South. Now an institutionalised political party, it led insurrections against the government in the 70's and 80's, destabilising the South and being responsible for political assassinations.

The alliance between the SLFP and the JVP was very controversial in 2004. Although both parties support a larger role of the state in economic and social life, there are substantial policy differences between them particularly relating to Sri Lanka's fragile peace process.

The **Eelam People's Democratic Party (EPDP)** is a Tamil based party and has fought since 1990 against the LTTE. Its stronghold is Jaffna.

Jathika Hela Urumaya (JHU) is a Buddhist party, whose aim is the protection of the Buddhist Sinhalese identity, values, and the national unity. The party candidates in 2004 Parliamentary elections were all monks.

The **United National Party (UNP)** is the party of the former Prime Minister, Mr. Ranil Wickremesinghe. The UNP has governed the country for 30 years since independence and it enjoys the confidence of the business community. It traditionally enjoys the support of minority-based parties:

- The Sri Lanka Muslim Congress (SLMC) is the other officially recognised party representing the Muslim minority community. Their electorate is largely based in the East, Kandy and

central Colombo. In 2004, some of the SLMC candidates stood under the UNP banner in central areas while others ran alone in the East.

- The Ceylon Workers Congress (CWC) is an Estate Tamil party. Its strongholds are the estate tea plantations in the central regions. The improvement of the estate Tamil workers' conditions represents the key issue of its policy.

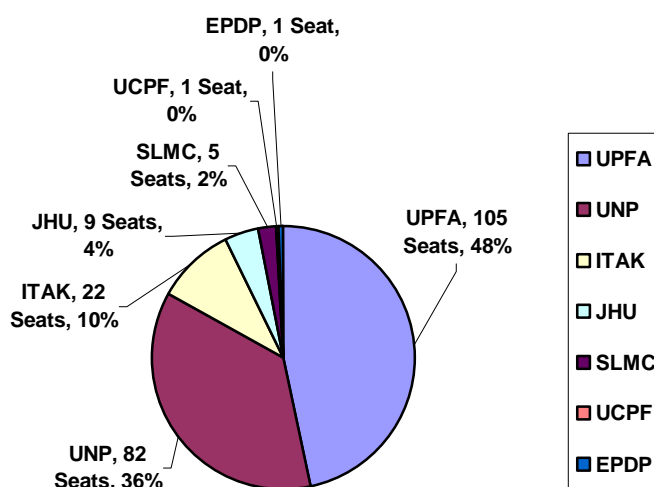
The **Tamil National Alliance** (TNA or ITAK in Tamil), a Tamil-based alliance, is the political proxy of the LTTE. The alliance includes the Tamil United Liberation Front (TULF) and the Tamil Eelam Liberation Organisation (TELO). The TNA's strongholds are the LTTE controlled areas in the North and some areas in the East.

2.2. THE 2004 PARLIAMENTARY ELECTIONS³

The 2001 Parliamentary elections had brought the UNP into power (Ranil Wickremesinghe being Prime Minister), thereby creating a situation of political cohabitation with the President, Chandrika Bandaranaike Kumaratunga from the Sri Lanka Freedom Party (SLFP). The cohabitation between these political rivals proved difficult and the growing tensions between the President and her Prime Minister resulted in the President dissolving the Parliament and calling for new elections to be held in April 2004, the third general election in just four years.

Results of the 2004 Parliamentary elections

Political parties in the Parliament (*source Election Secretariat website*) and Repartition of seats inside the coalitions (*source: EU EOM 2004 Final Report*)



Party / Coalition	Total
n# of seats	
UPFA	
SLFP	
JVP	
NUA	
LSSP	
MEP	105
	62
	39
	2
	1
1	
UNF	
UNP	
CWC	
SLMC*	
UCPF*	82
	67
	10
	4
1	
SLMC*	5

³ For more detailed analysis on previous elections, 2000, 2001 and 2004, please see EU EOMs final reports.

UCPF*	1
TNA	22
JHU	9
EPDP	1
TOTAL	225

*NB the SLMC and UCPF won seats running independently as well as running within the UNF coalition (UNP led).

The 2004 elections clearly showed voters' disaffection for the two main parties, the UPFA and the UNP, to the benefit of smaller parties, and most of all to the benefit of the JVP who appeared as the main "winner" of the elections. The Tamil National Alliance (TNA, or ITAK), the political proxy of the LTTE, secured 22 seats and appeared as an important new political force.

After the 2004 elections the United People Freedom Alliance (UPFA), led by the SLFP, formed a government with the support of the Jathika Hela Urumaya (JHU) and of the People's Liberation Front (JVP). Unlike the JHU, the JVP actually participated to the new government but its strong Sinhalese-nationalist positions resulted in conflict with the President on several significant occasions. The tensions reached their climax with the discussion on the repartition and management of the post tsunami aid⁴ and the JVP, whose position was against any agreement that could confer greater legitimacy to the LTTE, left the government in June 2005, leaving the President with a minority government.

2.3. THE 2005 PRESIDENTIAL ELECTION AND CANDIDATES

The presidential election took place after a protracted and heated debate that started in August 2005. At the heart of the controversy was a division of opinion relating to the actual date on which the presidential election should take place. The normal duration of the Presidential mandate is six years, with a maximum of two terms. Chandrika Bandaranaike Kumaratunga, the outgoing president, was first elected President in November 1994. She decided to call for an early election in December 1999, was re-elected, and took the official oath immediately. The third amendment of the Constitution would have allowed her to take this oath in 2000 instead, should she have wished to do so; consequently her mandate would have ended in 2006.

On 3 August a Fundamental Rights Petition was filed by the Venerable Omalpe Sobitha Thero, a member of the Parliament and General Secretary of the Jathika Hela Urumaya (JHU). He alleged an infringement, or an imminent infringement, of his fundamental rights, due to the failure on the part of the Commissioner of Elections (CE) to decide on the date for the holding of the Presidential Elections. The issue at stake was the accurate date of commencement of the second term of office of the incumbent President. The Supreme Court by its decision on the 26 August 2005, interpreted Article 31(3A)(d)(i) of the Constitution to read as the President will hold office for a period of six years commencing on the date on which the result of the election is declared, being in the present case 22 December 1999. The first Respondent, the Commissioner of Election, was accordingly directed to take steps on this basis to conduct the poll for the elections of the President in terms of Article 31 (3) and the applicable law. Consequently, on 19 September, the CE published on the Gazette the official date for the election to be held on (17 November) and the date for the nomination of candidates (7 October). The EU EOM has found no indications that the decision to hold the election on 17 November was further in question.

Thirteen candidates registered for the Presidential elections. One political party, the "Muslim National Alliance" deposited the fee required for the nomination but eventually did not propose any candidate. In the race for the Presidency, two candidates, both Sinhalese, and very experienced political leaders⁵ were the clear front-runners:

⁴ Post-Tsunami Operations Management structure, P-TOMs

⁵ Mahinda Rajapakse has been Minister of Labour (1994-96) Minister of fisheries and Fisheries Harbours (1997-2001) Minister of Highways (2004-05) and Opposition leader (2001-2004). Ranil Wickremesinghe has been

- Ranil Wickremesinghe, for the United National Party (UNP), had the support of the Sri Lanka Muslim Congress (SLMC) and of the Ceylon Workers' Congress (CWC), and being the promoter of the peace agreement was seen as taking his support from the minorities (Tamil, Muslims, estate Tamils), as well as from voters supporting the peace process besides the UNP traditional electorate
- Mahinda Rajapakse⁶, for the United People Freedom Alliance (UPFA) coalition is the son of a founding father of the Sri Lanka Freedom Party (SLFP) and the outgoing Prime Minister. The Sri Lanka Freedom Party (SLFP) led the UPFA coalition, and Mahinda Rajapakse had the support of the Jathika Hela Urumaya (JHU)⁷ and the People's Liberation Front (JVP).

There were no Tamil or Muslim candidates; the interests of minority groups were instead represented through a set of formal and informal alliances that the two main candidates managed to establish. Interestingly enough, the shortened preferential vote system, by which minority groups could express their first preference for a representative of their minority, and the second for a candidate with more national stature, has never been used in that way in Sri Lanka. All the presidents, since this system is in use, have always been elected at the first round of counting (the counting of the first preferences) with a minimum of 50%+1 majority. Voters never actually made use of the possibility of the second or third preference to express their choice.

The other eleven candidates did not represent a serious threat to the two front-runners, and were often considered as “supporters” of one or the other main candidate. As a matter of fact, a few days before the elections, four of them openly declared their support to the UPFA and one to the UNP.

3. LEGAL FRAMEWORK

3.1. THE SHAPE OF THE INSTITUTIONS

The current Constitution, promulgated on the 7 September 1978, provides for a unicameral Parliament with legislative power and a powerful President. The term of office of the President and of Parliament is six years. It also introduced a Shortened Preferential voting system for the election of the President.

Sri Lanka's Institutions are shaped by the “executive presidency”. Among others, the President is chief of the army, can dissolve the Parliament (except during the first year of the Parliament term), appoints the entire cabinet, provincial governors, the Attorney General, Auditor General, the Chief of Justice and other judges of the Supreme Court. The President appoints also upon approval of the Constitutional Council the Commissioner of Elections, the Public Service Commission, the National Police Commission, the Human Rights Commission, the Bribery Commission, the Finance Commission and the Delimitation Commission.

Deputy Minister of Foreign Affairs (1977) Minister of youth Affairs and Employment (1978) Minister of Education (1980) Minister of Industries (1989-1994) Leader of UNP – 1994 Minister of Science and Technology (1990-1994) Leader of the House (1989-1994) Prime Minister (1993-1994), (2001-2004) Opposition Leader (1994-2001), (2004-2005)

⁶ Manifesto “Mahinda Chinthanaya”

⁷ Although, on 27 October, a JHU MP, Venerable Uduwe Dammaloka officially declared his support to the UNP.

Sri Lanka is part of many international instruments on protection of human rights including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Right of all Migrant Workers and Members of their Families, the International Pact on Social and Economical Rights and the Convention against Racial Discrimination.

3.2. THE 17TH AMENDMENT TO THE CONSTITUTION

The Parliament of Sri Lanka adopted in September 2001 a new amendment to the Constitution. This amendment established, among others, the creation of independent commissions to administer the police, the judiciary, the public service and the elections. In order to improve the transparency and legitimacy of these institutions, the Constitutional Council, a multiparty institution, was established. The Constitutional Council must give its approval to the nomination of the members of the above-mentioned commissions, as it lapsed in March 2005, some commissions, like the National Police Commission, are currently awaiting for the nomination of their members.

The 17th Amendment contains provisions establishing an independent Election Commission and vesting it with new powers. So far, the proposed Election Commission had not been appointed due to the fact that President Chandrika Bandaranaike Kumaratunga had not been able to agree with the Constitutional Council on the person to chair it. However, the current Commissioner of Elections (CE) is able to exercise the powers vested in the future Election Commission⁸.

As a result, the CE must ensure the enforcement of election laws, and can request that State authorities to participate in such law enforcement. For this purpose, the CE can deploy police officers made available to him (to be under his direction and control during the period of the election). He can prohibit a party or candidate from using state/public property in the campaign. The CE is as well in charge of overseeing media coverage of the elections and can issue media guidelines to ensure balanced and fair coverage. Finally, he can make recommendations to the President regarding the deployment of the armed forces for the prevention of any actions that may be prejudicial to the holding of the election.

3.3. THE PRESIDENTIAL ELECTIONS ACT AND SPECIAL PROVISIONS

The Presidential Election Act (PEA) was adopted on 12 March 1981. It has been amended in 1988. The Special Provisions for the Presidential Elections adopted on 29 January 1981 further explain the procedures for the election of the President. However, the EU EOM has identified some discrepancies between the Special Provisions on one side, and the Constitution and the PEA on the other side, in the explanation of the Electoral System. This could lead to some confusion on which provision should be applied. For instance, the Special Provisions allow marking as many preferences as the voter wants, whereas the PEA and the Constitution limits the choice to up to three candidates.

The PEA provides a detailed framework for election administration: voter and candidate registration, appointment of election administration officers in the districts, material organisation of the polling and counting procedures, and the provisions on offences and

⁸ Art.27 of the 17th Amendment foresaw that, until a new multi-member Election Commission is appointed, the person holding the post of CE exercises the powers not only that he was vested with prior to the adoption of the Amendment, but also the powers that are vested in the proposed new Election Commission.

petitions. The Commissioner of Elections is vested with the power of issuing a series of guidelines establishing procedures for the administration of the elections such as the guidelines for media or instructions for the polling and counting.

3.4. FUNDAMENTAL RIGHTS APPLICATIONS BEFORE THE SUPREME COURT

The Constitution details the procedure for the filing of a petition to the Supreme Court in the event of an infringement of any fundamental right or language right⁹. The Supreme Court has issued a number of decisions that have established election related jurisprudence.

The right to vote is not specifically mentioned as a fundamental right in the Sri Lankan Constitution. However the Supreme Court has ruled that the freedom of speech and expression guaranteed by Article 14(1) (a) of the Constitution should be broadly interpreted as including the right to vote.

Of particular significance in this election is a 2001 decision, in which the Supreme Court referred to cases when the Commissioner of Elections may declare the poll void at a polling station¹⁰ It specified that a “genuine poll” is required which should be “uninterrupted from beginning to end”. The Supreme Court also specified the criteria that must be considered when deciding to order a re-poll. The 2001 decision also details the rights of voters to lodge complaints before the Supreme Court, and to request revision of a decision by the Commissioner of Elections on whether polling is declared void and whether re-polling is ordered.

Another pertinent decision by the Supreme Court was taken in 1999 on the controversial subject of the use of state resources for the benefit of one political candidate, party or group. Explicit reference is made to human resources and the importance of state workers not being used to the advantage of one entity. Misuse of state resources is regarded as constituting unequal treatment and political discrimination.¹¹

Voters, candidates and other entities are all able to file fundamental rights applications to the Supreme Court without administrative barriers or legal prerequisites (e.g. there is no requirement that a complaint should have already been submitted or decided upon).

On 9 November the Supreme Court issued an interim order (see hereafter under the Petitions and Fundamental Rights Applications) about the specific circumstances of this election. The conclusions of the Supreme Court had controversial implications for this election, and there is also concern that the Court’s decision could be made permanent in more binding decisions and legislation. The 9 November interim order referred to the management of cluster polling

⁹ Art. 126 (1) of the Constitution states that “The Supreme Court shall [*have*] sole and exclusive jurisdiction to hear and determine any question related to the infringement or imminent infringement by executive or administrative action of any fundamental right or language right declared and recognized by the Constitution”.

Art 126 (2) “where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by attorney at law on his behalf within one month, apply to the Supreme Court by way of petition praying for relief or redress in respect of such infringement”.

Art 126 (4) “The Supreme Court shall have the power to grant such relief or make such directions as it may deem just and equitable in the circumstances in respect of any petitions or reference to any fundamental right or language right”.

¹⁰ Article 46A of the PEA,

¹¹ 1999 (2 Sri L.R. 412)

stations and campaigning for voters from the LTTE controlled areas in the North and the East of the country

3.5. ELECTORAL SYSTEM

The shortened preferential voting system allows voters to indicate their preference on the ballot by rating up to three candidates in the order of their choice. In the first round of counting only the first preferences will be counted and if any candidate receives more than one-half of the valid votes cast s/he shall be elected President. Since 1981, all Presidents have always been elected with an absolute majority at the first round of counting; therefore the preferences have never been counted.

If no candidate is elected at the first round of counting, all the candidates, other than the ones who received the highest and second highest number of votes, shall be eliminated. During the second round of counting, the second preference on the ballot papers of the eliminated candidates are transferred to the two leading candidates, only if the second preference is marked for one of the two leading candidates. However, if the second preference has been indicated for another candidate who has also been eliminated, the third preference will be transferred to one of the two remaining candidates, if such a preference has been indicated. If the third preference is marked for a candidate other than the two leading candidates, it is not taken into consideration.

3.6. LEGAL FRAMEWORK FOR MEDIA

The legal framework regulating media coverage during the presidential election campaign is based on three documents:

1. The Constitution.
2. The Presidential Elections Act No. 15 of 1981 (PEA), including provisions concerning the allocation of free airtime on public radio and television, in its Article 117.
3. The Guidelines to be observed by the print and the electronic media, issued by the Commissioner of Election (CE) on 7 October 2005.

Freedom of speech and expression is guaranteed under Article 14 (1a) of the Constitution, which provides that: "All citizens of Sri Lanka shall be entitled to (...) freedom of speech and expression including publication."

The PEA guarantees that all presidential candidates contesting elections are provided with free direct access to present their platforms in the state-owned media, and that this access is regulated by the CE. The CE is responsible for the regulation and the supervision of media coverage of elections.

Together with the Presidential Elections Act No. 15 of 1981 and the Constitution, the Guidelines provide instruction on the conduct of the media for matters related to voter education, free airtime allotted to candidates to present their political platforms, news coverage and opinion polls. The Guidelines also foresee a right of reply for misrepresented candidates. Furthermore, they try to set a limit to the advantage of the incumbent government and the incumbent President by suggesting that news coverage of these subjects should also be subject to a right of reply. Electronic and print media, particularly those controlled by the state, have the obligation to provide balanced, unpartisan and accurate news reporting.

In accordance with these guidelines, free of charge airtime was allocated to the 13 candidates: each of them had the right to speak for 90 minutes (using three slots of 30 minutes each) on the state owned Channel Eye (TV) and on the main state radio channel.

Although, the Commissioner of Elections has the power to issue guidelines with effect on any broadcasting or telecasting operator or any proprietor or publisher of a newspaper (as he did on 7 October 2005), he has not resources to monitor the actual implementation of such guidelines.

The decision by the Commissioner of Elections to appoint a Competent Authority to oversee Sri Lanka Rupavahini Corporation (SLRC) and Sri Lanka Broadcasting Corporation (SLBC) was taken too late to have a substantial effect on the overall conduct of the state media. This was also the case for last year's Parliamentary elections.

The Commissioner of Election justified this delay declaring to the EU EOM he did not receive any complaint from any political party about this issue. However, there is no provision in the law that a political party should make a complaint about the SLRC or the SLBC for the Commissioner to appoint a Competent Authority¹².

The Constitution empowers the Commission to issue guidelines to any telecasting operator or proprietor or publisher of a newspaper to ensure a free and fair election. The law then makes it mandatory for the Chairmen of the SLRC and the SLBC to take all necessary steps to ensure compliance with those guidelines. Where the guidelines have been contravened, the Commission has the power to appoint a Competent Authority to take over the management of the two Corporations in respect of all political broadcasts or any other broadcasts which in the opinion of the Commission impinge the Election¹³.

There is no mention about the requirement of receiving one or more complaints by the Commission, thus implying the Commission (therefore the Commissioner) can be proactive.

4. ELECTION ADMINISTRATION

Besides the Commissioner of Elections, who is appointed by the President at national level, the election administration comprises a Returning Officer and Assistant Commissioner in each of the 22 electoral districts, a Presiding Officer (PO) for each of the polling stations, and a Counting Officer for each of the counting centres. Polling agents (i.e. party representatives) also play a significant role, for instance in the identification of voters, at polling station and counting centre level.

The Commissioner of Elections enjoys the confidence of political parties in the country and is well respected. The regular meetings he held with the political parties were open to international and domestic observers, increasing the transparency and general confidence in the work of the election administration. Many Returning Officers have used the same approach.

The Commissioner of Elections met all the legal deadlines for the technical preparations of the election. At district level, the Returning Officers and their staff were assessed to be well

¹² According to Article 27 (2) of the 17th Amendment to the Constitution, the powers conferred on the Election Commission have to be exercised by the Commissioner of Elections up to the date on which the Election Commission is constituted.

¹³ The relevant provisions are contained in Article 104B(5) of the Constitution.

organized and to have the electoral preparations and management well in hand. Training of polling and counting staff was assessed to be well organized and positively conducted.

4.1. VOTER REGISTRATION

An active registration system¹⁴ is used in Sri Lanka. The voter register is created annually at district level. The total number of voters registered for this election was 13,327,160. This is approximately 428,000 more than for the last elections (2004). However, the register was based on enumerations conducted in June 2004, before the Tsunami hit the island's coasts. To address this situation, and reduce opportunities for impersonation, the Commissioner of Elections introduced special measures to mark in the voter register the 40,000 names of people identified as deceased or missing from the Tsunami.

Several shortcomings in the registration process were reported and followed-up by the EU EOM. These include the following:

- a. Only citizens who have attained 18 years on the date of registration (2004) are allowed to register as an elector. Therefore citizens, who, in the interim period reached the age of 18 by the date of the election, were not able to vote because they had not been included in the voter list.
- b. The house-to-house enumeration has not been conducted in LTTE controlled areas in the North and East since the late eighties, due to the prevailing security situation. As an example, and as previously reported, the number of voters registered to vote in Jaffna district (701,938) is not consistent with the number of residents (evaluated at the most to be 500,000).
- c. No mechanism at central level has been established to identify possible duplicates across the districts. Deletions of any duplicates are only done on a case-by-case basis, normally upon an individual complaint. The Commissioner of Elections estimates that there are around 30,000 duplicates.
- d. There are estimated to be 350,000 IDPs who were displaced before the most recent enumeration (i.e. also before the Tsunami). Generally these IDPs have had to move because of the conflict in the North and East of the country. For those IDPs who were on the voter list before becoming internally displaced, the Commissioner of Elections reports that there is no problem, they are recorded on a separate list in their new area of residence. However, the IDPs who were not previously on the register face more difficulties. They are required to produce documentation demonstrating their identity and as it is reported to be a widespread problem of an absence of documentation amongst this population, it leaves such individuals disenfranchised.
- e. In the Tsunami-affected areas, an estimated 440,000 people have been displaced. However, IDPs very often remain in their district of origin and are reported to be frequently now residing only a few kilometres from their original place of residence. Although the Commissioner of Elections has instructed the Grama Niladharis¹⁵ to identify the new residences of IDPs, it appears that this has not always taken place. Consequently, it has been reported that a significant number of voter cards could not be distributed to

¹⁴ In an active registration system, the initiative to register belongs to the voter.

¹⁵ Village officers who are required to identify voters in their area of responsibility.

IDPs in the eastern part of the country. As some voters may have not been aware of the fact that voter cards are not necessary to vote, they may have felt unable to exercise their franchise.

- f. It is widely recognized, including by the Commissioner of Elections, that up to 1,5 million Sri Lankan citizens reside abroad and most of them are included in the voter register. It is regrettable that the Bureau of Employment has failed to provide the election administration with data on those citizens residing abroad. This leaves the election authorities unable to modify the register. While it is commendable that the authorities are in favour of full enfranchisement, there is concern that this situation might cultivate attempts at impersonation and fraud. Furthermore, it may distort accurate measures of turnout.

There is no facility for Sri Lankans living abroad to vote by postal vote or to cast a ballot outside of Sri Lanka (for example in embassies). It is not known how many citizens living abroad returned to Sri Lanka to vote.

- g. The voter list in Colombo has been particularly controversial on, and after, Election Day. This problem had never arisen in previous elections. Colombo is the only district in the country where the voter list has been computerized. It was alleged by many individuals, NGOs¹⁶ and the UNP that a number of Colombo residents were not on the voter list, despite having always been on the list. As a matter of fact, the number of registered voters in Colombo in 2005 had increased by only 786 voters more than in 2004. Furthermore, 9 polling divisions out of 15 in the Colombo district actually “lost” voters in 2005 if compared to 2004. The EU EOM regrets the possible disfranchisement of many voters in Colombo and the resulting lack of credibility and confidence in the accuracy of the voter register in Colombo.

The Returning Officer for Colombo acknowledged that registration receipts have not been consistently issued by Grama Niladharis, and without a registration receipt a person is not able to prove that s/he has registered, hence leaving little opportunity for further contestation.

Voters who were not on the list admitted that they did not check their entries during the display of the voter list as they assumed that, as in previous years, their names would be listed. This demonstrates the limited effectiveness of the display of the voter list, if it is not accompanied with a strong communication effort from the election administration to explain to voters why it is important to check if their name is on the list. At the same time, voters argued that since polling cards were not mandatory for voting they were not too concerned about not receiving one.

The UNP alleges that certain minority populations (Muslims, Tamils) were particularly targeted, as they are perceived to support Ranil Wickremesinghe. Colombo district is considered to be a UNP stronghold.

¹⁶ Both Paffrel and the CMEV collected complaints of voters who were not included on the voter list this year, despite having been included in the previous elections. Before the EU EOM left the country, Paffrel had received some 200 complaints (gathering some 5000 voters) and CMEV some 150. The returning officer in Colombo reported that 500 voters had complained. The UNP was currently in the process to gather names of voters who had been disfranchised. The EU EOM also received verbal complaints of individuals or NGOs claiming the same shortcomings.

One other complexity of the registration system that is open to allegation of malpractice, is the procedure whereby Grama Niladhari or Special Enumerators, complete registration forms. There are allegations that on occasions these forms are not delivered, not collected or inaccurately filled by either a household member or the Grama Niladhari or Special Enumerator.

- h. Plantation workers are estimated to number approximately 30,000 in Kandy district, a large proportion of which are originally from India. Despite having been born in Sri Lanka and lived here for their entire lives, there is a lack of accompanying paper work for many such workers. The opportunity to swear an affidavit, and to obtain Sri Lankan citizenship is often not taken up. Effectively this leaves these individuals as stateless, and without Sri Lankan citizenship, they are not eligible to vote.

4.2. NOMINATION OF CANDIDATES

Thirteen candidates registered for the Presidential elections. No nomination has been rejected by the Commissioner of Elections, and no complaints have been lodged about candidate nomination.

The provision for nomination established in the Presidential Election Act differentiates between independent candidates and political party candidates on the amount of the deposit for nomination. Whilst the political parties have to deposit fifty thousands rupees (approximately 415 Euros), the Independent candidates should deposit seventy thousands rupees (approximately 585 euros). The fee will be returned to the candidate, if s/he gains more than 8% of the total number of valid votes.

The situation is complicated by outstanding local elections that were initiated in 1998 and are still pending in the North and East. The Parliamentary Election Act¹⁷ specifies that while an election is in process, new parties may not register. This resulted in an unusual situation whereby some candidates in effect “rented” an existing party for the purpose of being able to run for this election. The only other way to run is as an independent candidate, under the condition the candidate has been a parliamentarian.

4.3. CLUSTER POLLING STATIONS

Following the interim order issued by the Supreme Court (see part 3), the Commissioner of Elections made the necessary arrangements related to the additional buses to transport the voters from the army controlled line to the polling stations, and to include a Senior Presiding Officer (SPO) and a Junior Presiding Officer (JPO) from other areas outside the North and East Provinces and the Grama Niladhari as additional staff in the cluster polling stations. The Commissioner of Elections also gave instructions to the Presiding Officers to take the polling card presented by the voter into their hands and ask the voter to say his/her name so that the SPO can verify its accuracy against the name appearing on the polling card.

Due to security reasons, the Commissioner of Elections decided to locate 118 cluster polling stations in Jaffna government controlled areas, in addition to the 103 for the voters coming from the LTTE controlled areas.

¹⁷ Section 7 of the Parliamentary Elections Act states no applications for registering new political parties will be accepted “commencing on the date of a Proclamation dissolving Parliament or of an order requiring the holding of an election under the Parliamentary Elections Act, n.1 and ending of the date of poll specified in such Proclamation or order”.

4.4. POLICING OF ELECTIONS

The Police Election Secretariat and National Police Commission

The Constitution vests the Commissioner of Elections with the responsibility to secure the enforcement of the electoral law and to deploy police officers on Election Day. A Police Election Secretariat has been created within the Police HQ in Colombo. It is headed by a Deputy Inspector General of the Police (DIG) under the direct supervision of the Commissioner. A total of 64,000 police were deployed on Election Day.

The Police Election Secretariat keeps track of all complaints lodged by political parties and candidates against offences relating to the electoral process. The Police recorded 517 violations of election laws during the process. Unfortunately, despite repeated requests, the EU EOM did not receive any statistics for election related violence until after the election had been concluded.

Policing of the campaign and Election Day was much better than during recent elections. During the campaign, the Police efficiently enforced the prohibition of posters and party signs, hence contributing to a substantial decrease in election-related violations. This was reported to the EU EOM throughout the entire country.

The transfer of police officers due to political reasons has not been an issue in this election¹⁸.

5. MAIN FEATURES ON THE CAMPAIGN

The SLFP obviously wished to attract JVP voters whereas the UNP wanted to appeal to voters for whom the peace process is not the only priority – they wanted to broaden their base to encompass those voters who were concerned about living conditions, the increased cost of living, unemployment etc.

The contest between the two main candidates, Ranil Wickremesinghe and Mahinda Rajapakse appeared as being very close from the outset of the campaign. In this context, the Tamil electorate, especially in the LTTE controlled areas, were considered to have a pivotal role in deciding who would eventually succeed and these voters were widely perceived as being more sympathetic to the UNP. Therefore when the TNA parliamentarians and the LTTE met in Kilinochchi on 10th November and issued a declaration on their strategy, it would inevitably prove to be highly significant. Although the declaration did not, at that stage, explicitly call for a boycott of the election, it nonetheless discouraged voters from participating in it. As polling day approached, the LTTE position became clearer when the LTTE and its front organisations stepped up the pressure to ensure there would be a boycott.

The EU EOM received many reports from NGOs and from opposition parties about undue use of public resources in the campaign¹⁹. The mission has directly observed several instances of

¹⁸ The establishment of the Constitutional Council in March 2002 and the creation of a National Police Commission, in December 2002, vested the latter with some of the powers that were previously in the hands of the Inspector General of the Police (IGP). In particular: [Constitution, art.155G (1)(a)] “The appointment, promotion, transfer, disciplinary control and dismissal of police officers other than the Inspector-General of Police, shall be vested in the Commission. The Commission shall exercise its powers of promotion, transfer, disciplinary control and dismissal in consultation with the Inspector General of Police.”

¹⁹ These reports mainly refer to the use of state owned vehicles and the deployment of employees of state owned companies for the purpose of election campaigning for the UPFA.

state-sponsored advertisements (by State corporations and statutory boards), both in the state and private media, promoting Mahinda Rajapakse election. The EU EOM also directly observed state owned buses being used for Mahinda Rajapakse campaigning in Hambantota district.

The level of misuse of state resources in this election showed an inversion in the trend initiated in the 2004 general elections²⁰, and in this regard is particularly worrying.

The general lack of voter education campaigns on the preferential vote resulted in the public not being aware of the possibilities of the second and third preferences. There was confusion around the way to mark the ballot, by marking a cross or by marking numbers, and rather than promoting the preferential vote (encouraging voters to mark up to three numbers on the ballot), political parties promoted the single vote (marking a cross for their party and no additional sign on the ballot). This is reflected in the election results as showed in paragraph 8.

Apart from the use of major rallies, gathering thousands of supporters around the two main candidates, the campaign has been mainly conducted through the media.

5.1. CAMPAIGN IN THE MEDIA

A) Media landscape²¹

State-owned media

The state controls the Associated Newspapers of Ceylon Limited (ANCL, or Lake House as it is popularly known), the biggest newspaper establishment in the country. ANCL has approximately 20 publications in the three main languages (including the dailies *Dinamina* and *Daily News* and the weekly *Sunday Observer*). ANCL has the broadest outreach in terms of distribution networks. It also benefits extensively from state advertising. The state also controls the Sri Lanka Broadcasting Corporation (radio), the Sri Lanka Rupavahini Corporation (television) and the ITN radio and television network (10 radio channels and three television channels) along with three regional radio stations.

Privately-owned

There are seven large private establishments that print a number of daily newspapers in all three official languages. In addition there are also a number of private establishments that publish several weekend newspapers. Although radio and television were a government monopoly up to the mid-1980s several privately owned television and radio stations have now been established. The private sector owns four TV stations (with seven channels), and four radio stations (with 12 channels). The transmission capacity and reach of the private stations still remain far more limited than that of the state-owned electronic media. Thus, state owned media, both radio and television, remain the electronic media with the widest reach (approximately 95% of the country). *Swarnavahini*, *TNL*, *MTV*, *Sirasa*, *ETV* and *ARTv* are the most watched private TV channels. Among the private radio stations, worth mentioning are: *Sirasa FM*, *Yes FM*, *Isira Radio*, *Shree FM*, *TNL Radio*, *Gold FM* and *Sooryan FM*. The most important private publications are: *Silumina*, *Thinakaran*, *Veerakesari*, *Thinnakkural*, *The*

²⁰ See EU EOM 2004 final report

²¹ Information mainly taken from: “A study of media in Sri Lanka (excluding the North and the East)” April 2005, by the Centre for Policy Alternatives and International Media Support.

Island, Divaina, Daily Mirror, Lankadeepa, Sunday Leader, Sunday Island and Sunday Times.

Regional Media

Sri Lanka unfortunately has very little noteworthy regional media. The only substantial regional media are the four state broadcast provincial (community) radio services. These regional services are accountable to the Head of Regional and Community Services at SLBC and have no financial autonomy.

B) Media monitoring

On 28 October, the EU EOM Media Unit started monitoring the election campaign on the state owned TV stations *Rupavahini* and *ITN* as well as on the private station *Swarnavahini*. This was conducted on a daily basis for six hours per day (from 18h00 to 24h00). It has also undertaken monitoring of five dailies: the state-owned *Daily News* (English) and *Dinamina* (Sinhala), and the private *Daily Mirror* (English), *The Island* (English) and *Veerakesari* (Tamil). The media monitoring, which was conducted by five national staff under the supervision of the media expert, includes both quantitative and qualitative analysis²². The team of media monitors was trained in the quantitative and qualitative methodology normally used by the EU Election Observation Missions. Measurements were made of the time, space and tone devoted to the political parties and candidates in a cross-section of the Sri Lankan media.

Taken as a whole, the media offered the electorate a diverse range of political opinions that enabled voters to compare parties and candidates. The state television and radio allotted all candidates free broadcasting time thus allowing them to present their platforms to the electorate.

Both private and state media were strongly polarised along party lines and were strongly supportive either of the Prime Minister (Mahinda Rajapakse), or the main opposition candidate (Ranil Wickremesinghe). While in this election, it provided some measure of balance, it happened more by accident than design. This is an unsatisfactory situation.

One of the biggest issues in the campaign was the impartiality and fairness of the media coverage of the elections. In a context of strong polarization between two main contesting forces, the state media were widely viewed as being supportive of the Prime Minister. Conversely, the private media were widely viewed as being supportive of the UNP candidate. The findings from the monitoring activity clearly confirm this pattern.

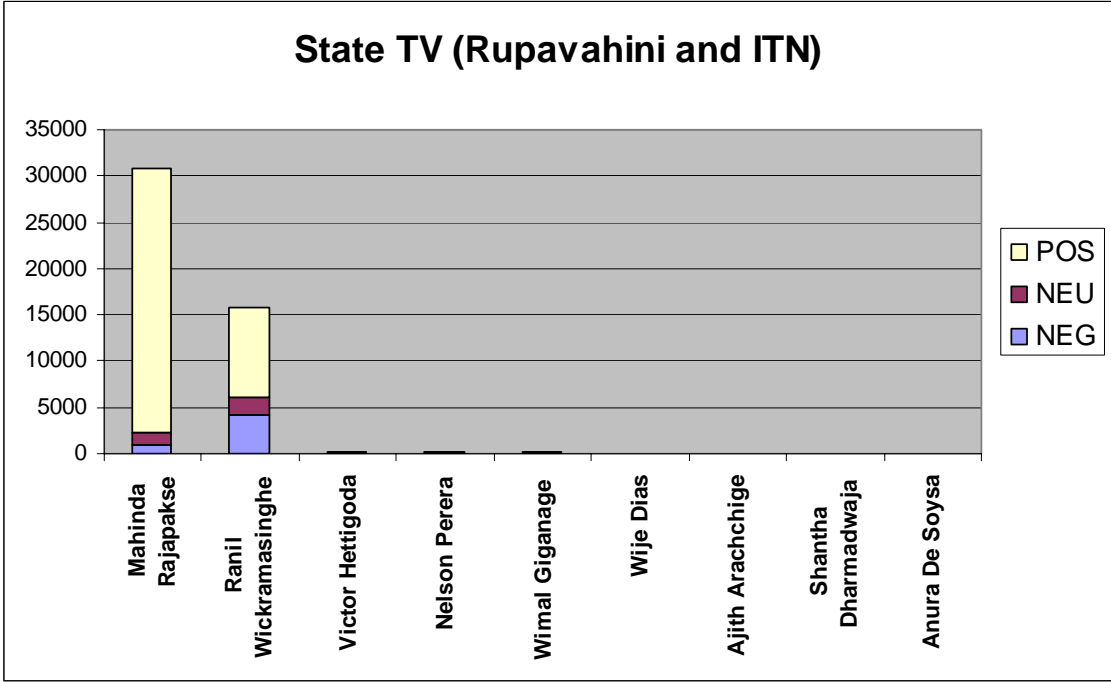
State media did not fulfill their duty to provide balanced and impartial reporting in their election related coverage either in their news bulletins and current affairs coverage, or in other informative programs.

²² The choice of the sample used for media monitoring was based on three main criteria: ownership, penetration and audience. The sources of information the EU EOM Media Unit used are: Center for Political Alternatives – Monitoring of Print Media Coverage of General Elections 2004 and A study on Media in Sri Lanka (excluding the North and East) April 2005, Phoenix Advertising Survey on TV Audience Share, EU EOM Final Report 2004 on Sri Lanka Parliamentary Elections.

On the basis of the aforementioned criteria, the following media were selected:

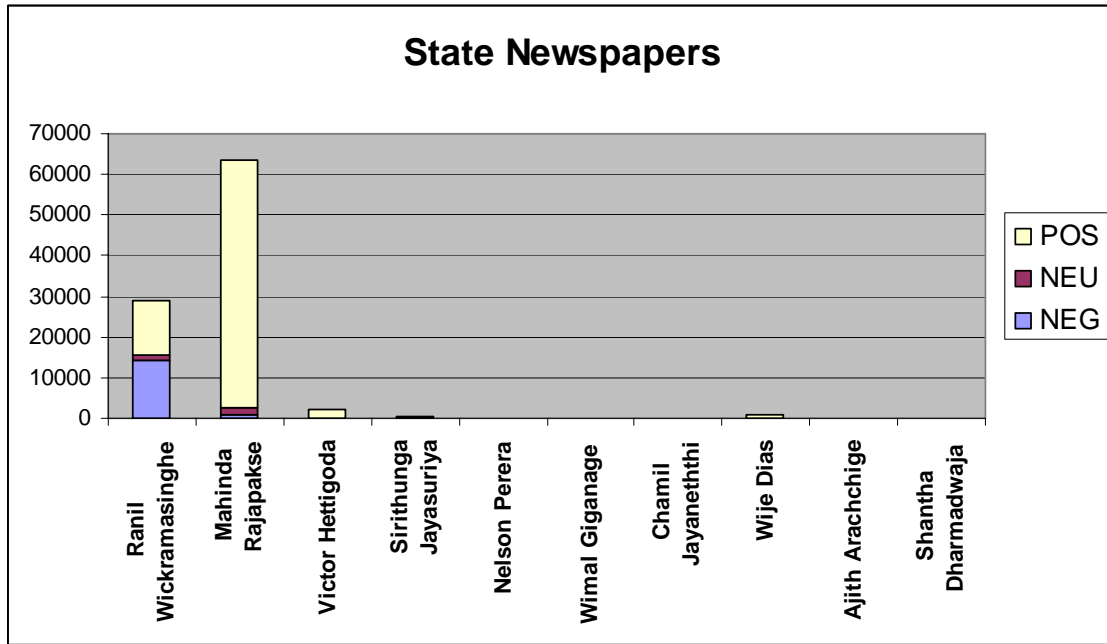
- Rupavahini TV, the main state broadcaster and it covers the whole country.
- ITN, another state broadcaster with a considerable audience.
- Swarnavahini, probably the most watched private television channel in the country.
- Daily News (English) and Dinamina (Sinhala) are the most important state controlled papers.
- Veerakesari (Tamil), one of the oldest and most read Tamil dailies.
- The Island (English) and Daily Mirror (English) are both private and have a large diffusion.

With regards to news and informative programmes, the state owned television channels (*Rupavahini* and *ITN*) dedicated almost 66% of the election coverage given to candidates to Rajapakse, while only 33% to Ranil Wickremesinghe. The same pattern observed for the 2004 Parliamentary Elections. Last year’s data were respectively 68% for UPFA and 22% for UNP. In addition coverage provided to Rajapakse was generally very positive while a significant part of the time devoted to Ranil Wickremesinghe was negative.



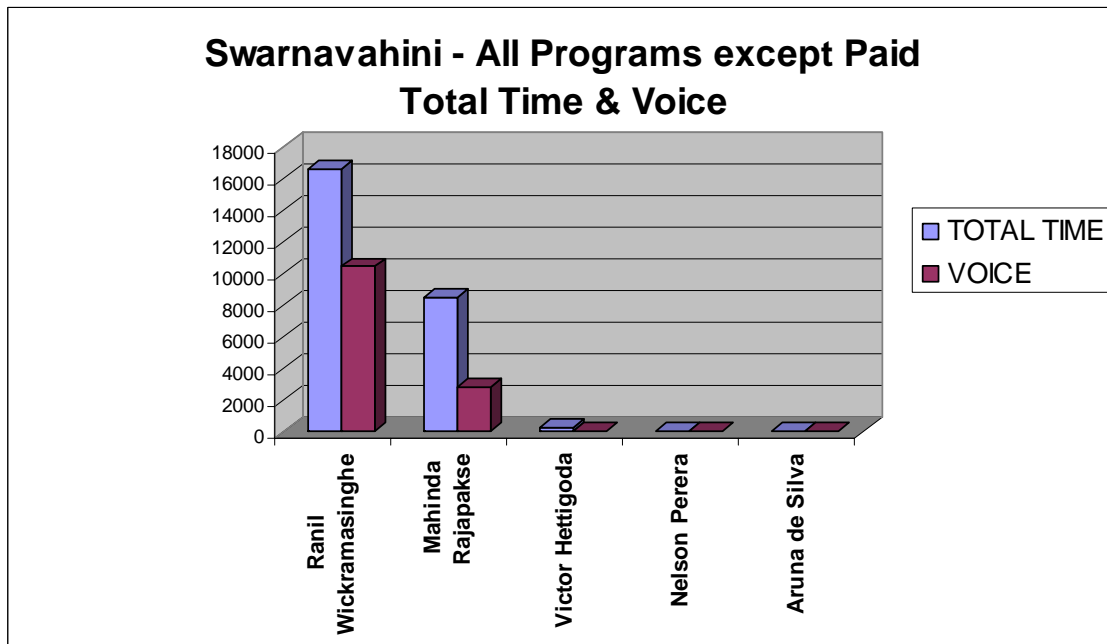
Allocation of time (in seconds) and tone of the coverage in news and informative programmes

The State print media (*Daily News* and *Dinamina*) displayed a very similar tendency by devoting approximately 67% of their total space to Rajapakse compared to 30% allotted to the UNP candidate. Again, Ranil Wickremesinghe was frequently covered in a negative manner, as shown by the chart below.



Allocation of space (in sq centimetres) and tone of coverage

Conversely *Swarnavahini*, the private TV channel monitored dedicated 66% of its election coverage to Ranil Wickremesinghe and 33% to the UPFA candidate. This difference is further accentuated if the time that the candidates actually speak on air is considered.

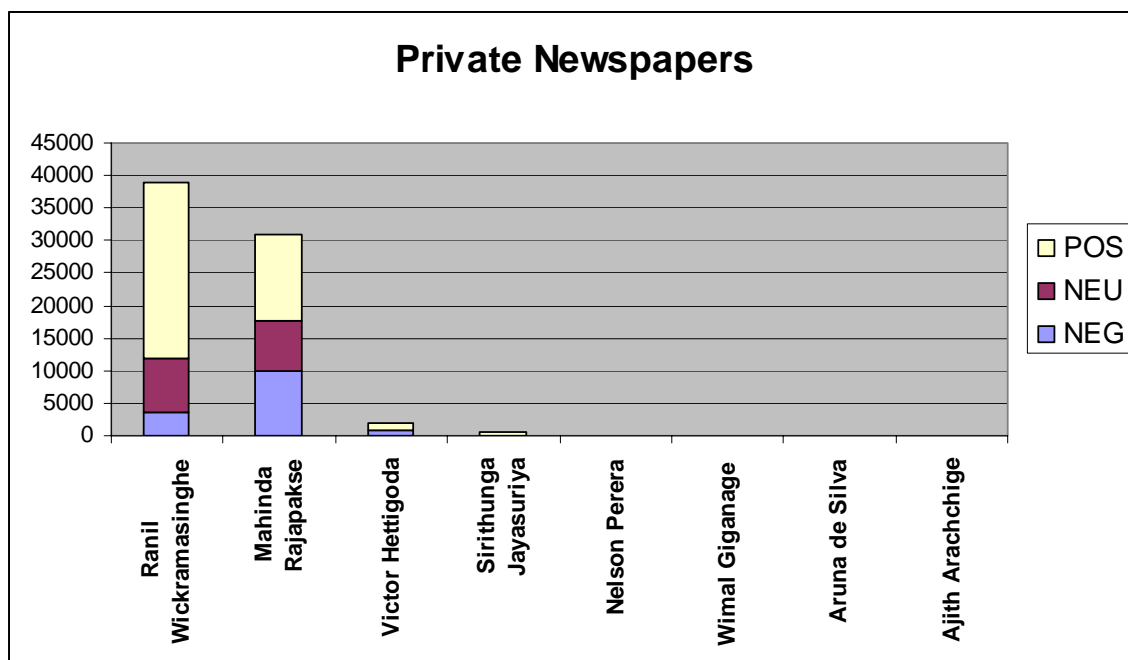


Allocation of Total Time and Time with Voice on air (in seconds) given to the candidates

Private monitored dailies showed a similar but less accentuated pattern. Ranil Wickremesinghe received 45% of the total space in the *Daily Mirror* (mainly positive coverage), and 62% in *Veerakesari*. Mahinda Rajapakse had 54% of the space in the *Daily Mirror* (mainly negative coverage) and 36% in *Veerakesari*. More balanced coverage was

provided by *the Island*, which dedicated 53% of the election coverage given to candidates to Ranil Wickremesinghe, and 41% to Rajapakse.

Taken as a whole the private print media devoted 54% of their space to Ranil Wickremesinghe and 43% to Rajapakse, with the latter receiving more negative coverage.



Allocation of space (in sq centimetres) and tone of coverage

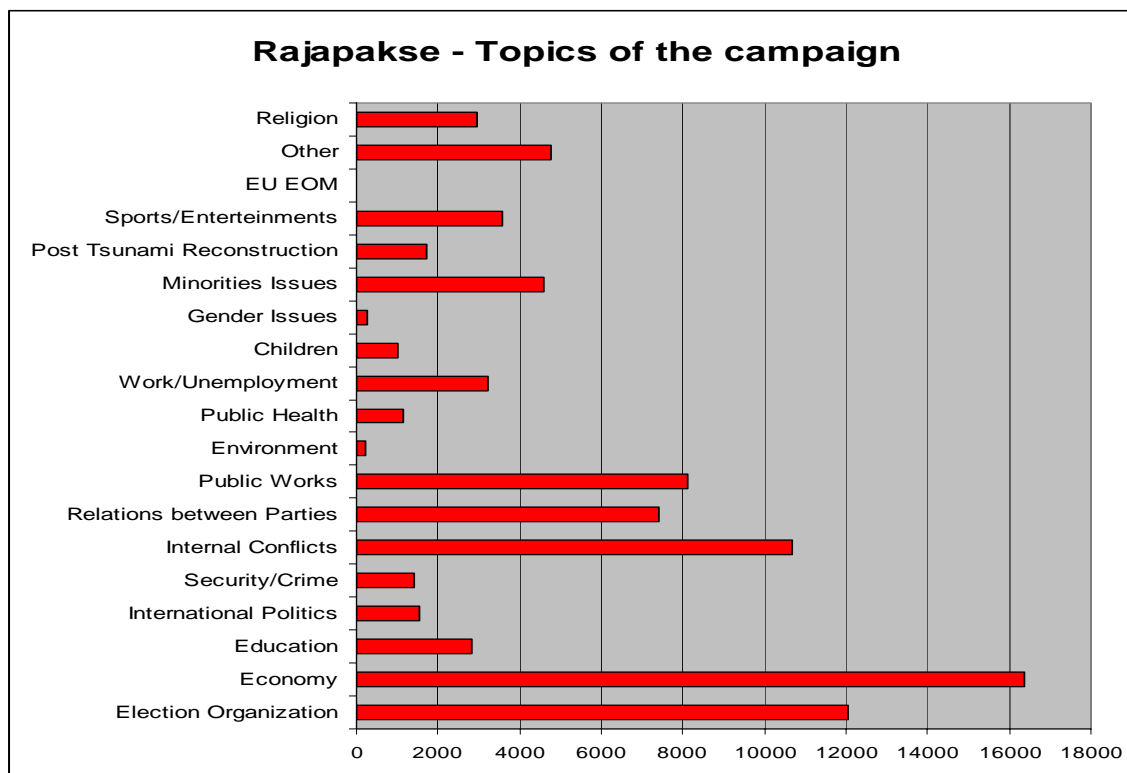
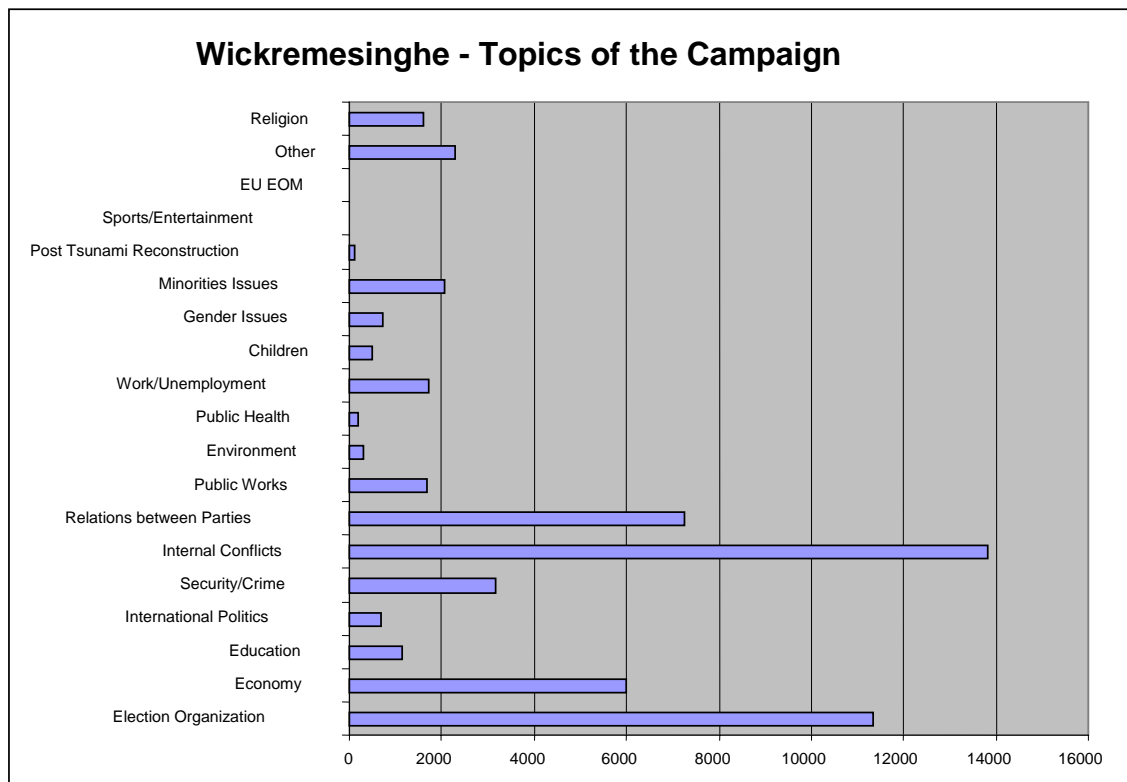
The EU EOM also observed a consistent number of violations of the election silence (72 hours prior to the opening of the polls²³) in both private and state electronic media. It must be noted that the regulations regarding the electoral silence were ambiguous and left excessive space for interpretation, with different time frameworks applying to different media (electronic and print).

C) The topics of the campaign

The election campaign was conducted by the two main candidates mostly through the media; the coverage, both in print and electronic media, was intense and consistent. All candidates' activities as well as election related issues were widely covered. Unfortunately, the strong polarization between the two main contesting forces and the campaign strategies of Rajapakse and Ranil Wickremesinghe, led to a situation of lack of dialogue and debate. Regrettably, the two candidates could not reach an agreement on the conduct of a public debate on television. The political communication of the two candidates was mainly focusing on pure propaganda (almost 39% out of the total of the political communication) or on political related topics (which are included in the category» relations between parties» 9%). The two candidates were generally worried about the election organisation, particularly in the North and East of the country. While Ranil Wickremesinghe gave more attention to the internal conflict, Rajapakse

²³ as stated by the Commissioner of Elections in accordance with the requirements of the Constitution (art. 104 of 17th amendment) and the PEA (art. 117)

was more focused on the economy, particularly at the moment his Government was presenting the annual state budget.



Topics of the campaign for the two main candidates (not including space devoted to propaganda)

5.2. ELECTION RELATED VIOLENCE

All the organizations that monitor election related violence (PAFFREL CMEV, the police) reported lower incidences of violence, compared to 2004 and even more so when compared to elections prior to 2004.

The police recorded 581 incidents of election violence, compared to 1770 for the 2004 elections, and 523 election related offences, compared to 652 in 2004. The role of the police in enforcing election rules, as for 2004 elections, continued to be reported as positive.

The CMEV recorded a cumulative total of 484 incidents during the campaign and 297 on Election Day, reflecting the fact that although the campaign was indeed less violent compared to previous ones there was nonetheless a significant increase in violence in the final days of the campaign and particularly on Election Day itself.

After Election Day instances of political violence were registered in Ampara district²⁴, targeting Muslim communities.

However a superficial analysis of these statistics creates a totally misleading impression of what actually happened during this election. Although they correctly reflect the fact that voters in the “South” of the country experienced a much improved election environment in which there was less violence than in previous elections, this does not accurately reflect the entirety of the situation.

There is no room for complacency and more effort is still required to eliminate all incidences of violence and the circumstances in which they thrive. However it is important to note that although some unacceptable problems did re-occur in the “South”, they did not prevent normal election activity from taking place. This was in marked contrast to the situation in LTTE controlled areas, where candidates were unable to undertake normal campaigning activity and voters were denied the opportunity to participate fully in the election process and especially the right to exercise their franchise due to the hostile environment created by the LTTE.

However this was not confined to LTTE controlled areas. It also occurred in many parts of Government-controlled areas in the North and East where Tamil voters reside. This was all observed directly by EU EOM members and particularly on polling day in Vavuniya, Trincomalee, Jaffna, Mannar and Batticaloa.

This was the inevitable consequence of the strategy that the LTTE adopted towards the election. The LTTE’s initial attitude was revealed following a meeting between the LTTE and TNA²⁵ on 10 November. Following the meeting Tamil Net reported:-

Emerging from the three and a half hour meeting with the Political Wing of the LTTE, R. Sampanthan, Leader of the TNA Parliamentarians, categorically declared to the media,

"Nothing worthwhile would be achieved by supporting either of the two leading candidates in the Sri Lankan Presidential election. Both Sinhalese parties have been in the government before and after periods of war in the NorthEast. If we carefully examine the conduct of these Governments towards Tamil people we are forced to conclude that we cannot place our trust on either of the parties or their candidates

²⁴in Akkairapattu

²⁵ Tamil National Alliance

We are convinced that Tamil people will not benefit by showing any interest in the forthcoming Sri Lanka Presidential elections. The past bitter experiences of the ordinary Tamil people are such that they will never forget their sufferings, especially under military subjugation, both during their non violent struggle as well as during armed confrontation.

It is not surprising that the Tamil people have lost all interest in the forthcoming Sri Lankan presidential elections. The experience the Tamils have had over five decades, has taught them neither to trust the leading Sinhala political parties nor to have faith in their leadership”.

This created an atmosphere of uncertainty for voters in these areas as to whether or not they would be allowed to vote.

In order to ensure that no ambiguity existed as to what the LTTE wanted to happen in reality, they enforced a boycott by creating an environment that was rife with violence and intimidation for potential voters. They increased the pressure on voters in areas under their control in a number of ways. They used several of their front organizations to deliver the message. Leaflets and posters were circulated which warned people not to vote. Additionally, in the run-up to polling day an organisation called “People’s Force” from the Jaffna district was reported on TamilNet²⁶ as calling for Tamil public servants to boycott election duty and a second one called the Consortium of Public Organisations (CPO) was also reported on Tamil Net as making a similar statement in which they advised Jaffna voters to boycott the election and to observe polling day as “a day of mourning” for Tamil People.

On polling day, EU EOM observers reported significantly increased incidences of intimidation. In Tamil areas in Batticaloa, there were at least seven cases of grenade-throwing or bombing which targeted polling stations, the main district counting centre, a bus for the transportation of voters from the LTTE controlled areas and at a police check-point. In Jaffna, Vavuniya and Batticaloa observers witnessed protests at lines of control in which plain-clothed groups gathered and burned voter cards. The atmosphere was also reported to be tense in government controlled areas of Jaffna and Batticaloa resulting in deserted streets.

Unsurprisingly, the use of these tactics had the desired effect – a virtual boycott had been successfully enforced in areas where the LTTE exercised control and influence.

In parallel with this, the EPDP (a rival Tamil organisation to the LTTE/TNA) was subjected to a number of attacks. EPDP officials had been the target of assassinations on four occasions, resulting in the murder of three officials in Trincomalee (6 October), Pottuvil (10 October), and in Colombo (13th November). A fourth person was also seriously wounded in Jaffna in the closing days of the election.

The combination of the enforced election boycott and the attacks on the EPDP would seem to confirm the continuation of the strategy that the LTTE had adopted in the 2004 election. The 2004 EU EOM Report considered that this strategy was intended to ensure that no other political party or individual would be allowed to claim a mandate to speak on behalf of the Tamil people except those allowed to do so by the LTTE itself.

As a consequence there was a failure, yet again, to create the necessary conditions for full electoral processes to be held in all parts of the country. In successive elections in Sri Lanka which have been observed by EU EOM’s, candidates and parties have been denied the right to campaign freely in areas either under the control or influence of the LTTE.

²⁶ TamilNet.com

In the 2001 parliamentary election, voters from LTTE controlled areas were also denied the right to vote freely because the army blocked checkpoints at Vavuniya and Batticaloa.

In the 2005 presidential election because of the enforced boycott by the LTTE, Tamil voters, in LTTE controlled areas or areas subject to their influence, were once again denied the opportunity to exercise their right to vote freely.

Successive EU EOM's have therefore consistently defended the rights of these voters and criticized those responsible for preventing them from exercising their franchise, no matter who they were.

However this situation can no longer be allowed to continue and it is now clear that if future elections in LTTE controlled areas are to be held in accordance with internationally recognised principles for genuine democratic elections, they will have to be administered and supervised by an international body as has happened in other countries that are in transition because of conflict. This approach was used recently in Afghanistan and prior to that in Cambodia(1993), South Africa(1994), Bosnia and Herzegovina(1996-2001), Eastern Slavonia(1997) Liberia(1997), East Timor(2000-02) and Kosovo(2001-03). Lessons can be learnt from these experiences, adapted and applied to the North-eastern parts of Sri Lanka. Obviously such a body could only be invited into Sri Lanka if both parties to the peace process were in agreement and in this regard it is important to point out that both the GOSL and the LTTE have obligations relating to human rights under the Tokyo Donor Conference Declaration (2003)

6. POLLING AND COUNTING

6.1. POSTAL VOTE

The EU EOM observed the conduct of postal voting on 7 and 8 November. As in 2004, procedures were well respected. A few instances of missing material were noted and, in 8% of the observed polling stations, the secrecy of the vote was not ensured at all stages of the process (mainly because voters could not isolate themselves to mark their ballot in secret).

The EU EOM has been informed of a high level of applications for postal vote being rejected (around 17%) with regional disparities (for example approximately 23% in Nuwara Elya). Two main reasons for this were mentioned by the election administration: either the voter did not submit the application in time, or the voter did not fill out the form in the proper manner.

6.2. POLLING AND COUNTING ON ELECTION DAY

As previously mentioned, there was an extremely low turnout of voters in not only LTTE-controlled areas but also in Government-controlled areas in the North and East²⁷ where Tamil voters reside. This was observed by EU EOM teams in Vavuniya, Trincomalee, Jaffna, Mannar and Batticaloa following increased violence and intimidation.

²⁷ Batticaloa district turnout in 2004: 83,58%, in 2005: 48,51%
Trincomalee district turnout in 2004: 85,44%, in 2005: 63,84%
Jaffna district turnout in 2004: 47,38%, in 2005: 1, 21%
Vanni district turnout in 2004: 66, 64%, in 2005: 34,30%

In all other regions polling and counting on 17 November generally happened in an orderly manner. The EU EOM observed polling stations and counting centres throughout all 22 districts. The overall picture on Election Day was of a well-administered process with voters participating in large numbers. EU observers assessed the polling process as good or adequate in 96% of more than 330 stations observed. Campaign material was seen within 500 meters of polling stations in 4% of the total number of polling stations observed. The counting process was assessed to be good or adequate in all centres visited.

The presence of polling agents of both main parties in almost all polling stations visited (89%) as well as in counting centers (88%) was a positive feature as a guarantee for transparency. Domestic observers were present in 73% of the polling stations visited.

The procedural arrangements, whereby each voter's registration number is marked on the ballot counterfoil, results in all marked ballots being traceable. While this may be intended as a fraud-prevention mechanism, it fundamentally undermines the secrecy of the ballot.

As in the three previous EU EOMs, observers reported that polling booths were typically placed in such a way that election officers could see voters marking their ballots. Even though this might have been done to guard against attempts at election fraud, it compromises the secrecy of the vote. In 75% of polling stations observed the layout was assessed to be inadequate.

The legal lack of obligation for voters to show any type of ID or voter card before voting provides very weak protection against attempts at impersonation and multiple voting. Furthermore the discretion of the Presiding Officer on this matter can result in people being disenfranchised. In 4% of polling stations visited, observers witnessed people being refused a ballot because their identity was not ascertained. In 9% of polling stations observed, objections were raised regarding the identity of some voters. The EU EOMs of 2000, 2001 and 2004 have all recommended official identification to be required.

Procedures to protect against double voting were in some cases weakly applied. Although ink was consistently applied, in 9% of polling stations observed voters were not checked for ink prior to being issued a ballot. Furthermore in testing of the ink, observers in Trincomalee, Batticaloa and Kegalle reported that the ink was taking more than one hour to become visible. In 3% of polling stations visited tendered ballots had been used (these are issued when someone has already voted in a person's name).

Observers noted a high level of armed police present inside some polling stations in the North and the East in particular. While this provides security in a potentially tense environment, it could also have an intimidating effect on voters and was assessed as such by EU EOM observers in 10% of the PS visited.

In Colombo there were regular reports of a considerable number of people arriving at polling stations to find that their names were not on the voter list²⁸.

In general, EU EOM observers assessed the process as "OK" or "good" in 98% of the observed polling stations (96,5% in 2004).

²⁸ See part on voter register

6.3. ELECTION RESULTS

Registered Voters:	13,327,160		
Votes Cast:	9,826,908	[73.74% of registered voters]	
Valid Votes:	9,717,039	[98.88% of votes cast]	
Invalid Votes:	109,869	[1.12% of votes cast]	
CANDIDATES	PARTY	TOTAL VALID VOTES	% [OF VALID VOTES]
Mahinda RAJAPAKSE	United People's Freedom Alliance (UPFA)	4,887,152	50.29%
Ranil WICKREMESINGHE	United National Party (UNP)	4,706,366	48.43%
Siritunga JAYASURIYA	United Socialist Party (USP)	35,425	0.36%
Achala Ashoka SURaweera	Jathika Sangwardhena Peramuna (JSP)	31,238	0.32%
Victor HETTIGODA	Eksath Lanka Podujana Pakshaya (ELPP)	14,458	0.15%
Chamil JAYANETHTHI	New Left Front (NLF)	9,296	0.10%
Aruna DE ZOYSA	Ruhunu Janatha Party (RJP)	7,685	0.08%
Wimal GEEGANAGE	Sri Lanka National Front (SLNF)	6,639	0.07%
Anura DE SILVA	United Lalith Front (ULF)	6,357	0.07%
Ajith Kumara Jayaweera ARACHCHIGE	Democratic Unity Alliance (DUA)	5,082	0.05%
Wije DIAS	Socialist Equality Party (SEP)	3,500	0.04%
P. Nelson PERERA	Sri Lanka Progressive Front (SLPF)	2,525	0.03%
Hewaheenipelage DHARMADWAJA	Shantha United National Alternative Front (UNAF)	1,316	0.01%

Source: IFES.com

Mahinda Rajapakse was elected at the first round of counting, with 50,29% of the valid votes. The results reflect the close race between the two front-runners, with only 180 786 votes of difference between them. Most of all, Mahinda only got a little bit more than 28 000 votes over the 50%. Altogether the two main candidates gathered 98, 72% of the vote cast, which

clearly shows that the preferential vote was not used by the voters, probably by lack of knowledge (lack of voter education as pointed out before) but most likely because of the lack of a true political alternative to the two main candidates. Voters marked their ballot with one cross only, which also explains why the number of invalid ballots was very low (1,12%), much lower than for 2004 the Parliamentary elections (5,46%) where the electoral system requires the voter to mark the ballot for the party and for the three candidates of his/her choice. The turnout (73,74%) was lower than for the 2004 Parliamentary elections (75,96%) reflecting the enforced boycott in the LTTE controlled areas and intimidation in the Tamil areas of the North and East. Nonetheless, some districts recorded a very high turnout, close or even over 80%.

7. ENFORCEMENT OF ELECTORAL RIGHTS

7.1. COMPLAINTS AND APPEALS

Instructions on management of electoral violations are specified across various different legal acts and institutions, but the mechanism for lodging and adjudicating complaints is essentially unregulated. Consequently there is a fragmented management of alleged electoral violations. Limitations of this process have been highlighted by the re-polling question that has arisen in this election.

Election offences are detailed in Part V of the Presidential Election Act (PEA). This section classifies offences and specifies which court should hear each sort of offence detailed. It states that both Magistrate Courts and High Courts should hear election related cases, and it specifies the appropriate punishment for each violation. These violations essentially relate to violations on a district level. The PEA also specifies in Part VI, that for a limited number of more serious offences, petitions can be made directly to the Supreme Court²⁹. A further legal avenue is the Court of Appeal which can receive appeals about the decision of any state administration body (including the electoral authorities).

No part of the PEA or any other law specifies who can lodge a complaint or the time limitations on submitting a complaint or appeal. There are also no directions on the procedure for management or investigation of a complaint.

²⁹ The Constitution gives the Supreme Court the power to hear, determine, and make order with regard to any legal proceeding relating to the election of the President. Additionally the PEA provides for an Election petition to be filed at the Supreme Court within 21 days of the date of publication of the result of the election in the Gazette and within 28 days after the alleged act was committed.

The petition can be presented to court by a candidate at the election or any person who signed the nomination paper/s of any candidate abovementioned. The Sec. 91 of the Presidential Election Act sets out the grounds for presenting such petition: 1/ if due to bribery, treating or intimidation the majority of electors were or may have been prevented to vote. 2/ non-compliance with the provisions in the act and the elections results might have been affected by it. 3/ corrupt or illegal practice committed by the candidate in connection with the elections. 4/ If the candidate engages an agent knowing him to have been guilty of corrupt practice. 5/ If the candidate engages an agent knowing him to have been imposed with a civic disability under the Constitution. 6/ When the candidate was disqualified for election to the office of President. The court can only determine who was duly returned or elected or whether the election was void. The ruling must be given within 6 months of the presentation of the petition.

In practice complaints are submitted to a variety of bodies, often in parallel. Furthermore the same complaint may be lodged at both local and national level. This results in some confusion over the number of complaints and inconsistencies over their management.

Unfortunately the Commissioner of Elections is not keeping a record of complaints lodged to Returning Officers at the district level.³⁰ It appears that at national and district level, complaints are frequently only followed-up with a letter to the responsible body with no investigation or enforcement process. The majority of the complaints received by the election authorities related to misuse of state resources and the opposition has expressed frustration to the EOM at the lack of effective redress in these cases. Election authorities refer some cases to the Police Election Secretariat (who may then refer on to the court) but this process does not appear to have clear guidelines and is not transparent.

The Police Election Secretariat receives complaints from election authorities and also from individuals and other bodies (parties, NGOs). It is commendable that the Police Election Secretariat keeps records at central level of complaints lodged across all districts, but as coordination with the election authorities appears to be minimal over complaints, those ones may be dealt with by two different bodies and processes and conflicting outcomes may result.

LTOs reported some frustration from interlocutors at the protracted time period for addressing complaints. Various interlocutors commented that by time a complaint is lodged, and then heard by a court, the election would be over and therefore there was felt to be little point in submitting a complaint. Despite time limits specified in the penal code, it is widely acknowledged that these are not kept to in practice.

The Commissioner of Elections had received 194 complaints by Election Day. The UNP has submitted 159 of those complaints. Most of the complaints (77) related to the unlawful use of state resources, in particular the misuse of public vehicles (46) for campaigning. EU EOM observers have been able to observe some instances of misuse of public transport for campaigning purpose. In addition, 24 complaints of unlawful transfer and appointment of public officers were filled. 30 complaints were related to violence, intimidation of voters and undue influence. The police elections secretariat had received 517 complaints on violations of the election laws, mostly filed by the SLFP and the UNP. On a positive note, the police elections received only 24 complaints on impersonation.

At the time of writing, no petition had been filed to the Supreme Court, nor an appeal been filed to the Court of Appeal.

7.2. ANNULMENT AND RE POLLING

Re-polling has been the key issue in this election following what effectively was an enforced boycott in LTTE controlled areas and in certain government controlled areas in the North and East where Tamil voters reside in significant numbers. Supporters of Ranil Wickremesinghe argued that these voters had been intimidated by violence and therefore the polling was not free and fair³¹.

Necessary conditions for re-polling are specified in various parts of the law. The basic premise for a re-poll is described in Section 46A of the PEA which states that the

³⁰ LTOs have confirmed that complaints have been lodged to Returning Officers from different parties over a variety of offences.

³¹ As the low turn out in Jaffna testifies.

Commissioner may declare an election void at a polling station if polling could not commence on time, could not continue until the official closing time or if ballot boxes assigned to the polling station did not reach the counting centre³².

In 2001 a Supreme Court judgment³³ gave further guidance on circumstances that should result in re-polling. This includes further criterion, such as if ballot papers were forcibly taken or put into the ballot box, or if agents have been forced out of a polling station. There is no detailing of the timing or process for deciding about a re-poll. Furthermore there is no requirement for the decision to be transparent and subject to scrutiny.

In practice, the Commissioner can make a decision about re-polling on the basis of reports received from election staff, the police, parties and domestic observers. In this election, the Commissioner declared in advance that any re-polling would take place on 19 November (two days after the Election Day). This left minimal time and opportunity for the Commissioner to receive and verify information, and to make a decision.

The Commissioner argued that although there was an apparent boycott in the North and the East, there was not sufficient evidence to demonstrate that intimidation was taking place. He therefore felt that there was insufficient evidence to justify a re-poll. This resulted in two complaints being lodged on this issue by the UNP and by the Centre for Monitoring election violence (CMEV).

The CMEV complained to the Commissioner that the prevailing environment was not conducive in the North and the East for the conduct of a free and fair election. The major issue as explained in the complaint was intimidation of voters through diverse means including the distribution of posters and leaflets that discouraged people from going to the polls; the letter further exposed that voters living in the East uncleared areas were denied access to transportation to the cluster polling stations. The CMEV complaint includes reports on various serious violent incidents that occurred in these areas³⁴.

³² Pursuant to Section 46A(1) of the Presidential Elections Act, the Commissioner may declare the poll void at a polling stations if

- the polling could not commence on time; or
- the polling could not continue until the official closing time; or
- ballot boxes assigned to that polling station did not reach the counting centre.

The Election Commissioner can declare an election void and order a re-polling based on reports from SPOs, ROs, NGOs, Political Parties and police. The Sec. 46A(6) of the PEA further states that where the Commissioner is of the opinion that the result of the elections will be affected by the failure to count the votes polled, or the votes which would have been polled, at the PS in respect of the PS declared void, he shall appoint a date for taking a fresh poll at such PS not later than one month before the expiration of the term of office of the president in office. From these provisions, one could conclude that, not only the range of cases for annulment is very restricted but also that the word “may” would imply that the Commissioner had a discretionary power to annul.

³³ The Supreme Court ruled that art.46A of the Presidential Elections Act should be interpreted as requiring a “genuine poll”, that should be “uninterrupted from beginning to end”. Namely, a re-poll can be ordered in the following cases: if agitation has prevented the polling station to open before 4 pm, if there was uncontrolled agitation, if ballot papers were forcefully taken or put into the box. The Court further asserted that chasing away polling agents (parties’ representatives) made “a poll cease to be equal”. In addition, the Supreme Court went further in ruling that if the proved irregularity had interfered with a free, equal and secret ballot, the Commissioner had a duty to exercise his discretionary power to annul. The Supreme Court also specified the criteria to take into consideration when deciding to order a fresh election.

³⁴ ie: grenades were thrown in several polling stations in Batticaloa and Valaichchenai, two people were shot and injured in Kalmunai and Trincomalee, there were attacks on 3 EPDP officers in Jaffna.

The UNP also lodged a complaint to the Commissioner of Elections the day after election day. It called for a re-poll in the North and East, arguing that voters were disenfranchised as a result of intimidation.

Because of what our team had itself directly observed in these areas throughout the course of the entire election process and particularly on polling day itself, we would have fully endorsed a decision by the Election Commissioner to re-poll all electoral districts in the North and East that had been affected by violence and intimidation. All EU EOMs to Sri Lanka have consistently supported the need for re-polling where the integrity of the process had been compromised.

Many interlocutors were critical of the fact that no attempt had been made by the government or by the LTTE to create conditions for electoral processes to be held in all parts of the country.

7.3. PETITIONS AND FUNDAMENTAL RIGHTS APPLICATIONS

The Supreme Court issued on 9 November an interim order on the case of the petitions on violation of fundamental rights lodged by two candidates³⁵. The new provisions established by the Supreme Court refer to polling in cluster polling stations of the North and East only. The interim order created an additional distance of 500 meters from the previous 500 meters separating the polling stations from the Sri Lanka army line, and two segments of transport for the voters to get to the polling stations. The purpose of this provision was to allow candidates to canvass before voters get inside the polling station, since no campaigning was conducted inside the LTTE controlled areas. In different circumstances, this new measure could have had an impact on the smooth flow of voters. It should be pointed out that on polling day the primary purpose is voting not campaigning.

To prevent similar cases of impersonation as reported at the 2004 elections, the Supreme Court granted the Senior Presiding Officer with a new power to ask questions to the voter to establish his/her identity, and to deny the issue of the ballot to this voter if his/her identity has not been proved.

Furthermore, the interim order establishes new coercion measures of preventive detention of a person in cases where the Presiding Officer suspects him/her of making a false statement on his/her identity or his/her age “since the person would not be subject to the ordinary process and sanctions at law”. This is in contradiction to Article 31 (6b/c) of the Constitution, by which only the Parliament is entitled “to make provisions for the register of electors to be used at and the procedure for the election of the President” and “for the creation of offences relating to such election and the punishment therefore”. Finally, the detention, even for one day only, of a young adult who has failed to prove s/he is 18 years old is disproportionate to the attempted offence.

With this order, the Supreme Court has gone beyond the existing legal framework. The decision introduces a double standard among Sri Lanka citizens that needs to be addressed in the future. Furthermore the EU EOM regards the denial of liberty, lack of access to a recourse mechanism, and the presumption of guilt implied in the act, as being counter to fundamental freedoms.

³⁵ Nelson Perera, from the Sri Lanka Progressive Front, and Wimal Geeganage, from the Sri Lanka National Front

8. WOMEN'S PARTICIPATION³⁶

In the election administration

Women are well represented at the lower levels of the election administration. In polling stations observed by the EU EOM, 53% of the polling staff were found to be female. However there is an under-representation of women at the higher levels. For example, in only 4% of PSs visited by observers the Senior Presiding Officer was female. One reason often given for this is that the prospect of late-night return travel to a person's home on election night is particularly off-putting for women. Only 12% of Counting Officers observed were female. Only 4 out of 22 Returning Officers are women.

It is also noteworthy that EU EOM observers found only 27% of domestic observers to be female.

As candidates and within political parties

Not one of the 13 candidates was female. This clearly indicates the limited role women generally have³⁷ at the higher levels of political life in Sri Lanka.

Both of the main candidates included a short section in their manifestos on women. The UNP's was slightly longer and more specific and included a commitment on ensuring the passing of the Women's Rights Bill (which has been in limbo for several years). Neither manifesto referred to the promotion of women in leadership or politics. The lack of more elaborate and specific candidate commentary on gender issues indicates that neither candidate made substantial efforts to engage the female electorate.

At rallies observed, there was a lower level participation by women than men. Observers also reported that the vast majority, if not all, of the speakers presenting at rallies were male.

Parties reported other means of campaign communication, that could be stronger for women, such as party women's groups, and door-to-door campaigning. However the extent of these activities was far from clear. Thus the question remains over whether women experienced the same level of live interactive campaigning as men.

In meeting with parties, EU EOM observers reported that women were only visible conducting the lower-level administrative functions.

Female voters

Regrettably there is no centralized record of the number of voters disaggregated by gender. It is therefore difficult to analyse deficiencies in the number of women registered on a national level or in particular parts of the country. Similarly there is no record of voter turn-out by gender. Such information is required in order to understand where and why women are under-represented.

Interlocutors have identified various issues that may in some way be limiting the extent that women participate. Firstly, associations of violence and intimidation with the electoral process is frequently argued to have a disproportionately off-putting effect on female voters.³⁸

³⁶ Sri Lanka has ratified the Convention on Elimination of All Forms of Discrimination against Women in 1981.

³⁷ Two notable exceptions are the outgoing President and her mother who was the first ever female Prime Minister.

³⁸ Similarly it is argued by some that aggressive and negative campaign and party activities are particularly disengaging for women.

Secondly, in the North and the East, the Supreme Court ruling requiring proof of identification could be regarded as having a greater impact on women as they are less likely to have identification documentation than men.

Thirdly, women are over-represented in vulnerable employment both in-country and abroad. Such vulnerable employment circumstances may affect some people's ability to exercise their voting rights at all or to do so in a free way. In particular migrant workers abroad are not able to vote without returning to the country to vote in-person in their original home location. As described previously in this report, plantation workers in Sri Lanka typically have fragile working conditions and are therefore vulnerable to excessive influence from local figures of authority. The EOM and other observer missions received reports directly of attempts to influence such workers who are predominantly female, in their voting choices.

Finally, the lack of voter education for this election may have been especially disadvantaging to women (due to their more limited campaign exposure and more domestically-orientated patterns of activity and work).

9. DOMESTIC AND OTHER INTERNATIONAL OBSERVERS

Two domestic organisations were accredited³⁹ to observe the polling, the Centre for Monitoring Election Violence (CMEV) and People's Action for Free and Fair Elections (PAFFREL). On election day, PAFFREL deployed around 20 000 "stationary" observers and 2000 mobile observers. CMEV deployed 4592 observers, of which 80 were mobile. Both organisations deployed a number of international observers within their ranks (17 for CMEV, around 100 for PAFFREL); this was a way to ensure these observers would be more independent from the local conditions and from potential threats or intimidations. Both organisations adopted a long-term approach in their observation, which is to be commended; PAFFREL for instance recruited 24 international LTOs for this purpose. Nonetheless, when meeting domestic observers in polling stations, EU observers generally noticed that those were often standing back and would benefit from more empowerment. The Programme for Protection of Public Resources (PPPR) scrutinised the misuse of public resources for campaigning; PPPR acknowledged more abuse of state resources (vehicles, buildings, media and public servants) than in 2004, mainly from the political forces in power, and their reports were more negative than in 2004.

Besides the EU, two international organisations had answered positively to the Commissioner of election invitation. The Commonwealth Secretariat sent a delegation of six members, headed by Hon. Cassam Uteem, former president of Mauritius. A delegation of the Asian Association of Election Officials was also observing, led by Mr Benjamin S. Abalos, from the Philippines Election Commission.

10. ACKNOWLEDGMENTS

The European Union Election Observation Mission in Sri Lanka (EU EOM) would like to express its appreciation to the Commissioner of Elections (CE), Mr Dayananda Dissanayake, and to the Sri Lanka Electoral Administration for their cooperation and openness during the

³⁹ Two other local NGOs also observed the process, the Diriya Foundation and the Human Development Organisation, but it is not clear whether they could enter the polling stations or not.

entire electoral process. In this regard, the EU Mission praises the commitment and dedication displayed by the electoral body.

We also would like to thank those candidates and representatives of political parties who made themselves available to meet members of the EU EOM, to answer our questions and explain their point of view.

The EU EOM would also like to thank domestic observer organisations and national NGOs for their cooperation and willingness to share information during the course of the electoral process.

The assistance of the staff of the European Commission's Delegation to Sri Lanka was deeply and sincerely appreciated. It was instrumental in enabling the EU EOM to be able to function so quickly after its arrival in Sri Lanka and it also rendered invaluable assistance throughout the duration of the Mission.

The mission also received important and enthusiastic support from the service provider IOM. The EU EOM national staff members also demonstrated the same enthusiasm and commitment.

Finally and most importantly, the EU EOM would like to express its sincere gratitude to Sri Lanka's citizens for the warm welcome, support and full co-operation they extended to our mission and its members throughout our stay.

ANNEXES

1. EU EOM STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS



European Union Election Observation Mission
Sri Lanka Presidential Election 2005
www.eueomsrilanka.com

PRELIMINARY STATEMENT

Sri Lanka Presidential Election 2005

Colombo, 19 November 2005

Summary of the EU EOM preliminary report:

- Election day in the South proceeded satisfactorily and was an improvement on 2004. However voting in the North and East was marred by violence accompanied by an enforced boycott by the LTTE, resulting in extremely low voter participation in many areas.
 - The legal framework for elections provides an adequate basis for the conduct of democratic elections and allows for transparency of the process. However, the Supreme Court interim order of 10 November installed a de facto discrimination against the voters from the LTTE controlled areas.
 - The EU EOM observed misuse of public resources for the purpose of election campaigning.
 - Taken as a whole, the media offered the electorate a diverse range of political opinions that enabled voters to compare parties and candidates and thereby make a more informed choice on election day.
 - State media did not fulfil their duty to provide balanced and impartial reporting in their election related coverage.
 - Accurate updating of the voter register remains problematic.
 - The election process was, in general, conducted in a professional and impartial manner, by well-trained staff often working in very difficult circumstances.
-

Introduction

The European Union's Election Observation Mission (EU EOM) to Sri Lanka's Presidential Election on November 17 issues this statement of preliminary findings.

The EU EOM was deployed following an invitation by Sri Lanka's Commissioner of Elections, Mr Dayananda Dissanayake. A Memorandum of Understanding was signed between the European Commission and the Sri Lankan Ministry of Foreign Affairs.

This report is based on observation of election preparations, the electoral campaign and election day itself made by 7 Core Team members over a period of over four weeks, 22 long term observers deployed throughout the country for 3 weeks and 51 short-term observers deployed for seven days. These observers were drawn from 21 Member States of the European Union, as well as from Switzerland. Observers reported back from all 22 electoral districts. The EU also observed the counting process in 70 centres throughout Sri Lanka.

The EU EOM will remain in the country until December 4 to observe the post-election situation. A final report will be issued at a later stage.

The findings of the EU EOM are assessed based in accordance with international standards for genuine democratic elections as stated in the Universal Declaration of Human rights (1948) and the International Covenant on Civil and Political Rights (1966).

The degree of impartiality shown by the election management body.

The Commissioner of Elections enjoys the confidence of political parties in the country and is well respected. The regular meetings he held with the political parties were open to international and domestic observers, increasing the transparency and general confidence in the work of the election administration. Many Returning Officers have used the same approach.

It is however unfortunate that, more than 4 years after 17th Amendment was adopted, the President of the Republic has regrettably not been able to agree with the Constitutional Council, before it lapsed, on the appointment of a new independent Election Commission, thereby delaying its establishment. The appointment of an Election Commission as specified in the 17th Amendment would considerably strengthen the capacity of election officials to act efficiently and independently.

However, the current Commissioner of Elections (CE) is able to exercise the powers vested in the future Election Commission.

The Commissioner of Elections met all the legal deadlines for the technical preparations of the election. At district level, the Returning Officers and their staff were assessed to be well organized and to have the electoral preparations and management well in hand. Training of polling and counting staff was assessed to be well organized and positively conducted.

Right to stand and campaign freedoms.

All thirteen candidates that submitted application to contest the presidential race were nominated and no complaint was filed regarding the right to stand.

With the exception of the Liberation Tigers of Tamil Eelam (LTTE) controlled areas in the North and East, candidates were generally able to campaign freely, meeting voters and presenting their political platforms. In the 28 rallies that the EU EOM observed, attended by tens of thousands of supporters, no violence was witnessed. As posters could by law only be displayed in a very limited number of locations, political parties took a creative approach to establishing party offices where they could display their material. In practice, the media was the main source of candidate and campaign information.

Although the pre-election campaign was reported as less violent compared to 2004, 2000 and 2001, the last days of the campaign showed an increased level of violence. In Kurunegala, a hand grenade was thrown into the house of an UNP official on 14 November. Eelam People's Democratic Front (EPDP) officials have been the target of assassinations on four occasions, resulting in the murder of three officials in Trincomalee (6 October), Pottuvil (10 October) and, in the last days of the campaign, in Colombo, and the attempted murder of a fourth person in Jaffna.

The fairness of access to state resources made available for the election.

The EU EOM received 10 complaints (all from the UNP) and reports from NGOs of misuse of public resources for the purpose of election activities. These reports mainly refer to the unlawful use of state owned vehicles by the authorities and the deployment of employees of state institutions for the UPFA campaign activities. On many occasions, the EU EOM directly observed advertisements, both in the State-owned and private newspapers, sponsored by State Corporations and Statutory Boards, with the clear intention of promoting the election of Mahinda Rajapakse. The EU EOM also directly observed state buses being used for campaign purposes in Hambantota district.

Election Complaints.

The Commissioner of Elections had received 191 complaints on election violations by Election Day. The UNP has submitted 159 of those complaints. Most of the complaints (77) related to the unlawful use of state resources, in particular the misuse of public vehicles (46) for campaigning. EU EOM observers have been able to observe some instances of misuse of public transport for campaigning purpose. In addition, 24 complaints of unlawful transfer and appointment of public officers were filed. A total of 30 complaints were related to violence, intimidation of voters and undue influence.

Although the Commissioner of Elections forwarded the complaints in due time to the relevant authorities for their action, no mechanism has been established to ensure that action has been taken to follow-up on the complaints.

The fairness of access for political parties, alliances and candidates to the media.

Overview.

Taken as a whole, the media offered the electorate a diverse range of political opinions that enabled voters to compare parties and candidates and thereby make a more informed choice on Election Day. The state television and radio allotted all candidates free broadcasting time thus allowing them to present their platforms to the electorate.

Both private and state media were strongly polarised along party lines and were strongly supportive either of the Prime Minister (Mahinda Rajapakse), or the main opposition candidate (Ranil Wickremesinghe). As a consequence the lack of a truly independent media system impedes citizens in their ability to assess the campaigning by candidates.

Although, the Commissioner of Elections has the power to issue guidelines with effect on any broadcasting or telecasting operator or any proprietor or publisher of a newspaper (as he did on 7 October 2005), he has not resources to monitor the actual implementation of such guidelines.

The decision by the Commissioner of Elections to appoint a Competent Authority to oversee Sri Lanka Rupavahini Corporation and Sri Lanka Broadcasting Corporation was taken too late to have a substantial effect on the overall conduct of the state media. This was also the case for last year's Parliamentary elections.

Media Monitoring.

One of the biggest issues in this campaign was related to the impartiality and fairness of media coverage of elections. In a context of strong polarization between the two main contesting forces, the state media were widely viewed as being supportive of the Prime Minister. Conversely, the private media were widely viewed being supportive of the UNP candidate. The findings from the monitoring activity conducted by the EU EOM⁴⁰ clearly confirm this pattern.

State media did not fulfil their duty to provide balanced and impartial reporting in their election related coverage either in their news bulletins and current affairs coverage, or in other informative programs.

The state owned television channels dedicated almost 74% (*Rupavahini* 74% and *ITN* 73%) of the election coverage given to candidates to Rajapakse, while only 25% to Ranil Wickremesinghe. State print media

⁴⁰ On 28 October, EU EOM Media Unit started monitoring the election campaign on the state owned TV stations *Rupavahini* and *ITN* as well as on the private station *Swarnavahini*. It has also undertaken the monitoring of five dailies: the state owned *Daily News* (English) and *Dinamina* (Sinhalese) and the private *Daily Mirror* (English), *The Island* (English) and *Veerakesari* (Tamil). The media monitoring included both quantitative and qualitative analysis.

displayed a very similar tendency by devoting about 70% of their total space to Rajapakse (*Daily News* 73% and *Dinamina* 66%) compared to 25% allotted to the UNP candidate.

Swarnavahini, the private TV channel monitored, conversely, dedicated 66% of its election coverage to Ranil Wickremesinghe and 33% to the UPFA candidate. Private monitored dailies showed a similar but less accentuated pattern, with Ranil Wickremesinghe receiving respectively 45% of the total space in the *Daily Mirror* (mainly positive coverage), and 62% in *Veerakesari*, while Mahinda Rajapakse was allotted 53% in the *Daily Mirror* (mainly negative coverage) and 36% in *Veerakesari*. More balanced coverage was provided by *the Island*, which dedicated 51% of the election coverage given to candidates to Ranil Wickremesinghe, and 44% to Rajapakse.

The EU EOM observed a consistent number of violations of the election silence (72 hours prior to the opening of the polls⁴¹) in both private and state electronic media. It must be noted that the regulations regarding the electoral silence were ambiguous and left excessive space for interpretations, with different time frameworks applying to different media (electronic and print).

Voter registration and universal suffrage.

The total number of voters registered for this election is 13,327,160. This is approximately 428,000 more than for the last elections (2004). However, the register was based on enumerations conducted in June 2004, before the Tsunami hit the island coasts. To address this situation, and reduce opportunities for impersonation, the Commissioner of Elections introduced special measures to mark in the voter register the 40,000 names of people identified as deceased or missing from the Tsunami.

Several shortcomings in the registration process were reported to the EU EOM:

- a) Only citizens who have attained 18 years on the date of registration (2004) are allowed to register as an elector. Therefore citizens, who, in the interim period reached the age of 18 by the date of the election, were not able to vote because they had not been included in the voter list.
- b) The house-to-house enumeration has not been conducted in some LTTE controlled areas in the North and East since the late eighties, due to the prevailing security situation. As reported in previous election observation missions, the number of voters registered to vote in Jaffna district (701,938) is not consistent with the number of residents (evaluated at the most to be less than half this number).
- c) No mechanism at central level has been established to identify possible duplicates across the districts. Deletions of any duplicates are only done on a case-by-case basis, normally upon an individual complaint. The Commissioner of Elections estimates that there are around 30,000 duplicates.
- d) In the Tsunami-affected areas, an estimated 440,000 people have been displaced. However, IDPs very often remain in their district of origin and are reported to be frequently now residing only a few kilometres from their previous place of residence. Although the Commissioner of Elections has instructed the Grama Niladhris⁴² to identify the new residence of the IDPs, it has been reported that a significant number of voter cards have not been distributed in the eastern part of the country. As some voters may have not been aware of the fact that voter cards are not necessary to vote, they may have felt unable to exercise their right to vote.
- e) The EU EOM received reports estimating up to 1.5 million Sri Lankan citizens reside abroad and most of them are included in the voter register. It is not known whether these citizens are able to come back to vote on election day. The failure of the Bureau of Employment to provide the election administration with data of the people residing abroad seems to be the reason for their names still being in the voter list on election day. The EU EOM will look further in to the issue in the coming weeks.

⁴¹ as stated by the Commissioner of Elections in accordance with the requirements of the Constitution (art. 104 of 17th amendment) and the PEA (art. 117)

⁴² administration officers at the first level, "village" level.

The Supreme Court 9 November interim order and equal treatment of voters

The Supreme Court issued on 9 November an interim order on the case of the petitions on violation of fundamental rights lodged by two candidates⁴³. The new provisions established by the Supreme Court refer to polling in cluster polling stations of the North and East only. The interim order created an additional distance of 500 meters from the previous 500 meters separating the polling stations from the Sri Lanka army line, and two segments of transport for the voters to get to the polling stations. The purpose of this provision was to allow candidates to canvass before voters get inside the polling station, since no campaigning was conducted inside the LTTE controlled areas. In different circumstances, this new measure could have had an impact on the smooth flow of voters. It should be pointed out that on polling day the primary purpose is voting not campaigning.

To prevent similar cases of impersonation as reported at the 2004 elections, the Supreme Court granted the Senior Presiding Officer with a new power to ask questions to the voter to establish his/her identity, and to deny the issue of the ballot to this voter if his/her identity has not been proved.

Furthermore, the interim order establishes new coercion measures of preventive detention of a person in cases where the Presiding Officer suspects him/her of making a false statement on his/her identity or his/her age “*since the person would not be subject to the ordinary process and sanctions at law*”. This is in contradiction to Article 31 (6b/c) of the Constitution, by which only the Parliament is entitled “*to make provisions for the register of electors to be used at and the procedure for the election of the President*” and “*for the creation of offences relating to such election and the punishment therefore*”. Finally, the detention, even for one day only, of a young adult who has failed to prove s/he is 18 years old is disproportionate to the attempted offence.

With this order, the Supreme Court has gone beyond the existing legal framework. The decision introduces a double standard among Sri Lanka citizens that needs to be addressed in the future. Furthermore the EU EOM regards the denial of liberty, lack of access to a recourse mechanism, and the presumption of guilt implied in the act, as being counter to fundamental freedoms.

The conduct of polling and counting of votes described in the electoral law.

(a) *Postal voting*: The EU EOM observed the conduct of postal voting on 7 and 8 November. As in 2004, procedures were well respected. A few instances of missing material were noted and, in 8% of the observed polling stations, the secrecy of the vote was not ensured at all stages of the process (mainly because voters could not isolate themselves to mark their ballot in secret).

The EU EOM has been informed of a high level of applications for postal vote being rejected (around 17%) with regional disparities (for example approximately 23% in Nuwara Elya). Two main reasons for this were mentioned by the election administration: either the voter did not submit the application in time, or the voter did not fill out the form in the proper manner. The EU EOM will look further into this issue in the coming weeks.

(b) Election Day and the count:

There was an extremely low participation of voters from the LTTE-controlled areas and also in Government-controlled areas in the North and East where Tamil voters reside. EU EOM members observed this in Vavuniya, Trincomalee, Jaffna, Mannar and Batticaloa. This followed a joint statement by the LTTE and TNA⁴⁴ on 10 November in which they stated “...it is a futile exercise to show any interest in the elections.” This created an atmosphere of fear and uncertainty for voters in these areas. In order to ensure that no ambiguity existed as to what the LTTE wanted to happen in reality, they enforced this boycott by creating an environment that was rife with violence and intimidation. Furthermore several LTTE front organisations had earlier made explicit calls for a boycott, for election staff to cease work on polling day, and for there to be a day of “mourning”.

In Tamil areas in Batticaloa, EU EOM observers reported increased levels of violence with seven cases of grenade-throwing or bombing targeted at polling stations, the main district counting centre, a bus for the transportation of voters from the LTTE controlled areas and at a police check-point. In Jaffna, Vavuniya and Batticaloa observers witnessed protests at lines of control in which plain-clothed groups gathered and burned voter cards. The atmosphere was reported to be tense in government controlled areas of Jaffna and Batticaloa resulting in empty streets.

⁴³ Nelson Perera, from the Sri Lanka Progressive Front, and Wimal Geeganage, from the Sri Lanka National Front

⁴⁴ Tamil National Alliance

In all other regions polling and counting on 17 November generally happened in an orderly manner. The EU EOM observed polling stations and counting centres throughout all 22 districts. The overall picture on Election Day was of a well-administered process with voters participating in large numbers. EU observers assessed the polling process as good or adequate in 96% of more than 330 stations observed. Campaign material was seen within 50 meters of polling stations in 4% of the total number of polling stations observed. The counting process was assessed to be good or adequate in all centres visited.

The presence of polling agents in almost all polling stations visited (89%) was a positive transparency measure. Domestic observers were present in 73% of the polling stations visited. In 88% of counting centres observed, polling agents were present.

The procedural arrangements, whereby each voter's registration number is marked on the ballot counterfoil, results in all marked ballots being traceable. While this may be intended as a fraud-prevention mechanism, it fundamentally undermines the secrecy of the ballot.

Observers reported that polling booths were typically placed in such a way that election officers could see voters marking their ballots. Even though this might have been done to guard against attempts at election fraud, it compromises the secrecy of the vote. In 75% of polling stations observed the layout was assessed to be inadequate. This was also identified by previous EU EOMs.

The legal lack of obligation for voters to show any type of ID or voter card before voting provides very weak protection against attempts at impersonation and multiple voting. Furthermore the discretion of the Presiding Officer on this matter can result in people being disenfranchised. In 4% of polling stations visited, observers witnessed people being refused a ballot because their identity was not ascertained. In 9% of polling stations observed, objections were raised regarding the identity of some voters. The EU EOMs of 2000, 2001 and 2004 have all recommended official identification to be required.

Procedures to protect against double voting were in some cases weakly applied. Although ink was consistently applied, in 9% of polling stations observed voters were not checked for ink prior to being issued a ballot. Furthermore in testing of the ink, observers in Trincomalee, Batticaloa and Kegalle reported that the ink was taking more than one hour to become visible. In 3% of polling stations visited tendered ballots had been used (these are issued when someone has already voted in a person's name).

Observers noted a high level of armed police present inside some polling stations in the North and the East in particular. While this provides security in a potentially tense environment, it could also have an intimidating effect on voters.

In Colombo there were regular reports of a considerable number of people arriving at polling stations to find that their names were not on the voter list. Many alleged that they had always been registered at that station and that their neighbours were registered there, so they could not understand why they were not registered and not able to vote. The inadequacies of the voter registration process risks disenfranchisement and public disillusionment.

Any other issue that concerns the essential freedom and fairness of the election.

Police

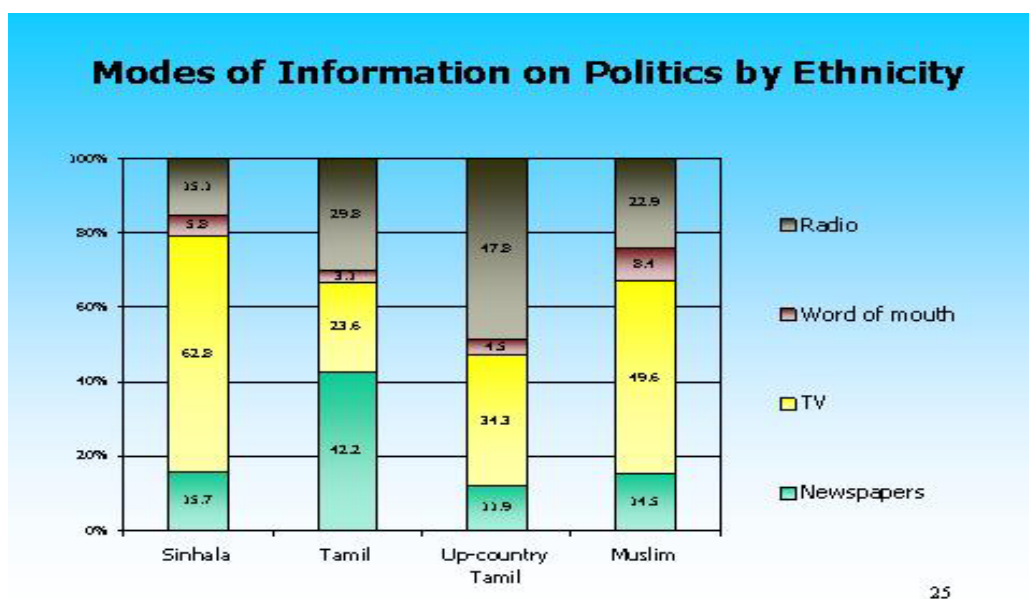
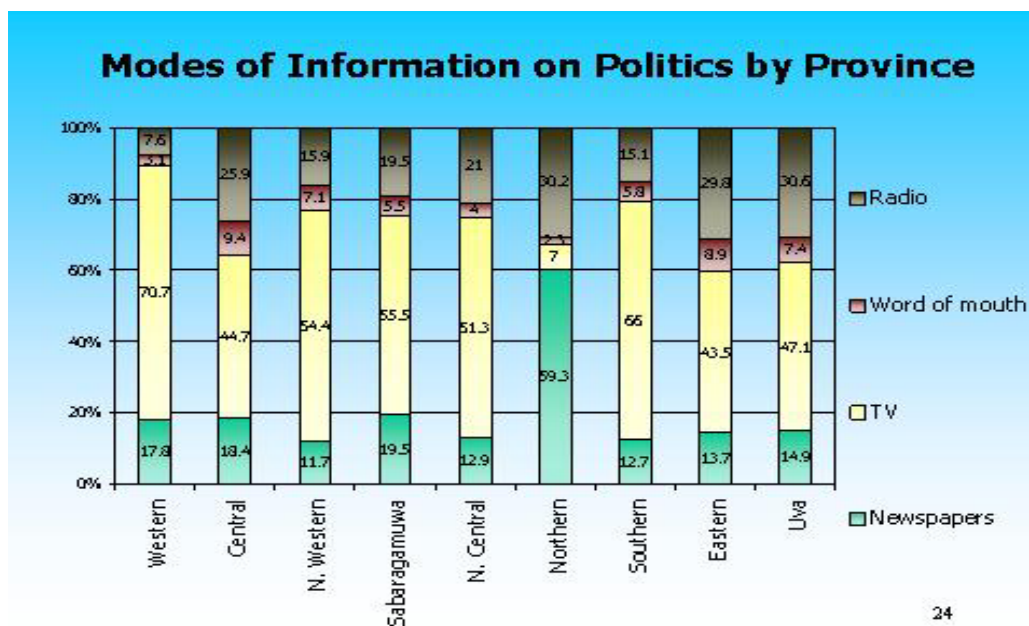
Policing of the campaign and Election Day was much better than during recent elections. During the campaign, the Police efficiently enforced the prohibition of posters and party signs, hence contributing to a substantial decrease in election-related violence. This was reported to the EU EOM throughout the entire country.

However, the EU EOM regrets the refusal of the Inspector General of Police (IGP) and the Deputy Inspector General (DIG) for elections to provide the mission with the statistics for election related violence, in contrast to what happened in previous EU EOMs.

Voter education.

Voter education in the media was poor and inadequate, particularly in the electronic media. The lack of voter education is particularly important in this election given the complexities of preferential voting. The CE guidelines for the media failed to mention any provision regarding voter education.

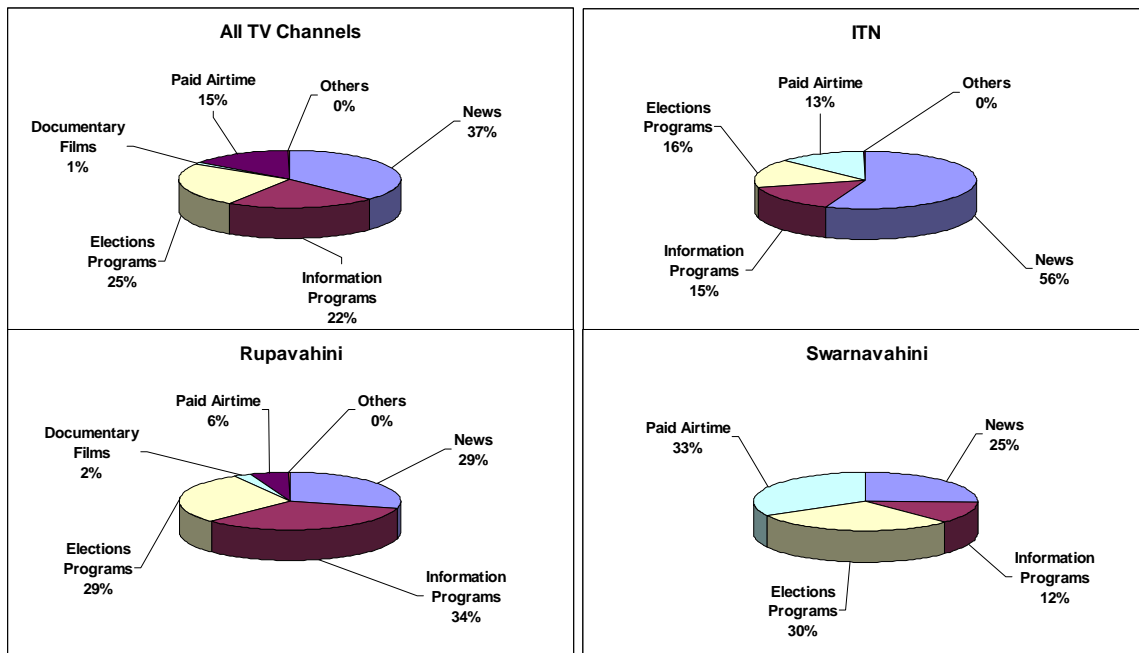
2. MEDIA MONITORING DATA



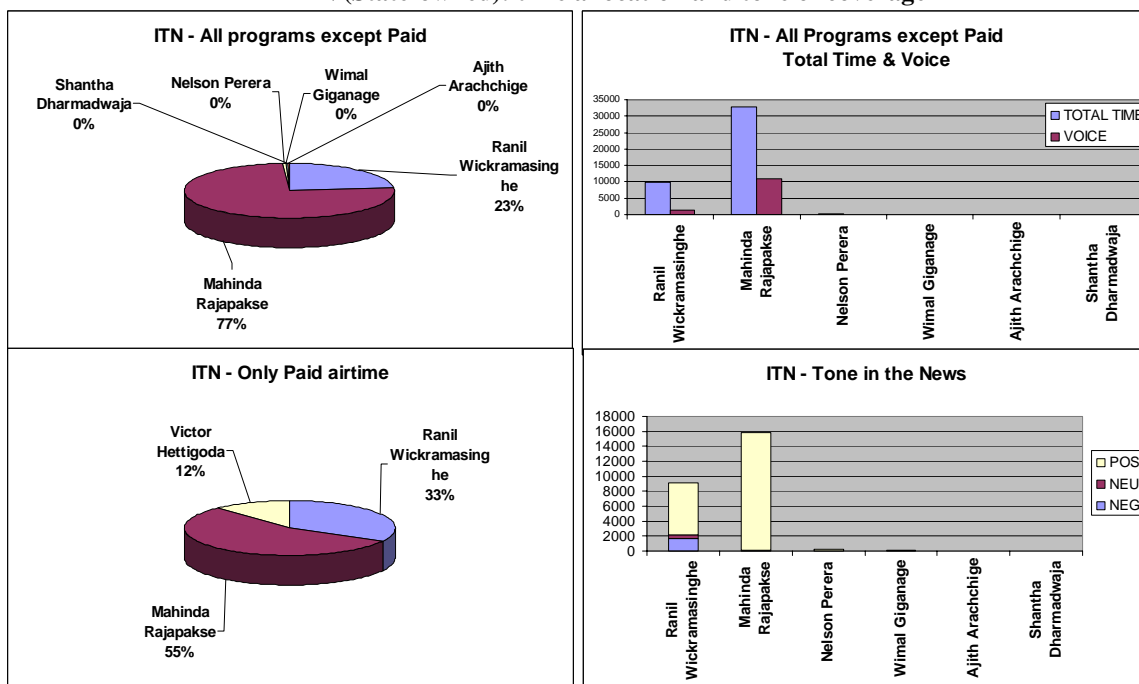
Mode of Information on Politics in Sri Lanka

Source: "A Preliminary Analysis of the KAPS Data" by Pradeep Peiris, Social Indicator – Centre for Policy Alternatives. "Knowledge, Attitudes and Practices Survey (KAPS) on the Peace Process" the research was conducted in June 2003 with the financial assistance of Academy for Educational Development (AED), which is a USAID funded project.

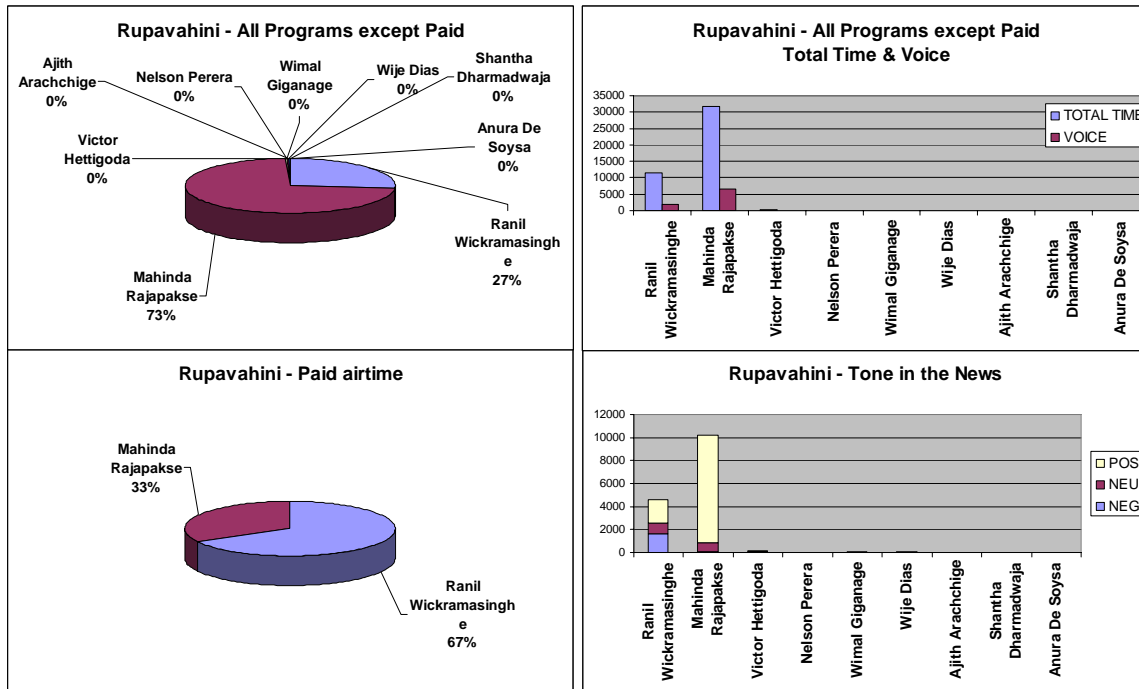
Format for elections and political coverage



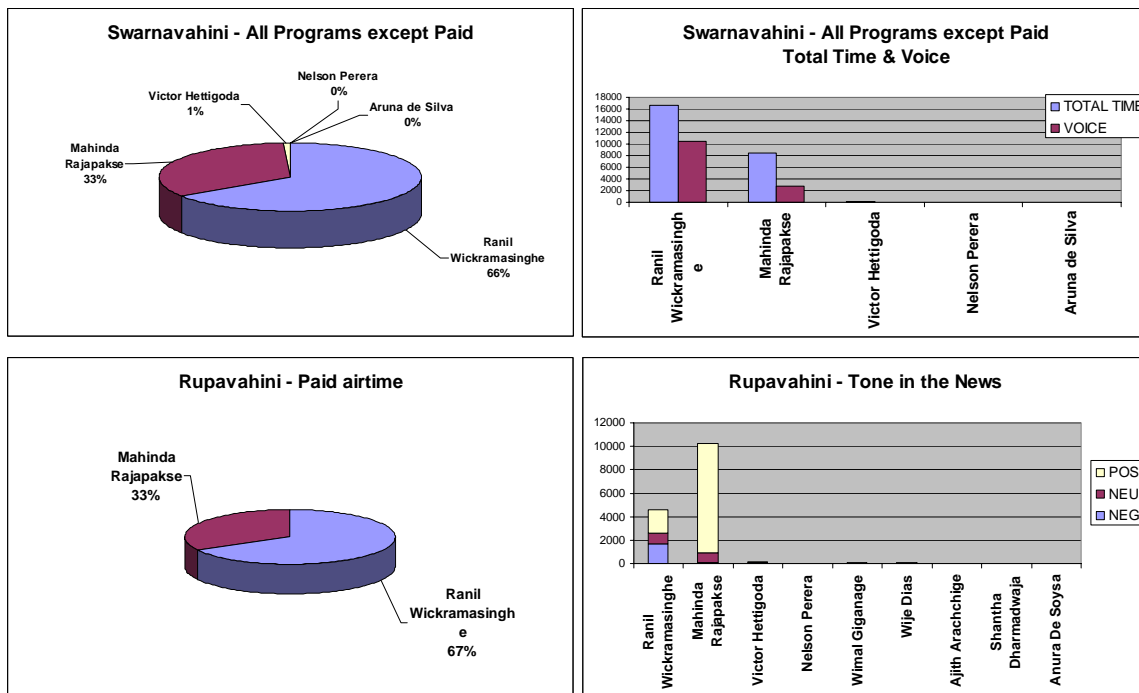
ITN (State-owned): time allocation and tone of coverage



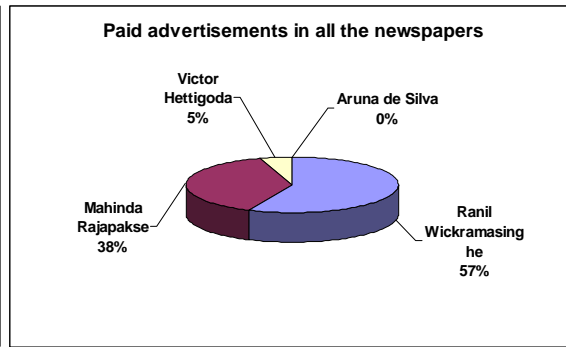
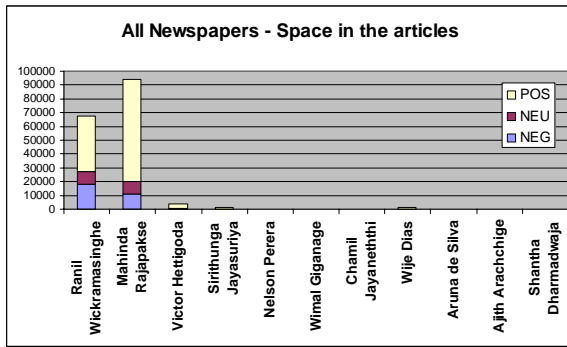
Rupavahini (State-owned): time allocation and tone of coverage



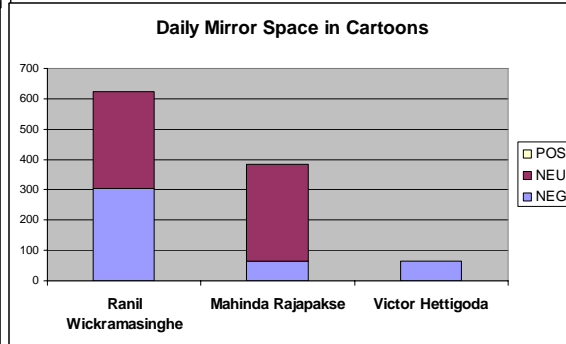
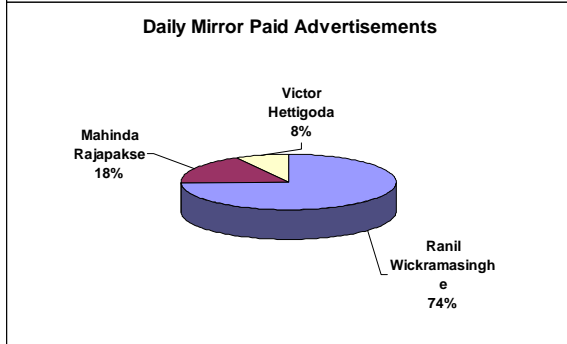
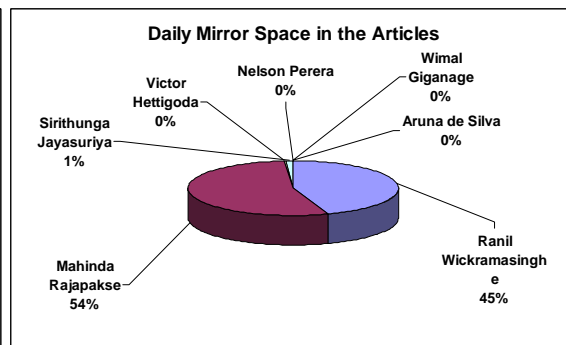
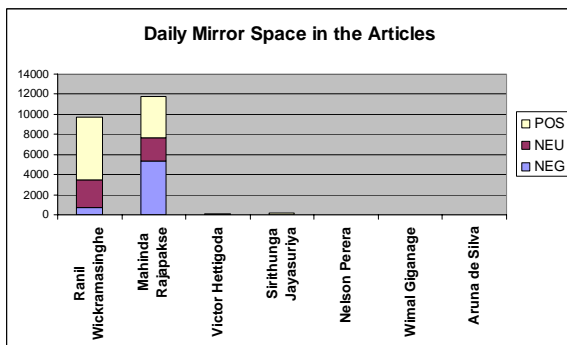
Swarnavahini (private): time allocation and tone of coverage



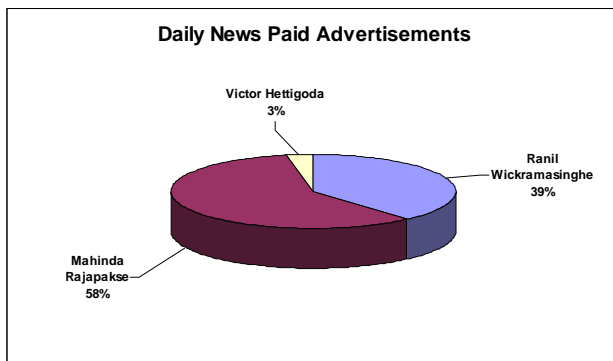
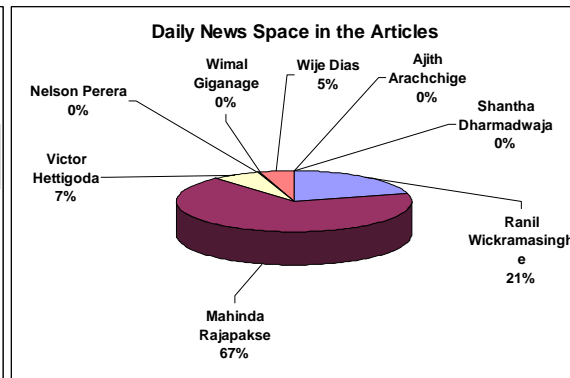
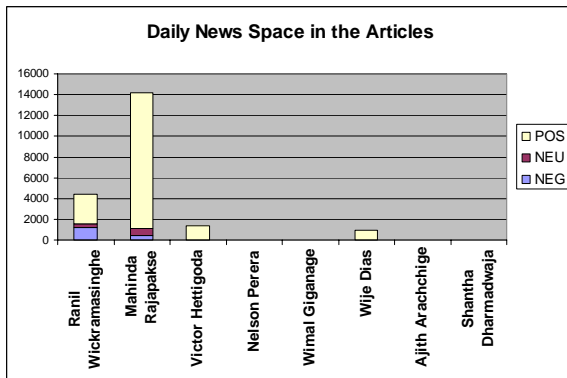
All newspapers (State and private) space allocation and tone of coverage



Daily Mirror (private - English) space allocation and tone of coverage

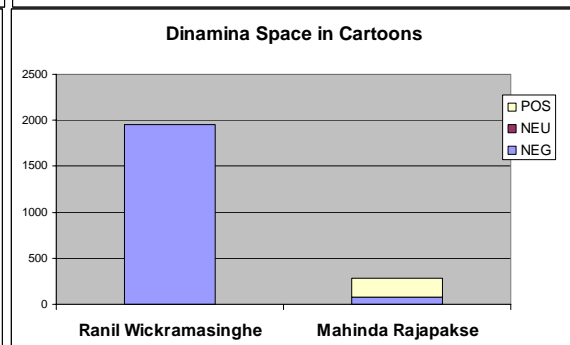
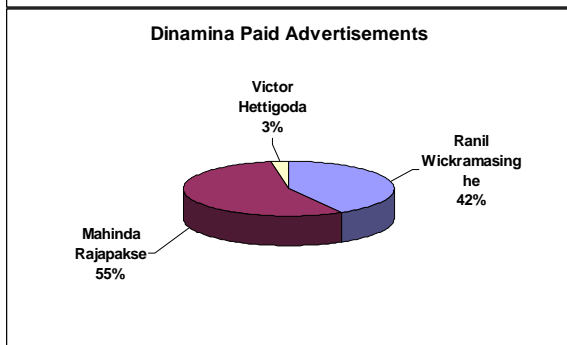
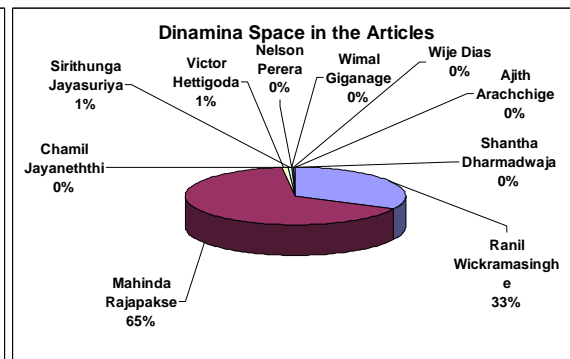
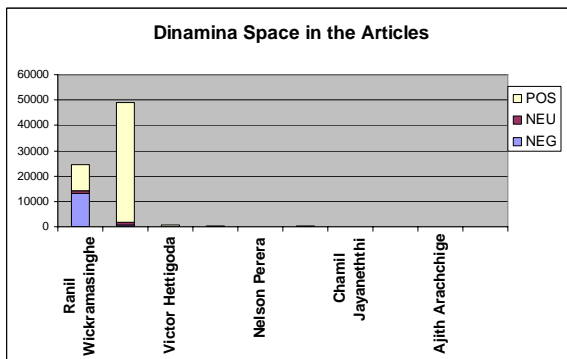


Daily News (State - English) space allocation and tone of coverage

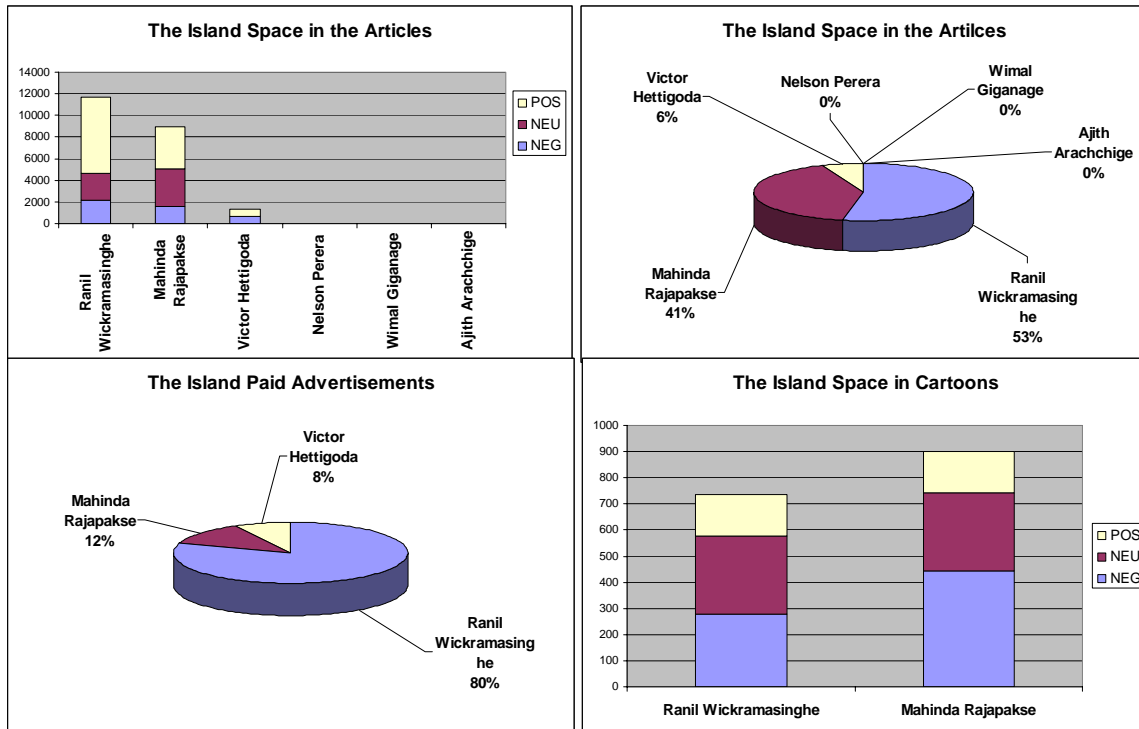


The Daily News did not publish any cartoon.

Dinamina (State - Sinhala) space allocation and tone of coverage



The Island (private - English) space allocation and tone of coverage



Virakesari (private - Tamil) space allocation and tone of coverage

