

**Advocating for inclusive electoral processes, for
minority rights and for rule of law in South Asia:**

Situation Report Sri Lanka



Conceptualised, implemented and funded by South Asians for Human Rights; Researched and written by PAFFREL

The Situation of Minorities and Other Marginalized Groups in Sri Lanka in Relation to its Electoral Processes

Introduction

The little island of Sri Lanka situated in the Indian Ocean and in close proximity to the Indian sub continent is inhabited by people who fall into different categories on the basis of their ethnicity, language, religion and other socio-cultural identities. Sinhalese who belong to the major category (74%)¹ are considered to be descendants from a migrant prince from India while Tamils who fall into the next highest category (18.1%)¹ are considered to be descendants of people of Indian origin. They fall into 2 sub-categories – viz. those who came in ancient times and settled down in the Northern and Eastern areas of the Island and are called Sri Lankan Tamils and those who were brought from India during colonial times to work in the plantation sector, mostly in the upcountry areas and are called Indian Tamils. Moors or Muslims who comprise the next highest ethnic category (7.1%)¹ are more dispersed in areas dominated by the Sinhalese but have their concentrations in the Eastern Province, especially Amparai. Before the ethnic conflict there were Muslim residents in the Tamil concentrated areas in the North as well; but like Sinhalese residents in these areas Muslims were forced to leave due to terrorist atrocities committed by the Liberation Tigers of Tamil Eelam (LTTE).

There are also several other ethnic categories in the Sri Lankan population such as Burghers, Malays etc., but their numbers constitute approx. 0.8% of the population and are more or less living among major ethnic categories mostly in urban localities.

The following table shows the Sri Lankan population by ethnicity and its Provincial/Electoral District distribution on a percentage basis.

¹ Source: Census Department 1981 Census.

Distribution of Sri Lanka's Population (Per Cent)
By Ethnicity and Provincial/Electoral Districts (Per Cent)

Electoral Districts By Provinces	Sinhalese (%)	Sri Lankan Tamil (%)	Indian Tamil (%)	Moors (%)	Burghers (%)	Malays (%)	Others (%)
<i>Western</i>							
1. Colombo	77.9	9.8	1.3	8.3	1.1	1.1	0.5
2. Gampaha	92.2	3.3	0.4	2.8	0.6	0.6	0.1
3. Kalutara	87.3	3.3	4.1	7.5	0.0	0.1	0.2
<i>Central</i>							
4. Kandy	75.0	4.9	9.3	9.9	0.2	0.2	0.4
5. Matale	79.9	5.9	6.7	7.2	0.1	0.1	0.1
6. Nuwara Eliya	35.9	13.5	47.3	2.8	0.1	0.2	0.2
<i>Southern</i>							
7. Galle	94.4	0.7	1.4	8.2	0.0	0.1	0.2
8. Matara	94.6	0.6	2.2	2.6	0.0	0.0	0.0
9. Hambantota	97.4	0.4	0.1	1.1	0.0	1.0	0.0
<i>Northern</i>							
10. Jaffna	0.6	95.3	2.4	1.7	0.0	0.0	0.0
11. Mullaithivu*	5.1	76.0	13.9	4.9	0.1	0.0	0.0
12. Mannar*	8.1	50.6	13.2	26.6	0.0	0.0	1.4
13. Vavuniya*	16.6	56.9	19.4	6.9	0.0	0.0	0.2
<i>Eastern</i>							
14. Trincomalee	33.6	33.8	2.6	29.0	0.5	0.3	0.2
15. Batticaloa	3.2	70.9	1.2	23.9	0.7	0.0	0.1
16. Amparai	37.6	20.1	0.4	41.5	0.2	0.0	0.1
<i>North Western</i>							
17. Kurunegala	93.1	1.1	0.5	5.1	0.0	0.0	0.1
18. Puttalam	82.6	6.7	0.6	9.7	0.1	0.2	0.1
<i>North Central</i>							
19. Anuradhapura	91.3	1.4	0.1	7.1	0.0	0.0	0.1
20. Polonnaruwa	90.9	2.2	0.1	6.5	0.0	0.1	0.2
<i>Uva</i>							
21. Moneragala	92.9	1.8	3.3	1.9	0.0	0.1	0.0

22. Badulla	68.5	5.7	21.1	4.2	0.1	0.2	0.2
<i>Sabaragamuwa</i>							
23. Kegalle	86.3	2.1	6.4	5.1	0.0	0.0	0.1
24. Ratnapura	84.7	2.3	11.1	1.7	0.1	0.1	0.1
TOTAL	74.0	12.6	5.6	7.1	0.3	0.3	0.1

Source: Census Department 1981 Census.

* These three Administrative Districts have been combined as Wanni electoral district.

The composition of Sri Lankan population by religion is as follows:

Buddhists	-	69.3%
Hindus	-	15.5%
Muslims	-	7.6%
Christians	-	7.5%
Others	-	0.1%

Source: Census Department 1981 Census.

While Buddhism is the religion of the majority of Sinhalese, Hinduism is the religion of the majority of Tamils. Islam is the faith of Muslims, and Christianity which has several denominations has Sinhalese, Tamils and other minor ethnic categories as its followers.

Sinhalese use Sinhala language as their mother tongue while Tamils and Muslims use Tamil language as their mother tongue. English that was established as the language of administration during the British colonial period continues to gain popularity although Sinhala and Tamil have been declared as the languages of administration now.

The Electoral Process

The electoral process of a country is a fundamental component of its process of governance. It sets out the ways and means of selecting citizens' representatives to entrust them with the citizens' democratic rights of managing the affairs of their country including the protection of their rights.

In Sri Lanka, the process of representative governance based on democratic principles had its beginnings in 1931 with the grant of adult franchise and came to its fruition with the grant of independence in 1948. The legal base of this governance process is composed of the constitutions that were adopted periodically and other legal enactments on various aspects of the process of representative governance including the electoral laws. The Constitution in force at present was adopted in 1978. So far it has been amended nearly 20 times.

Legal Provisions and Minorities

Some provisions of these constitutional and other legal enactments have been cited as instances that have adversely affected the minorities in the electoral process. In one of a series of seminars held by the Council for Liberal Democracy Dr. Chanaka Amaratunga and Dr. Rajiva Wijesinghe while pointing out the importance of Proportional Representation (PR) in Sri Lanka's context have shown that under the territorial representation based on plurality that was existing in Sri Lanka prior to 1978, Tamils and Muslims were not adequately represented in Parliament. They have pointed out that according to the distribution of population up to 1983, 55% of Tamils resided outside the Northern and Eastern Provinces and yet no political party of the main stream nominated a Tamil to stand for Parliament from a constituency outside those provinces. In the period since independence, no Burgher, apart from one exception (Mr. Pieter Keunaman) and no member of a smaller ethnic community was nominated to stand for Parliament, despite members of such minorities reaching levels of considerable eminence in non-political fields of activity.

As the 1978 Constitution has introduced the PR system it is argued that the anomaly described above has now been removed. However, at a workshop on the electoral system in Sri Lanka held at the Sri Lanka Foundation Institute in 1985, it was pointed out that even under the PR System there is the possibility of minorities ethnic, religious or other communities whose distribution did not correspond to the demarcation of the electoral districts getting affected by the high cut off points mentioned under paragraph 5 (a) of Article 99 of the 1978 Constitution.

Political analysts have pinpointed several other negative features of the PR system which have led to the undermining of the democratic nature of the electoral system in Sri Lanka.

This system makes the candidate dependent on the party for nomination. It solidifies party loyalty and diminishes member's individual responsibility to the electorate and the voter. It has diminished the independence of the member who is forced to vote according to the dictates of the party. According to Art. 19(3) of the Constitution members who resign or are expelled from their parties are liable to lose their seats in Parliament. Deficiencies in the internal democracy of political parties aggravate this situation.

Another negative feature of the PR system is its contribution to the escalation of the competition in the electoral process leading to corruption, malpractices and conflicts. As the candidates in their propaganda activities have to cover a much larger area than the former constituency, it is the persons who have higher financial and other resources who get a better chance of selection as nominees of political parties and also get a better chance of winning. The violence and terror that have entered into the field of electoral competition prevent some sections like women and citizens with low financial and other resources from assuming leadership roles in the process of governance of the country.

The application of the PR system for electing members to Local Authorities from 1987 has also been criticized as a method that negates the benefits expected under a system based on the principle of subsidiarity. The need for adjusting the governance system based on this democratic principle has been widely accepted to enable the people to directly participate in the affairs of their areas and proposals have been made that Local Authorities should be vested with powers and resources to manage the affairs in their localities on this basis. It has also been suggested that in this process the re-introduction of electing members on the ward basis would make the practical aspects of the principle of subsidiarity more beneficial to groups who are isolated in small localities like villages

due to various socio-cultural factors as they will have a representative of their own to look after their interests.

The PR system has also been criticized as a system which is the very antithesis of a structure that fosters and strengthens interdependence among communities. It not only perpetuates and facilitates division along ethnic lines among voters, but also carries the additional drawback of polarising the communities even within political parties. A critic of the PR system says – “it is no coincidence that political ‘ghettoisation’ through the formation and emergence of communal political parties has coincided with the introduction of the present PR system. It is also not a coincidence that heightened ethnic tensions have become common after the introduction of the PR system”².

The powers, functions and immunities of the Executive President under the present Constitution indicate that the person in that position can act untrammeled by the checks and balances available to a democracy. He is the Head of the State, Head of the Executive and of the Government. Although Article 42 of the Constitution mentions that the President shall be responsible to Parliament for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and any written law, according to Article 38, the approval of two-thirds of the whole number of members will be necessary to unseat him. While it is granted that the presence of a Head of State of this position is a positive feature when factors like Sri Lanka’s geographical location and economic, social and cultural situations are taken into consideration, there are arguments that the holder of this position could manipulate the process of governance and the electoral mechanisms with ulterior motives. Some instances where this has been done in the past have been pointed out by analysts of the governance process.

Non-Legal Aspects

² Javid Yusuf in Nation Building – Priorities for sustainability and Inclusivity.

The governance process, and therefore the electoral process is also led and influenced by non-legal aspects of the political culture, historical antecedents and their interpretations, and the weaknesses in the implementation of the legal provisions.

Political Culture

The influence of Sri Lankan political culture in the formulation and the practice of its present electoral process has been pointed out as one of the factors that have contributed to the presence of certain negative factors which are considered as deviations from the accepted democratic norms. At the time of granting self-rule a unitary state with a highly centralized administration and an ethno-centric political system which was majoritarian in character came into being. Thus, a political culture of a unitary state, a highly centralized administration and a majoritarian democracy was established. In this setting the composition of the political elite that was holding the reigns of governance underwent far-reaching changes. The number of politicians coming from the new generation rapidly increased and gave expression to the values, grievances and expectations of the ethnic, religious and cultural mainstream. Many of these did not have easy access to the thought, literature and the practice pertaining to democratic ideology and value systems. There was no systematic effort directed at providing a broad-based political education in democracy to both politicians and the electorate. Consequently the political culture of the new institutions and practices absorbed values and patterns of behaviour from the larger culture. They were inconsistent with the values and practices of a genuine democratic system that lagged behind. The following principal core values that ought to govern democratic institutions got undermined due to this position.

- A non-partisan consensus on core national issues and societal goals;
- The freedom and tolerance of political dissent and political opposition;
- Free and fair competition for power within an agreed set of rules;
- The legitimacy of the opposition parties and their right to offer choices of alternative government to the electorate.

- Acceptance by the opposition of the legitimacy of the elected government during their term of office.

While many of these core values are embodied in the Constitution and Statutes, these values have not been fully absorbed into the political culture and do not find full expression in the political behaviour of politicians, their parties and their leadership.

The competition to acquire political power under the representative governance system that was introduced began to be based on factors that enhanced the ethnic and other divisions in the society. The political parties tended to behave and act as though their rivals had no right to exist and compete for power. They almost failed to show magnanimity as ruling parties nor did they show a gracious acceptance of their defeat as opposition parties. This situation led to the increase of violence in politics mainly during pre-election and post-election periods. The politics in the period after the introduction of democratic institutions based on adult franchise in 1931 up to 1956 were conducted in a relatively peaceful environment. Apart from the post-election murders in Matale in 1936 no major acts of violence were reported. However, political campaigning and elections were not entirely free of intimidation and the use of force. Local elites in many electorates often used their social and economic power combined with the threat of violence to make it difficult for rival parties such as the left parties to mobilize support and bring their voters to the polls. The criminal elements and village bullies were drawn into these activities.

This latent violent atmosphere began to break out in ugly form after 1956. In 1959, the Prime Minister was assassinated. With the outbreak of ethnic riots in 1958 and the violent disruption of the democratic protest campaign of the Federal Party in Colombo, the violence against any opposition was used with impunity in the presence of the law enforcers.

In these events there were several far-reaching implications for the political culture and therefore, the electoral system of the country as a whole.

- The law enforcing authorities were not able or willing to act independently where the political party holding power seemed to condone violence.

- Non-activation of the due legal processes against offenders acted as a signal to political parties and their followers.
- The state was not willing to uphold the rule of law when the opposition, in this case the minority party was the victim of violence and the supporters of the ruling party were the offenders.

The overwhelming majority gained by the United National Party (UNP) in 1977 led to a regime which showed scant respect to the opposition and used violence flagrantly against political opponents. The 1980s witnessed election malpractices and the use of force of a somewhat unprecedented nature. Obstructing election propaganda campaigns, prevention of voters from going for voting, impersonation, vote rigging, prevention of polling agents of opposition parties from performing their duties etc. were some of the election-related violent acts.

PAFFREL under its mission of orienting society towards free and fair elections held a National Convention in Colombo on 30th April 2000 in association with the Marga Institute to bring the grave problem of escalating electoral violence to the nation's attention. Some details of the types of violence that took place at an election immediately prior to this event – namely the North Western Provincial Council election – were narrated at this convention. The Chairman of the UNP at that time who was the opposition leader in the North Western Provincial Council (PC) and the Chief Minister at that time of the Western Province P.C. representing the People's Alliance (PA) attended this convention on invitation from the organizers. At that convention where representatives from most of the prominent Civil Society Organizations (CSO) committed to the task of strengthening the democratic process were present, the chairman of PAFFREL at that time told the meeting, "while the two main political parties must accept collective responsibility for the violence, what is happening is a fierce dispute between the two as to who started the violence and who did more of it when in power". He added: "This approach only means that both parties – the PA and the UNP – would continue using various forms of force and violence when they come to power and justify it on the grounds that the other had done worse"³.

³ Report of the Workshop on Electoral System in Sri Lanka held at Sri Lanka Foundation Institute on 5th and 6th July 1985.

The programme of this convention allowed for a few of the victims of political violence to relate their harrowing experiences. A feature article entitled "**Never Again Those Ugly Scenes**" published in The Sunday Times of 14th May 2000 and an editorial in The Daily News of 6th May 2000 under the caption **Admirable Initiative**, while acclaiming these Civil Society initiatives, described the gravity of the problem of political violence.

Groups that lose their Political Rights due to Electoral Violence and Malpractices

Women:

Although in Sri Lanka over half the population are females their participation as candidates in elections is very much lower than the participation of males. Women's representation in Parliament is only around 4%. Harsh and vituperative language used to attack opponents, mobilization of persons with criminal backgrounds, threats and violence etc. that usually become a part of electoral campaigns prevent women from entering these contests to the same extent as men do. Although the Constitution guarantees equality to all citizens including women and recognizes all rights such as freedom of speech, peaceful assembly, freedom of association etc. for citizens on an equal basis there are communities such as Muslims where women have restrictions on the basis of socio-cultural norms and practices. The violent culture in electoral campaigns would become a factor that prevents them from enjoying their democratic rights of participation in politics.

The Sinhala newspaper "Lakbima" of 25/01/2011 carried an interesting news item. Mr. P. Muttulingam, the President of Social Development Organization addressing the Women's Front of that organization told the audience that except for the single instance of a representative of the Indian Tamils in Sri Lanka's estate sector functioning as a Provincial Councillor, there are no women as representatives of this ethnic category either in Parliament or in any of the Local Authorities.

The reason adduced by the women in the audience was that unlike men, women cannot be enticed by offering bottles of liquor and, therefore, some politicians have a reluctance to sponsor women in estate areas to hold elected positions in representative bodies.

Other marginalized groups and voters in remote areas

In a report under the title “The Subversion of the Electoral Process in Sri Lanka” Janaki Perera has published the following data in respect of the Presidential Election held in December 1988 to show the differences in percentage of votes cast in a number of electorates.

Electorate	Electoral district	Registered voters	Total polled	% of voting
Hanguranketha	Nuwara Eliya	44,596	37,705	84.42
Hewaheta	Mahanuwara	42,868	34,374	80.1
Dambulla	Matale	72,515	7,710	10.63
Minneriya	Polonnaruwa	50,128	4,725	9.43
Moneragala	Moneragala	51,823	3,373	6.51
Hakmana	Matara	65,407	2,913	4.45

She says: “Of course, this could mean that the mass of the people in some regions were not very interested in the elections. But for those who know the country this seems highly unlikely. Especially so in Hakmana, where voter participation in the 1960s and 1970s had been; March 1965, 85.23%; July 1965, 78.34%; 1970, 85.95%; 1977, 87%. This would then make the reported 1988 turnout of 4.45% rather impossible”.

Although Ms. Perera does not come out with a clear reason or reasons for the drop in the percentage of votes in the example she has analysed, this unusual drop in the votes may have been due to various manipulations.

Quoting Campaign for Free and Fair Elections (CAFFE), the Sinhala medium weekend Newspaper “Lankadeepa” dated 17/07/2011 had reported as follows with regard to the situation and some incidents in the North during the pre-poll period of the Local Government Election held in July 2011.

“A Local Government election is held in the North after 25 years. Yet even after 25 years the space available for the residents there to freely engage in political activities is low. We found that the political freedom of residents in Jaffna, Mullative and Kilinochchi has reduced. Political party activists

also appear to have become helpless. An attack was made at the first meeting of the Tamil National Alliance held at Alaweddi in Jaffna. There were security arrangements at second, third and fourth places where meetings were held. In one of these there was a widespread search operation. As a result there was a reduction in the attendance of people at these meetings.

There was an incident where throwing of excreta at a residential house of a TNA candidate in Jaffna took place. In the context of the cultural factors in Jaffna this is considered as an insulting act.

A dog domesticated by a TNA candidate named S.X. Sivakumar had been killed and its head was hung on the fence of the candidate's house.

A wreath was found to have been placed at another house.

It was clear that these attacks were done after getting organized in a subtle manner with a view to create fear among the candidates. There were obstructions to J.V.P. and U.N.P. activities also."

This note recorded in this newspaper concludes with the following statement made by Mr. Kirthi Tennakoon, Director of CAFFE.

"The right of expressing views by the candidates and the people has been clearly violated. There are no fundamental rights in the North. Majority of them do not have the National Identity Cards. We went and took action to issue Identity cards to about 1500 before the election".

Deficiencies in the Voter Registration Procedure

In Sri Lanka the register of voters is revised every year. This process has to commence in June. PAFFREL in association with the National Democratic Institute and the Department of Elections published a monograph giving the legal provision relating to

qualifications for registration, revision procedure, shortcomings in the existing procedure, proposals to reduce such shortcomings and the roles and responsibilities of voters and the political parties. The purpose of this publication was to draw the attention of the public and the authorities to the need of eliminating the shortcomings and strengthening the present procedure.

After observing the work related to the revision of the voter register for 2010, PAFFREL brought the following deficiencies to the notice of the authorities.

- a. Non-receipt of necessary forms by voters in many areas even up to 14th July 2010 although the revision work commenced officially in June and the first phase was expected to end by 31st July. This problem was pertinent especially to the Northern areas and the District of Colombo.
- b. Non-filling of vacancies in the Grama Niladhari (GN) Cadres, non-availability of voters in their places of residence, lethargy on the part of voters in filling forms were some of the problems in this revision exercise. Lack of ability due to poor literacy on the part of some persons in remote areas to fill the BC forms was also an issue.
- c. Failure on the part of some GNs to issue receipts when completed BC forms are accepted.
- d. Refusals of GNs to enter names of persons gone abroad temporally, to issue BC forms to those living in rented homes or have shifted to new houses unless they bring letters of GNs from the original places. This has affected particularly the IDPs in the North who are living with their relatives. When this was brought to the notice of the Commissioner of Elections he has informed PAFFREL that he would rectify these shortcomings.

Misuse of State Resources and Public Media

Although the ways the State resources and the public media used by the ruling parties in electoral campaigns were violations of the laws relevant to such elections, authorities responsible for the application of such legal provision were helpless to take legal

provision or remedial measures due to political interference and the fear of reprisals. PAFFREL in its report regarding the Presidential Election of 2005 has stated as follows:

"This practice seems to have increased in comparison to previous years. Incidents such as using ministry and government employees for campaign work, use of State vehicles for propaganda activities, grants of concessions and privileges to groups of people with political motives were all reported under this caption. The reported incidents reveal the use of thousands of government employees, hundreds of official vehicles, state buildings and other government resources on a massive scale".

With a view to strengthen authorities enforcing the legal provisions in several important areas Sri Lanka adopted the Seventeenth Amendment to the Constitution in 2001. In the field of conducting elections it was expected to set up an Election Commission in place of the present Elections Commissioner. However owing to the failure of some authorities who had to nominate members to the body responsible for setting up the Election Commission - viz. the Constitutional Council, the intended Election Commission did not become a reality until the amendment itself was repealed by the 18th Amendment.

However, at the time of the General Election in 2004, in terms of the provisions in the Seventeenth Amendment, the Election Commissioner took some steps to regulate the activities of two State media organizations - viz. Sri Lanka Broadcasting Corporation and Sri Lanka Rupavahini Corporation - by appointing a Competent Authority to enforce the guidelines issued by him. When the two media organizations challenged these guidelines, the fact that the Supreme Court rejected the interim relief prayed by them is a positive development.

Loss of Voting Opportunities Due to Lack of Facilities

(a) *Internally Displaced Persons (IDPs)*

Among the difficulties faced by the persons resident in areas affected by the civil war that was raging in the Northern and Eastern parts of Sri Lanka, the inability to exercise

their democratic right of casting their vote was one. The inability to be registered as voters, as the registration procedure could not be implemented by the election authorities, the non-availability of documents to prove the identity and the shifting to temporary camps outside their permanent areas of residence were some of the factors that led to the denial of this democratic right of the IDPs.

Another significant result of this civil war was the creation of a large number of female headed households. In a report prepared on IDPs by the Consortium of Humanitarian Agencies for the Human Rights Commission following numbers of such households have been noted:

Vavuniya	-	820
Jaffna	-	288
Trincomalee	-	158
Ampara	-	60
Mannar	-	58
Batticaloa	-	48

These households have become a minority group that is liable to lose their democratic right of participating in the electoral process. In fact PAFFREL, in its report on the Presidential Election 2010, has reported that owing to a break down in the transport facilities provided by the Sri Lanka Transport Board to transport voters from Arunachalam and Ramanthan relief villages at Cheddikulam in Vavuniya many voters could not come to Kilinochchi Cluster Polling Station before the closure of the poll and thus could not cast their votes.

Another significant matter that the voting statistics pertaining to the Local Government Elections held in July 2011 have revealed is the comparatively high rates of rejected votes in areas where the IDPs are residing. Thus in Kilinochchi it was 10.70%, Mulative it was 9.85% and in Jaffna it was 8.57%. The election monitors believe that this may be due to secluded and restricted life styles that the IDPs are compelled to undergo especially in camps where they do not get updated knowledge and information regarding the methods of casting their votes etc.

As the civil war has now come to an end and the people who were in temporary camps are being resettled the situation is returning back to normal. PAFFREL and other CSOs are carrying out voter education programmes and assisting the voters to obtain the necessary documents of identity.

(b) Others

Lack of transport and the inability of procuring private transport facilities for elders, invalids, pregnant mothers etc. in marginalized groups especially in rural areas to come to polling stations to cast their votes may prevent them from exercising their voting right.

The above description will show that in Sri Lanka the legal provisions which underpin the electoral system do not contain aspects which are directly discriminatory to any particular section of the citizens. However, there are certain developments in the political culture and electoral practices of the country which at times impact negatively on the minority communities and groups like women and extremely destitute categories who are compelled to forgo their electoral rights.

Various proposals made by CSOs and also by the authorities charged with the implementation of the present electoral process indicate that the present weaknesses can be overcome if the following proposals are implemented.

Proposals by Civil Society Organizations

At a dialogue sponsored a few years ago by PAFFREL together with the Centre for Monitoring Election Violence (CMEV) and the Centre for Policy Alternatives (CPA) the following recommendations were made:

- Ensure that at least 30% of elected positions are filled by women. It has been suggested that to remove the impediments faced by women the political parties should take steps such as increased training, education, funding for women candidates etc.

- Ensure that constituency or voting area boundaries do not negatively affect minority populations (such as by splitting minorities into two groups for purposes of voting etc.)
- The difficulties of obtaining National Identity Cards (NIC) by some citizens, especially the Indian Origin Tamils in Plantation areas have led to the loss of their voting rights. It has been pointed out that during the last Presidential Election many of these citizens could not vote due to lack of identity documents. PAFFREL in its final report on the Presidential Election 2010 has recommended that the process of issuing Identity Cards to these citizens should be expedited.

Some of the other recommendations that have been made by citizens' organizations to rid the electoral process of its other weaknesses are as follows:

- The 17th Amendment to the Constitution should be re-enacted and its provisions including the setting up of independent commissions should be implemented.
- As the abuse of public resources and State media by the Government in power for the benefit of its candidates contesting elections is taking place on a very large scale the following steps have been proposed to empower the Election Commission appointed under the 17th Amendment, to curb these abuses.
 - To take into custody or otherwise deal with any movable public property abused or likely to be abused for election propaganda,
 - In the case of immovable property so abused to prohibit the usage of such property for electoral propaganda,
 - To bring any person violating the orders to justice,
 - To get police assistance to enforce orders,
 - To give directions to heads of public institutions and, if necessary, to inspect the property or premises of such institutions,
 - To appoint a competent authority to regulate the media to act in a balanced manner.

- The Election Commission should be vested with power to annul candidacies which had violated electoral laws. Though the existing laws can prevent persons with criminal records or recent convictions from standing for elections it is essential that such laws are enforced.
- Laws relating to the declarations of assets by candidates have to be revised to remove ambiguities. There should be rules requiring candidates and parties to declare their campaign expenses and also to set limits on such spending.
- A code of conduct for election campaigning should be established with provisions for sanctions against parties and candidates who violate the code.

Proposals by the Election Commissioner⁴

The recently retired Election Commissioner who had a long spell of service in the Department of Elections had himself appeared before a special Parliamentary Select Committee to consider Electoral Reforms and had made under-mentioned proposals:

A. Registration of Voters

Necessary legal provision should be made to update the register of voters to enable all the voters who become eligible up to a date very close to the election day to get their names registered.

B. To make a Re-election Compulsory in case of a Rejection

To remove the need for taking a decision in consultation with the political parties regarding holding of a re-election in the event of a rejection and make the holding of a re-election compulsory.

C. Election Day

It has been proposed that the present legal framework should be changed to vest the Election Commission with the power to fix dates for Referendums, Parliamentary

⁴ Interim Report of Parliamentary Special Committee on Electoral Reforms

Elections and Presidential Elections instead of vesting that power with the Executive President.

The fixing of dates for elections creates difficulties regarding the work in connection with the organization of elections. Therefore to make it easier for all the officials who get involved in the electoral process it was suggested that the election should be held on a Saturday coming after six weeks from the conclusion of the nominations.

If a Saturday is fixed for an election the number of man hours lost due to the election could be minimized. The Commissioner's view is that to minimize the election expenses of candidates and as a positive step to reduce the administrative costs in connection with the maintenance of law and order during the period of electoral activities the period for electoral activities that begin after the conclusion of the nominations should not be extended beyond five weeks.

D. Police Clearance Certificate

Necessary laws should be made to make it mandatory for all the candidates to submit along with their nominations, a police clearance certificate to the effect that there are no criminal allegations against them.

E. Certificate of Assets and Liabilities

Forwarding a certificate of assets and liabilities at the time of handing over the nominations should be made compulsory.

E. Code of Ethics

It is recommended that necessary legal provision should be instituted to ensure that during the conducting of an election all candidates, party leaders and Members of the Parliament (MPs) act according to a code of conduct.

G. Prevention of Meaningless and Fraudulent Candidacy

As it was seen in the elections there were many instances of meaningless and fraudulent candidacies in the elections conducted in recent times. It is proposed that there should be constitutional provisions to prevent that habit.

It is recommended that the nomination of every candidate should be attested by a proposer (a registered voter) and a seconder (a registered voter) of the relevant electorate. To prevent the inclusion of fraudulent names of candidates the NIC number of every candidate should be included in (his/her) nomination paper.

H. Security Deposit

It is recommended that legal provision be enacted for establishing the need of keeping a security deposit for every candidate in order that nominations for elections be tendered separately. It is further recommended that the difference in the values between sums that must be deposited by the candidates coming from accepted political parties and the candidates coming from other parties and independent groups be removed and all candidates should tender an equal sum as security deposit.

I. Election Petitions

As the time for raising objections for nominations prior to the conducting of elections is limited it has been observed that there are impediments for the proper functioning of that procedure. Therefore it is recommended that legal provision be made to allow for the forwarding of election petitions only at the end of the election.

J. Extra Authority to Enable the Issue of Orders at Unspecified Instances

It is proposed that the Commissioner/Commission be empowered to issue orders or make recommendations in the case of any problem or matter in respect of which there are no clear provisions in the respective electoral laws.

K. An Atmosphere Conducive for an Election

The Police Commission in consultation with the Elections Commissioner should clearly decide and issue instructions regarding the role and duties of police officers so that they would not be made to idle and be inactive when on duty in connection with an election.

L. Obstructions at Polling Stations

The Elections Commissioner thinks that the legal provisions regarding obstructions at polling stations (Sec. 48 (a) of Parliamentary Elections Act), (46 (a) of Presidential

Elections Act), (46 (a) of Provincial Councils Elections Act) should be further amended and they should also be incorporated into the Local Authorities Elections Act. It is proposed that legal provisions are needed regarding the following matters that could arise on the polling day and the day after:

- i. If the poll cannot be held due to a reason beyond the control of the presiding officer.
- ii. If one or more of polling agents are threatened, assaulted or chased away while the poll is in progress.
- iii. If the polling staff do not arrive at the polling station due to an obstruction to their arrival.
- iv. If the peace in the polling station breaks down in a manner that makes it impossible to take the vote.
- v. If some person casts his/her vote forcibly.
- vi. In any polling station where the poll is not genuine, free reasonable or secret the Commissioner will use his power and cancel such poll.
- vii. Necessary arrangements to postpone the poll and also to conduct the new poll on a day not later than fourteen days from the day fixed for the poll.

M. Filling of vacancies (Parliament, Provincial Councils and Local Authorities)

In filling a vacancy the Party/Independent Group or the Commissioner cannot implement their wish other than announcing the person who is there next according to the results list and not announced before. Accordingly the Returning Officer of the relevant Electoral District/Elections Commissioner will take suitable action. However as there is a difference in the provisions of the Provincial Councils Election Act and the Local Authorities Elections Ordinance in filling a vacancy the Returning Officer should consult the opinion of the secretary of the party to which the member who resigned belongs and appoint a suitable person thereafter.

In filling vacancies in respect of parliamentary seats it is recommended that provisions similar to the above laws should be enacted.

N. Limitations in Respect of Candidates

It is proposed that from the declaration of the poll until its end, Ministers and other relevant power holders should refrain from the following acts:

- i. Announcing a promise or a grant of any other financial award.
- ii. Laying foundations or starting any type of projects or programmes
- iii. Giving promises like construction of roads, supply of drinking water etc.
- iv. Giving appointments in government or in the private sector in a way to influence the casting of votes in a manner that is beneficial to the Party in power.
- v. Ministers of Central or Provincial, Government entering a polling station or a counting centre other than as candidates or voters or accredited representatives.

O. Election Expenditure

According to the view of the Election Commissioner to prevent or reduce the influence of financial power in elections the following steps have to be taken. As it is expected to introduce the First-Past-the-Post system of elections the supply of monies from the government on the proportion of 50 cents per vote received at the last election should be abandoned and make it mandatory for the Parties and independent candidates to act compulsorily according to the following parameters:

Every political party recognized by the Commissioner/Commission should publish its accounts annually and such accounts should be audited by agency institutes especially named by the Elections Commissioner/Commission.

Without the written authority of the relevant candidate or his polling agent no society or group of persons (other than a recognized political party) be allowed to make any election expenditure and if such a power has been given such expenses should be included in the relevant candidate's account of expenditure. Anybody who violates these provisions should be subject to punishment.

Any type of person as mentioned above if proved guilty should be declared as ineligible to be a Member of Parliament or any constitutional council for a period of seven years.

Any candidate who fails to handover his statement of expenditure to the Returning Officer within the recommended time period should automatically become disqualified for seven years from the date of the last day of submitting such reports.

P. An Incorporated Elections Act

To achieve the objectives of holding free and fair elections and referendums, elections laws have to be reviewed and amended. Therefore it is recommended that all elections laws should be consolidated into one statute for the conducting of all types of elections.

Q. Standing Committee on Universal Franchise and Elections

It is clear that in some countries a standing committee on elections and universal franchise has been set up to maintain a continued dialogue to consider suitable amendments to elections laws. In Sri Lanka too there should be a similar programme to bring about suitable amendments to elections laws without long delays.

It appears that most of the above recommendations made by the Elections Commissioner are solutions he proposes to the problems pinpointed by the CSOs and the problems that he himself has experienced. The Parliamentary Special Committee on Electoral Reforms has recommended that necessary amendments to the legal framework should be done to implement these recommendations. In addition this Committee has made the following recommendations to improve the electoral process:

i. Parliamentary Elections

The introduction of a system combining the First-Past-the-Post-system and the Proportional Representation System.

ii. Provincial Councils Elections

A system similar to the one proposed for Parliamentary elections.

iii. Local Authorities Elections

To redesign the boundaries of Local Authorities to make them smaller than the ones at present in terms of area and population to ensure

- Peoples participation,
- Increase ability of management
- Diversification of development
- Development of the economic needs in the area, and
- The democratic participation of minority communities

iv. Women's Representation in Politics

Political parties should include in their policies arrangements which ensure the granting of nominations to women.

Legal provision should be made to ensure that out of every three persons named by a Party Secretary from the national list one should be a woman.

v. Electronic Voting Process

In addition to the recommendations forwarded to Parliament on 23/1/2004 by the Electoral Reforms Special Committee appointed on 28/8/2003 this Committee has recommended that a method of electronic voting should be introduced.

This method would reduce expenditure on human labour during election times and also improve the efficiency of counting votes and reduce delays in the declaration of results.

vi. The System of Postal Voting to be Altered to a Pre-Voting System

The proposal is to make special arrangements to enable those eligible to apply for the present method of postal voting to cast their votes at centres arranged by officials appointed by the Election Commissioner/Returning Officer. The date for pre-voting should be a date not 14 days before and five days after the poll.

vii. Recognition of Political Parties

As the present legal provisions are not adequate, necessary amendments have to be introduced.

Conclusion

As the Special Committee in Parliament has endorsed these recommendations there is hope that the government would take necessary steps to implement them. In the meantime CSOs and the media have an important role to stimulate the authorities to expedite this task.

Once these recommendations are implemented with the necessary legal backing, the electoral process would be free of most of the present undemocratic features that have at times been negative to some minority groups.

Among these proposals there are some which would remove certain features in the electoral process that are disadvantageous to certain categories of citizens. Proposals have been made by both the CSOs and the Elections Commissioner to increase the women's representation.

The Election Commissioner's proposal to redesign the boundaries of Local Authority areas to make them smaller and the CSO proposal that in redemarcating boundaries of electoral areas it should not be disadvantageous to minorities have the interests of minority groups in view. When the Local Authority areas are made smaller, groups which have common interests based on ethnic, religious or other factors can get an opportunity to assume leadership in such Local Authorities.

The proposal to make legal provision to update the register of voters to register all those who become eligible up to a date very close to the election day could benefit such groups like IDPs too who will get an opportunity to register themselves in their new locations.

However this by itself would not bring about a lasting solution to the communal grievances and misgivings unless a political system internalising core values of democracy is developed.

In a recent publication entitled “**Nation Building – Priorities for Sustainability and Inclusivity**” edited by Gnana Moonasinghe a multi disciplinary and multi ethnic team of writers have analysed the situation in the country and made valuable suggestions as priorities for building an inclusive and sustainable Sri Lankan nation.

The following extract from the Editor’s Note in this publication hints at the best path that should be adopted.

“This publication is a response to the post war dilemma of how best to bring together the different communities and build a nation on strong foundations, of inclusivity, fairness, justice, equality and contentment for all. In nation building the essence of coming together is to build personal, communal and national relationships, creating the environment for understanding each other, for forming and holding close bonds of affection, trust and respect. The end of the war will come to naught if facilitation is not provided to find means of purging the people, irrespective of majority minority differentiations, of the bitterness, anger, misunderstandings and pain, experienced from the post 1956 years up to now”.

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Organizations engaged in or responsible for election related activities and minority rights-related activities within Sri Lanka

- | | | | |
|----|---|---|-------------------------|
| 1. | Centre for Policy Alternatives (CPA)
24/2, 28 th Lane
Off Flower Road
Colombo 7. | - | 2565304 |
| 2. | Centre for Society and Religion (CSR)
281, Deans Road
Colombo 10. | - | 2672065 |
| 3. | Centre for Women's Research
222/4, Kirula Road
Colombo 05. | - | 2368965 |
| 4. | International Centre for Ethnic Studies (ICES)
2, Kynsey Terrace
Colombo 08. | - | 2679745
Fax: 2688929 |
| 5. | National Peace Council of Sri Lanka (NPC)
12/14, Purana Vihara Mawatha
Off Dutugemunu Street
Colombo 06. | - | 2818344 |
| 6. | Institute of Policy Studies (IPS) | - | 2448212 |
| 7. | Consortium of Humanitarian Agencies (CHA) | - | 46106943 |
| 8. | Law and Society Trust | - | 2691228 |

9.	International Movement Against All Forms of Discrimination and Racism	-
10.	Institute of Human Rights	-
11.	Movement For Defence of Democratic Rights (MDDR)	-
12.	Rights Now	-
13.	Sarvodaya Legal Aid Division	-
14.	Women and Media Collective	- 2809343
15.	Peoples Action for Free and Fair Elections (PAFFREL)	-
16.	Centre for Monitoring Election Violence (CMEV)	-
17.	Marga Institute 941/1, Jayanthi Mawatha Kotte Road Ethul Kotte.	- 2888790/1