



## **International Election Observation Mission (IEOM) to the Democratic Socialist Republic of Sri Lanka's 2019 Presidential Election**

### **INTERIM REPORT**

#### **IEOM Profile**

ANFREL's IEOM to the 2019 Sri Lankan Presidential Election is composed of nine long-term and 29 short-term international election observers, and two electoral analysts (EAs). The long-term and short-term observers were deployed for 21 days and 11 days, respectively, and the EAs for 40 days. The team covered all 22 electoral districts in the country.

The IEOM team was able to observe the pre-election period, postal voting and election day. The team conducted campaign observation, interviews with key electoral stakeholders, desk research and observation of election day operations. ANFREL covered 31 polling stations during the days allocated for the postal voting (November 1-7) and 507 polling stations on Election Day (November 16) across all 25 administrative districts.

This interim report contains an assessment of pre-election activities and conduct of postal voting and election day operations covering the electoral processes from the opening of the polls to the counting, consolidation and publication of results.

ANFREL will issue a comprehensive Mission Report in January 2020, which will include details of the information highlighted in this report. The Mission Report will also include an assessment of post-election environment including the quality of electoral dispute resolution and a set of recommendations for consideration of electoral stakeholders.

## Executive Summary

The Asian Network for Free Elections (ANFREL) congratulates the people of Sri Lanka on the successful, largely peaceful and orderly conduct of the 2019 Presidential Election held on November 16. The Election Commission of Sri Lanka (EC) needs to be particularly acknowledged for delivering on its constitutional mandate to ensure an electoral process that has drawn confidence of people and political parties alike. The success of election was resounded by the acceptance of the election outcome by all contesting parties in a welcome demonstration of democratic maturity, yielding a quick and swift transfer of power.

Through the deployment of international election observers throughout the country, the mission witnessed how Sri Lankan people emerged and participated in deciding the future of their country. This report presents ANFREL's preliminary assessment of the electoral process, which was crafted with internationally-recognized democratic election norms and principles in mind.

The 83.9% turnout is the reinforcement of public faith in the ballot and the prospects of change it can bring. Therefore, it is necessary that all issues both observers and voters saw emerging from the process be addressed immediately in order to continue and strengthen public trust in elections.

Despite some procedural inadequacies such as insufficient safeguards to protect voters' secrecy, generally unclear definition of the role of police officials inside polling stations and differential understanding of election officials to handle tendered and spoiled ballots, the voting process on Election Day ran smoothly. However, the smoothness of the process was not felt by all voters. Almost all polling stations observed by ANFREL observers posed an accessibility challenge to persons with disability (PWD), especially wheelchair-bound and elderly voters. ANFREL recommends to the EC, relevant government agencies and civil society organizations (CSOs) to pay immediate attention to creating a more enabling environment for particularly elderly voters and PWDs.

The campaign environment was dominated by only four major candidates in a field that supposedly had 35 contestants. Such dominance was further aggravated by the incessant and uncontrolled spending of several candidates in both traditional and social media. Given the lack of legal framework to control campaign spending, the playing field is heavily tilted towards moneyed candidates. ANFREL recommends to the Sri Lankan Parliament to consider an immediate passage of campaign finance laws to make elections more inclusive to candidates representing diverse income groups. In addition, the EC may also consider measures to prevent candidates supporting the candidacy of their opponents, which Sri Lanka has seen in this election.

The campaign period was dominated by traditional and non-traditional campaigning by candidates. The media, both public and private, were perceived to have been biased by most stakeholders in the elections. Such biases should be avoided in future elections ideally through an initiative of media entities to police themselves and their members to ensure the fulfillment of the right of voters to have access to unbiased information about election contestants and their manifestos.

The postal voting process was also observed to be peaceful and orderly. This exercise can be further improved by expanding the privilege to similarly situated government employees and private individuals. In addition, the location of these postal voting stations should be assessed further to make it more conducive to voters who are eligible to avail this facility.

Sri Lankan voters seem to possess the basic knowledge about elections but largely unaware of the complexity as well as advantages of preferential voting. A majority of them only know how to vote for one candidate. Such basic knowledge deprives voters the opportunity to vote for more than one candidate, which they have been legally given. Hence, the EC should strive to provide more comprehensive voter education to the Sri Lankan voters. Local election organizations should also take it to task to provide voter education to people in the peripheries, and not just focus in urban areas.

Although the November 16 Presidential Election hallmarks the conduct of future elections in the country, further improvements can be made to make the electoral process more inclusive, transparent and accountable to inspire even greater confidence of diverse communities that inhabit the island.

### **Election Day**

ANFREL's observers deployed in 25 administrative districts witnessed a largely peaceful and orderly Sri Lankan 2019 Presidential Election on November 16. Observers reported a high voter turn-out and participation of young, elderly voters and PWDs across the country. The environment around and inside polling stations was almost free of electoral violations and violent activities. The polling process starting from checking voter's identity to casting of ballot was observed to be done in a transparent manner. Notwithstanding a few instances of restrictions, ANFREL's observers were allowed to freely observe the polling process as well as transfer of ballot boxes to counting centers and the subsequent counting process.

However, it was observed in several polling stations that roles of polling staff and police during the voting process were not clear. Armed police were observed inside many polling stations including some of them assisting voters to booths and exit. Keeping in view the best electoral practices, future avoidance of involvement of police in responsibilities other than providing security will only enhance the quality of election. However, the police appeared to have a more defined role during the counting process at the designated centers where they were generally seen guarding the counting rooms from outside.

Another observation made was regarding procedures to deal with spoilt and tendered ballots. Several election officials had understood the procedures to handle the spoilt and tendered ballots differently, which could be due to unclear guidelines or gaps in communication.

Based on the widely held standard of voters' secrecy, ANFREL observers found the inside setting of most of the polling stations to have compromised ballot secrecy. The polling booths were placed in a manner that anyone around the area could view the choice of the voters on the ballot paper. In

many instances, the polling booths were placed in close proximity to the Senior Presiding Officer's desk. However, voters or party agents in none of these polling stations highlighted the matter to the staff during or after voting.

While polling stations observed were all setup on the ground floor of the buildings, accessibility to these premises remained a challenge mainly for elderly voters and PWDs in more hilly terrains of the country. Despite being located on the ground floors, use of narrow pavements and stairs was required to reach many polling stations.

Though the EC listed six identification cards that could be used by eligible voters to cast their vote, there were instances where polling staff did not accept senior citizen card as a valid identifier. ANFREL observers also witnessed several voters who came to the polling stations being turned away due to invalid identification documents. Improvement in the outreach of voter education will help prevent confusion among eligible voters about identification cards to be used on election day leading to their disenfranchisement.

The use of 2018 voter registration list for the 2019 presidential election is believed to have disenfranchised several hundred thousand eligible voters, mostly the first time voters. Besides, the absence of provisions for overseas voting disenfranchised around a million Sri Lankan overseas migrant workers. Provisions to facilitate voters such as students and workers unable to be present at the place of their vote registration on election day may also be considered.

Some inconsistencies at polling and counting stations were encountered regarding the presence of international observers. Though less in number, few observers were refrained or not permitted completely to observe the counting process. In other instances, some district election commissions had additional requirements for international election observers on election day.

- Guidelines should clarify the role of the police within the polling area -- best practice avoids the participation of the police in the polling process aside from providing security;
- Clarify the process regarding the spoilt and tendered ballots;
- Protect voter secrecy by reconsidering existing guidelines on polling station set-up and ensuring no person remains behind the voters as they vote;
- Promote accessibility by performing polling station audits prior to election day, and reconsider any polling station which does not fit accessibility guidelines;
- Conduct wider voter education on the necessary requirements to vote, furthermore, polling officers should receive better instructions on identification of voters;
- Ensure the voting rights of migrant workers, students, and workers through postal voting or other alternative voting procedures;

## **Legal Framework**

The 2019 Presidential Election was conducted under the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka, Presidential Elections Act of 1981, Registration of Electors Act of

1980 and Sri Lankan Election Act, No. 28 of 2011. Supplementing these laws were the guidelines issued by the EC. The Presidential Elections Act of 1981 is the primary law that governs the conduct of the entire electoral exercise. It has four major sections namely voter and candidate registration, material organization of the polling and counting procedures, appointment of election administration officers in the districts, and offenses and petitions.

Absence of campaign finance laws to regulate the spending of political parties and candidates and monitor the individual or organizational contributions to their campaigns allowed unchecked and excessive spending in the election. This was also noted by one of the local observer groups, Center for Monitoring Electoral Violence (CMEV), in its preliminary report. While excessive use of money impacts the level playing field for candidates representing diverse income groups, equally important are the concerns about the sources of money being used to finance political parties and their election campaigns. Regulation of the use of money in electoral contests is, therefore, guided increasingly by various political finance-related international obligations. Foremost among these, the United Nations Convention Against Corruption (UNCAC) emphasizes that all States must enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties. Sri Lanka signed and ratified the convention and should bring its political finance regulations in conformity with its international obligations.

Another vacuum is the lack of a legal and policy framework to govern the use of online media in elections. In the Media Guidelines issued by the EC, there is a provision which provides that the same guidelines shall be applicable to administrators of social media sites and their users. Given the critical role online media has played in Sri Lanka's most recent elections, the EC, in partnership with all interested groups, should develop and enact measures to regulate online media during elections. However, such regulations should be crafted in a manner that they do not impinge upon the fundamental human rights of online and social media users.

- Introduce a working campaign finance regulation as part of the electoral system;
- The Election Commission and other relevant stakeholders should provide guidelines on the use of social media during electoral campaign period.

### ***Voter Registration***

According to the Constitution and the Registration of Electors Act, any Sri Lankan citizen can be registered as a voter who has reached 18 years of age on the qualifying date (1 June), has not been found or declared to be of unsound mind under any law in force, has not been serving or has not served imprisonment during the immediate preceding seven years and is ordinarily resident in any electoral district on the qualifying date (1 June). In addition, no person may have his name entered or retained in more than one voter register or more than once in the same voter register.

The qualifying date above and lack of legal provisions for supplemental voter registers in the Registration of Electors Act of 1980 deprived around 700,000 Sri Lankan citizens who have attained the age of 18 years after June 1, 2018. This number was essentially 5% of the total Sri Lankan voting population. For this not to happen again, the Sri Lankan Parliament should amend

the Registration of Electors Act of 1980 for the provision of supplemental voter registers. This way, young individuals who are not yet 18 years old on the qualifying date, can still have the chance to register via these supplemental voter registers.

- Continue the active voter registration system the country has which encourages regular updates on the voter registry; and
- A revision in the law should be made to allow for the enfranchisement of all voters aged 18 on election day.

### ***Electoral Dispute Resolution***

For this election, the EC established an Election Complaint Management Unit (ECMU) in its national office as the centre of 25 sub-election complaint management units which were setup in its district offices.

ANFREL observers found the ECMU to be accessible and transparent. It has provided information on the quantity and the typology of complaints. To further promote transparency, efforts should be made to inform stakeholders on how the various cases handled by the unit are being resolved. It would also encourage public trust in the dispute resolution processes when they are acted upon in a timely manner. While the office received more than 3,000 complaints, a high number of election complaints is not indicative of an effective electoral dispute resolution procedure.

- Promote public access to the ECMU by establishing an open data site containing updates on the cases being heard by the body;

### ***Transparency Measures***

The EC has demonstrated transparency in its dealings with political parties and observer groups. In this election, the EC has met with party agents and local election groups to discuss electoral issues and updates. It also opened its doors to observer groups and furnished timely accreditations to domestic and international observers. In ANFREL's experience, the EC has extended all possible assistance to the group to make its observation work more effective and easier.

Almost all of ANFREL's observers were accommodated by the EC's district offices. Relevant election information was given to the observers once it was requested. However, in one district ANFREL observers found it difficult to deal with the District EC. ANFREL observers were requested to submit additional documents to access polling and counting stations.

From the conduct of postal voting up to the counting of ballots, the EC opened up the entire process to party agents, and local and international observers. This was the first time ANFREL and other international observers were given access to the counting centers. ANFREL observers were also invited to EC activities such as the training of polling officials and deployment of polling materials. In an isolated incident, an ANFREL observer was asked by the official to leave mid-way through the training program of polling officials. The reason of the EC was due to confidentiality.

One transparency measure the EC should adopt in future electoral exercises is the segregation of voter information, for example, the number of male/female voters, number of PWD registered as voters and number of elderly voters. Such voter information is essential to a more effective program of action, not only for the EC, but also for other interested groups.

- Ensure consistent application of transparency measures in all stages of the electoral process;
- Proper policy should be published by the EC on the rights and responsibilities of international election observers, domestic election observers, and other relevant stakeholders; and
- Ensure proper data keeping by keeping a record of voter information which identifies the categories mentioned above.

## **Electoral administration**

### ***Postal Voting***

Sri Lanka allows postal voting mechanism to state officers who are expected to render election duties, officers and servants engaged in civil services, the personnel of the three armed services (army, navy and air force), police and civil defense force. From September 18 to October 4, EC accepted applications for postal voting. A total of 717,918 applications were received from public servants but 58,404 of these applications were rejected by the EC<sup>1</sup>.

A total of five days was allocated for postal voting. From October 30 to October 31, civil servants were first to avail of this privilege. The three services, police and civil defense force and, EC employees had theirs from November 4 to November 5. For those who were not able to vote on these four dates, November 7 was allocated for them to avail postal voting at the District EC office.

ANFREL observers reported that postal voting was peaceful and orderly, with voting process generally organized, and no major incidents of violence or electoral violations reported. It should be highlighted that in one district, retired police officers were permitted to vote by postal voting.

Location of postal voting stations can also be improved. In most of the observed areas, the polling station was set-up at the office of the head of the police or the administrative secretary. Given the number of personnel mandated to be inside the postal voting station, the space allocated for observers and the polling booth, it was not conducive for voting. Adding to this limited space was the constant barrage of police officers/government officials into the offices for everyday office concerns.

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<sup>1</sup> *Colombo Page*, 17 October 2019, "Over 58,000 postal vote applications rejected". At [http://www.colombopage.com/archive\\_19B/Oct17\\_1571284997CH.php](http://www.colombopage.com/archive_19B/Oct17_1571284997CH.php)

The high number of rejected postal voting applications should also be noted. Based on the discussions of ANFREL observers with District EC officials, the most common reason for rejection of postal voting application was wrong filling-up of the form. This could have been avoided if the EC in coordination with concerned government offices and agencies who are privileged to avail of postal voting, conducted an information session on the correct way of filling up the form.

For future electoral exercises, the Parliament might want to consider extending this privilege of postal voting to the general public as well. The extension will be particularly useful to voters who are not in their district of residence on Election Day.

- Extend postal voting or other alternative voting procedures for out-of-constituency voters;
- Perform an audit of postal voting locations to ensure they are adequate venues;
- Conduct an information drive on how to properly fill out the postal voting application form

### **Campaign environment**

The campaign environment in the run-up to the 2019 Sri Lankan Presidential Election remained largely peaceful and orderly. It was noticeable that the campaign period was free of major violence and/or electoral violations. Election activities during the campaign period were noticed by many as less vibrant, mainly in comparison with the previous elections. Unlike the campaign period in the past elections, the 2019 presidential election had limited campaigning through posters and billboards. Electoral stakeholders hoped the lesser presence of posters and billboards of candidates may have promoted a better playing field for the contending candidates. In addition, several stakeholders attributed the 'less vibrant' campaign period to voters considering presidential election not as much relatable to them as parliamentary elections.

Campaign activities of political parties were dominated by two candidates, Sajith Premadasa and Gotabaya Rajapaksa, and to a limited extent Mahesh Senayake and Anura Dissanayaka. Ajanta Perera received some attention from the media in particular because of being the only woman among the contesting thirty-five candidates. Though traditional methods of campaigning such as rallies and door-to-door visits were still employed heavily, the use of social media as a platform for election campaign was widespread. Several political parties and candidates in this election actively campaigned through social media. It was also observed that voters' engagement was high on platforms such as Facebook, Twitter, Youtube and Whatsapp. A concern expressed for and during the campaign was the use of social media for misinformation and disinformation. The existing measures by relevant officials to tackle the issue were considered to be insufficient by several voters who were interviewed. Considering that the use and accessibility to social media in Sri Lanka is ever increasing, ANFREL hopes that measures to effectively tackle misinformation and disinformation through social media are soon developed in the country. This involves clear guidelines on content moderation of platforms such as Facebook, Twitter, and Google.

While the campaign environment remained free of major violent activities, there was widespread belief among voters of vote buying. Voters and stakeholders reported inability to file complaints as they found it difficult to obtain evidence of such occurrences. Some of the claims include voters receiving a certain amount of money to vote for a candidate as well as to refrain them from casting their ballot. Religious and ethnic minorities are feared to be more vulnerable to the latter nature of vote buying. Though instances of security issues such as intimidation, threat and/ or violent activity occurred at a small scale, ANFREL urges concerned authorities to conduct a prompt and effective investigation of the cases.

Furthermore, allegations related to the misuse of public resources remained as one of the top concerns for various stakeholders throughout the campaign period. Government offices, staff and resources as well as media outlets were perceived with scepticism by voters. Voters are hoping that complaints on misuse of public resources will be effectively handled by the EC. ANFREL joins the hope of the people that relevant authorities will deal with the issue and redress complaints on misuse of public resources in an effective and impartial manner. In addition, lack of legal framework to oversee and regulate campaign funding and expenditure of political parties and candidates surfaced as the most concerning issue, reinforcing the urgent need for enactment of laws to regulate political finance.

- Develop policies to curb the spread of fake news and hate speech, which must be done without infringing on the rights to expression and speech; and
- Conduct investigations on the use of state resources, and prevent the occurrence of such by giving the EC stronger investigative power in this regard.

## **Media**

Media persons and journalists interviewed by ANFREL observers expressed a more conducive environment for press freedom in the country since the last 10 years. It remains as one of the most important stakeholders in the political landscape of Sri Lanka. This election also witnessed media's active role and wide coverage of political events including campaigns of political parties and candidates leading up to the election. Moreover, TV remained the main source of electoral information for voters in the 2019 Presidential Election.

However, both state and private media outlets are widely perceived by the voters as partial to their favoured candidate. The problem of bias in the media could be largely attributed to the media ownership in the country where political ties affect the self regulation mechanism of media outlets as either news reports lean toward favoured candidates or attack opponents.

The bias and proliferation of disinformation in the media adversely affected the equal playing field among the election candidates and above all, undermined the people's right to know. The EC attempted to address problems in the media through media guidelines but the coverage was limited to state-owned media which was deemed insufficient.

Media as a community should unite to enforce among its ranks the highest standards of ethical journalism and engage media owners in a dialogue for a more independent media practice. The public, meanwhile, as media stakeholders play an important role in strengthening press freedom through an informed and engaged culture of critical media consumption.

- Create a stronger media self-regulation mechanism to address breaches on media ethics;
- A more comprehensive media fairness guideline during campaign period should be created to cover both public and private media;

## **Voter education**

Voter education in Sri Lanka is conducted at different levels by several stakeholders. The role to impart voter education rest primarily with the EC. Civil society groups, media and political parties also engage in providing voter education. However, despite the long history of electoral politics as well as high voter turn-out in this election, voter education was found to be inadequate.

A large number of voters are not aware enough about electoral regulations and processes mainly regarding the presidential election. ANFREL's mission observed voters' limited knowledge on voting rights, voting process and related aspects that will enable voters an informed voting decision. One widespread lack or misinformation on electoral knowledge was the preferential voting system. In most cases, voters were found to be unaware of the existence of preferential voting system while a lot interacted by ANFREL's observers were reportedly confused about its legality.

Voter education was also found to be lowest among the ethnic minorities. Media is still one of the main sources of voter education and electoral information among the majority population in the country. However, several voters from the minority communities expressed inability to access mainstream media due to the language barrier.

EC officials at some districts informed ANFREL observers their apprehension to conduct voter education on preferential voting in order to avoid being perceived as biased towards a party/candidate. Media coverage on the election also pertain mainly on information about political parties and candidates rather than educating voters on the electoral process or the importance of choosing the right candidate.

Political parties and supporters promoted marking the ballots with the "X" mark contrary to what the explanation of the preferential voting system in the media voter education campaigns which were only launched days before the election. This has created confusion among the voters.

Effective voter education programs that are voter oriented must be prioritized. Stakeholders conducting voter education programs must also aim at empowering and enabling voters to make an informed voting decision.

- Perform a concerted effort among the EC, the civil society, and the media to explain the optional preferential system so voters can fully understand and express their voting rights; and
- Multi-lingual voter education should be conducted to ensure that all voters receive information in a proper manner equally.

## **Vulnerable sectors**

ANFREL recognizes the efforts of the EC to promote inclusion and accessibility among all voters. Before the run up to the 2019 election, the EC implemented a number of programs to educate PWDs and elderly voters. Interviews reveal that no assistance were extended to increase accessibility of elections to vulnerable groups like tea plantation workers and remand prisoners. On the other hand, the EC should not be faulted for the disenfranchisement of almost one million Sri Lankan migrant workers, because of the absence of an implementing law to provide them this right. The Sri Lankan Parliament, in coordination with the Election Commission, concerned government agencies and other interested groups, should pass a bill giving the opportunity to vote for Sri Lankan migrant workers.

It should be said that accessibility of elections does not only pertain to Election Day. Accessibility of elections starts from registration of voters. From the registration of voters, data on the number of PWDs, elderly voters and type of assistance they need, should be captured immediately. This can be one in the revision of the registration forms used by the enumerators. This way, the Election Commission can prepare beforehand to address these concerns of PWD and elderly voters. On the other hand, the Election Commission should make necessary measures to ensure that tea plantation workers are not deprived of their right to register, just because of the lack of access to identification documents or the decision of the tea plantation manager to intervene.

Campaign information should also be made more accessible to vulnerable sectors. Campaign can be made more accessible, for example, by requiring sign language interpreter inserts in all television campaign commercials of candidates.

Prior to voting, the Election Commission, together with other government agencies and non-governmental organizations, can assess the terrain of identified polling stations so that necessary changes or measures could be done to ensure that PWDs and older voters will not have a hard time going inside their respective polling stations. The training of polling officials and security officials should also include sensitivity training in their dealings with these kinds of voters.

During voting, the senior polling official and the junior polling officials are the authorized ones to assist a PWD or an elderly voter. Given that the right to vote is a personal one, it should also follow that the voters be given the opportunity to choose the person to assist them in voting, if they cannot do it on their own. The Sri Lankan Election Parliament should look into revising the Presidential Election Act to afford the voter the opportunity to choose their assistor.

The Election Commission should also create guidelines for voting of remand prisoners, as there is nothing in the laws which prohibits them from voting. The failure of these remand prisoners to vote is the lack of guidelines giving them such.

It is worth nothing, based from the interviews of ANFREL observers, that there is a low appreciation for the challenges faced by vulnerable sector groups when it comes to exercising their electoral rights. The Election Commission and election observer groups in the country should include this in their voter education manual to increase the knowledge of the general public as to the situation of vulnerable sectors in elections.

- The Parliament should work on amending laws which prevent migrant workers from exercising their voting rights, the EC, civil society, and migrant worker advocates should be consulted to create this enabling law;
- Registration process should capture data on differently abled and the elderly to better prepare the local election commission on the needs that should be provided to these sectors during the polling;
- The Election Commission and the Human Rights Commission, and other concerned authorities should work together to ensure the voting rights of tea estate workers;
- Use of accessibility materials such as Braille manifestos and sign language interpreters in televisions can promote inclusive campaigns;
- PWDs should be given the option to choose who they want to assist them, sensitivity training should also be conducted as part of the polling officer training;
- Policy making bodies should legislate alternative polling procedures to ensure remand prisoners' voting rights.