



PRELIMINARY STATEMENT

Sri Lanka Presidential Election 2005

Presented by Chief Observer EU EOM John Cushnahan, *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 three weeks, 22 long term observers deployed throughout the country for more than 2 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 filled. 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 Wickramasinghe). 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 EOM¹ 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.

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 Wickramasinghe. State print media 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 Wickramasinghe and 33% to the UPFA candidate. Private monitored dailies showed a similar but less accentuated pattern, with Ranil Wickramasinghe 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 Wickramasinghe, 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 polls²) 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.

¹ 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.

² 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)

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 Niladhris³ 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.

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 candidates⁴. 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

³ Village officers

⁴ Nelson Perera, from the Sri Lanka Progressive Front, and Wimal Geeganage, from the Sri Lanka National Front

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 TNA⁵ 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 which was rife with

⁵ Tamil National Alliance

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.

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 EC guidelines for the media failed to mention any provision regarding voter education.