



LAW AND SOCIETY TRUST

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OBJECTIVES

The Law and Society Trust Fortnightly Review keeps the wider Law and Society community informed about the activities of the Trust, and about important events and legal personalities associated with the Trust. Our publication is aimed at raising public awareness on all issues concerning the legal rights of citizens, and at gaining wider recognition of law as society's instrument for peaceful change.

This joint issue is devoted to the Sri Lankan Parliamentary Elections held in August this year. We reproduce extracts from the reports of the elections by three observer groups and a shorter report by the International Commission of Jurists, which also participated in the observation process. We further publish a comment on the electoral process in the North, the conduct of which left much to be desired. A dissenting report by some members of the Official Observation Team on the polls in the North is also included. An overview of the election results forms part of this issue.

THE 1994 PARLIAMENTARY ELECTIONS

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Report of the International NGO Election Observer Mission to the Sri Lanka Parliamentary Elections

I. Summary of Findings

The August 16, 1994 Parliamentary Elections in Sri Lanka resulted in the peaceful transfer of parliamentary power to the political opposition, an important measure of democratic governance. The composition of the new Parliament must be seen as having been determined not only by the voting on election day, but also in the context of the entire election campaign. The pre-election period was marred by an electoral process that favoured the ruling party and by serious and widespread acts of political violence. Election day itself went smoothly and relatively peacefully, a tribute to both the voters of Sri Lanka, who weathered pre-election violence and intimidation to vote in large numbers, and to the police, who with few exceptions acted impartially and professionally.

Three election issues deserve the government's highest priority. First, the elections in Jaffna were determined by only two percent of the district's electorate, tainting the electoral process generally and distorting the composition of the new Parliament. Second, the government should actively prosecute violations of the criminal law committed during the election campaign, including those by candidates for office. Impunity from prosecution for serious violations of the law undermines the electoral process and encourages violence during future election campaigns. Third, the government needs to readdress the registration requirements and voting procedures for internally displaced persons, many of whom, in the face of other hardships they face, were denied the right to vote.

II. Background to the Elections

On June 25, 1994, President D.B. Wijetunga dissolved Sri Lanka's Ninth Parliament and set a General Parliamentary Election for August 16, 1994. The election date was six months prior to the end of the Parliament's six-year term and three months before presidential elections scheduled for November. The last parliamentary elections, held in February 1989, were marked by considerable political violence and electoral manipulation.

In 1978, Sri Lanka's constitution was amended to create a strong executive presidency and a Parliament elected by proportional representation¹. The Parliament consists of 225 members. Of those, 196 are elected from the country's 22 electoral districts. The number of members each district elects ranges from 4⁴ in Trincomalee to 20 in Colombo. Seats in each district are divided on a proportional basis, with the winning party in each district entitled to one additional "bonus seat"². The remaining 29 members of Parliament are chosen from national lists of the political parties based on percentages of the country-wide total vote.

Thirteen political parties and 26 independent groups (states of non-affiliated candidates) fielded

¹ Previously, members of Parliament had been elected through a "first past the post" system by district.

² One "bonus seat" is given to the party gaining the highest number of votes in a district. The remaining seats are then divided among the contesting parties according to the proportion of votes won.

candidates in the election. There were 1,440 candidates contesting, of whom 45 were women. Each party was permitted to nominate one candidate for each district seat, plus 3 to allow for mid-term vacancies. The nomination period was from July 4 to July 11, 1994.

Two major political alliances contested the elections along with several minor parties. A majority (113) of seats in Parliament is necessary to form a government. Because the proportional representation system reduces the chance that one party will gain an overwhelming majority in Parliament, the minor parties can play a significant role even if they garner only a few seats.

The United National Party (UNP), led by President Wijetunga and Prime Minister Ranil Wickremasinghe, has governed Sri Lanka since 1977. It has the support of the Ceylon Workers' Congress (CWC), a party that represents Indian Tamil plantation workers.

The opposition People's Alliance (PA) is a formal coalition of political parties led by the Sri Lanka Freedom Party (SLFP). The PA is headed by Mrs. Sirimavo Bandaranaike; its candidate for Prime Minister was her daughter, Chandrika Kumaratunga. The PA includes several small leftist parties and has the support of the Sri Lanka Muslim Congress (SLMC). The SLFP last governed the country from 1970-77.

The main Tamil-based political parties include the pro-UNP Eelam People's Democratic Party (EPDP), the pro-PA Eelam People's Revolutionary Liberation Front (EPRLF) and the independent Tamil United Liberation Front (TULF). Three smaller Tamil parties formed the Tamil National United Front. Three other Tamil parties contested the Vanni electoral district under the Democratic People's Liberation Front. Sinhalese ultra-nationalist parties included the Mahajana Eksath Peramuna and the Sri Lanka Progressive Front (SLPF), which included some elements of the Janatha Vimukti Peramuna in a National Salvation Front.

There are approximately 10.9 million registered voters in Sri Lanka. Traditionally, 80-85% of the electorate votes in national elections. There were 9,533 polling stations in operation; polling opened at 7 a.m. and closed at 4 p.m. Once balloting was completed, the ballot boxes were sealed and taken to one of 1,188 counting centres for the votes to be tabulated. Each center was to account for the votes of from 10 to 15 polling stations, postal votes or the votes of internally displaced persons. The law bans rallies and victory parades for one week following election day.

Security for the voting was primarily the responsibility of the nation's police force. About 39,000 police were assigned election duty. Each polling station was to have two, sometimes three, policemen on duty. About 20,000 members of the armed forces were to provide additional security in areas controlled by the militant Liberation Tigers of Tamil Eelam (LTTE).

The election in the North, particularly the electoral districts of Jaffna and Vanni, raised special issues. Roughly 80% of the Jaffna peninsula and half of Vanni district are controlled by the LTTE. In July the LTTE announced that it would not permit voting to take place in areas under its control or allow voters to travel to vote elsewhere. Instead of attempting to have polling stations in LTTE-controlled zones, the government set up clusters of polling stations in "cleared" (government-controlled) areas of Jaffna (primarily on islands off the Jaffna coast) and Vanni. Even by adding the votes from internally displaced persons, less than 5% of the Jaffna electorate of 600,000 were expected to vote for the district's 10 parliamentary seats. Security on the Jaffna islands was largely to be provided by pro-government security forces of the Eelam People's Democratic Party (EPDP), which was also contesting the election.

Sri Lanka's 11-year-long ethnic conflict has left 600,000 to 800,000 people displaced. Most are Tamils and Muslims who fled fighting in the North and East for government-controlled areas. A majority live in displaced persons camps in Vanni, Batticaloa, Anuradhapura and Puttalam. Others are scattered throughout the country. By law they are permitted to vote for their home district at a polling station close to their present residence.

On August 16, Sri Lankans turned out in large numbers to vote. Overall, 76% of the electorate voted. Excluding the Jaffna district, where only 2% of those eligible voted, and the Vanni district, where 25% voted, 81% of the electorate cast their ballots. The elections in these areas raised important legal and constitutional issues that were not immediately resolved, and which will need to be addressed by the courts and the Parliament.

The election results were tabulated by the morning of August 17. The Commissioner of Elections is empowered to declare the poll in any polling area or district invalid if in his opinion a proper poll has not been held. But before making such a decision the Commissioner must consult the political parties or groups contesting that area. At 3 p.m. on August 17, Elections Commissioner Chandrananda de Silva convened a meeting of the political parties contesting the Jaffna and Vanni districts. At this meeting all the political parties, for different reasons, asked him to validate the results in these two areas, even though it was accepted that the polling had not been completely proper. The Commissioner agreed and released the election results.

The PA won a sufficient plurality of seats to form a government with the SLMC and an independent candidate. The PA received a total of 105 seats: UNP - 94 seats; EPDP - 9 seats; SLMC - 7 seats; TULF - 5 seats; DPLF - 3 seats; SLPF - 1 seat; independent candidate Chandrasekera - 1 seat. The illegitimacy of the Jaffna vote is highlighted by the fact that each UNP and PA seat represents about 37,000 votes obtained, while each EPDP seat, all won in Jaffna, represents only about 1,000 votes. Following President Wijetunga's request that she form a government, PA leader Chandrika Kumaratunga was sworn in as the Prime Minister of Sri Lanka on August 19, 1994.

III. Note on Methodology

This report is based primarily on information gathered in the field by participants to the International Non-Governmental Organisation (NGO) Election Observer Mission. The NGO Election Observer Mission was organized by the International Human Rights Law Group at the request of Sri Lankan non-governmental election monitoring organisations, in particular the Movement for Free and Fair Elections (MFFE) and the People's Action for Free and Fair Elections (PAFFREL).

The International NGO Election Observer Mission acted independently. The Mission had no formal ties with the official International Observer Group sponsored by the Commission of Elections of the Sri Lankan government or any other international observer mission. The Mission was facilitated by the International NGO Forum on Sri Lanka. The Netherlands Organisations for International Development Cooperation (NOVIB) was instrumental in providing financial support. In addition to NOVIB, funding was provided by the Interchurch Organisation for Development Cooperation (ICCO), Misereor, CAFOD, TROCAIRE, Secours Catholique, Caritas Netherlands, APHD (Hong Kong).

³ Had the results in these districts been declared invalid, the 196 members from the electoral districts could not have been declared. In that event, the national list could not have been declared and the election could not have been concluded.

⁴ The national list seats were as follows: PA - 14; UNP - 13; SLMC - 1; TULF - 1

Christian Aid (UK), Diakonisches Werk (EKD, SEDEC and Bread for the World Germany).

The Mission consisted of 35 participants from 13 countries. Approximately half of the participants were from Asia, the rest from Europe and North America. The backgrounds of the participants varied widely, but most were human rights activists or lawyers. All had experience in Sri Lanka, election observation or human rights monitoring.

The Terms of Reference of the International NGO Observer Mission state: "The Mission is to assist local NGO election observers to determine to what extent the parliamentary elections to be held in Sri Lanka on 16 August 1994 are free and fair in accordance with the laws of Sri Lanka and international human rights laws and standards". The International Observers arrived in Sri Lanka from three to four days prior to Polling Day. They were briefed by both Sri Lankan and international election observers and provided with background information on the elections. On August 2, the International Human Rights Law Group made a formal request to the Commissioner of Elections to send an International Observer to the Jaffna district, which requires government authorisation, but no reply was received. Observers were issued travel passes by the Ministry of Defence to go to Batticaloa and Trincomalee.

Election Observers travelled to the following 15 election districts (the number of Observers sent is noted parenthetically): Badulla (1), Matale (2), Batticaloa (4), Trincomalee (2), Kandy (1), Kurunegala (4), Vanni (1), Moneragala (1), Galle (4), Colombo (3), Gampaha (2), Anuradhapura (1), Puttalam (2), Ratnapura (3), Kegalle (1) and Kalutara (2). With a few exceptions, they had at least one full day in their district before Election Day. The districts chosen were primarily those areas where Sri Lankan NGOs had an organised presence and could properly assist with logistical arrangements.

The International Observers, with the assistance of an interpreter and local election monitoring groups, met with local government officials, party officials and supporters, prominent local persons and religious figures, and ordinary voters to assess the situation in their district prior to Election Day. On Election Day itself, they visited anywhere from 10 to 20 polling places. Rather than trying to visit as many polling places as possible, however, the International Observers sought to gather as much information as possible on serious infractions of the electoral regulations and serious acts of violence or intimidation that would affect the extent to which the elections were free and fair. The monitors stayed in their districts from one to three days following Election Day to assess the situation, particularly in regard to ballot box collection and vote counting. The work of the Observers during this period was hampered by the government curfew, which limited travel and access to information.

The International NGO Election Observer Mission relied on various non-governmental organisations in Sri Lanka for logistical support and background information, but the International Observers were individually responsible for the accuracy of their findings in the field. This report is a publication of the International Human Rights Law Group and does not necessarily reflect the views of the participants to the International NGO Observer Mission.

The International Human Rights Law Group gratefully wishes to acknowledge the assistance and information provided to the Election Observers by hundreds of Sri Lankans, including members of NGOs, police officers, government officials, candidates and other party members, as well as ordinary voters. We specifically wish to thank those individuals who came forward, sometimes at personal risk, with information on serious abuses of human rights and other criminal acts. We hope that our findings can help bring about justice for the victims of election-related violence, and also to help ensure that such problems are not repeated in future democratic elections in Sri Lanka.

IV. Pre-Election Phase

The pre-election political climate in Sri Lanka had an undeniable - but also indeterminate - influence on Election Day. Under Sri Lanka's proportional representation system, a small but localised shift in voters can have an important impact on the distribution of parliamentary seats. The extent to which the elections were free and fair must be framed by an assessment of governmental mechanisms for conducting elections in Sri Lanka, as well as to the extent of pre-election violence and intimidation by the political parties.

The mechanisms for conducting elections in Sri Lanka substantially favour the ruling party. Longstanding limitations on the freedom of expression, as well as special election-related restrictions, make it more difficult for opposition parties to communicate their political message. Also favouring the ruling party has been the use of state property by those UNP candidates (91 in number) who retained ministerial or sub-ministerial rank. Finally, administration of voter registration lies with village officers, virtually all of whom were appointed by the ruling party.

Political violence during the pre-election period was serious and widespread. The Superintendent of Police reported receiving more than 3,000 election-related complaints from July 3 to August 16, 1994 and as many as twenty deaths may have been attributed to the campaign. The great majority of cases of serious pre-election violence and intimidation reported to the International Observers were attributed to UNP supporters, although no party was guiltless of acts of violence. Of particular concern were acts of violence and intimidation by candidates themselves, often with members of the police or other local officials.

1. Laws Affecting the Fairness of the Election

It is inevitable in a parliamentary democracy that an incumbent political party will retain certain advantages in an election that are unavailable to the opposition. So long as the government can undertake local development projects or conduct foreign policy, the ruling party maintains a unique ability to influence voters. There were, for instance, many reports that UNP ministers had provided promotions for senior police officials and teachers just prior to the election, in what appears to have been a last-minute effort to win their allegiance⁵.

The Law Group is concerned with electoral disparities that go beyond the inherent advantages of incumbency. These include laws and practices that undermine the fundamental rights of free expression of Sri Lankan citizens, election regulations that significantly and unnecessarily favour the ruling party, and the improper use of state property and the state apparatus. In each of these areas, the Law Group found that the ruling party had significant advantages over the challengers.

A. General Restrictions on Fundamental Rights

Government domination of the media provided the incumbent UNP and its supporters with a significant electoral advantage. The active domestic press corps in Sri Lanka has in recent years been relatively free to cover matters of political importance, although coverage of the war in the North and East remains very restricted. While newspapers in the country represent all political views, the major newspaper chain, the Lake House group, is government owned. Its coverage of the elections was

⁵ For instance, on August 9, two Deputy Inspector Generals in Colombo were promoted to Senior Deputy Inspector General, bringing the total number in the department to five.

heavily biased in favour of the UNP, not only in editorials, but in its news accounts and feature stories.

There is far less diversity in the broadcast media than in the newspapers. Since 1993 the government has allowed non-government owned radio and television stations to operate, but the government has maintained its monopoly over local news coverage. While general news coverage over television and radio is normally biased towards the government, during the election campaign it was even more so. Coverage was given to UNP activities and meetings presided over by the President, while campaign rallies were not covered. The opposition election campaign was completely ignored. In addition, there were many feature programmes describing the activities of various government projects and advertising by state banks, insurance agencies and other state-owned enterprises. These were often little more than blatant campaign promotions for the UNP.

The ruling party was willing to manipulate the press for its own political advantage. On August 15, the eve before the election, both state-controlled television networks broadcast a twenty minute interview with Gamini Iriyagolle, a well-known Sinhalese nationalist, in Sinhala. Iriyagolle sharply criticised the PA for its views on the ethnic question, asserting that the PA intended to carve up the country on an ethnic basis. He quoted from a 1988 speech by PA leader Sirimavo Bandaranaike in which she had spoken in defence of the rights of self-determination of Tamils. Although Iriyagolle did not express support for the UNP, his message was evident. This was a clear misuse of the state-owned television network for partisan political purposes and possibly also a violation of the regulation prohibiting electioneering and the solicitation of votes in the 48 hours before election day.

Findings: The existing governmental control of television and radio news violates the basic right to freedom of expression. During an election period, governmental control of the broadcast media is an unwarranted political advantage to the ruling party. The Law Group urges the Government of Sri Lanka to end its virtual monopoly on domestic television and radio news.

B. Electoral Restrictions on Freedom of Expression

Sri Lanka's Parliamentary Elections Act (Act No. 1 of 1981, as amended) contains onerous restrictions on the most common forms of campaigning. Chief among them are the total ban on campaign posters in all public places and on door-to-door canvassing by candidates for office and their families. While many countries have time and place restrictions on campaigning, the regulations in Sri Lanka are so broad as to infringe on the freedom of expression.

Many countries restrict the use of posters and signs during an election campaign. However, the Parliamentary Elections Act sharply limits freedom of speech and access of candidates to the electorate by banning all handbills, placards, posters, drawings, party symbols, etc. from all public places⁶. Such signs are also banned from all vehicles except the one conveying the candidate.

Candidates and their families are prohibited from undertaking door-to-door canvassing or distributing handbills or notices from the last day of the nomination period all the way through election day⁷.

These election law prohibitions on campaigning favour well-known incumbents over lesser-known

⁶ Parliamentary Elections Act, art. 74. The law permits signs at or in the immediate vicinity of a place where an election meeting is to be held.

⁷ Parliamentary Elections Act, art. 75.

challengers. The broad scope of these provisions, extending beyond reasonable restrictions on time and place, appear in violation of international human rights law on freedom of expression.

The failure of the regulations against postering was visible in every major town visited by the International Observers. Posters and other party material - from ribbons in party colours to large painted numerals reflecting individual candidates - were ubiquitous. The plastering of bridges and other sites guarded by the police or military conveyed an impression of indifference to the law or bias on the part of the authorities. In Colombo, for instance, UNP posters overwhelmed those of the opposition, though it is not clear whether this was a result of a greater willingness to violate the regulations, bias by the police in allowing more UNP signs or fewer PA ones, or simply the UNP's greater financial resources.

Particularly egregious was the widespread placement in Colombo on the night of August 14 of posters and signs of the number 18 on a green background - the Colombo ballot number of UNP Prime Minister Ranil Wickremasinghe. It seems doubtful that such a massive production of posters and signs could have been carried out without the candidate's knowledge. Serious questions are also raised as to the role of the police, who apparently took little or no steps to prevent this plastering of unlawful signs, arrest those involved, or see that they were promptly removed.

The following case highlights some of the problems of the overly restrictive anti-poster law:

Unlawful Campaigning (Kalutara). On the eve of Election Day, a team of 15 persons from the Presidential Secretariat arrived in Horana, Kalutara district and put up two posters in the town. One was a large picture of President Wijetunga which read in Sinhala at the top: "You have seen the clean work done by him in the past year", and at the foot: "Victory is certain". In tiny lettering at bottom the poster read: "Not to be put up in public". The other poster accused the PA of planning to divide the country.

Those responsible asserted that the hanging of the posters was not unlawful because the President was not a candidate in the parliamentary election. Police in the vicinity reportedly watched the posters going up but took no action. A crowd of PA supporters gathered around the poster team's van and damaged it; no injuries to individuals were reported. Soon after higher-ranking police officers were notified of the posters, they were removed.

The effects of these overly broad election regulations are two-fold. First, they limit the ability of candidates, particularly those less known, to communicate their political message to the voters. Second, the authority and impartiality of the police is undermined by their failure to prevent the pasting of posters. Even if bias were not a factor, it is a tremendous waste of limited police resources, especially in politically tense electorates, to be combatting unlawful postering and canvassing when there are more pressing matters.

Findings: Government regulations prohibiting the public display of posters and prohibiting the canvassing of voters by candidates and their family members are overly broad. By limiting the freedom of expression, the laws affect the fairness of the electoral process.

The Law Group urges the Sri Lankan government to adopt less restrictive regulations on campaigning. Total prohibitions on posters and canvassing could be replaced with less restrictive measures that address the problems associated with these practices. For instance, the government might create special public places where campaign posters could legally be pasted, charge political parties for the removal of posters or enforce campaign spending limits against candidates.

2. Manipulation of the Electoral Process

A major concern of the opposition parties prior to the election was the manipulation of the electoral process by the ruling UNP and law enforcement authorities. The use of state resources, primarily cars but also the services of government employees, by UNP ministers for their own political campaigns seems to have been widespread. The failure of local officials to register all eligible voters, particularly persons displaced by the ethnic conflict, was another serious problem. While the police did not engage in a concerted campaign to support the ruling party, many law enforcement officers turned a blind eye to open abuses of the law, particularly restrictions on the use of government property by UNP candidates with ministerial status.

A. Unlawful Use of State Resources

The UNP's election campaign benefitted from having 91 of its candidates retain their ministerial posts during the pre-election period. Whereas the dissolution of Parliament on June 24 deprived Members of Parliament their benefits of office, all cabinet, state and project ministers (who ordinarily are also members of Parliament) retained theirs. The ease with which the ruling party in Sri Lanka can manipulate this system was evidenced by President Wijetunga's announcement, two weeks before Parliament was dissolved, to confer seven new ministers with portfolios, all to members of the UNP.

Administrative regulations, establishment codes and departmental orders prohibit the use of state property for anything other than official purposes. In practice, these laws were openly flouted by many UNP ministers. Moreover, there was no concerted effort on the part of law enforcement authorities to prevent such practices; in some cases, they participated in them. There were unconfirmed reports of government civil servants being requested to take on campaign tasks for the UNP. And even so modest a perk of office as a government car can be a significant advantage in a local campaign.

The misuse of ministerial positions by the ruling party gives local police an excuse to provide political support under the guise of additional security. In Anuradhapura district, the police told the International Observer that for security reasons each minister was entitled to one sergeant and five armed constables with two police vehicles. Project Minister for Science and Technology Themiya Hurulle, was seen in Horowapattana, Anuradhapura unlawfully campaigning within 48 hours of polling day. His own vehicle, filled with men wearing UNP green, was escorted through the area by a police vehicle.

The most widespread and visible abuse of state resources concerned the use of government cars by UNP ministers and sub-ministers. At a press conference on August 3, Chandrika Kumaratunga provided detailed information on more than two dozen state-owned vehicles that had been requested by government officials reputedly for campaign purposes⁸.

Virtually every International Observer reported the unlawful use of government vehicles by UNP candidates, among the cases:

Unlawful Use of Government Vehicles (Badulla). Throughout the campaign UNP minister and candidate W.J.M. Lokubandara used three government vehicles, covering the government emblems on the cars with UNP campaign material.

⁸ "UNP Using Government Resources for Polls Work, alleges Chandrika", *Island*, 4 Aug. 1994.

Violence, Unlawful Use of Government Vehicles (Digamadulla). In Ninthavur, the Sri Lanka Muslim Congress reported that on August 5 at 12.30 a.m., a group led by two known UNP provincial council members had used a government vehicle in an attack on their local party office. Four push cycles were damaged in the attack.

Findings: The unlawful use of state resources by the UNP, particularly government vehicles, was among the most frequently cited violations committed during the campaign. Such practices provide an unfair and unlawful advantage to the ruling party. The Law Group urges the Sri Lanka government to better enforce existing laws on the use of government property during election campaigns or to strengthen the laws so that such practices do not continue.

B. Manipulation of Election Processes by Local Authorities

The problems with voter registration were mostly ones of confusion. However, a number of local officials, particularly *grama sevaka niladhari* (village officers), seem to have conducted registration with a view to promoting the interests of the UNP, rather than acting as impartial administrators.

1) Registration and Polling Cards

The most important problems with voter registration appeared to have been logistical, rather than political. Each year in June and July, village officers distribute registration forms to all of the households in their area. These must be filled in by the chief occupant and returned to the officer, who sends them to the elections department. The household receives no acknowledgement from either office. Once the voter registers are compiled, normally at year's end, there is a public notification that the registers are available for inspection at various government offices. Anyone whose name does not appear can then have it added.

At the election, the registers used are the latest certified ones available. For this election, the latest registers were for 1993; thus, many otherwise eligible 18 year-old voters were unable to vote. As discussed in section 4(B), thousands of internally displaced persons were also deprived of their right to vote, many because they had no opportunity to register. In Jaffna district, the latest registers available were for 1986.

Much of the confusion about the registration process could have been alleviated by greater voter education. In a number of areas, voters believed the polling cards were necessary for casting their ballot. This created problems in areas where, for whatever reason, the post office was unable to deliver all of the polling cards. In Oddamavaddai, one of the more tense areas of Batticaloa district, many voters had not received their polling cards by the afternoon before the election. In Kurukkal Madam, Batticaloa, some 300 polling cards were never delivered. Some local persons believed, though without proof, that the failure to deliver them was a politically motivated action by pro-UNP people working in the post office. The absence of polling cards created confusion and doubtlessly deterred many from voting.

The most frequently expressed political concern about the registration process was the role of the *grama sevaka niladhari* (village officers). All *grama sevakas* are political appointees of the government - most of them have been appointed in the last 15 years by the UNP. They are responsible for the preparation of up-to-date voter lists. Frequent reports of deceased persons being left on voter lists or displaced or opposition party voters being left off the lists were difficult to prove. While there were few clear-cut cases reported of electoral misfeasance by *grama sevakas*, the very fact that they were political appointees heightened concerns about their partiality.

Eligible Voters Removed from Registration Lists (Galle). In Magalla North in Galle district, the PA alleged that at least 75 and as many as 200 PA supporters were missing from the registration lists. A registration book from the previous election confirmed that these individuals had then voted. The PA believes the names were deleted when the voter registration lists were being prepared by the village officers. The PA in Magalla North also alleged that up to two dozen minors had been added to the lists there. In two nearby villagers, PA supporters said about 50 names had been removed from each of the lists there.

Findings: Many otherwise eligible voters were unable to vote simply because the registration period for this election closed more than a year ago. Particularly affected were young, first-time voters. Greater voter education is needed to clarify the purpose of the polling cards and the procedure for distributing them.

The administration of the registration process by the grama sevaka niladhari creates uncertainty about the fairness of the process because they are political appointees. Even if actual cases of registration list tampering by village officers were infrequent, the process was marred by the appearance of impropriety. The Law Group urges that the registration process be administered by persons who are not appointed for political reasons.

2) Police Bias

There were relatively few cases of police partiality in the enforcement of serious violations of the criminal law. Credit for this must go in large measure to Inspector General of Police Frank de Silva and steps taken by his department to ensure equal enforcement of the law.

The main failing of the police in this regard was the acquiescence to (and occasional participation in) the widespread unlawful pasting of campaign posters in public places, a regulation most flagrantly violated by the UNP. In some cases it reflected police bias; in others a shortage of personnel to enforce a perhaps unenforceable law.

Police Bias and Poster Removal (Kurunegala). There were at least four reports from Wariyapola, Kurunegala district of police showing favouritism by destroying PA posters while leaving UNP posters intact. For example, on August 5 at 9.30 a.m., Sub-Inspector Wijeratne and other officers from the Ambanpola police station forced a store worker to tear down posters featuring PA leader Chandrika Kumaratunga and to tar posters of local PA candidates. A PA complainant maintained that, by contrast, posters advertising UNP candidates and a visit by President Wijetunga were left intact until after the President's visit.

Bias in Law Enforcement (Gampaha). On August 12, several PA supporters were pasting campaign posters when a group of UNP supporters arrived and threatened them. One of the UNP supporters, Mr. Rohitha, fired a revolver three times towards the sky. The police arrested Rohitha, but soon released him without bringing him before a magistrate, the proper legal procedure. Rohitha had been implicated in the death of Stanley Joseph Fernando, a PA activist killed on July 19 [see section 3(B)].

Unfair Restriction on Campaigning (Colombo). According to the PA, the police in Dehiwela, Colombo, denied the organizers of a PA rally a permit to use a loudspeaker. The planned August 10 rally already had municipal approval. The Officer in Charge refused the organizers a loudspeaker permit on the grounds that the UNP was scheduled to hold a meeting nearby. The PA claimed that the planned UNP meeting place was a small textile shop that could hold only a dozen people - and thus was an unfair basis for denying a permit. The refusal was upheld by the local Deputy Inspector General.

Electoral Manipulation by Police (Matale). PA candidate A.C.M. Zeirideen in Matale town reported that on August 15, Senior Superintendent of Police Dhamaratne changed the counting center security officer. The new officer, Mr. Samarasinghe, was known to be a close friend of UNP candidate Alick Aluvihare. Zeirideen contested the change.

Interference with Law Enforcement (Kandy). Officer in Charge C. Abeysinghe Bandara from Hasalaka, Kandy district, was transferred twice reportedly on an allegation by UNP candidate and Higher Education Minister Tissa Attanayake, that the officer had not dispersed PA supporters who were holding a peaceful protest.

Interference with Law Enforcement (Badulla). In Mahiyangana, Badulla district, Officer in Charge Daya Bandula Gooneratne was reportedly transferred on the basis of a complaint from UNP candidate Lakshman Seneviratne that he had removed the candidate's flags, banners and posters, which by law the policeman was entitled to do.

Unequal Enforcement of the Law (Badulla). On August 10 at 10 a.m., about 50 police forcibly broke up a meeting of 400 PA supporters who had gathered outside the home of candidate Anslam P.B.B.D. Priyanjan in Galanda, Viyaluwa. The senior police inspector present explained to Priyanjan that rallying was not allowed, to which the candidate replied that the gathering was simply a meeting to facilitate distribution of the manifesto.

Having reached an apparent agreement with the police, Priyanjan gathered his supporters at 2 p.m. that day at a bus stand in town prior to the group's returning to his house. The police arrived and attempted to arrest the candidate on the basis of "illegal rallying". He eluded them, but at 3.30 p.m. the police arrested fellow PA candidate K. Gunasena Fernando. According to Priyanjan, Fernando was arrested as a substitute for himself. In the company of lawyers, Priyanjan visited the police station where Fernando was being held, but the police refused them access to the detainee. (The police did not try to arrest Priyanjan again). The police released Fernando later that day, after Priyanjan threatened to stage a hunger strike outside the station.

Whatever the merits of the alleged police action against the PA, unequal police enforcement came into play on August 13 when UNP President Wijetunga visited Badulla and staged a UNP rally. When challenged by Priyanjan, the senior police inspector replied that he had wanted to block the rally as a violation of election regulations, but that his superior had ordered him not to do so.

Findings: There were many complaints by opposition parties regarding alleged bias by police in the enforcement of the election law. Many of these allegations may have reflected the unenforceable nature of the law. With respect to serious violations of the criminal law, the police generally appeared to act in a highly professional manner throughout the campaign. The Law Group urges the Inspector General of Police to assess election-related complaints with respect to the police force and take proper action against those police who failed to uphold the law because of political partisanship.

3. Pre-Election Violence and Intimidations

A. General

Throughout the election campaign there were serious acts of politically motivated violence in all parts of the country. According to Inspector General of Police Frank de Silva, "the majority of incidents are connected with election meetings when people are going to and from the meetings. Incidents are provoked by rival parties particularly when passing the election offices situated close by"⁹.

⁹ "Police Ready for Any Eventuality", *The Sunday Observer*, Aug. 7, 1994.

Violence peaked towards the end of the party nominations period, which began July 4 and continued through July 11. The last day for nominations proved to be the most violent, as all the major political parties came out in strength to hand in their nominations. The human rights organisation INFORM explained why violence was so prevalent on July 11:

The handing in of nominations, considered the real start of the campaign, is generally a festive affair. District leaders of parties attend with their candidates and supporters and hand in their nomination papers; they are garlanded outside the office, and are then conducted to a reception or a short meeting in a kind of motley procession. The occasion generates some tension which is usually released in hooting and jeering at one's opponent, though there has been some instance of violence during past elections. This time, however, the tension was higher than usual and degenerated into violence in a large number of places¹⁰.

Violent clashes between opposing groups of party supporters were reported in virtually all districts. The most serious clashes, typically involving the UNP and the PA, were reported in Anuradhapura, Galle, Gampaha, Kegalle, Kalutara, Matara, Matale, Polonnaruwa, Puttalam and Ratnapura.

Party Clashes, Killing (Kalutara). In Kalutara town on July 11, UNP candidate Mervyn Cooray and PA candidate Reginald Curet exchanged blows inside the Kalutara Divisional Secretariat while handing in their nomination papers. Reginald Curet required treatment for a fractured nose. The outburst led to a number of serious clashes between UNP and PA supporters both inside and outside the Secretariat and elsewhere in the district.

At 2.30 p.m. that day, a group of UNP supporters, identified by their green hats, hurled stones at PA members who were congregating on Kalutara bridge after handing in nominations. Two unidentified persons also fired shots at those on the bridge, seriously wounding PA supporter Rajawangsa Gunatileke in the chest. He was taken to a hospital where he later died.

Witnesses to this and other incidents in Kalutara felt that the police did little to prevent the widespread violence that occurred. By the time order was restored in Kalutara town, 45 persons had been reported injured to the police and several dozen cars and buses were damaged throughout the town. Reports that bottles filled with sand were used by party supporters indicated that the parties were either planning or expecting violence. Because of their failure to control the situation and prevent the spread of violence, Western Province (South) Deputy Inspector General T.V. Sumanasekera and Kalutara Senior Superintendent of Police Jagath Jayawardene were transferred out of Kalutara.

Party Clashes (Ratnapura). In Ratnapura town on July 11, clashes erupted after UNP supporters attacked two buses carrying PA supporters. The PA supporters responded by stoning the vehicles belonging to UNP candidate Susantha PUNCHINILAME and Environment Minister Dr. Wimal Wickremasinghe. The clashes worsened and numerous people were injured, including two policemen. Several persons, including a policeman who fired his gun into the air, were taken into police custody.

Findings: Much of the violence that occurred in the pre-election period did not appear to be premeditated, but resulted from altercations between groups of party supporters that escalated into violence. The Law Group urges the political parties to take steps, individually and in consultation with other parties, to minimise the possibilities of such violence in future campaigns. The promulgation of codes of conduct for supporters would be a useful start.

¹⁰ Inform, "Special Report I: Polls Related Violence", July 1994.

B. Killings

Approximately 20 persons died in apparent election-related killings during the pre-election period. Supporters of the PA were the victims in most of the cases reported to the Law Group. In a number of cases so far reported, it has not been possible to ascertain whether a killing was in fact politically motivated or resulted from a personal dispute.

Killing of Buddhist Monk (Puttalam). In Wennappuwa, Puttalam district on July 11, supporters attacked a People's Alliance meeting that followed the submission of nominations. During the attack, a UNP provincial councillor reportedly ordered the police to fire at the PA supporters. Ven. Suduwelle Uparathana Thero, a Buddhist monk, was seriously injured. He was taken to a hospital, but succumbed 15 days later. Another PA supporter, a trader named Gunaratne, was hospitalised for injuries he received after being beaten by the UNP group.

Killing (Ratnapura). PA supporter Jayasundara Mudiyansele Amarasinghe, aged 27, died as a result of head injuries received on July 11 in Palmadulla. A 40-bus convoy he was travelling in was stoned by alleged UNP supporters, identified by their green clothes. The police reportedly were in the vicinity and took no action against the attackers.

Killing (Puttalam). On July 19 about 1 a.m., UNP provincial councillor Sugath Tissera, a supporter named Rohitha and a group of some 15 men allegedly broke down the door and entered the home of PA supporter Stanley Joseph Fernando in Wennappuwa, Puttalam district. Witnesses said the men were wearing black. They beat Mr. Fernando until he was unconscious, but family members were not able to bring him immediately to a hospital because the men were seen in the vicinity of the house until 6 a.m. The homes of Mr. Fernando and five neighbours were damaged by the group. Mr. Fernando died without regaining consciousness. An autopsy report concluded that he had several fractured ribs and had suffered serious injuries to the brain. The police later arrested Tissera and Rohitha.

Killing (Kurunegala). On July 25 at 6.30 p.m. at the Alabada junction in Kuliyaipitiya, Kurunegala district, a group of persons assaulted PA supporter S.D. Jayasinghe with bricks and bottles. Witnesses alleged that the assailants were led by Milton Sunil Perera, a UNP supporter and driver for prominent party members. S.D. Jayasinghe died on July 26 as a result of his injuries.

Killing (Anuradhapura). On July 28, more than ten persons armed with automatic rifles entered the home of PA activist Navaratnarajah Tilakaratne in Pillayarwatte, Anuradhapura district and shot him dead. The shooting reportedly followed a violent confrontation between UNP and PA supporters. A magistrate's hearing in Anuradhapura implicated Rasika Gayan Ekanayake, son of UNP candidate from Anuradhapura, W.P.B. Ekanayake. PA activists in the area alleged that W.P.B. Ekanayake had been responsible for making death threats against them. The magistrate remanded 9 suspects, including Rasika Gayan Ekanayake, until August 10.

Killing (Galle). An altercation between UNP and PA supporters returning from a PA rally in Mapalagama, Hiniduma, Galle district on August 9 resulted in the stabbing to death of 17 year old Ruwan Chaminda. The police later arrested UNP supporter L.K. Bandaragoda as the suspect assailant.

Killing (Badulla). In Taldene, Mahiyangana, Badulla district on August 15 at approximately 10 p.m., PA supporter W.M. Piyadasa killed UNP supporter Aron Premaratne for collecting polling cards from the residents of Lalgelande village in Taldene. (The victim was reportedly intimidating residents to get their polling cards). The accused was arrested by the police and brought to police headquarters in Badulla on August 16.

In several cases, candidates themselves were implicated in killings:

Killing, Possible Candidate Involvement (Anuradhapura). PA organiser R.N. Piyasena, 38, was assaulted at his home in Makulawa, Eppawala, Anuradhapura district on July 29 by a group of about 20 men who set fire to his house. According to family members, when Mr. Piyasena travelled to the police to report the incident, he was attacked with knives by the same group of men and fatally stabbed. The Anuradhapura magistrate ordered the arrest of UNP minister for Posts and Telecommunications A.M.S. Adikari and two of his supporters for their alleged participation in the attack. On August 1, a court released Mr. Adikari on Rs. 5000 (US \$ 100) bail after determining that evidence implicating him was insufficient.

Killings, Possible Candidate Involvement (Polonnaruwa). On July 11 in Diyabeduma, Polonnaruwa district, PA candidate T.B. Mahalekam and his supporters reportedly stoned a group of UNP supporters travelling by bus in a motorcade to Bakamuna. Two persons travelling in the bus, UNP Women's League member Ms. H.W. Kusumalatha and Mr. Piyadasa were critically injured in the clash and later died from their injuries. Altogether over 17 persons were injured during the incident. The police arrested Mahalekam and four others for their suspected involvement in the killings.

Killing, Possible Candidate Involvement (Polonnaruwa). PA supporter M. Rajimudeen and four others were injured during a shooting incident that took place at a PA rally in Thambala on August 5. It is alleged that persons in a jeep arrived at the rally and opened fire at the assembled crowd. Rajimudeen died from his wounds on August 11. UNP candidate E.D.B. Ekanayake was arrested by the police in connection with the incident and was released on Rs. 5,000 bail (US \$ 100). About 25 witnesses were questioned by the police.

Several government officials were also implicated in election-related deaths:

Killing, Possible Official Involvement (Kandy). Mr. K.A. Singho, 60, was fatally wounded, and two others were seriously injured, when an alleged group of UNP supporters fired into a PA rally in Hasalaka, Kandy district, on August 2. The assailants were identified as *Pradeshiya Sabha* (Divisional Development Council) President Kannangara, Deputy President E.M.P.W. Navaratne, and *Pradeshiya Sabha* member Serasinghe. T56 machine guns and double-barrelled guns were reportedly used in the attack, which left a total of 13 persons injured.

Killing, Possible Official Involvement (Kurunegala). UNP provincial councillor R.M.T.B. Ratnayake reportedly shot dead PA supporter H.M. Dhanapala in Meegalawa, Nikaweratiya, Kurunegala district at 11.30 p.m. on August 4. The police said Ratnayake and village officer Piyatilake had entered Dhanapala's home and told him to remove a PA poster beside his house. When Dhanapala refused, Ratnayake shot him with a pistol, killing him.

After the shooting, PA supporters attacked homes in the area belonging to members of the UNP. Several thousand people gathered outside Ratnayake's liquor shop and residence, demanding that police take action against him. An unidentified person set fire to the shop and residence; Ratnayake was not in the building at the time. The police arrested Ratnayake on August 5. He was further remanded until August 22 and to date remains in custody. Ratnayake had previously been implicated in a politically motivated murder attempt¹¹.

In a number of the killings reported, there was no clear evidence of political motivation:

¹¹ On May 28, 1994, R.M.T.B. Ratnayake and a group of about 50 persons had gone to the house of R.A. Tulakaratnam in Meegalaawa, Galgamuwa, Kurunegala district. Ratnayake had threatened to kill R.A. Tulakaratnam and threatened to destroy his house. They asked him to stop supporting the PA and when he refused Ratnayake shot him while others threw stones at him. The victim was hurt and hospitalised for seven days. A report was filed with the police at Meegalaawa, but not until after the killing of Dhanapala on August 4, in the same place, was any action taken against him.

Possible Election-Related Killing of Tamil Activist (Batticaloa). Velapody Alagaiah, a former candidate of the Tamil Eelam Liberation Organization (TELO) who had reportedly considered supporting the Tamil United Liberation Front (TULF), was abducted from his home in Sittandikudi, Batticaloa district on July 17 and killed. According to family members, two persons came to their home at 7.30 p.m. and left with Mr. Alagaiah. Gunshots were heard soon thereafter and Mr. Alagaiah's body was found a short distance away. Police suspect LTTE involvement in the killing.

Possible Election-Related Killing (Gampaha). According to the police in Katana, on July 21, UNP council member Mahindapala Silva was stabbed to death while he was returning from a party meeting early in the morning.

Possible Election-Related Killing (Ratnapura). K.P. Salmen, 60, a well-known activist who supported PA candidate D.V. Nanayakkara, was stoned to death by an unidentified group of men after he left a PA meeting in Watappitiya, Ratnapura district on July 30.

Possible Election-Related Killing (Moneragala). On August 7, Aluthgamage Dharmasena, a supporter of PA candidate Ms. Sumeda Jayasena, was clubbed and shot to death in his home in Udawalawe, Sevanagala, by a group of men claiming to be police. The police were investigating.

Possible Election-Related Killing (Matara). A supporter of the Kandurata Janata Peramuna named Subramaniam was stabbed to death at 9.30 p.m. on August 10 at his home in Kandadola, Matara district, following a meeting of the Ceylon Workers' Congress. The police arrested P. Muthusami for the killing and were reportedly seeking another suspect.

Possible Election-Related Killing (Kegalle). On August 11 P.M. Adikari, a resident of Arupalamulla village, Kegalle, was killed by unidentified persons armed with a sword while he was returning home from a PA rally in his village.

Possible Election-Related Killing (Gampaha). On the evening of August 12, P.M.A. Priyantha Kumara, aged 25, a PA activist, was travelling back to the People's Alliance's Attanagalla campaign headquarters with Sanjay Sivardana, aide of PA leader Chandrika Kumaratunga and a member of the Western Provincial Council for the Gampaha district. At about 7.30 p.m., the road was blocked by a jeep, a searchlight focussed on their car and shots were fired. Kumara was killed. Local sources believe that Sanjay Sivardana was the likely target. The police have made no arrests in the case.

Possible Election-Related Killing (Vanni). Unidentified gunmen on August 14 shot and killed People's Liberation Organization of Tamil Eelam (PLOTE) supporter Sandara Kulasekeram while he was putting up posters in Bandarikulam, Vavuniya district.

Findings: There were as many as 20 election-related deaths reported in the pre-election period. Most of the victims in the cases reported were PA supporters. Particularly distressing was the high number of cases in which candidates and government officials were involved. The Law Group urges prompt, thorough and impartial investigations into these and other serious election-related offences. Prosecution of the responsible parties is essential to ensure that the unacceptable level of violence preceding the 1994 parliamentary elections does not occur in future election campaigns.

C. Other Acts of Violence and Intimidation

In addition to election-related killings, the International NGO Election Monitoring Mission documented a wide range of violence and intimidation during the pre-election period. The extent of pre-election violence varied considerably by district and even within districts. The most serious cases require further investigation by the authorities. Of particular concern are those acts of violence and intimidation by candidates, a number of whom were elected to Parliament.

The following cases are taken primarily from International Observer reports and are not intended to present a comprehensive picture of pre-election violence in Sri Lanka.

1) Attacks By Candidates

Repeated Violence and Intimidation (Matale). UNP candidate Alick Aluvihare was implicated in numerous acts of violence and intimidation prior to (as well as during) election day. He was a direct participant in some of the cases investigated, as were his two sons, Ranjith Aluvihare, the Mayor of Matale, and Vasantha Aluvihare, a provincial council minister.

Assault (Matale). In Hathamunagala, Matale district on August 14 at about 5 p.m., a van containing Gamini Ekanayake, chief PA organizer in the area, local PA leader Nimal Jayawardena, and 4 PA supporters was attacked by a group of approximately 30 people travelling in two jeeps and a van. The attackers used iron bars and knives. Ekanayake was hospitalised with a head injury; Upali Hetharachchi with an injury to his left thigh. Jayawardena had knife wounds to both thighs. The van itself had six windows broken, four deflated tires and other damage.

The victims identified 6 of the attackers, including Vasantha Aluvihare. The local Chief Inspector stated that a warrant had been issued for the arrest of those identified, but the police were unable to locate them. The Assistant Superintendent of Police confirmed the report and stated that "it is difficult to arrest them during the election, but things will happen after the election". Vasantha Aluvihare was interviewed by the International Observer on August 15 and denied any knowledge of the case, stating that they were "probably busy campaigning".

Intimidation, Candidate Involvement (Galle). At around midnight on August 7, UNP candidate M. Lalith de Silva and several of his supporters reportedly appeared outside a house in Karuwalabedda, Galle district, where a PA meeting was taking place. The UNP supporters shouted challenges to those inside the house: "We are UNP's. You can do what you want to us!" Gunshots were heard and believed to have come from the UNP supporters; at least one bullet shell was later found outside the house. According to PA supporters, villagers came to the house and threw stones at the UNP supporters, some of whom were injured and required up to two days hospitalisation. The case was reported to the police.

Assault, Possible Candidate Involvement (Kegalle). PA candidate Mr. Mithrapala informed the International Observer that between 3 and 4 p.m. on July 11 his vehicle was attacked and he was assaulted at Ranwella junction by UNP supporters acting under the direction of Minister and UNP candidate U.L.M. Farook, whom the victim observed at the scene.

Assault, Candidate Involvement (Ratnapura). On the night of August 13, the UNP held a meeting of about 300 - 350 supporters in Dematagala. Sena Gunasekera, a PA supporter, was passing by and heard Nanda Mathew, a UNP candidate, tell his supporters to attack him. Gunasekera said that he was hit by clubs and a bicycle chain. He received eight stitches to the head and bruises to his head, arms and back. The police reportedly were present at the scene but did nothing to stop the attack.

Threats by a Candidate (Batticaloa). SLMC candidate Basheer Segu Dawood, at a final SLMC meeting in Eravur on the night of August 13, openly threatened to "inject cyanide", "shave heads" and "kill people" who supported the UNP and any teachers scheduled for polling duty. Dawood's remarks were treated seriously by local voters, frightening many people, including some polling officers who refused to take up their posts. Although police were present when Dawood made his remarks, no legal action was taken against him.

Assault and Abduction, Possible Candidate Involvement (Kegalle). PA supporter Mr. Anil was standing at a bus stop in Ranwala at 6.30 p.m. on August 14, when he was abducted by UNP supporters riding in a jeep. One occupant of the vehicle was identified as Sajith Perera, son of UNP

candidate Vincent Perera. Anil was taken to the house of Vincent Perera, where he was blindfolded and beaten with iron bars. Mr. Anil received bruises and cuts over his face, arms and elsewhere. His attackers also robbed him of cash and jewelry.

Assault, Abduction, Death Threat, Candidate Involvement (Kurunegala). On August 15, PA supporters Jagath Balasuriya, aged 28, and Jinendrawansa Perera were reportedly abducted near Balasuriya's home by seven or eight UNP supporters led by provincial council president S.B.Y.M. Ariyaratna. Balasuriya and Perera had gone to investigate sounds arising from the UNP group putting up election posters across the street from a polling station. There the group allegedly assaulted them, put them into a white van, blindfolded them, and took them to the home of UNP parliamentary candidate Ariyapala Gunatileke, where the blindfolds were removed.

Some 30 people were at the home, including the candidate. The abductors then allegedly slapped the two around the face, head and chest, accused them of being thugs, and threatened to take them to the forest and "burn" them (that is, kill them by placing burning tires around their necks).

At around 3 a.m. the abductors took the two to the local police station, filed a complaint that they had tried to strike members of the group with an axe, and produced an axe that the two had supposedly used. Over Balasuriya and Perera's objections, the police accepted the complaint and jailed them. They were released on Rs. 250 (US\$ 5) later that day and a court appearance was scheduled for September 1.

2) Attacks by Party Supporters

Assault (Matale). On August 13 at around 10.30 p.m., a group of 15 men surrounded the home of a PA supporter in Peralanatta, Wilgamuwa, following a PA meeting. They threw stones which destroyed the windows in the house and injured one person slightly. Three UNP supporters were identified by name - one carried an automatic weapon, the other two carried iron bars.

Numerous Serious Assaults (Matale). An International Observer interviewed several PA supporters who were victims of attacks from August 12 through August 15. The attacks were carried out by groups numbering from a half dozen to thirty armed with rifles, iron bars and swords. The groups reportedly travelled around Matale district, threatening and beating PA supporters and destroying property. For instance, on August 12, D.M. Ratnayake, a 35 year old PA supporter from Palapathwala, was beaten men, including one known UNP supporter, with iron bars. He received serious injuries to his head, both knees, back and left foot.

Destruction of Property (Matale). On the final nomination day, July 11, alleged UNP supporters threw stones at vehicles of PA supporters in Sigiriya, broke tables and chairs at the Dambulla PA party office, and destroyed platforms built to welcome PA candidates in 5 areas: Ibbankatuwa, Thalakitiyagama, Pahalawewa, Kudawena, Puwakpitiya and Galewela. These incidents were reported to the Galewela police station. A UNP office at Bambawa on the Galewela to Matale road was broken into by alleged PA supporters, and tables and chairs were damaged. Three persons were taken into custody and subsequently released on bail.

Assault (Matale). Most cases reported in Matale district implicated UNP supporters. Yet PA supporters were also accused of acts of violence. For example, on August 11, PA supporters attacked a vehicle returning from a UNP rally at Mukulugaswewa. The vehicle was damaged and one person was injured and briefly hospitalised. UNP security men caught one of the assailants and turned him over to the Galewela police station. The suspect was produced before a magistrate and released on bail.

Destruction of Property, Assault Attempt (Ratnapura). On August 12, alleged UNP supporters damaged the car and house of PA activist Mr. Wimalasena. On the night of August 13, Ananda

Ratnayake, the security officer of UNP candidate Gamini Athukorale, and others came to the house of Wimalasena in what was alleged to be an abduction attempt. Wimalasena's brother held the attackers off by blocking the door. Wimalasena is the PA coordinator for a half dozen villages.

Destruction of Property (Kalutara). The PA office in Mahagama North village was burnt by UNP supporters on August 14 at 11.45 p.m. The police arrested six UNP supporters - they were released on bail prior to election day.

Destruction of Property (Ratnapura). About 50 PA members reportedly stoned a UNP house on an estate in Pelmadulla on August 14.

Intimidation of Polling Agents (Batticaloa). On the night of August 14, unidentified men came to the homes of SLMC polling agents in Eravur, Batticaloa and threatened them and damaged property. Fearing for their safety, all 22 SLMC polling agents for the area withdrew. The party was forced to find inexperienced replacements the day before the election.

Intimidation (Ratnapura). On the night of August 15, three known UNP supporters and others stoned the house of PA supporter Wilson Jayasundera. The case was reported to the police but no action was taken.

Assault (Kurunegala). At Daladagama junction in Maho, Yapahuwa, on August 11 at 9 p.m., I.M. Dhamaselvan, an influential member of the PA in Yapahuwa, was returning home when he was stopped by known UNP supporters and assaulted with clubs. He suffered injuries to the head and body and was hospitalised for three days. He filed a report with the police.

Assault (Kurunegala). On the evening of August 7, PA supporter Mr. Muthubanda was returning home after participating in a PA rally in Rekogama, when he was assaulted with a club and bicycle chain by alleged UNP supporters. He was injured in the head and body. The case was reported to the Maho police station and one person was arrested.

Threats Against Polling Agents (Puttalam). PA polling agents in Wennappuwa went into hiding before election day after being harassed by UNP supporters. Although the police had sometimes arrested persons who had been harassing the polling agents, they would almost immediately be released. Only after the suspects in the killing of Stanley Fernando were remanded was there any confidence in the authorities to control the violence in the area.

Assault (Kegalle). The driver for UNP candidate Vincent Perera was assaulted by about 15 PA supporters at 2 p.m. on August 14 near the factory of the Halgolla Estate. The victim required treatment at a local hospital. The Yatiyantota police chief questioned whether the incident was political, asserting that the victim had insulted someone's mother. Local election observers supported the driver's account.

Assault (Batticaloa). In Oddamavadi a dispute over posters between the UNP and the SLMC on August 8 led to further violence. At 2 a.m. on August 9, 15-20 UNP supporters broke into a store next to the SLMC office. The owner, named Farook, was awakened and cut in the head with a knife. He required hospitalisation.

Assault (Moneragala). Four people were injured during a UNP attack on a PA office in Bibile, Moneragala district on the evening of August 15. Three required hospitalisation and the building was burnt.

Assault (Galle). In Galle district before the election both PA and UNP supporters were implicated for damaging vehicles owned by opposing party members. In one case in Galle town, PA supporters damaged nine UNP vehicles. The police mediated a settlement of Rs. 70,000 (US\$ 1,400) in damages.

3) Violence, Intimidation and Bias by Local Authorities

The widespread political violence that occurred during the pre-election period was in part attributable to failings by local officials and the police to defuse potentially violent situations and take prompt legal action against those responsible. At the same time, reports of direct involvement by the police and other local officials in campaign violence were few. Problems did occur in districts where the police appeared to support local candidates, such as in Matale.

Intimidation, Police Participation (Matale). On July 12, UNP candidate Alick Aluvihare arrived with two police cars to the PA office in Dambulla and threatened supporters and members there. The police cars were from Galewela station and the police officers were in uniform.

Harassment, Destruction of Property, Police Participation (Matale). On August 5, 1994, Mr. Wickremasinghe, a UNP provincial council member from Galewela, and the police chief from Wahakotte, went to the PA party office at Kendangamuwa. They reportedly asked all PA supporters to leave the premises. Wickremasinghe and UNP supporters of Alick Aluvihare then set fire to the party office. A report was lodged at the Galewela station and police said that the matter would be investigated.

Assault, Participation by Local Authorities (Anuradhapura). On the evening of August 12 in Madawachchiya, three PA supporters walking home were allegedly beaten up by about 30 UNP supporters who had emerged from a truck. The victims identified among the attackers provincial council member Navaratne and Sunil Jagath, the village council head. Those attacked required one to two days hospitalisation. The case was reported to the police, who on August 15 stated that they had arrested and released on bail the perpetrators, including Navaratne.

Findings: Although its impact on the election results is uncertain, the widespread pre-election violence raised political tensions throughout the country. Violent acts by party supporters against opponents were widespread. In most cases reported, PA supporters were the targets of UNP attacks, although PA supporters were also responsible for violence. Additionally, there were a large number of cases of violence attributed to candidates and local officials. Irrespective of the outcome of the vote, the government should prosecute these cases to the fullest extent of the law. Government officials involved in unlawful acts should be criminally prosecuted or face administrative sanctions.

4. Situation in the North and Displaced Persons

A. Jaffna and Vanni

It was evident before Election Day that the election in Jaffna and Vanni districts would be determined by a very small percentage of the electorate. In Jaffna district particularly, fewer than 5% of eligible voters were expected to have access to a polling station and cast their ballot. Those able to vote included about six to seven thousand people living on the government controlled Jaffna islands, several hundred people living around Telipallai on the northern end of the peninsula, and about 18,000 displaced persons from Jaffna who had registered in Puttalam and Colombo. It was also clear that political parties, except the pro-UNP, EPDP, which maintained security in cleared areas of Jaffna, could not effectively organise and campaign. Jaffna put to test not only the matter of an individual's right to vote, but also the entire election, as Jaffna's 10 seats might have been crucial in

determining which of the major political parties would be able to form a governing coalition¹².

Human rights organisations as well as political parties questioned the validity of the Jaffna poll. The Civil Rights Movement of Sri Lanka (CRM) on July 14 called on President Wijetunga to invoke the consultative jurisdiction of the Supreme Court to determine whether voting in the Jaffna electoral district would meet constitutional requirements for a free and equal election, as guaranteed by Article 93 of the Constitution.

The Tamil United Liberation Front (TULF) filed two lawsuits seeking a court ruling on the Jaffna elections. In July a writ application filed by TULF president M. Sivasithamparam before the Court of Appeal sought to prohibit the holding of elections in the Jaffna district¹³. The Appeal Court rejected the application. TULF later filed a fundamental rights application which argued that the rights of Jaffna residents to equality before the law was violated if the Commissioner of Elections could not hold a free and fair election in Jaffna as provided by the constitution. TULF stated in its petition that since 1990 TULF (and other political parties except the EPDP) had not been able to establish party branches, organise public meetings or communicate with the voters in the district on its policy and programs. The Supreme Court rejected the plea on July 18¹⁴.

The Eelam People's Revolutionary Liberation Front (EPRLF) called upon the government to deploy police on 6 Jaffna islands that were under the authority of the EPDP, which was contesting the election in Jaffna as an Independent Group. Only on Kayts island were police stationed to provide security. The EPRLF alleged that the EPDP security forces, numbering several hundred, were preventing EPRLF politicians from campaigning in cleared areas¹⁵. The government responded to the request by deploying 50 policemen on the Jaffna islands¹⁶. During the pre-election period there were many reported clashes between EPDP and EPRLF supporters, though it was not possible to verify the details of these incidents.

Findings: The current political situation in Jaffna and in much of Vanni District does not permit free and fair elections. In areas controlled by the LTTE, any sort of political activity is currently impossible. Even in the few areas in Jaffna controlled by the government, the security forces of the EPDP have not freely permitted political activity by opposition parties. The Law Group urges the Sri Lankan government to reassess its current policy towards holding elections in Jaffna and Vanni. A solution that would permit eligible and able persons to vote, yet does not give them a disproportionate share of the parliamentary seats, would uphold both the right to vote and the right of Sri Lankans to equality under law.

B. Internally Displaced Persons

According to government statistics, there are some 600,000 displaced persons in Sri Lanka as a result

¹² Neither the UNP nor the PA contested Jaffna. However, the Eelam People's Democratic Party, which was pro-UNP, and the Sri Lanka Muslim Congress (SLMC) and the Eelam People's Revolutionary Liberation Front (EPRLF) backed the PA.

¹³ "TULF makes application in Court to prohibit holding of polls in Jaffna", *Island*, July 11, 1994.

¹⁴ "SC refuses TULF rights application", *Daily News*, July 19, 1994.

¹⁵ "EPRLF wants police in Jaffna Islands", *Island*, July 16, 1994.

¹⁶ "Pre-election security tightened in Jaffna", *The Sunday Leader*, July 24, 1994.

of the ethnic conflict. Others estimate the figure at 800,000. Most are Tamils and Muslims from contested areas in the North and East, though Sinhalese have been displaced as well. Many displaced persons have lived, often for years, in camps in Puttalam, Colombo, Trincomalee and Batticaloa. Others, scattered widely, eke out an existence on their own or live with relatives.

By law, displaced persons are eligible to vote at their current residence for candidates in their home district. The Commissioner of Elections required that an application form be completed and submitted. Information about this procedure was said to be available to displaced persons living in camps.

The application forms for displaced persons required detailed information and only a short period was available to have them completed. To make matters worse, the forms were in Sinhala, although most displaced persons speak Tamil. Acceptance of the application required information from the individual's home district, which was often difficult to obtain in the short time available.

Jaffna registration lists were another problem. The Commissioner of Elections has not revised the electoral register of the Jaffna district since 1986. This meant all persons attaining the age of 18 after 1986 had no right to vote, including those who have been in displaced persons camps for several years.

For various reasons, many displaced persons did not apply for a polling card (or a voting authorisation letter signed by the Commissioner of Elections). Many who did were rejected. For example, of the returnees from India, only those who had returned prior to March 1993 were entitled to vote. At the Asikulam camp in Vavuniya, about 700 of 2,500 returnees from India applied for polling cards. Out of those, only 75 were accepted by the Commissioner of Elections. Those denied were not given a reason for the denial, and included persons who returned from India prior to March 1993.

At one Tamil displaced persons camp in Vavuniya, only a very few people had applied for polling cards. Less than 30 persons had applied for 5 different electorates in Jaffna.

Altogether, the government announced that a mere 25,000 displaced persons had applied for polling cards. In the end, only 19,000 displaced persons were declared eligible to vote on election day¹⁷. But as noted in section V(3)(B), receiving a polling card or a displaced persons authorisation letter was often not enough to ensure one being able to vote. Given that only 13,000 people ultimately voted in Jaffna district, including displaced persons, the inability of many of those to vote could have been crucial.

Repeated Threats Against Displaced Persons (Puttalam). An International Observer in Puttalam received several reports from the Saltern I displaced persons camp and other camps, of threats by members of the EPDP. On several occasions during the week before election day, armed EPDP members came to the camps and told people that if they did not vote for the EPDP that they would be killed or their houses would be burnt down, or they would not be allowed to return to Jaffna. The police response to these threats was merely to tell the EPDP not to enter the camps before the elections.

Findings: Sri Lanka's more than 600,000 internally displaced persons faced additional hardships in securing their right to vote. The application to register as displaced persons was complicated by the

¹⁷ "Strictly Adhere to the Election Process", *The Sunday Observer*, July 24, 1994.

difficulty in reaching displaced persons, the detailed information required by the form in a short time, and the printing of the forms only in Sinhala. In Puttalam camps displaced persons were also the targets of harassment and threats by members of the EPDP.

The government's policy regarding the registration of displaced persons is in urgent need of reform. At its core, the current approach fails to recognise that displaced persons are citizens with the same right to vote as other Sri Lankans. The process must favour inclusion, rather than exclusion. Registration lists need to be updated to the present, forms simplified and written in Tamil as well as Sinhala, and the procedure made less burdensome and time consuming. Where displaced persons are unable to establish their former residence, they should still have the fullest opportunity to vote in their current residence.

V. Election Day

Election day went smoothly and peacefully in most of the country. Although a number of International Observers reported considerable tension in areas they were surveying, serious cases of violence were few. Credit for this must go to the police, government polling officers, party polling agents, and local NGO poll monitoring groups, all of whom in large measure contributed to the electoral process by demonstrating a high degree of professionalism and dedication. The police generally received high praise from many International Observers for responding promptly and impartially to defuse tense situations that might have erupted into violence. Credit is also due to the voters of Sri Lanka, who as in the past braved rumours and reports of expected violence to vote in large numbers. The fact that in many areas virtually all the voting was completed by noon was indicative of the seriousness with which the average person held their franchise.

There were, nonetheless, credible reports of violence and intimidation by local candidates and their supporters, particularly in areas where the police had sided with one party or decided to look the other way. Manipulation of the electoral machinery also occurred, although there was no evidence of any systematic or large scale effort to rig the vote. Reported cases of "impersonation" and vote buying were anecdotal. More problematic was the voting process itself. In some areas facilities did not permit voters to mark their ballots in secrecy from polling officials. The format of the ballot, as in past elections, resulted in a relatively high percentage of spoiled ballots. The collection and counting of ballot boxes, despite some confusion in some areas, went smoothly.

In July, the Commissioner of Elections requested that the Inspector General of Police take steps to ensure that police did not become involved in election malpractice. He cited improper activities in the past, including: police without identification; the use of unmarked vehicles; police security detachments improperly entering polling stations with arms; and police making frivolous arrests solely on the basis of complaints made by political rivals. In response to the Elections Commissioner's letter, the Deputy Inspector General of Police issued a circular for police setting out the proper actions to be taken in each circumstance¹⁸. The International Observers cited few reports of such malpractice by the police on election day.

The most serious electoral problem on polling day concerned the voting in the North and, relatedly, that of internally displaced persons. As expected only a tiny fraction of eligible voters in Jaffna and about one-quarter in Vanni were able to vote. In addition, large numbers of internally displaced persons who had registered, were not able to find their names on the voter lists and were thus

¹⁸ "Police Alert for Polls Violators", *Sunday Leader*, July 17, 1994.

prevented from voting.

1. Manipulation of the Electoral Process

The electoral process, from the casting of ballots, to the transportation of ballot boxes, to the final tabulation at counting centres, generally proceeded without serious problems.

Violated by every party just about everywhere was the election law prohibition on the distribution of campaign materials within half a kilometer of a voting station. Instead of attempting to enforce a largely unenforceable law, the police focused on the most egregious violations, such as where large groups of party supporters congregated just outside of polling stations. Sometimes the police were lax in allowing such groups to congregate, only taking action after a complaint had been made. In some areas there were insufficient numbers of police present to keep opposing groups sufficiently apart, though mobile police teams were often able to address this problem.

There was no evidence of large scale efforts to manipulate either the polling or the counting of ballots. However, there were many scattered reports of "impersonators" and illegal voting, but ultimately without impact on the vote. The most frequent reports of illegal voting came from the East, from Batticaloa and Trincomalee. In past elections there was a problem of supposed indelible ink, used to mark voters, that could be easily washed away, facilitating voter impersonation. Only in Batticaloa was this reported to be a continuing problem. There were numerous reports of political parties, particularly the UNP, using vehicles to transport voters, in violation of the election law.

Without the vigilance of local polling officers, party polling agents, the police and local NGO poll watchers, these minor problems could have easily developed into major ones. Confusion about the polling process itself seems to have caused more problems, which the government should attempt to rectify before the next election through voter education programmes.

A. Impersonation of Voters and Illegal Voting

No large scale use of "impersonators" or other forms of illegal voting was reported on election day. There were scattered reports of persons not being able to vote because of impersonators. Several impersonators were apprehended in some areas, but these practices did not have any affect on the outcome of the voting. Various illegal voting techniques, including the purchasing of ballots, may have been attempted in various areas, but none seem to have been effective to a significant degree. Efforts at multiple registration, as well as using polling cards assigned to persons living abroad or deceased persons, were attempted, but given the few complaints, rarely successful. Again, local officials and party polling agents seemed to have done an exemplary job in dealing with this problem, which has plagued past Sri Lankan elections.

Some of the cases reported include:

Impersonation (Puttalam). At a single polling station on Kalpitiya Island in Puttalam district there were at least 20 cases of impersonation. The Senior Presiding Officer was allowing people with a poorly forged polling card to vote, which was only discovered when the true voters appeared to cast their ballot. When the Eelam People's Democratic Party complained about the situation, the Senior Presiding Officer stopped accepting the forged polling cards.

Impersonation (Batticaloa). There were several reported instances in Batticaloa of persons possessing large numbers of polling cards. For example, in Vallaichchanai, one Tamil United Liberation Front

(TULF) supporter had 20 polling cards in his shirt pocket. A man wearing Tamil Eelam Liberation Organization (TELO) colours was handing out polling cards near a polling station in Kovilkulam.

Impersonation (Vanni). Three People's Liberation Organization of Tamil Eelam (PLOTE) supporters were arrested in Vavuniya for impersonation attempts and for attempting to use forged identification cards.

Unlawful Distribution of Polling Cards (Kalutara). Seventy four polling cards were confiscated from Sunil Hettiarachchi, who had been travelling around to several polling stations in Matugama, Kalutara district, and distributing them. The police were notified three times about the activity, but took no action.

Estate Workers: Denial of Polling Cards (Kegalle). There was a report that the Estate Superintendent of the Pallegamawatta Estate in Kegalle had taken away the polling cards of the estate workers.

Misuse of Ballots (Moneragala). PA supporters in Moneragala reported that persons were placing blank pieces of paper in the ballot boxes and taking their actual ballots (which had not been filled in) outside to sell to candidates.

Impersonation (Batticaloa). In Eravur, a number of people openly admitted to the International Observer that they had been able to vote multiple times, on behalf of "relatives", namely persons outside the country or strangers.

Attempted Mass Illegal Voting (Trincomalee). At 1 p.m. in Saliyapura, Kinniya, about 25 UNP supporters arrived together at the polling station by bus and tried to vote illegally. They were arrested by the police.

Attempted Illegal Voting (Trincomalee). About 45 persons were arrested in Trincomalee for possessing false ballot papers.

Multiple Registration (Puttalam). In Anamaduwa, Puttalam district, the Peoples's Alliance produced lists from polling stations that showed 57 persons were registered more than once.

Multiple Registration (Kurunegala). In Mawatagama, a relative of a UNP candidate was on three polling station lists.

Findings: The large scale use of impersonators or other forms of unlawful balloting does not appear to have taken place, or even attempted. More localised attempts to unlawfully affect the vote generally seem to have been ineffectual. Vigilance on the part of the polling authorities seems to have been the primary deterrent to such practices. Continued attention to this issue, especially in Batticaloa and Trincomalee, is needed to ensure that old practices do not reappear in future elections.

B. Spoiling of Ballots

Approximately 4.8% of the ballots cast in the election were declared spoiled, effectively disenfranchising one out of twenty voters. Even if it is accepted that many of these ballots may have been spoiled intentionally as an act of protest, this number is too high.

Many voters expressed confusion to the International Observers about the balloting process. The absence of party names on the ballot and names of individual candidates seemed to be a source of much of the problem. Using just numbers on the ballots for individual candidates became a sort of memory test on a hectic day.

The use of just numerals on ballots also encouraged the political parties to focus their campaigning on the numerals, rather than on the candidates and their views. Passing out leaflets with coloured numerals at the polling station was among the most common election day violations. It seems likely that many numerals were chosen by voters at random or for reasons other than preference for a particular individual.

Findings: The current ballot seems to cause confusion among a great many voters. Ballots should contain party names in the country's three major languages as well as party symbols. Candidates names, rather than just numerals, should also be included on the ballot. Care in revising the ballot would be needed to ensure that changes result in fewer spoiled ballots rather than more.

C. Transport of Voters

Article 83 of the Parliamentary Elections Act prohibits political parties from providing transportation to voters on election day. Violations of this provision would not be a major concern were it not for the relatively easy access UNP candidates had to government transport. However, the fear that the UNP's access to state cars and trucks would allow them to transport large numbers of persons who would otherwise not vote proved unfounded. However, such practices may have had an impact in close local contests.

In Kegalle, there were several reports of the UNP transporting voters, particularly in Manikkadawana, Galapitamada and Kannattota. In Wariyapola, Kurunegala district a government car was used to ferry UNP supporters. In Galle district, both the UNP and the PA appeared to have been illegally transporting voters.

In Eravur, Batticaloa district, the police were reportedly issuing permits to the UNP that allowed for the use of government vehicles on election day. These vehicles were seen bringing in voters with UNP members to the polling stations. After several cars being used by the UNP to transport voters were detained by one police station, the UNP complained. A senior officer then ordered the cars released with a severe warning to the local policemen responsible for detaining the vehicles.

Findings: The unlawful transport of voters by political parties, especially the UNP's use of government vehicles for this purpose, did not appear to occur with great frequency. Although greater enforcement of the regulation could reduce the practice, a more effective solution might be to increase public transportation on election day.

D. Ballot Box Transportation and Counting

There were very few reported problems in the transportation of ballot boxes and the counting of ballots. Most problems resulted from confusion about the process, rather than any attempt to manipulate it. Concern had been expressed that a curfew would be called before the ballot boxes were transferred, thus preventing NGO poll watchers and other interested parties from keeping an eye on boxes enroute to the counting station. The government is to be commended for calling a curfew only after the ballot boxes had reached their destination at the counting stations.

Altercation Over Ballot Boxes (Gampaha). A security guard of UNP candidate Joseph Michael Perera, known as Reggie, threw light bulbs filled with acid at the car of PA candidate Felix Perera on the evening of August 16. Joseph Michael Perera had seen an empty ballot box in the bus used to transport the boxes and had accused the PA candidate of trying to tamper with the vote. The extra ballot box was in fact being used by the polling officials to carry election day office supplies. Felix

Perera's brother Conrad and four policemen standing nearby received acid burns to the face.

Tampered Ballot Boxes (Ratnapura). Some ballot boxes arrived at a Ratnapura counting station without the PA sticker. The PA district organizer, Mr. Wanniarachchi met with police sources and it was agreed that 5 or 6 ballot boxes without the PA sticker would not be counted. The boxes had been kept at Mahawella Estate Bungalow and apparently the Deputy Inspector General took them in his vehicle, which was improper.

Findings: The process of transferring ballot boxes to polling stations and the counting of ballots seems to have been carried out without serious problem. There was some confusion and anxiety at this state of the electoral process. The Law Group recommends that the government educate the public better as to the proper procedure of ballot box transfer and vote counting. Ballot boxes should be clearly distinguishable from boxes used for election day supplies.

2. Violence and Intimidation by the Police, Candidates and Party Supporters

Polling day was largely free of the serious violence and intimidation that plagued the pre-election period. The International Observers received reports of one election day death. The impartial role played by the police generally was a major factor in a relatively peaceful election day.

The most troublesome districts were Matale and Puttalam, where several of the candidates themselves engaged in election day violence. The police largely remained neutral, except in those areas where they had closely allied themselves with a powerful UNP figure. For example, in the northern part of Ratnapura district, the police were openly in support of the UNP. The Deputy Inspector General there was seen travelling with UNP candidate Susantha G. PUNCHINILAME.

A number of candidates took their armed bodyguards into the polling stations with them, in violation of the election law. In Bibile, Moneragala district, the police barely prevented an armed clash between the PA and UNP candidates and their bodyguards.

An overall favourable situation should not detract from the need for the government to prosecute fully those persons, including candidates, government officials and police, implicated in polling day violence and intimidation. This is essential for curbing election violence in the future.

A. Puttalam Cases

Attempted Murder, Involvement by Candidate, Police (Puttalam). On election day at around 10.30 a.m., a crowd of UNP and PA supporters gathered on both sides of the road leading to the polling station in Taldekke, Wennappuwa, Puttalam district. UNP candidate Festus Perera arrived with a group of bodyguards, including at least two policemen. Perera, holding a pistol, began asking for Padmasiri Fernando, a well known PA activist. Fernando ran from the scene and Perera took a shot at him as he fled. The UNP supporters also threw stones at Fernando. For 10 to 15 minutes after shooting at Fernando, Perera continued to harass the PA supporters in the area.

Police Threaten Voters (Puttalam). At 11.15 a.m. on August 16, five PA supporters were sitting by the side of the road leading to the Rajakadaluwa polling station. A car with three policemen in uniform drove up. The police jumped out and hit two of the men with their sticks. They warned the men not to vote for the PA. One of those attacked said he and about ten others had decided not to vote because of the threat.

Assault (Puttalam). At about 3 p.m. in Puttalam, two groups of about a dozen PA and UNP supporters faced each other, armed with knives and swords, outside a polling station. In the PA group

was candidate Godfrey Fernando and an armed police escort. The UNP supporters started beating up Fernando. The police guard pulled out his gun and managed to get the UNP supporters to back off. The police inside the polling station, said to be supporters of UNP candidate Festus Perera, did nothing.

Destruction of Property (Puttalam). Approximately 75 PA supporters came through Panagoda late on August 16. The area is viewed as supportive of the UNP government. They burned down two houses and did substantial damage to a third, whose owner was married to a UNP polling agent. The action was believed to be in retaliation for the wounding of two PA supporters prior to the election. For 48 hours after the election, the PA supporters returned to the area to harass the local residents.

B. Matale Cases

Threats Against Party Polling Agents, Candidate Involvement (Matale). On election day, UNP candidate Alick Aluvihare and his sons Ranjith Aluvihare, the Mayor of Matale, and Vasantha Aluvihare, provincial council minister and their armed guards, went inside at least four polling stations. There they would ask the PA polling officers for their names. Once they had the names, they would then threaten the polling agent, saying such things as: "I will burn your house down". "I will kill you unless you leave the polling station now". The polling officers remained in their stations despite the threats, which were confirmed by the police.

Assault, Candidate Involvement (Matale). On August 14, R.K. Seneviratne, an active PA supporter, had been abducted by about eight men, armed with automatic weapons and iron bars, who blindfolded him and proceeded to assault him with a bar. He recognised one of the group, Sarath Ranasinghe, as a UNP supporter. After he escaped from the van, he was briefly hospitalised at Matale hospital with deep wounds to his back, both arms and left leg. The case was reported to the police.

At 10.30 a.m. on August 16, Seneviratne was at his home in Aluthgama, Yatawatte, when Alick Aluvihare arrived with a bodyguard. Aluvihare proceeded to slap Seneviratne in the face while the bodyguard hit him in the stomach. Seneviratne went into hiding out of fear for his safety.

Threats, Harassment, Unlawful Detention, Candidate and Police Involvement (Matale). R.K.M.I.W. Kapilaratne, M.M.W. Anuruddha Banda and a half dozen villagers from Siyambalagahawela village in Wahakotte were walking to the polling station when at about 9.30 a.m., two vehicles pulled up. Vasantha Aluvihare was in one of the vehicles. The vehicles carried UNP security men and supporters. Several of the UNP men got out of the cars - one was brandishing a sword, others carried guns. The UNP men took out their guns, fired two shots in the air and chased the villagers back to their village. No one was injured.

The affected villagers subsequently met up with a police patrol and explained what had happened. The police told them to return to their homes. They subsequently made a complaint to the police at the police station, but the police refused to record it. Later in the day, a jeep containing police from the Wahakotte police station came to their village and fired into the air. The villagers were fearful of filing complaint.

The same M.M.W. Anuruddha Banda went to cast his vote at about 11 a.m. After voting, the police officer at the polling station asked him whom he voted for, and he replied the PA. The policeman then told him to remain at the polling station, which he did for half an hour, until the police Officer In Charge (OIC) arrived. The OIC then asked the same question and was given the same answer. Then the OIC asked Banda if he were still in school and Banda replied that he had recently sat for examinations and was awaiting the results. The OIC then told him that he (Banda) had made up the story about the shooting incident involving Vasantha Aluvihare and threatened to jail him should the story be repeated. Banda was directed to come to Wahakotte station at 4 p.m. that day or "we will kill you".

Threats Against Voters, Candidate Involvement (Matale). On at least two occasions the Aluvihares and their bodyguards appeared armed with pistols and rifles outside polling stations. "If you are a PA supporter, if you vote for them, I will kill you" is typically what was said. In an incident in Mahawela junction at around 11.30 a.m., witnesses reported that Alick Aluvihare and UNP supporter Sarath Ranasinghe threatened the driver of the car of PA activist Hemantha Dissanayake.

Armed Clash (Matale). Between 1.30 and 2.30 p.m., 35 PA supporters travelling in four vans through Balakaduwa, Welikanda stopped and fired on the homes of UNP supporters, causing damage but no injuries. About 10 UNP supporters then threw stones and bricks at the PA supporters. Two men from the UNP group fired three to four shots from shotguns in the direction of PA candidate Nandimithra Ekanayake. He was not hit, but his bodyguard, G. Ranasinghe was hit once in the left thigh and in the left ankle. The case was reported to the police.

Threats, Assault (Matale). In Morahela on the morning of election day, W. Wickremasuriya, a PA supporter, was threatened by unidentified men after he cast his vote. At 5.10 p.m. that day he was stopped by 12 people, one of whom he recognised as a UNP supporter. Two of them carried iron bars and hit him, dislocating his left shoulder. He went to the hospital but was afraid to notify the police of the incident.

Harassment of Voters, Assault By Both Parties (Matale). In Pilihudugolla, Sanjeeewa Kavirathna, the son of UNP candidate R.M.P.B. Kavirathna, and a member of the provincial council, were emplaced about 50 metres from the polling station, where they told voters that the UNP would stop subsidies to their village if they voted for the PA.

Subsequently, PA supporters came and told the UNP supporters to stop the harassment. The PA supporters then went to the house of UNP supporter G.P.H. Perriyadasa and assaulted him, injuring him in the mouth. He went to hospital for treatment. Window panes in his house were also damaged.

UNP candidate Wijethunga Banda arrived at the scene at about 3.40 p.m. with supporters and allegedly encouraged them to assault PA supporters. The village head reportedly assaulted the father of a polling agent there. The police did not take action in the matter until about 4 p.m., when they restored order.

C. Other Districts

Intimidation by Police Officer (Vanni). At the Muslim School Maha Vidyalaya, one polling station in Vavuniya, a police inspector unapologetically greeted voters, as well as the International Observer, with a pistol in his hand. The matter was raised with the police superintendent.

Insufficient Security for Estate Workers (Kalutara). In eastern Agalawatta, there are several rubber estates where Indian Tamils work and live. At the Delkeith estate, families in two villages expressed concern on election day about possible retribution in the event of a UNP victory, whom they largely support in a PA-dominated area. The residents did not believe the 14 private guards assigned to protect them in their remote area would be very effective. There were no police forces assigned as they were only said to patrol main roads. Security was such that the superintendent of the estate had left the area on the day before the elections. The police did not set up any peace committees on the estates, as they had done at other polling places in Agalawatta. To date, there have been no reports of election day or post-election violence at any of the estates.

Intimidation by Candidate (Ratnapura). Supporter of UNP candidate A.M.L. Marikkar arrived at a polling station in 12 vehicles with about 70 people. The threatened PA supporters gathered there and flashed a pistol. The group left when the police arrived.

Assault, Destruction of Property (Kandy). In Kiribathkumbura, Udunuwara, Kandy at 3.15 p.m. on election day, PA supporters Mr. Dinapala Mudalali and G.P. Alahakoon congregated outside the

former's shop, which was decorated in PA colours. Stopping in front of the shop were two black cars and a Pajero vehicle, each of which had the markings of the "Mahaweli River Project", of which UNP candidate Gamini Dissanayake was the former minister. About 10 UNP supporters got out of the vehicles and beat the two men and two others with iron rods. They then fired some shots into the shop. Altogether 4 persons were injured and taken to the hospital. One had a serious head injury. None suffered from bullet wounds. The same group of men later continued to the automobile business of PA candidate Wilson Kuruppu Arachchi, and shot at the cars there and damaged them.

Assault, Candidate Involvement (Colombo). UNP candidate Weerasinghe Mallimarachchi and a group of his supporters intimidated and physically assaulted people outside a polling station in Mulleriyawa, Colombo. At least six people were injured. One of those injured reported that she was threatened by a pistol aimed at her chest.

Impersonation, Threats (Colombo). Three persons were apprehended attempting to vote unlawfully at a polling station in Piliyandala, Colombo. A group of 10 UNP supporters were intimidating PA supporters who arrived at the polling station to vote. A UNP supporter, Kalu Malli, threatened a PA supporter, Indika de Alwis, with death and the latter went into hiding.

Harassment, Candidate Involvement (Moneragala). In Athiliwewa village, PA candidate A.P.J. Pushpakumara reportedly chased UNP supporters from the polling station. Some PA supporters threatened to burn a UNP supporter's tractor.

Threats Against Polling Agent by Candidate (Kalutara). UNP candidate P.D. Abeyratne threatened to harm two PA polling agents after they and members of local NGOs questioned the credentials of the two UNP polling agents present. It was clear the Senior Presiding Officer heard the remarks, but he insisted he did not. The PA polling agents continued to work, but were clearly concerned by the threats.

Assaults by Parties (Colombo). PA supporters in a red Pajero arrived at about 10.30 a.m. at the Kolonnawa, Galwana junction polling station and threatened UNP supporters with knives. At about 11.35 a.m., two vehicles with UNP supporters, including provincial councillor K.A.D. Sunil, arrived at the scene. The UNP supporters, some of whom were armed with pistols, assaulted the PA supporters. One PA supporter had to be taken to a hospital. Ten minutes later, PA candidate Lakshman Premachandra and PA supporters arrived in about six vehicles. They assaulted the UNP supporters who were there. The police then dispersed the crowd using teargas, though they later denied doing so. Additional police reinforcements restored order.

Destruction of Property (Batticaloa). At 10.50 a.m. on August 16 in Eravur, three unidentified men set fire to the shop of T.M.M. Mohideen, a known SLMC supporter. The shop adjoined a polling booth.

Threats (Kegalle). Sajiv Perera, son of UNP candidate K.V. Perera, in Kegalle, allegedly fired gunshots outside PA candidate H.R. Mithrapala's home at 6 a.m. on polling day.

Findings: Compared to the pre-election period, election day was relatively peaceful in most of the country. The major exceptions were Puttalam and Matale districts, where numerous cases of violence were reported. Except in these areas and a few other cases, the police seemed to have responded promptly and impartially to reports of violence. The Law Group urges the government to thoroughly investigate the election in Matale and Puttalam and prosecute those responsible for the violence. We also urge that the police in ensuing elections pay more attention to the security concerns of groups in exposed situations, such as Indian Tamil estate workers and those in displaced persons camps.

3. Situation in the North and Displaced Persons

A. Jaffna and Vanni

Information to date on election day in the Jaffna district is sparse. Only about 13,000 people of the 600,000 who were registered, voted in the polls - slightly more than 2%. Kayts island attributed for more than 10,000 of the votes cast. Polling took place in areas effectively under the control of the EPDP, the pro-UNP militant group that ran in the elections as Independent Group 2. The vote here cannot be considered a meaningful reflection of the will of the electorate.

The Report of the official International Observer Group, two of whose members were permitted to go to Jaffna, reported several cases of election irregularities. The most serious infractions occurred on Delft island. The Official Observer found cases of EPDP supporters acting as EPRLF agents, double voting done with the knowledge of the Senior Presiding Officer and other election violations.

In Vanni district, only 67 out of 169 polling stations were active, or 40%. These included 21 of 50 polling stations in Mannar, 45 of 65 stations in Vavuniya and only 1 of 54 stations in Mullaitivu. The large number of voters who were unable to vote undermines the legitimacy of the Vanni election. Nonetheless, in "cleared" areas of the district, balloting took place generally without incident.

Findings: The elections in Jaffna and in much of Vanni were conducted without the participation of large segments of the electorate. Polling day itself went peacefully and smoothly in Vanni. The lack of in-depth information on the polling in Jaffna precludes an accurate assessment of election day there.

B. Internally Displaced Persons

Many internally displaced persons were deprived of their right to vote on election day. The approximately 19,000 displaced persons who had managed to get authorisation to vote were often treated as outcasts to the election process, rather than as citizens with full rights.

The day was frustrating for many. Those in government camps far from polling stations sometimes found public transportation meagre. Once at the polls, hundreds, perhaps thousands, found that they were not on the local registries, despite having received polling cards or letters from the Commissioner of Elections detailing their eligibility to vote.

1) Voting

The situation was worst in Puttalam district, residence to thousands of primarily Muslim displaced persons. Many local voting lists were incomplete, preventing many displaced persons from voting. Even many of those with authorisation letters from the Commissioner of Elections could not vote.

The Sri Lanka Muslim Congress (SLMC) had procured from the Commissioner of Elections in Colombo the names of 6,100 persons who had received authorisation letters to vote in the half dozen Puttalam camps for candidates in their native Jaffna. But the local polling authorities received lists of eligible displaced persons that contained only about 3,000 names.

In 5 other Puttalam polling stations visited by an International Observer, at least 1000 displaced persons who had registered were not on the local lists. For example, at a Muslim camp near Puttalam town, the voter list for Kilinochchi, Jaffna district contained a mere 6 voters, although the SLMC

voter list procured from the Elections Commissioner listed 806 voters. The Senior Presiding Officer announced that a corrected list would be provided, but by 1.30 p.m. on election day, the situation had not changed. At a Kalpitiya polling station, 185 displaced persons from Vanni district were missing from the local voter list and informed that they were not eligible to vote. In some areas where this was a problem, local election officials decided to accept the Elections Commissioner's authorization letters as proof of eligibility where the name was not on the voter list.

The registration problem was not limited to the North, but occurred in the East as well. A senior staff member of the Eastern Rehabilitation Centre informed an International Observer that 1,000 of the internal refugees living there had been unable to vote because they had not received their polling cards. At Rugam camp, Eravur, Batticaloa district, many displaced persons never received their polling cards until the day before the election, if at all. It was unclear whether the delay was intentional as most of the refugees had been living in the camp for 4 - 5 years.

2) Transportation Problems

Transportation to polling stations was another problem for many displaced persons. In some areas, polling stations were close to the camps. But in those where distances to the polling station were great, voters often found that the public transportation to the polls was wholly inadequate.

In Vanni district, a polling station was set up beyond the Thanthikulam army checkpoint (the last checkpoint before no-man's-land). This was for the people who came from this region originally but now live in Vavuniya town. It proved to be very difficult for these people to get transport from Vavuniya town to the polling station. While this area is considered "cleared", many areas nearby are "uncleared". Those in uncleared areas were not able to vote at all. In general, there were many transport problems throughout the region, with few buses running on election day.

In the Horowupotana area, Trincomalee district, there are upwards of 40,000 displaced persons, as well as persons who live in contested areas. On the day before election day, two soldiers were killed in Morawewa in an attack by the LTTE. While there proved to be no attacks by the LTTE on election day (here or elsewhere), many persons living in exposed areas were afraid to vote. Villages often have only a few families and it was difficult for them to reach the polling stations, which were closer to the main towns. Although there was general support for the role played by the military on election day, it seems that a more concerted effort by the army to provide security on the roads to the polling stations, particularly the road from Horowupotana to Trincomalee, would have enabled a significantly greater number of people to vote.

Findings: The relatively few displaced persons who successfully registered found additional obstacles awaiting them on election day. Many, perhaps several thousands, discovered that their names were not on the polling lists even though they had authorisation from the Elections Commissioner. Others found it very difficult to get to polling stations because of inadequate public transportation or security.

The Law Group urges the Elections Commissioner to make the issues of internally displaced persons a priority for the next election. The government needs to ensure that all displaced persons are able to exercise their right to vote and that they do not face unnecessary obstacles in doing so. Better communication links need to be established between the Elections Commissioner in Colombo and local officials who work in areas where there are displaced persons. Registration lists need to be brought up to date. Polling cards (or authorisation letters) must be distributed well in advance and local polling stations must be notified. Public transportation needs to be provided to those displaced persons who live far from polling stations, or, even better, polling stations should be set up near the

VI. Findings and Recommendations

The International Human Rights Law Group makes the following findings and recommendations:

1. The Media: The existing government control of television and radio news violates the basic right to freedom of expression. During an election period, government control of the broadcast media is an unwarranted political advantage to the ruling party. The Law Group urges the Government of Sri Lanka to end its virtual monopoly on domestic television and radio news.

2. Election Regulations: Government regulations prohibiting the public display of posters and prohibiting the canvassing of voters by candidates and their family members are overly broad. By limiting the freedom of expression, the laws affect the fairness of the electoral process.

The Law Group urges the Sri Lankan government to adopt less restrictive regulations on campaigning. Total prohibitions on posters and canvassing could be replaced with less restrictive measures that address the problems associated with these practices. For instance, the government might create special public places where campaign posters could legally be posted, charge political parties for the removal of posters or enforce campaign spending limits against candidates.

3. Use of State Resources: The unlawful use of state resources by the UNP, particularly government vehicles, was among the most frequently cited violations committed during the campaign. Such practices provide an unfair and unlawful advantage to the ruling party. The Law Group urges the Sri Lanka government to better enforce existing laws on the use of government property during election campaigns or to strengthen the laws so that such practices do not continue.

4. Voter Registration: Many otherwise eligible voters were unable to vote simply because there can be a long gap between the close of the election registers and voting day. Particularly affected were young, first-time voters. Steps should be taken to allow for registration much closer to the day of the vote. Greater voter education is needed to clarify the purpose of the polling cards and the procedure for distributing them.

The administration of the registration process by the *grama sevaka niladhari* (village officers) creates uncertainty about the fairness of the process because they are political appointees. Even if actual cases of registration list tampering by village officers were infrequent, the process was marred by the appearance of impropriety. The Law Group urges that the registration process be administered by persons who are not appointed for political reasons.

5. Pre-Election Police Bias: There were many complaints by opposition parties regarding alleged bias by police in the enforcement of the election law. Many of these allegations may have reflected the unenforceability of the law. With respect to serious violations of the criminal law, the police appeared to act in a highly professional manner throughout the campaign. The Law Group urges the Inspector General of Police to assess election-related complaints with respect to the police force and take proper action against those police who failed to uphold the law because of political partisanship.

6. Pre-Election Party Violence: Much of the violence that occurred in the pre-election period did not appear to be premeditated, but resulted from altercations between groups of party supporters that escalated into violence. The Law Group urges the political parties to take steps, individually and in consultation with other parties, to minimise the possibilities of such violence in future campaigns.

The drafting of codes of conduct for supporters would be a useful start.

7. Pre-Election Killings: There were as many as 20 election-related deaths in the pre-election period. Most of the victims in the cases reported were PA supporters. Particularly distressing was the high number of cases in which candidates and government officials were involved. The Law Group urges prompt, thorough and impartial investigations into these and other serious election-related offences. Prosecution of the responsible parties is essential to ensure that the unacceptable level of violence preceding the 1994 parliamentary elections does not occur in future election campaigns.

8. Pre-Election Violence Generally: Although its impact on the election results is uncertain, the widespread pre-election violence raised political tensions throughout the country. Violent acts by party supporters against opponents were widespread. In most cases reported, PA supporters were the targets of UNP attacks, although PA supporters were also responsible for violence. Additionally, there were a large number of cases of violence attributed to candidates and local officials. Irrespective of the outcome of the vote, the government should prosecute these cases to the fullest extent of the law. Government officials involved in unlawful acts should be criminally prosecuted or face administrative sanctions.

9. Situation in Jaffna and Vanni: The current political situation in Jaffna and in much of Vanni district does not permit free and fair elections. In areas controlled by the LTTE, any sort of political activity is impossible. Even in the few areas in Jaffna controlled by the government, the security forces of the EPDP have not freely permitted political activity by opposition parties. The Law Group urges the Sri Lankan government to reassess its current policy towards holding elections in Jaffna and Vanni. A solution that would permit eligible and able persons to vote, yet does not give them a disproportionate share of the parliamentary seats, would uphold both the right to vote and the right of Sri Lankans to equality under law.

10. Registration of Internally Displaced Persons: Sri Lanka's more than 600,000 internally displaced persons faced additional hardships in securing their right to vote. The application to register as displaced persons was complicated by the difficulty in reaching displaced persons, the detailed information required by the form in a short time, and the printing of the forms only in Sinhala. In Puttalam camps, displaced persons were also the targets of harassment and threats by members of the EPDP.

The government's policy regarding the registration of displaced persons is in urgent need of reform. At its core, the current approach fails to recognise that displaced persons are citizens with the same right to vote as other Sri Lankans. The process must favour inclusion, rather than exclusion. Registration lists need to be updated to the present, forms simplified and written in Tamil as well as Sinhala, and the procedure made less burdensome and time consuming. Where displaced persons are unable to establish their former residence, they should still have the full opportunity to vote in their current residence.

11. Manipulation of the Polling Process: The large-scale use of impersonators or other forms of unlawful balloting does not appear to have taken place, or even attempted. More localised attempts to unlawfully affect the vote generally seem to have been ineffectual. Vigilance on the part of the polling authorities seems to have been the primary deterrent to such practices. Continued attention to this issue, especially in Batticaloa and Trincomalee, is needed to ensure that old practices do not reappear in future elections.

12. Spoiling of Ballots: The current ballot seems to cause confusion among a great many voters. Ballots should contain party names in the country's three major languages as well as party symbols. Candidates' names, rather than just numerals, should also be included on the ballot. Care in revising the ballot would be needed to ensure that changes result in fewer spoiled ballots, rather than more.

13. Unlawful Transport of Voters: The unlawful transport of voters by political parties, especially the UNP's use of government vehicles for this purpose, did not appear to occur with great frequency. Although greater enforcement of the regulation could reduce the practice, a more effective solution might be to increase public transportation on election day.

14. Transfer of Ballot Boxes: The process of transferring ballot boxes to polling stations and the counting of ballots seems to have been carried out without serious problem. There was some confusion and anxiety at this stage of the electoral process. The Law Group recommends that the government educate the public better as to the proper procedure of ballot box transfer and vote counting. Ballot boxes should be clearly distinguishable from boxes used for election day supplies.

15. Election Day Violence: Compared to the pre-election period, election day was relatively peaceful in most of the country. The major exceptions were Puttalam and Matale districts, where numerous cases of violence were reported. Except in these areas and a few other cases, the police seemed to have responded promptly and impartially to reports of violence. The Law Group urges the government to thoroughly investigate the election in Matale and Puttalam and prosecute those responsible for the violence. We also urge that the police in ensuing elections pay more attention to the security concerns of groups in exposed situations, such as Indian Tamil estate workers and those in displaced persons camps.

16. Polling in Jaffna and Vanni: The elections in Jaffna and in much of Vanni were conducted without the participation of large segments of the electorate. Polling day itself went peacefully and smoothly in Vanni. The lack of in-depth information on the polling in Jaffna precludes an accurate assessment of election day there.

17. Polling and Internally Displaced Persons: The relatively few displaced persons who successfully registered found additional obstacles awaiting them on election day. Many, perhaps several thousand, discovered that their names were not on the polling lists even though they had authorisation from the Elections Commissioner. Others found it very difficult to get to polling stations because of inadequate public transportation or security.

The Law Group urges the Elections Commissioner to make the issue of internally displaced persons a priority for the next election. The government needs to ensure that all displaced persons are able to exercise their right to vote and that they do not face unnecessary obstacles in doing so. Better communication links need to be established between the Elections Commissioner in Colombo and local officials who work in areas where there are displaced persons. Registration lists need to be brought up to date. Polling cards (or authorisation letters) must be distributed well in advance and local polling stations must be notified. Public transportation needs to be provided to those displaced persons who live far from polling stations, or, even better, polling stations should be set up near the refugee camps.

MOVEMENT FOR FREE AND FAIR ELECTIONS (MFFE)

Interim Report on the Sri Lanka Parliamentary Elections of August 16th 1994

(EXTRACTS)

Introduction

The Ninth Parliament of Sri Lanka was dissolved by the President on June 25th; nominations for the new Parliament were set for the period July 4 to July 11 and the elections for August 16.

The dissolution took place six months before the parliament's term of life was due to end. This act took most by surprise. Presidential elections were due constitutionally in November 1994 and political parties were preparing themselves for that election, with the anticipation that Parliamentary elections would follow thereafter.

The ruling UNP had been in power since 1977; it had introduced a strong executive presidential system of government and had changed the electoral system from a "first past the post" to one based on proportional representation. Elections since then, from the referendum in 1982 to extend the life of Parliament for a further six years, had been vitiated by various factors. The Parliamentary Election of 1989 and the Presidential Election of 1988 had been held during a period of insurgency throughout the island; they had been marked by violence and a low turn out of voters. The Northern and Eastern provinces have been the site of an armed insurrection by Tamil militants against the state since the early eighties and elections in those provinces were hampered by the fact.

The UNP had in fact won every single election since 1977 upto the Provincial Council Elections of 1993 where the opposition had won control of 3 provinces. The Southern Provincial Council, under the control of the opposition with a majority of one vote, was dissolved at the end of 1993 as a result of a member being abducted at the time of a crucial vote. The subsequent election held in March 1994 had been won by the opposition with a bigger majority.

It was this political background that gave the Parliamentary Elections of August 1994 an extra tension and importance.

Thirteen political parties or alliances and 26 independent groups contested the election; 1400 candidates fought for the 196 seats from the 22 electoral districts.

The two major groupings were the UNP, backed by the Ceylon Workers' Congress and the People's Alliance, a coalition of the SLFP, LSSP, CP, SLMP and a part of the DUNF led by Mrs. Athulathmudali; the PA also had an electoral agreement with the SLMC.

A number of Tamil-based parties contested the elections in the Northern and Eastern provinces - TULF, EPDP, EPRLF, DPLF - along with several independent groups.

The electoral register used, excepting in the Northern province, were those certified for the year 1993. In that province the register used was that of 1986, the latest available certified register since when there had been no revision. These registers had approximately 10.9 million voters.

There were 9553 polling stations gazetted in the 22 electoral districts. There were 1188 counting centres each accounting for an average of about 12 polling stations and postal votes.

76.24% of the electorate participated in the poll. If the figures for the Jaffna and Vanni districts which comprise the Northern province, respectively 2.32% and 25.34% are excluded, the participation rate rises to 81%.

This report will cover violence during the campaign period and on polling day, the use of state resources for partisan political purposes, the use of state owned media, both print and electronic, for similar purposes, the voting rights of displaced persons and the electoral farce perpetrated in the Northern province because it raises certain specific issues.

The report will pay special attention to these aspects because they are of significance in the organisation of the Presidential election. It may be possible to make the Presidential election peaceful, free and fair if some of the problems we set out and the recommendations we make are given heed by the government, the election authorities and the political parties.

Part I - Violence during the Campaign

Although we have separated "campaign violence" and "use of state resources" into two distinct categories, it is important to emphasise that often the two went hand in hand. Often, we see thugs in government vehicles attacking campaign officers and individuals. Even more disturbing were the incidents of violence and intimidation carried out by provincial council candidates and officers and to a lesser degree by parliamentary candidates and sitting MPs.

Introduction

Campaign violence was widespread in the 6 week period leading up to the vote on August 16th, and escalated considerably on and after the deadline for nominations on July 11th.

As of August 3, police headquarters received 1058 complaints and reports of election-related incidents between July 11 and August 3, including 9 political murders.

By the end of the first week in August, the police estimated that they were receiving at least 100 complaints every 24 hours.

By August 9, 122 violations had been reported in a 24 hour period, and the aggregate number was up to 2129.

As of 6 a.m. on August 16th, the Police Election Secretariat reported a total of 2092 incidents of some form of election-related intimidation, 1003 incidents of "simple assault", 47 incidents of "serious violence" and 12 murders. A tabulation of incidents of polls-related violence in terms of location and severity prepared by the Police Elections Secretariat is given as Annex III to this report.

MFFE and police records reflect between 12 and 20 murders committed during this period. There were many more incidents of stabbings, shootings, stonings, beatings and abductions, as well as crimes against property including houses being burnt to the ground and widespread destruction of campaign vehicles by all sides. There were many cases in which police, local officials, MPs and candidates were directly implicated in attacks. In addition, there were also many cases reported in which government vehicles (and in some cases, officially issued weapons) were reported to have been

used and serial numbers corroborating this claim were submitted. Although violent incidents were reported in virtually all provinces, Matale, Kurunegala, Puttalam, Anuradhapura, Ratnapura and parts of Colombo district seemed to have the highest number.

The last day on which nominations were received, July 11th, was also the day on which most nominations were made. This often led to the congregation of numbers of candidates and their supporters at election secretariats. The occasion usually generates some tension and leads to argument. On this day, the tension often erupted into violence.

Violent clashes of a serious nature occurred in Kalutara, Ratnapura, Balangoda, Anuradhapura, Polonnaruwa, Kegalle, Matara and Wennappuwa, primarily between supporters of the PA and the UNP. Firearms, bottles of sand and other missiles figured in these clashes, indicating some degree of preparedness either to attack or to defend. These clashes led to the death of 4 persons, at Wennappuwa, Polonnaruwa, Kalutara and Ratnapura.

Intimidation

Intimidation, accompanied by threats of violence, has been a feature of this election campaign. The highest number of complaints made to the police are about intimidation. However, it is more difficult to identify the source of threats which often come anonymously.

Candidates themselves have been involved in acts of intimidation. On the night of August 7th, Lalith de Silva, a UNP candidate and his supporters gathered outside a house at Karawalabedde, Galle, where a PA meeting was in progress and threatened the meeting. Gunshots were heard coming from outside; at least one bullet shell was later found inside the house. PA supporters then retaliated. In another instance in Eravur, Batticaloa, SLMC candidate Dawwod [sic] publicly threatened to "shave heads", "inject cyanide" and to kill people who supported the UNP.

Intimidation is all the more alarming when it comes from state officials, particularly of the police. In one flagrant example, on or around August 14, a Reserve Sub-Inspector in Hewahata threatened PA supporters that they would be killed if they did not vote for the UNP.

In another instance, the local PA branch office at Ganethenna in the Ratnapura district reported having received violent threats from approximately 10 people including one policeman. The group came to the office and threatened to burn it down if it did not close immediately.

Another object of intimidation has been the seizure of polling cards. On or around August 10th, estate workers on Ampitikanda Estate in Bandarawela, were surrounded by thugs and threatened with death. Three hundred and fifty of the workers had their identity and polling cards removed at gunpoint and were warned not to vote. A similar instance was reported from Katugastota in the Kandy district.

Conclusion

Most violence took place during the campaign; election day itself was relatively peaceful though it was not without its problems and incidents of violence which are chronicled in a later part of this report. Thus the most crucial time for domestic and international intervention and monitoring is really during the 6 weeks leading up to the vote, in addition to election day itself.

All major parties in the election were involved in the violence as both perpetrators and victims. Almost all the incidents involved local party officials or supporters attacking supporters of other parties - not just leaders or key organizers.

It is important to spotlight this pre-election violence because it has several deleterious effects on the election: first, by murdering and disabling campaign workers it deprives the electorate of a full and robust campaign where they are able to hear all points of view and be exposed to the platforms and candidates of all the parties; second, fear of violence certainly lowers popular participation in party campaign activities; third, selective violence prevents certain candidates and parties from effectively communicating their points of view to the electorate; finally, in the face of serious and prolonged pre-election day violence and intimidation it is almost a certainty that some voters concluded that voting was simply too dangerous to risk.

Recommendations

The prime context of electoral violence as we have described above is the generalised political violence which has characterised Sri Lankan politics in the entire decade of the 1980s. Anti-Tamil riots in 1983, the war between the Sri Lankan state and Tamil guerilla groups, and the armed conflict between the state and the Janatha Vimukthi Peramuna (JVP) in 89 to 91 were the main episodes that saw unprecedented political violence covering the entire political spectrum. As militarised political conflicts, they represented a specific phase in the country's politics in which many political actors, state as well as non-state, accepted terror and brutality as 'legitimate' mechanisms of political bargaining.

One specific aspect of the generalised political violence in the past decade was the violent opposition mounted against elections by armed militant groups in 1988 and 1989. When campaigns started for Provincial Councils Elections (1988), Presidential Elections (February 1988), the LTTE in the North-East and the JVP in the South declared these elections 'illegal' and invalid. Their objective was to disrupt the election process, before the actual date of election, by unleashing terror and violence against individuals and parties that contested the elections as well as voters and party supporters. Political murders and disruption of election campaigns by means of armed attacks were intended to paralyse the election process altogether. On the days of election, voters who went to polling stations were intimidated, threatened and in some cases killed in order to generate a state of fear so that the actual polling would be severely disrupted.

The ways in which political parties, both ruling and oppositional, handled the crisis during the elections of 1988 and 1989 has contributed to a subsequent process of electoral violence. Candidates were provided with fire arms and armed bodyguards for their protection. In many instances politicians were reported to have used these facilities not only for their protection, but also to intimidate political opponents and voters. Attempts to recall these weapons later were ineffective and the armed groups that thus came into existence still linger in the shadowy background.

The current spate of electoral violence may also be placed in the context where the state has become particularly violent and a ruling party has utilised the repressive agencies of the state for its own regime interests. The use of police for individual political objectives of politicians in power as well as of the ruling party has been a major aspect of the phenomenon of 'abuse of state power' in Sri Lanka. Thus the resort to violence and infractions of election laws have become a habit among certain sections of ruling party politicians. Opposition activists, meanwhile, appear to react to this situation in a spirit of tit-for-tat.

In this context it must be an act of will by political parties and the people that can rid the political process of violence. We need concerted action by all these actors if political and electoral violence is to be eliminated and replaced by democratic contest.

In the short term, it is necessary as far as possible to ensure police neutrality and to activate them to quick response to situations that can be prevented from becoming violent. Education and training of the police in election duty also appears necessary.

Part II - Use of State Resources for Party Purposes

Introduction

A major problem that MFFE has documented in this election has been the tendency of some ruling party politicians and state officials to conflate state interests with those of the ruling party and to take advantage of their official status to further their party's electoral fortunes. Throughout the election campaign there were widespread reports of state personnel, vehicles and equipment being put to partisan purposes. Many of these reports have been authenticated with specific names and vehicle serial numbers. From state bank employees to police, from Mahaweli Authority vehicles to government milk lorries, electioneering was intentionally confused with state business. Certifying officers at polling centres for postal voters were accused of attempting to influence voting, and certain polling centres had no contesting party agents who were considered essential to prevent undue influence.

The most important factor that permitted the misuse of state resources in this alarming fashion was the fact that 91 ministers of the ruling party remained in their posts and retained control over the resources of their ministries. From time to time the UNP had increased the number of ministers calling them state ministers and project ministers; it even swore two new ministers into office during the last 2 weeks of its office. When Parliament was dissolved, all these ministers remained in office; most of them used their offices, officers and other resources in a very partisan way.

Most disturbing were the repeated incidents of officials, candidates, state employees and police utilising their positions and state resources to perpetrate campaign violence or election law violations. Rather than acting as responsible public servants accountable to the state and as stabilising influences during the tense pre-election period, some individuals took advantage of their positions to further partisan aims. If elected and appointed officials view violence as just another campaign tactic, how can they expect the population at large to embrace the view that political differences can be settled parliamentarily without resort to violence?

Perhaps the most chilling of all the reports taken in by the MFFE during the past few months are those which implicate local police officers in violent incidents or in the meeting out of unequal justice and protection. Another group of officers who abused their position was the security bodyguards assigned to the ministers. These were drawn from the police or the reserve police; they confused the protection of the person of the minister with the furtherance of his political goals.

When Sri Lankans cannot even rely on their local police officers for non-partisan protection of the peace, we know that dramatic changes in the political culture are required.

Recommendations

The use of state resources, particularly vehicles, for electoral purposes was one of the most frequent

complaints. There is nothing in the election law concerning this; such use of vehicles is, however, in flagrant violation of administrative regulations which require state resources to be used specifically for state purposes.

This ability to use state resources gives an unfair advantage to the ruling party, and within the party, to those who held ministerial rank; the latter fact is important because of the preferential voting system.

We propose that the election law be amended to prohibit the use of state resources and to make such use a ground for challenging an election. Any politician or state official who uses or permits the use of state resources for partisan political purposes should be made guilty of a punishable misdemeanour.

There should also be a constitutional requirement that when Parliament is dissolved, the only persons who should comprise the caretaker government should be ministers of Cabinet rank.

Part III - Use of State Owned Media

Television, radio and the largest newspaper group are state owned and managed. There are some private radio and television channels but these did not carry news or current affairs programmes.

The law requires that all contesting parties and independent groups be given radio and television time on a specified basis of allocation. This was done and every party and group had the opportunity of taking their message to the people.

Bias however became apparent in the news and feature programmes as well as in the newspapers controlled by the state. News was of the activities of the government which in effect became those of the ruling party. Feature programmes devoted to various development programmes, sponsored by the state agencies responsible such as state banks, insurance companies and the Janasaviya Trust were thinly veiled advertisements for the achievements of the UNP.

The most blatant misuse of television by the ruling party was on 15th August, long after the cut off time for electioneering, when the Rupavahini and the Independent Television Network, both controlled by the state, ran an interview with Mr. Gamini Iriyagolla on two issues that had emerged during the campaign - constitutional reform and the ethnic conflict. Mr. Iriyagolla is a lawyer and a well known Sinhala nationalist; he bitterly criticised the PA pledge to end the ethnic conflict through a political settlement which he said was tantamount to betraying the interests of the Sinhalese as well as PA attitudes towards constitutional reform.

Mr. Iriyagolla now says that this interview was taped some days earlier and his understanding was that it would be telecast before the cut off date. The government's action in telecasting it after that then becomes all the more heinous.

Part IV - Election Day Problems

Introduction

Although Election Day was only one day in this campaign, it was the most important. But what happened on Election Day was largely a function of what had taken place on the days preceding it - during the course of the campaign. Who ultimately was allowed to vote was a function of many

things, for example, how postal voting was handled, and how effectively arrangements were made for displaced voters to vote. Who actually came out to vote was affected by, how effectively campaigns were able to communicate their message and by campaign violence. Which candidates and parties got the largest number of votes was affected by the quality of the campaigns, what resources were available to parties and candidates to carry out their campaigns, what voters believed to be the most important issues facing Sri Lanka and which party would deal with them best, and by campaign violence. Thus, the ultimate outcome on August 16th was shaped to a great extent by activities which took place during the months leading up to Election Day. Perhaps the best example of what we mean is also the most dramatic - Jaffna. Low voter turnout on Election Day in the Northern Province was a function of too few polling stations being set up ahead of time, inadequate transportation, and most importantly - widespread violence and fear of violence against and between parties, candidates, and others.

As we have detailed in earlier sections of this report, there were repeated problems with campaign violence against candidates, supporters, family members and ordinary voters. State resources were used to unfair advantage by the party in power. There were repeated incidents of interference with postal voters. There were inadequate arrangements made for displaced voters, and there were places where it was simply impossible to conduct an election, like Jaffna.

Of course all of these problems had a significant impact upon the ultimate outcome on Election Day. Thus to really evaluate what happened on August 16th, we must combine all of what we know came beforehand with all of what we know took place on the day itself.

The MFFE was able to monitor Election Day activities in 16 out of the 22 districts. Although there were still far too many incidents of violence and intimidation, the day was significantly more peaceful than the days leading up to it. The types of problems our teams reported were of several varieties:

1 Registration of voters

There were numerous complaints of voters being left out of the registers from virtually all areas. The procedures for voter registration need to be examined and improved. This question will be taken up in a later report.

2 Polling cards

The polling card is not a necessity for voting; nevertheless it is the one document which most voters take with them to the polling station as identity. It is also a document sought after by impersonators and others planning to impersonate.

Polling cards are distributed through the post about a week before the election. There may be a genuine case of inability to deliver polling cards because of the sheer mass in some post offices, but there is evidence of polling cards being used for malpractice as reported from many places.

An instance is a report of a PA candidate who allegedly came to Udathalawinna Village and threatened villagers, forcibly taking polling cards from Muslims, Tamils and known UNP supporters.

At Matugama, a person was carrying bundles of polling cards, visiting polling stations and distributing them to people. Despite repeatedly informing the police, nothing was done. A group of citizens apprehended this person and found on him 74 cards.

The other features we want to highlight are:

Violence and intimidation at the polls - on the part of candidates, their supporters, other party activists or, in a few instances, the police.

Violations of election laws pertaining to campaigning - such as parties providing transportation to the polls or giving out leaflets close to polling stations, or parties and individuals being denied rights such as to poll-watch or follow the ballot boxes to the counting centres.

Voting irregularities and violations - such as impersonations of voters, and poll workers denying certain individuals the right to vote either through direct intent or inflexibility.

Despite these problems, the overall turnout was an impressive 76.24% of registered voters.

Recommendations

As we have already made clear, many of the problems encountered on Election Day mirror those that took place during the campaign, thus the recommendations contained in Sections I and II are of obvious relevance here. It is important to bear in mind that in terms of election day, justice deferred truly is justice denied. Thus there must be a rapid response system in place so that voter turnout is not deleteriously affected. In addition to our previous recommendations, we would like to suggest:

1. A police presence if possible at every polling station in the country, or police patrols that functionally accomplish the same thing, so that there can be an immediate response to violence, threats and intimidation at the polls.
2. At least two central locations per district to which voters can appeal if they are denied the right to vote for any reason at their polling station.
3. Central locations where campaign supporters and candidates can report violations and get an immediate response from regional elections commission officers.

Police also need to be better able to distinguish between legal and illegal election day party activities. The Elections Commission needs to improve upon its election day training materials so that information is simple, concise and comprehensive and this material should be widely distributed to police, poll workers, candidates and party supporters.

Spoiled Votes

Another matter that can be taken up in this section is the large number of spoiled votes. In this election, the total number of ballots rejected was 400,389 - comprising 4.8% of the votes.

While a few of these may have been deliberately spoiled, the large majority are rejected because they have not been marked in accordance with the rules. A frequent complaint is that the ballot paper itself, which requires the voter to mark the party of his choice and his preferences among the individual candidates, is complicated.

It is recommended that attempts be made to simplify the ballot paper. In any case, greater attention to voter education is necessary.

Part V - The Election in Jaffna and Vanni Districts

When Parliamentary elections were announced, the question immediately arose as to whether it would be possible to hold free and fair elections in the Jaffna and Vanni electoral districts. These two districts comprise the Northern Province which is the primary area of conflict; the government controls only roughly 15% and 30% respectively of the land area of these two electoral districts.

The Elections Commissioner was approached by several Tamil political parties including the TULF, ACTC and EPRLF who maintained that conditions in Jaffna precluded a poll. The LTTE which is in de facto control of the remaining territory had instructed the Government Agent and his officers not to participate in the election process. The Elections Commissioner, however, maintained that he was obliged under the constitution to hold elections in all districts and that he would attempt to hold a proper poll in these areas too.

The TULF then went to law, applying to the Court of Appeal for a Writ of Certiorari to prohibit the holding of an election in the Jaffna district. Numerous grounds were cited in support; the Returning Office had been shifted from Jaffna to Tellippallai, a place under army control, thus signifying that conditions for an election did not exist in Jaffna; only 6000 out of the total 600,000 registered voters lived in areas under army control and it would be a travesty of democracy to permit them to decide who would represent Jaffna; political parties had no access to voters as they were kept out of Jaffna by the LTTE; the registers to be used were those prepared and certified in 1986 since no revisions had been made since then, thus disenfranchising all those who attained voting age since that date. The Court refused this application; it held that the proper course of action would be to permit the holding of the election and, if no proper poll was held, to canvas the matter through an election petition.

A fundamental rights application filed by a voter alleging that conditions did not exist for a proper poll in Jaffna because of the armed conflict and that the holding of the poll under such circumstances would be a violation of the voters' rights to equality before the law was also rejected by the Supreme Court.

The Elections Commissioner later issued a gazette listing the normal polling stations in the two districts even though it was patently clear that the large majority of these stations would not be active.

Several Tamil political parties made a final appeal to the Government to postpone elections in the Jaffna district in the second week of August. The parties expressed serious doubts about a fair election, arguing that only a tiny percentage of the 600,000 eligible voters would be able to cast their vote. They expressed concerns for their security when the LTTE attacked Palaly Military Air Base on August 1st, one day after the Elections Commissioner and police and military officials visited Palaly camp and the areas and islands where the elections would be conducted. This plea also went unheeded.

Also in early August, the Postal Department announced that it would not deliver any poll cards to the northern Jaffna peninsula and would deliver only 29,000 in the cleared areas of Vanni. The Elections Commission announced that approximately 25,400 displaced voters from the North and East were eligible to vote, most of whom were from Puttalam and Kalpitiya.

In the event, the elections that took place were a farce. In the Vanni electoral district, only 21 out of 54 polling stations in the Mannar division, 44 out of 65 in the Vavuniya division and 4 out of 50 in the Mullaitivu division were active. This meant that only 71,397 voters, 40% of those registered

in the district, had the opportunity of voting. Under these conditions, the turnout in the district was only 25.3%.

In the Jaffna electoral district the situation was grotesque. Out of a gazetted 445 polling stations, only about 30 in the islands and areas under military control were active. Ultimately, of the 596,366 registered voters in the district, 13,831 cast ballots, or approximately 2.3% of the electorate. The votes were, in all cases excepting Kayts, those cast by refugees in their present places of refuge.

Even in those areas under army control, the dominating presence of the EPDP, an armed group that also contested the election under the guise of Independent Group No. 2, distorted the result. The EPDP used its weapons to intimidate not only the voters but also polling staff. It used its position to effectively shut out other political parties from campaigning. It even went to the extent of registering its men as polling agents for other parties so as to create the impression that others too were involved in the election process.

These elections, however grotesque, were crucial in another sense. Whether a poll has been properly held in any electoral district or division is for the Elections Commissioner to decide; the release of results is proof that he has so decided. However, if he is to decide otherwise, he must then consult the political parties contesting that particular area. It is clear that he had doubts about the elections in the Vanni and Jaffna districts because he called for a meeting of all political parties contesting these two districts for 3 p.m. on 17th August, the day after the elections. All the parties present at the meeting supported, for different reasons, the acceptance of the results; the Commissioner accepted this position and released the results. If this had not been done, he could not have declared the election concluded and could not have proceeded to fill the national list. This would have thrown the country into political turmoil. The acceptance of the result in these two districts, however unrepresentative, was apparently the price to be paid for political peace.

MFFE's two-person team who reported from the Vanni electoral district of the Northern Province in the days prior to and on election day, characterised the elections as "free, but not necessarily fair..." calling attention to the myriad problems encountered there and the resultant low percentage of voter participation. One elementary problem they cited was the inadequate or inactive number of polling stations in many parts of the Province. The lack of adequate transport also certainly contributed to the low voter turnout.

In terms of the refugee vote, the team reported that approximately 15,000 Muslim refugees were entitled to vote and had their votes counted in the Vanni region. Indian refugees who returned prior to March 1993 were entitled to vote (those who came after this date - approximately 10,000 were not). But in at least one instance, of the 700 Indian returnees in the Asikulam camp (run by the Vavuniya Administration with the UNHCR) who applied for voting cards, only 75 were accepted by the Elections Commissioner and no explanation was given for the rejection of the other 625. Of the Tamil refugees from Jaffna living in Vavuniya, ostensibly entitled to cast ballots for Jaffna, very few applied for their voting cards.

Polling itself was free and efficient, "... but may be not fair" according to our team. Impersonation was largely avoided by requiring voters to bring ID papers and in some cases a special ID card issued by the army in Vavuniya; "we thought it was a wise decision to act like that in accordance with civil administration officials because this particularly avoided large-scale impersonation". The team did encounter one case of police misconduct in the town of Vavuniya at a polling place where the police inspector was greeting voters pistol in hand.

Nine persons were arrested on election day, 5 were from PLOTE either for alleged impersonations or for transporting voters to the polling stations. PLOTE had been accused of voter intimidation in the weeks leading up to the election.

Part VI - The Voting Rights of the Displaced

The ethnic conflict has left a large number of persons internally displaced. According to statistics maintained by the Director of Social Services, there are about 600,000 persons at present living in refugee camps run by the state or other voluntary organisations or with relatives. All these are entitled to state assistance. This figure is likely to be an understatement. Most refugees are either Tamil or Muslim, though there are also a smaller number of Sinhalese displaced from villages in the East.

By law, displaced persons have the right to vote in their places of refuge, provided that their names appear on the electoral registers being used. They have to make an application to the Elections Commissioner on a special form which asks for much detailed information. The applications have also to be made before a date specified by the Commissioner. Given the short time between the announcement of elections and the actual poll, the time available is limited.

In the face of all these difficulties, only 25,000 displaced persons applied for voting rights. Of these only about 19,000 were finally accepted by the Commissioner. This means that the large majority of the displaced were shut out of the election.

Refugees who had returned from India were subject to some special difficulties. Only those who had returned prior to March 1993 were deemed eligible to vote. At the Asikulam camp in Vavuniya which housed 2500 returnees from India, 2500 applied for the vote; only 75 of them were accepted by the Commissioner. No reasons were given for the denials.

This situation is particularly depressing when one notes that the votes of the displaced played a crucial role in determining representation from Jaffna.

Refugees also had to face armed threats. Refugees in the Saltern I camp in Puttalam were threatened with death or arson by the EPDP if they did not vote for them. In some instances, polling cards of refugees accepted for voting were taken from them by force.

During the same period, also in Puttalam, the Muslim Affairs Minister, A.H.M. Azwer, reported to the Elections Commissioner that he had learned that some poll cards were collected by an unauthorised person allegedly on behalf of the SLMC, from the Puttalam Post Office. The Minister expressed fears that these cards might be used to fraudulently cast votes at the refugee camps in Puttalam. At that time, he urged that the Postmaster at the Post Office issue the balance poll cards through the AGA and the *Grama Niladharis*.

Recommendations

It is necessary that the voting rights of refugees are accepted and that the formalities now associated with the exercise of this right be relaxed.

DNO. DISTRICT	REG. VOTES	EPFLY	UNP	TELO	TULF	NSSP	PA	DNC	DPLF	PPT	NEP	SLPT	SLMC	SHRP	INDI	IND2	IND3	IND4	IND5	VALID VOTES	REJECTED	TOTAL POLLED
1 COLONDO	1,235,899	--	385,100	1,113	--	2,050	469,642	589	--	42,734	11,454	1,243	19,278	9,251	1,002	--	--	--	821,933	36,635	858,568	
2 CAMPARA	1,140,808	--	375,631	0.12X	--	0.22X	509,030	0.06X	--	4,643	1,243	11,627	17,656	1,002	--	--	--	--	696,286	33,553	729,841	
3 KALUTARA	646,189	--	41,91X	--	--	--	56,793	--	--	339	5,914	6,238	17,656	270	208	--	--	--	86,39X	3,61X	90,01X	
4 KANDY	720,182	--	43,75X	--	--	--	267,683	--	--	0.07X	1,17X	1,23X	17,656	0.05X	0.04X	--	--	--	505,360	25,387	530,747	
5 MATALE	259,271	--	52,35X	--	--	--	46,43X	--	--	0.61X	0.53X	1,433	1,728	0.04X	--	--	--	--	84,89X	5,11X	90,01X	
6 NUWARA-ELIYA	386,668	--	40,61X	--	--	--	102,680	--	--	0.16X	0.31X	828	1,728	9,07X	--	--	--	--	301,918	41,592	343,510	
7 GALLE	632,422	--	58,12X	--	--	--	32,35X	--	--	306	4,145	7,239	17,656	0.06X	0.04X	--	--	--	492,914	20,673	513,587	
8 MATARA	503,410	--	41,24X	--	--	--	59,80X	--	--	1,422	0.736	2,736	17,656	0.06X	0.04X	--	--	--	379,467	17,167	396,634	
9 HAMBANTOTA	326,913	--	142,024	--	--	--	227,265	--	--	0.37X	2,30X	59,80X	17,656	0.07X	0.04X	--	--	--	246,478	13,539	260,018	
10 JAFFNA	586,386	263	38,87X	--	--	--	53,513	--	--	168	2,080	15,308	17,656	0.07X	0.04X	6,41X	--	--	94,80X	5,20X	100,00X	
11 VANNI	178,697	1,95X	7,650	--	3,039	44	5,583	11,567	27,36X	2,089	15,56X	15,56X	17,656	624	1,080	77	--	--	13,478	352	13,831	
12 BATTICALOA	281,698	8,20X	18,76X	17,073	76,516	0.10X	13,21X	27,36X	15,56X	15,56X	15,56X	17,656	17,656	624	1,080	77	--	--	97,45X	2,32X	100,00X	
13 DICMADULLA	312,906	2,76X	13,35X	8,81X	43,95X	--	11,07X	17,656	17,656	1,48X	4,45X	0.32X	17,656	1,547	556	--	--	--	174,080	15,531	189,611	
14 TRINCOMALEE	164,080	881	78,767	4,092	26,526	--	54,150	17,656	17,656	1,48X	4,45X	0.32X	17,656	1,547	556	--	--	--	91,81X	6,19X	98,00X	
15 KURUNEGALA	876,591	0.73X	32,547	3,09X	23,66X	--	19,91X	22,49X	22,49X	0.28X	31,19X	1,40X	17,656	0.89X	0.32X	--	--	--	240,766	12,716	253,482	
16 PUTTALAM	380,182	--	45,48X	1,74X	10,18X	--	22,49X	22,49X	22,49X	0.28X	31,19X	1,40X	17,656	0.89X	0.32X	--	--	--	94,98X	5,02X	100,00X	
17 ARURDAMPURA	406,926	--	142,064	--	--	--	180,454	19,91X	19,91X	2,886	4,890	0.48X	22,49X	0.51X	--	--	--	--	119,942	6,682	126,624	
18 POLOHARUWA	280,182	--	44,92X	--	--	--	53,16X	366,856	366,856	0.41X	0.71X	0.41X	17,656	0.41X	0.71X	--	--	--	94,72X	5,28X	100,00X	
19 BADULLA	436,260	--	76,706	--	--	--	81,18X	51,87X	51,87X	0.38	1,61X	0.38	17,656	0.41X	0.71X	--	--	--	707,278	30,071	737,350	
20 HODURAGALLA	199,391	--	47,61X	--	--	--	43,48X	150,60X	150,60X	0.30X	0.58X	0.30X	17,656	0.41X	0.71X	--	--	--	85,92X	4,08X	90,00X	
21 RATHNAPURA	554,607	--	182,131	--	--	--	43,48X	150,60X	150,60X	0.30X	0.58X	0.30X	17,656	0.41X	0.71X	--	--	--	280,728	13,144	293,873	
22 USSELLI	600,947	--	67,75X	--	--	--	77,95X	180,454	180,454	0.46X	1,05X	0.46X	17,656	0.41X	0.71X	--	--	--	240,766	12,716	253,482	
TOTAL	10,945,045	8,411	1,458,370	28,087	132,483	5,094	3,887,823	589	11,567	433,66,538	90,078	143,397	261	48,466	16,890	383	6,992	207	7,943,706	400,389	8,344,095	

August 12: Papers reported that complaints totalled 2750 complaints with a prediction of 500 incidents before election day.

Totals as of 10.30 p.m. August 15, 1994

A. Violations by district recorded/received by MFFE:

1.	Colombo	23
2.	Gampaha	7
3.	Kalutara	11
4.	Kandy	13
5.	Matale	20
6.	Nuwara Eliya	6
7.	Galle	4
8.	Matara	3
9.	Hambantota	1
10.	Jaffna	8
11.	Vanni	5
12.	Batticaloa	5
13.	Digamadulla	11
14.	Trincomalee	2
15.	Kurunegala	5
16.	Puttalam	8
17.	Anuradhapura	10
18.	Polonnaruwa	4
19.	Badulla	7
20.	Moneragala	9
21.	Ratnapura	14
22.	Kegalle	18
	District Total	196
B.	Police/Army Intimidation by Inaction by Complicity by Involvement by Pressure on	32
C.	Misuse of State Property	41
D.	Poll-Related Deaths	20

Election '94
Police Election Secretariat Statistics
August 16, 6 a.m.

	Intimidation	Minor Mischief	Major Mischief	Simple Assault	Serious Violence	Murder [†]
Ranges						
Colombo	88	24	6	60	4	1
Western (South)	125	47	1	58	3	0
Western (North)	115	28	0	81	6	1
Central	356	130	11	160	10	1
South (East)	59	28	0	35	2	0
South (West)	56	17	0	21	1	1*
North-Western (East)	71	40	3	52	0	1
North-Western (West)	204	69	2	103	4	3
North-Central	362	94	6	119	8	3
Uva	283	68	1	99	0	0
Sabaragamuwa (North)	179	63	1	98	3	0
Sabaragamuwa (South)	111	76	2	79	3	0
Eastern	41	38	5	34	3	1**
North	7	3	1	4	0	
Total	2092	725	39	1003	47	12 (2)

* Nagoda

** Eravur

ICJ COMMISSIONERS ASSESS ELECTIONS IN SRI LANKA

The International Commission of Jurists (ICJ) expresses its appreciation to the Commissioner of Elections of Sri Lanka for the invitation extended to it to send observers to the recently concluded parliamentary general elections.

The ICJ observers were its commissioners Justice Dorab Patel, former judge of the Supreme Court of Pakistan, Emeritus Chairman of the Pakistan Human Rights Commission and former Chief Chairman of the Pakistan Elections Commission; and Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of the Judiciary and President of Lawasia.

They joined 42 international observers from 12 countries and their task was to assess and evaluate whether the elections had been free and fair. The ICJ Commissioners reported that they were "generally free and fair except for the elections in the districts of Jaffna and Vanni". The reason being that Jaffna and Vanni, situated in the north of Sri Lanka, have been subjected to armed confrontation between the Sri Lanka security forces and the Liberation Tigers of Tamil Eelam (LTTE) and, consequently, the government controls only 20% of the land in Jaffna. The observers reported that in both districts people had been subjected to extensive intimidation by an armed political group who also presented candidates for the election.

Election throughout the 22 Electoral Districts of the country including Jaffna and Vanni proceeded on 16 August 1994. The observers stated that "the elections in those two districts were not only not free and unfair", but that "the genuineness of the same elections is questionable". They added, "We express our concern over the impact of the outcome of the elections in those districts on the outcome of the overall results of the General Elections". The ICJ Commissioners nevertheless concluded that "otherwise the election had been conducted with the highest democratic standards in difficult circumstances" and expressed their great admiration to the electorate of Sri Lanka who turned out in large numbers.

REPORT OF THE INTERNATIONAL OBSERVER GROUP (EXTRACTS)

CHAPTER I INTRODUCTION

Background

1. Under Section 24(1) of the Parliamentary Elections Act, No. 1 of 1981, the notice to hold the Tenth Parliamentary General Election of the Democratic Socialist Republic of Sri Lanka was given on Monday, 11th July, 1994, by the Commissioner of Elections, Mr. R.K. Chandrananda de Silva. The notification followed the dissolution of the Parliament by his Excellency the President Mr. D.B. Wijetunga on 25th June, 1994. According to Article 62(2) of the Constitution of Sri Lanka, the life of the Parliament is 6 years unless dissolved earlier.

The Parliament consists of 225 members of whom 196 represent the 22 Electoral Districts while the remaining 29 comprise the National List. The membership to the latter category is decided, following the polls, on the basis of nominations by successful political parties and Independent groups in proportion to the number of votes they received.

To elect the Tenth Parliament, 10,945,065 enrolled voters were called upon to exercise their franchise. The nominations commenced on 4th July, 1994 and closed on 11th July, 1994. The Election was held on Tuesday, 16th August, 1994.

To observe the Election, the Commissioner of Elections invited a team of International Observers comprising 44 persons from 12 different countries. According to the Commissioner, the proposal to invite the international observers was mooted by the Opposition Parties in one of his consultative meetings with them following the announcement of the election. The ruling party had endorsed the proposal.

This was the fifth occasion on which international observers were invited to observe elections in Sri Lanka. So far as Parliamentary General Elections are concerned, this was the second occasion, the previous occasion being the ninth Parliamentary General Election held on 5th February 1989.

The first meeting of the Group was held on 11th August, 1994 five days preceding the taking of the poll. The observers unanimously elected Mr. Douglas McClelland of Australia as their Chairman.

Upon the arrival of the international observers in Colombo, the Commissioner of Elections presented them with their terms of reference and briefed the Group on the administrative and security arrangements made for the conduct of the election. He explained the special problems faced in parts of the North-Eastern Province, particularly in the Jaffna district and parts of the Vanni district on account of the LTTE activities there. He further explained that elections in any part of the country could not be withheld because the Constitution of Sri Lanka provided for Parliamentary General Election only for the entire country and not parts thereof.

The details of meetings held with representatives of contesting political parties and NGO

groups are set out in later sections of this Report.

The group also met the members of the International and local media in Sri Lanka.

The forty-four international observers were invited to Sri Lanka as individuals and not as representatives of their government.

The Commissioner of Elections, to whom this Report is presented, will readily understand that it is not always possible for forty-four people to see things from the same perspective.

It is therefore pointed out that the observations and recommendations made in this report have been agreed to on a consensus basis unless it is specifically stated that it is by way of majority. A separate note by eight members is appended to this report.

Mode of Operation

2. It was evident to the Group that their presence was intended on the one hand to demonstrate the bona fides of the election authorities to uphold the rules of free and fair elections and on the other hand to re-assure the contesting parties and the Independent groups that deviations might be deterred by the presence of such a Group and in any event that deviations witnessed would be objectively reported. Some of the contesting parties had emphasized that in order to judge whether the election was free and fair not only must the observers seek to cover as many polling stations as possible but must also apprise themselves of the political and law and order situation in order to assess whether the overall situation and security arrangements had a bearing on the conduct of a free and fair election. In this context particular attention was drawn to the security situation in Jaffna.

In order to execute its terms of reference, the Group adopted the following approach to discharge its tasks:

- (a) Examination of documentary materials provided by the Elections Commissioner setting out the constitutional and legal framework for the Election;
- (b) Receiving information from the Commissioner of Elections and other officials regarding the administrative and security arrangements for the Election;
- (c) Examining information furnished by some of the NGOs;
- (d) Meeting leaders and representatives of contesting political parties and a cross-section of citizens to gather from them their apprehensions and concerns, if any, regarding the Elections; and
- (e) Field observations by visits to polling stations and counting centres throughout the country on the polling day.

The Group was committed to cover as many polling stations as possible in all the 22 districts of the country, recognising however the constraints of time and limited resources which would make an all-comprehensive coverage impossible.

The Group divided itself into 22 sub-groups for the purpose of undertaking field visits in each

of the 22 districts. All the districts were visited by two observers each, except Colombo and Gampaha where three observers each were posted and Moneragala and Digamadulla where one observer each was posted. The observers visited over 800 polling stations out of the 9,579 in the country.

After arriving in the districts two days before the poll (14th August), the members utilised the time available in holding discussions with Returning Officers, the local administration and security officials, representatives of political parties and a cross-section of citizens. The members also had an opportunity to speak to Senior and Junior Presiding Officers in polling stations as well as to Returning Officers and Assistant Returning Officers both before the poll and during the counting process.

On election day (16th August, 1994) each sub-group visited as many of the polling stations of their choice as possible to find out through observation and questioning of the election staff, polling agents and voters whether they felt that elections were being held freely and fairly and in accordance with the law. A set of guidelines formulated by the Group drew attention to the need to focus on the following matters while observing the electoral process: size of turn-out, adequacy of administrative and security arrangements, safeguards for the secrecy of the ballot and against impersonation, freedom from pressures and intimidation, compliance with legal procedures both during polling and counting.

After spending about three days in the districts the sub-groups reassembled in Colombo on 17th August, 1994. Each sub-group drew up its field report and exchanged information and impressions with other sub-groups.

Based on the observations and discussions amongst its members the Group presented its Report on 19th August, 1994 to the Commissioner of Elections.

Scope and Limitations

3. The terms of reference while dealing with different aspects of the electoral process were ultimately aimed at arriving at a broad assessment as to whether the Tenth Parliamentary General Election on 16th August, 1994 could be regarded on the whole as free and fair and conducted in accordance with the electoral laws and procedures of Sri Lanka. The Group was conscious of the inherently difficult nature of the task for a group of 44 persons who had arrived in Sri Lanka only four to five days before the election day.

Notwithstanding obvious constraints the Group felt that it could present certain broad findings based in part on direct observations of its members and on an assessment of reports received from and discussions held with the leaders and representatives of the contesting parties and a cross-section of Sri Lankan citizens.

CHAPTER II BRIEFINGS AND MEETINGS

Prior to the polling the International Observer Group (IOG) was able to meet a number of persons and groups.

The IOG was received by:

1. H.E. Mr. D.B. Wijetunga
President of Sri Lanka
2. The Hon. Ranil Wickremasinghe
Prime Minister of Sri Lanka
3. The Hon. Mrs. Sirimavo R.D. Bandaranaike
Former Leader of the Opposition

The IOG also received a briefing from the following:

1. Mr. R.K. Chandrananda de Silva, Commissioner of Elections
2. Mr. T.P.F. de Silva, Inspector General of Police

Representatives of the following political parties/organisations had meetings with the IOG:

1. The Eelam People's Revolutionary Liberation Front (EPRLF)
2. The United National Party (UNP)
3. The Tamil United Liberation Front (TULF)
4. A group of non governmental organisations through the International Centre for Ethnic Studies (ICES)
5. Sri Lanka Muslim Congress (SLMC)

The IOG was received by H.E. the President of Sri Lanka at the President's House.

The President extended a warm welcome to the Group and wished its members good luck in their task of observing the poll and assured the members that they were free to function in any manner desired. He said that the Eastern Province had been cleared of insurgency to the extent of 90% and he expected polling to be normal. In the Northern Province conditions were still unsettled though, in accordance with the law, elections would be held in the manner possible.

After the final results were declared he would be free, in terms of the constitution, to call upon any member who, in his opinion, commanded the confidence amongst the Members of Parliament to form the new government.

On behalf of the IOG, the Chairman of the Group thanked the President for his words of welcome; all political parties and the people of Sri Lanka for the honour done to members by inviting them and for their hospitality and assured the President that the IOG would submit to the Election Commissioner an impartial report.

The Hon. Prime Minister, Mr. Ranil Wickremasinghe (UNP) welcomed the presence of the International Observer Group during the General Election. He expressed his concern about the widespread violence during the pre-election time and especially on Nomination Day.

In reply to queries he made the following points:

- (i) All the ministers would continue in office until the end of the election. Earlier only Cabinet Ministers did so. However, they would have to pay for any government facilities used for political purposes.

- (ii) Concerning the situation in the North, he saw no problems of holding the elections in the Vanni area. But the situation was difficult in Jaffna, which was not totally controlled by the Government. Arrangements have been made by the Commissioner of Elections to hold elections there.
- (iii) On the future of the Presidential System he mentioned that the presidency cannot simply be abolished by Parliament. For that reason it would be necessary to amend the constitution or to hold a referendum.
- (iv) He was expecting a high voter turnout between 75 - 80%.

The Group met Mrs. Sirimavo Bandaranaike at her home at Rosmead Place, Colombo. She was accompanied by Mrs. Srimani Athulathmudali, Mr. Dharmasiri Senanayake (General Secretary SLFP), Professor G.L. Peiris (Political Adviser) and Mr. Rauf Hakeem (General Secretary SLMC) and other representatives of the People's Alliance.

Mrs. Bandaranaike and Mr. Senanayake expressed concern that the Government Party would engage in malpractices in order to stay in power. They also referred to the violence which had occurred in the period until the close of nominations, including the murder of 15 people. They believed that the killings were politically motivated.

Professor G.L. Peiris then elaborated on the main points to the Group. He expected 75 to 80% of the people to vote.

He was worried that the Government would impose a curfew before the ballot boxes were conveyed from the polling booths to the counting centres. He implied that during this period, the ballot boxes would be subject to interference. The People's Alliance was in favour of a curfew after all the ballot boxes had been delivered to the Counting Centres.

The Professor spoke about the role of the Police and the Army and referred to one incident when a man charged with attempted murder, was set free by Police as a result of intervention by the UNP. He alleged that a number of police promotions in recent weeks were politically motivated.

The allegation was made that the Returning Officers in certain sensitive areas were very close to the ruling party.

Concern was expressed regarding Government control of the state electronic media and Lake House Press.

The assurance was given that, if elected, a People's Alliance Government would be restricted to a maximum of 20 Cabinet Ministers and 20 other Ministers who would occupy junior posts.

In reply to a query he said that it was important that the election process should be completed. The courts had so ruled. He recognised that the situation in Jaffna raised some delicate points which needed to be handled with care. He believed the main political parties and the Commissioner of Elections were in agreement on this.

The Commissioner of Elections Mr. Chandrananda de Silva briefed the group. He was accompanied by the Co-ordinator Mr. Camillus Fernando.

The Commissioner said that the observers had been invited by him following an agreement to do so by all the political parties. The Group was invited to observe and not to monitor the election. He emphasised that they were completely independent and free to make their own observations. He then went over the terms of reference.

Regarding the poll in Jaffna he indicated that he had a constitutional responsibility to conduct the poll. The courts had rejected petitions that it should not be held. Under the law he could only annul a poll under stipulated circumstances that occurred during that poll. Once the results were announced the challenge lay once more with the courts.

The Inspector-General of Police, Mr. T.P.F. de Silva briefed the Group. He was accompanied by the DIG (Elections), Mr. I. Canagaratnam and the Director (Elections), Mr. G. Nicholas.

The Manual of Instructions for the Police was distributed to the members of the group. The IGP explained that it was the result of a constant effort to assimilate experience from the past and improve on it.

The role of the police was to provide its services to the Commissioner of Elections in the discharge of his responsibility to ensure a free and fair election. The police has a responsibility to society to provide an atmosphere of security and maintain law and order. Suitable deployments had been organised during the campaign and poll periods for this purpose.

In reply to queries he made the following points:

- (i) The Security for the elections in Jaffna would be supervised, by the Police. The armed forces would be providing necessary support.
- (ii) He acknowledged that the Police were aware of the allegations of threats in the displaced persons camps in Puttalam. These were being investigated by the camp administration.
- (iii) He saw no threat from violence to the conduct of the poll.
- (iv) The imposition of curfew was at the discretion of the President. If imposed on the night of the polling day it would have no effect on the poll or the counting. He did not envisage organised post-poll violence though he did not rule out sporadic incidents.
- (v) Regarding the allegations of partiality he pointed out that these were not necessarily correct. It should be noted that the allegations from both sides were about equal.
- (vi) The constitutional changes of 1978 by providing for some continuing authority in the President and the administration had reduced the uncertainty due to the total change occurring in previous elections. This, in his opinion, would act as a brake on violence.

The following representatives of the Eelam People's Revolutionary Liberation Front (EPRLF) met the Group:

Mr. L. Ketheeswaran
Mr. Chintan de Silva
Mr. A. Wilson

After giving the background and history of the party they made the following points:

- (i) No more than 20,000 out of the 600,000 electors of Jaffna will be able to vote. The EPDP is likely to intimidate many of those as it had been heavily armed by government authorities.
- (ii) Basic facilities for campaigning were not being provided. The Police are not always impartial.
- (iii) More than 50% of the electorate in Vanni would not be able to participate.
- (iv) PLOT and TELO are using intimidation and other malpractices in the Vanni district.

The United National Party (UNP) were represented by:

- (i) Dr. Gamini Wijesekera, General Secretary
- (ii) Mr. Daham Wimalasena, Campaign Manager

They said the UNP recognised this was a crucial election. They were convinced that it would be free and fair. All political parties were co-operating with the Commissioner of Elections and they had reached a consensus on arrangements at their joint meetings.

They made the further additional points:

- (i) There had been an eruption of violence on nomination day directed at the UNP. This has continued during the campaign. They feared intimidation on polling day. Their opponents were trying to create a fear psychosis. There was evidence of a resurgence of the JVP which they found disturbing.
- (ii) They acknowledged that polling in Jaffna would only involve a fraction of the population. This was not ideal. However as the courts had overruled the objection raised, the holding of the election was constitutional.

The Tamil United Liberation Front (TULF) regretted that as its members were busy with the campaign in the districts they could not meet the IOG. The following who were their attorneys at law met the group:

Mr. R. Balasubramaniam
Mr. N. Sinnathamby
Ms. R. Muttettuwegama

The points they made were:

- (i) Of the 600,000 registered voters in the Jaffna district only 1% live in the areas controlled by the security forces. This small number will be able to elect 10 members to Parliament. They held that free and fair elections could not be held.
- (ii) The polls register has not been revised since 1986.
- (iii) Arrangements have been made for displaced persons to cast their vote.

- (iv) The EPDP is a militant group which is assisting the security forces. They have filed an Independent list to contest elections in Jaffna. Other parties complain that the EPDP is preventing them from campaigning.

The group of non governmental organisations organised by the International Centre for Ethnic Studies (ICES) consisted of the following:

1. Ms. Suriya Wickremasinghe - Civil Rights Movement
2. Mr. Charles Abeysekera - INFORM and Movement for Free and Fair Elections
3. Ms. Radhika Coomaraswamy - ICES
4. Ms. Sakuntala Rajasingham - Civil Rights Movement
5. Ms. Deepika Udagama - Centre for Study of Human Rights, University of Colombo

IOG was informed that numerous local and some foreign NGOs and Human Rights Organisations were watching the elections. There were some umbrella organisations such as the Movement for Free and Fair Elections (MFFE), the People's Alliance for Free and Fair Elections (PAFFREL) and others. They were all apprehensive of irregularities.

They recalled that widespread violations of the law had occurred during the 1982 Referendum. So also during the 1989 Parliamentary General Election.

In this year's campaign, so far 14 deaths has resulted from election related violence. Their allied organisations were recording numerous infringements, irregularities and violations of the law and of the election code in many areas. The focus of their concern was particularly on the situation in and pertaining to the election in Jaffna. Their main concerns -

- (i) No fair and free election was possible in the Jaffna electoral district. Only about 1% of the voting population can vote in the 'cleared areas'. No nominations could be filed as required by law. Political parties have not been able to operate normally in the district. No normal campaign is possible. Movement of election officials and election material cannot take place freely or normally.
- (ii) Displaced persons from the North and East will largely be hampered in free exercise of their franchise.
- (iii) Presence of certain groups especially the EPDP and their armed cadres in camps are of concern to other parties.
- (iv) The electors list of Jaffna is based on the 1986 register thus denying the franchise to those who have become eligible to vote since then.
- (v) Out of 550 polling stations in the Northern and Eastern Region, polling would take place in only about 50 booths.
- (vi) Ten MPs would be returned by less than 1% of the electorate in the district and could hold the balance in the event of a close result.
- (vii) In their view the constitutional dilemma could only be decided by a special reference to the Supreme Court while the elections should be postponed.

- (viii) Batticaloa is still not quite normal. In Amparai the Tamils are hampered by the Special Task Force.

They would try to meet with the IOG after the election.

At its meeting with the IOG the Sri Lanka Congress (SLMC) was represented by:

- (i) Mr. Rauf Hakeem - General Secretary
- (ii) Mr. M.M. Zubair - National Organiser

Mr. Hakeem said that the SLMC had become the third largest political force in the country. The Party would be contesting the Elections in the Northern and Eastern Province in its own identity and as a constituent of the People's Alliance in the rest of the country.

The party's major apprehensions were intimidation, violence and coercion by supporters of the ruling party and police partiality towards the UNP.

He made mention of the following specific points and allegations in relation to the poll in the North:

- (i) Since it had not been possible to revise the Electoral Register in the Jaffna district in 1993, voting would be based on the 1986 Register. Consequently, voting would extend only to those above 26 years of age, thus excluding many who would otherwise be eligible to vote.
- (ii) The Eelam People's Democratic Party (EPDP) - an ally of the UNP - was freely roaming in the North, especially in the displaced persons camps in Puttalam, terrorising and intimidating voters, particularly supporters of the SLMC and the EPRLF. He termed the EPDP a private militia. In many cases polls cards had been deliberately withheld from voters in the camps in Puttalam.
- (iii) On account of the ground situation in the North, a poll of only about 28,000 was expected, viz. approximately 5% of the electorate of over half a million. They would return ten MPs who, in a close result, could affect the balance in the new Parliament.
- (iv) SLMC President Ashraff's letter to Prabhakaran had been distorted in the English translation. He would send an official translation (not received).

CHAPTER III

COMMENTS ON THE PRE-ROLL PERIOD

The fairness of an election cannot be assessed on the observations made on polling day alone: for clearer conclusions it is essential to consider the pre-poll conditions. Members of the International Observer Group were asked by the Commissioner of Elections to be in Colombo by 10th August; the Group had its first meeting on the afternoon of 11th August. The Terms of Reference given to the Group by the Commissioner covered the pre-poll period, and addressed among others the following issues:

- 1. Any complaints on the provision of equitable facilities to contestants
- 2. Media

3. Integrity of peripheral staff
4. Freedom from harassment
5. Enforcement of Sec. 74 of Parliamentary Elections Act, No. 1 of 1981 (Provisions relating to display of handbills, posters etc.)

In view of the timing of its arrival, the group could obviously only make a few direct observations regarding these issues. However, complaints made to Observers when they visited the districts related largely to the pre-poll period and very little to the polling arrangements and events on polling day itself. Although it was not possible for Observers to investigate and verify these, the Commissioner has requested our comments. As with our other observations, we make separate comments regarding those districts which include disturbed areas.

1. Equitable facilities

We received some complaints regarding access to facilities within the control of Provincial Councils. There were widespread complaints regarding the alleged use of state facilities by Ministers, MPs and Members of Provincial Councils. These related chiefly to the alleged use of government vehicles in the campaigns of UNP candidates. The number of UNP candidates who were ministers standing for re-election was substantial, as 91 of the 125 UNP MPs held ministerial office.

2. Media

One of the few direct pre-poll observations which the Group was able to make was the extent to which the government-owned newspaper group exclusively favoured the UNP in its reporting and features as well as its editorial opinion. The parties received equal time for their own broadcasts on the state television and radio stations; we were not able to assess the bias that has been alleged in their other programmes during the campaign.

3. Integrity of Peripheral Staff

We received almost no complaints regarding the manner in which election staff had carried out their pre-poll duties. There were many allegations, which we are unable to assess, that police had acted under the influence of politicians, principally by failing to take adequate action against violence by UNP supporters. We received a few allegations that village headmen (*grama niladhari*) attempted to influence voters.

4. Freedom from Harassment

Election-related violence was the major concern expressed to us before and during our visits to the districts. Each of the two main parties accused the other of responsibility for this, and the police confirmed that the supporters of each had been involved. People who were not involved in the election campaign on behalf of any party, while also citing incidents of violence by PA supporters, tended to attribute a greater proportion of the violence to UNP supporters. The recording by the Police of 2,119 'election related incidents' from 11th July to 7th August made available to the Group includes 18 cases of murder or attempted murder, 580 cases of assault and 913 cases of 'threat to kill' or 'abuse and threat'. The Police analysis shows the number of incidents attributed to each of the two main parties to be almost equal from 11th July to 7th August, with a somewhat greater number of complaints against the PA from 8th to 14th August. No analysis is available to us of the result of Police investigation into these incidents.

5. **Enforcement of Section 74: posters etc.**

The law regarding the display of posters, flags etc. was, as in previous elections, widely infringed by all parties. Although it opens the door to selective enforcement, we received few complaints of this.

CHAPTER IV OBSERVATIONS

Sri Lanka has 22 electoral districts. In Jaffna the vote was 2.32%. In Vanni it was 25.34%. The remaining 20 districts included 92.5% of the total number of registered voters, of whom 81% actually voted.

This is a tribute to the voters of Sri Lanka because this percentage has only been exceeded twice in recent Sri Lankan history, i.e. in 1977 and 1970.

The Group's 44 Observers visited over 800 polling stations on polling day out of the total of 9,579. We can testify only to what we saw directly at these polling stations, during the limited period of our visits.

While in all areas except those noted above, Election procedures were so well designed and administered that the election itself should be considered free and fair, the political context in which the election took place necessarily qualifies that conclusion.

The President of Sri Lanka, in his welcome to the Observers, remarked that there had been an escalation of violence in this pre-election campaign. These remarks were supported by other political leaders. The Inspector-General of Police reported to the Observers a large number of incidents had been recorded in the election information books kept throughout Sri Lanka. However the incidents of violence and disturbances as reported did not deter Sri Lankans from voting, in the opinion of a majority of Observers.

Some Observers received reports of or witnessed, the misuse of government vehicles by unauthorised persons, impersonation of voters at the polls, threats and interference during the campaign and on election day. However, it was the opinion of the majority of Observers that these violations did not affect the overall results of the elections.

As in previous elections, the Observers were constrained to note that the government is placed in a position of advantage because of its control of electronic media and the Lake House Press.

Previous Observer Groups have commented on the difficulty of enforcing the election law on posters. We repeat their recommendation that the Law should be reviewed.

We note that the facilities in some polling divisions were less adequate and as a result it was possible in some cases for Presiding Officers to see how a ballot was marked. Efforts should be made to bring the facilities within a polling station up to a minimum standard.

The Observers noted the number of spoiled ballots cast and suggest to the Commissioner of Elections that he considers measures to reduce their number.

Finally the Observers commend on the excellent preparations for the Election. Staff were well trained, procedures clear, and the necessary documents in place and on time. Sri Lanka's example in this respect could be a model for many other countries.

The majority of Observers have the opinion that the Elections were free and fair subject to the qualifications they make concerning Jaffna and Vanni.

VANNI AND JAFFNA DISTRICTS

Refugees and Displaced Persons

It was observed that there is a serious problem concerning the casting of votes by refugees and displaced persons. This was evident by the great difference between the large number of such persons, the low number who are registered and the extremely low number who actually cast their votes. The reasons given for this were various:

- (a) They lived so far away from where they were registered some years ago.
- (b) They had lost all interest in voting.
- (c) There was intimidation by armed groups.
- (d) Because of the long distances between camps and polling stations, public transportation was to be made available. It was not known if this was done or if it was adequate.
- (e) Because of the frequent moves which they have been forced to make since the last Electoral Registration, the registration lists have lost all reality.
- (f) They are completely unaware of how to become properly registered due to lack of information in a language they can read such as Tamil.

There are but a few of the reasons given and to what extent they are valid is impossible to determine. Every group or party who briefed us did stress this problem and it was obvious that it is one of great general concern.

There are two major groups, the first being those in organized refugee camps. It appeared that those who had been there long enough to be registered some time ago and were near their polling station, did cast their vote. One instance is of a camp which has been there four years and was 100 yards from the polling station, in which all 115 who were registered there did vote. In another instance a large number are now in a camp 25 miles from the polling station where they were registered, and only 5 cast a vote. The problem seemed to be that the registration of these persons in the camps is sadly out-of-date and the large majority are now too far removed from where they were registered many years ago, to be able to vote.

The second group are those scattered all over the island, some being constantly on the move trying to find a place where they can live and can make a living. Here again registration is so far out-of-date as to be practically useless.

A problem common to both groups is informing them as to how they can get proper identification, get their registration up-dated and then find out where to vote. Information has to be provided to

them in a language they can understand such as Tamil. Also common to both groups is the large segment who are now eligible to vote but who were too young at the last registration some years ago.

Vanni District

The election held in the 'cleared' areas were free and fair. However, the Parliamentary Elections were overwhelmingly influenced by the insecurity created by the insurgency/military situation in the North. While the administration of polling activity in the areas where it was possible to open polling stations was of a very high standard, these areas, regrettably, were so limited as to permit slightly less than 40% of the registered voters the possibility of exercising their ballot. In these circumstances one must conclude that the results cannot be viewed as reflecting the will of the people of the District as a whole.

The total number of polling stations in the District was 169, divided among three Divisions, Mannar, Vavuniya and Mullativu. Of this total the security situation only permitted the following numbers of stations to be opened:

Mannar	:	21 of 54 stations (39%)
Vavuniya	:	44 of 65 stations (68%)
Mullativu	:	4 of 50 stations (8%)

In total, therefore, only 70 of 169 polling stations (42%) were active.

Therefore in the Vanni District out of 90,456 registered voters only 71,397 were registered in active stations (34%) and 66% of the registered voters were unable to vote.

Security Influences on the Poll

The first defence line runs SW-NE approximately four miles north of Vavuniya and appears to be constantly moving, permitting territory to be designated 'cleared' and 'uncleared' and vice versa. The GA of the District, who is a co-operative and efficient person, had prepared maps of the Division, highlighting the location of polling stations with a number. Each number was placed in a circle (cleared) or a square (uncleared) zone.

Despite the efforts of the GA and his elections staff to address the problems created by the security situation, a significant level of confusion remained in the areas on the defence line.

We conclude by recording admiration for the many courageous election officials who administered this election without a major complaint being brought to our attention of dereliction on their part. Many of them had to spend the previous night in polling stations on the defence line or other generally insecure areas. The District Administrators deserve equally high praise for their efforts to ensure as fair a poll as possible under the circumstances. The tragedy of the Vanni District elections lies in the fact that insufficient areas and voters were able to benefit from his impartial and efficient administration for the over-all District results to be considered free and fair. The total turn-out of voters, 23.8% reflects the atmosphere of insecurity which prevails in the District.

Jaffna District

The election in the Jaffna district was overshadowed by serious problems that lead the observer team to the conclusion that the election in this district was neither free nor fair for the following reasons:

The main problem was that a large proportion of the electorate are displaced persons and thus unable to vote. This situation was demonstrated by the number of polling stations that either polled no votes or polled a tiny proportion of the registered electorate as well as large areas elsewhere in the district where no polling was planned or took place. This problem also affected the islands where there was an extremely large portion of the voters mostly the elders who could not vote due to the threat from the LTTE.

Much of the voting in the district took place under the total control of the EPDP, an armed political group that also presented candidates for election under the guise of Independent Group 2, and which used its weapons to intimidate both the voters and on at least one occasion on the islands, the polling staff. There was also a reported incident at the Kayts counting station, at which a member of the EPDP attempted to enter the counting station armed with an automatic rifle. He was turned away but later attempted, unsuccessfully, to enter a second time armed with two hand grenades.

The control of the islands in other parts of the district by the EPDP effectively stopped any other political parties from campaigning. This was a complaint that was expressed by all the other parties that were contesting the Election.

There were serious voting irregularities on the island of Delft. At one polling station a supporter of the EPDP had registered as a party agent for the EPRLF, presumably so that the complaint that no other party agent apart from EPDP was present would not be made.

The most serious irregularities took place at the polling station at Subramaniya Vidyalaya on Delft. The polling station was set a long way away from the nearest village. It was only on this island that polling stations had not been clustered. The irregularities included voters voting more than once. One voter voted whilst the Observer was present. When it was pointed out by the International Observer to the Presiding Officer, that a person being allowed to vote already had his finger marked the Presiding Officer responded "yes, but he has not voted here before", although the voter had been observed voting before at that polling station. Voters who had at other polling stations voted at this one. Underage voting also took place.

It was admitted to the Observer, that the EPDP had supplied photocopied voting certificates to voters who had already voted by an elector whom the Observer questioned. All these problems were brought to the attention of the Presiding Officer who failed to act. It should be noted that the Presiding Officer was originally from a local village, and the impression given was that his actions were brought about by fear of reprisals by members of the EPDP. The matter was reported to the Returning Officer for the district.

There was a constant threat from the LTTE although no election connected incidents took place during the Election.

All the factors listed gave the impression that the Elections in the Jaffna district were not representative. It was also considered that the number of seats, 10 awarded, on these results, almost 5% of the total number of seats in Parliament, was totally disproportionate since only slightly over 2% of registered voters in the district actually cast their vote.

It was noted that a helicopter and also the ambulance at Kayts army camp (although the use of government vehicles was strictly forbidden for election campaigning purposes), was used by Dr. Jayalath Jayawardena the Assistant Secretary of the UNP to visit some of the polling stations on the day of the election.

It must be stressed that the role played by the Police, Army and Navy was most professional and impartial. The Observers would also like to highly commend the polling staff for the highly efficient manner in which they carried out their duties.

TRINCOMALEE, BATTICALOA AND DIGAMADULLA DISTRICTS

Trincomalee

Despite the great unrest and refugee/displaced persons problem in this district, the Election was extremely well organised and administered. According to the police reports there was no violence or contravention of regulations. All those involved in the process were well trained and carried out their tasks competently and efficiently. The army guards and police were courteous and respectful. Everyone encountered at the polling stations (the Observers visited 29 during the actual polling) were happy and had no complaints. There were no violations of regulations in starting the election, the actual voting and the closing of the polls.

Thus we are confident that in the Trincomalee district this was a free, fair and equal election. We believe the people wanted it that way and were most happy to achieve it.

Digamadulla

Digamadulla has been an area of unrest with clashes between the three communities Sinhalese, Tamils and Muslims and with the LTTE activities.

In the areas meetings the Observer had with the local authorities, the Army, the Special Task Force, the Police and the two contesting political parties emphasised the low level of pre-election violence compared to other parts of the country.

The Election was well organised with no complaints regarding the technical procedure. The Observers visited 15 polling stations (out of a total of 312) during the actual polling and received no complaints by the polling staff or by the polling agents. In contrast to the incidents the day before, there were no major incidents reported on polling day. Thus it can be confidently stated that the Election in the district was free and fair and reflects the will of the people.

Batticaloa

Until recently Batticaloa was predominantly a disturbed area. Even in August 1994, it is estimated by authoritative sources that 20% to 25% of the district is still categorised as 'uncleared'.

Two indicators of this were evident with regard to polling:

- (a) A number of Polling Stations had to be 'clustered' in order to provide protected and convenient access to stations by voters.
- (b) At least 18 ballot boxes had to be air lifted from polling stations to the central counting centre due to threats of interference by armed groups.

In addition the Army remains prominently present throughout the district with numerous check-points.

Observers were able to visit 53 polling stations out of 250 stations. All arrangements facilitated polling in an orderly manner.

People voted with enthusiasm and determination in giving Batticaloa the distinction of being a partially disturbed area that nevertheless registered a turn out as high as 72%.

CHAPTER V CONCLUSIONS AND RECOMMENDATIONS

In view of the observations relating to the election in Trincomalee, Vanni and Jaffna Districts the following conclusions and recommendations are made:

1. It would appear that a part of the problem could be solved by having the Electoral Registration Lists brought up to date. This is an enormous task due to lack of communication and road system to the outlying areas. Just getting the word out to the people is most difficult with the lack of news media (Newspapers, Radio, TV) in the remote villages. It would however, solve many problems if this could be done, especially for the refugee camps and displaced persons who have been forced to settle themselves in new homes.

It is recommended that in preparation for future elections, notably the Presidential Elections that will be held soon, the Commissioner of Elections should, in so far as possible and as soon as possible, bring the register of eligible voters up to date in those districts in which the Electoral Register of 1987, serves to identify eligible voters. This is essential in order to enfranchise voters who have become eligible since 1987, including those who have been displaced because of security conditions in recent years.

2. In order to get the knowledge to the electorate of how to register, get proper identity and how to vote, somehow it will have to be given in the language native to most of the refugees and displaced persons, namely Tamil. It is realized that doing such things in two languages practically doubles the cost but sometimes, it can be done, at least in a partial manner, through public notices in schools, and other meeting places.
3. In view of the role of the EPDP in the Jaffna electoral district prior to and during the election, the group of Observers strongly urges the Government to ensure that political organisations should not also serve as armed units authorised by the Government to provide security in areas such as on the Islands of the Jaffna electoral district and in the camps of displaced persons. Such political organisations should be disarmed and should not be allowed to infringe - or appear to infringe - upon the rights of other legitimate political organisations in those areas. Only the police force should provide security during the Elections.
4. When Elections are held in the Jaffna and Vanni districts, with conditions of 'cleared' and 'uncleared' areas still in force, the designation of polling stations should be made early and every effort made to inform the affected voters with last minute re-designation being avoided as far as possible.
5. While the 'clustering' of polling stations for security is appreciated, it appears, in practice, not have served its intended purpose. Rather than giving the impression of providing an opportunity to vote by this device, the Commissioner of Elections may wish to consider the effected areas as beyond his administrative control.
6. Where polling stations are located in cleared areas to which normal transportation services have not yet been resumed, it will be necessary to give attention to ensuring the voters registered at these stations that they can travel there without hardship for the purpose of

casting their ballot.

7. It is recommended that the Commissioner of Elections and all election officials who worked indefatigably to ensure well-administered elections be highly commended for their efforts. The Group of International Observers have noted the high quality of the electoral process in Sri Lanka and the devotion to high standards.

The International Observers Group wishes to make the following further recommendations concerning the Elections as a whole.

Secrecy of the vote

There was a feeling that the writing of voter registration numbers on the counterfoil of the ballot books which themselves have a serial number which is duplicated on the ballot paper, might lead to a fear on behalf of some of the electorate that the intention of voters could be detected. A review of this practice might be considered.

Privacy of vote

It was observed that in many polling stations the Senior Presiding Officer was sitting so close to the polling screens that he was able to witness the way in which electors were voting. In some cases Junior Presiding Officers could also witness the way votes were being cast. More precautions should be taken to ensure the total secrecy of the vote.

Extra ballot boxes

The practice of allowing more than the necessary ballot boxes to be sent to polling stations might lead to the suspicion in the minds of some that the extra ballot box might be misused. Currently the extra ballot boxes are used to store extra stationery. This might be an area which could usefully be considered.

Lead up to the vote Posters

The law relating to the display of posters is regularly flouted. There are no limits on candidate's expenses, and the wealthier candidates are able to print and display more posters.

The law relating to poster displays should be reviewed, but this should be done in conjunction with some form of financial limits being imposed on candidates.

(One suggestion to reduce the number of posters being displayed was to make the candidates or party responsible for the posters being displayed, and making them responsible for the removal of these posters in a fixed period).

Misuse of State property

There were several observations relating to the use of state property or vehicles by Government Ministers during the campaign. This obviously favours candidates of the ruling party. It is recommended that government vehicles and property are not used to promote candidates during the election period. It might be appropriate to make the situation transparent by ensuring that government property and vehicles are not used by Government Ministers at all during the campaign.

Media

Consideration should be given to the non-feasibility of separating editorial control from government influence in order to limit partiality of state-owned media during any election campaign.

Firecrackers

It was noted that tension had increased during the period of the campaign, particularly during the last few days. In this atmosphere it was felt that confusion might result from the use of firecrackers during the campaign. This confusion might easily lead to fear, panic and injury which intensifies the tension of the election in the minds of the electorate. It is recommended that the law and the enforcement of the law relating to the use of firecrackers or any other explosive materials during the election period be reviewed.

Counting Centres

The International Observer-Group was impressed with the dedication of the counting centre staff utilised at the counting centres. Observers noted the conditions in which many of them had to work. They particularly noted the heat, and the length of time that staff had to work in these uncomfortable conditions. The Commissioner of Elections had previously noted the lengthy counting procedure in his report on the 1989 General Election. We recommend attention being paid to improving the conditions and facilities in which the counting staff and officials have to work.

Rejected Votes

A large number of votes were rejected due to incorrect markings. It is recommended that the causes of high rejection be examined and reviewed with a view to reduce rejection.

Select Committee Review

It was felt that an All Party Select Committee of Parliament might be established to consider all the recommendations of the International Observer Group. It was also agreed that the Parliamentary Committee be asked to consider the drawing up of a code of conduct for all candidates during the election period.

DOUGLAS McCLELAND

Chairman

19th August 1994

SEPARATE NOTE

We the undersigned, members of the International Observer Group, record this separate note to the main report.

We share with our other colleagues an extremely positive appraisal of the arrangements made by election staff for the conduct of the poll.

Like them, we are filled with admiration for the manner in which the voters of Sri Lanka went to vote in such large numbers in most districts.

However, we regard the main report as inadequate in the following important respects.

An election comprises many elements, some visible on polling day, some explicit and sharp in the pre-poll period, and others subtle but patent in the run-up to the ballot. The main report fails to see polling day as the culmination of a process with many preceding phases which affect its outcome.

The Commissioner of Elections in his invitation to us and in the Terms of Reference he gave us did not ask us to pronounce upon whether the election as a whole was free and fair: it is not for us to offer or withhold a stamp of approval. The Commissioner requested us to be available "in furtherance of the principle of free and fair elections". The Terms of Reference he gave us sought out comments not only on the conduct of the poll, but also on any complaints on the provision of equitable facilities to contestants, the role of the media, and freedom from harassment. Our opportunities to observe these directly have been limited, but we have had the opportunity to review documentation and hear from informed observers about them. The main report does not adequately examine the pre-poll situation and its implications.

The election-related violence, the abuse of state power and facilities and the partiality of government-owned media require qualifications stronger than those in the main report regarding the extent to which the overall election was equitable.

The main report records the inability to conduct polling in most of Jaffna district and large parts of Vanni district. Even where polling was possible, the elections were severely flawed by the absence of a fair opportunity to campaign in Jaffna, limitations on fair campaigning in Vanni and serious defects in the opportunities for displaced persons to register and vote. We therefore share the strong reservations of the majority of the International Observer Group regarding the overall elections in these districts. In our view, however, the report does not sufficiently emphasise the way in which this has distorted the allocation of Parliamentary seats.

Notwithstanding these qualifications, there is no disagreement within the International Observer Group that the Election has resulted in a peaceful transfer of power which is in accordance with the wishes of the majority of the electorate.

Dominique Francke (France)
M Amir-ul Islam (Bangladesh)
Javed Jabbar (Pakistan)
Walter Fanklin McLean (Canada)
Ian Martin (United States)
Michael McCormack (Guyana)
Mick Moore (United Kingdom)
Christian Wagner (Germany)

23 August 1994

The Northern Polls

by

Mario Gomez

For an election to be free, fair and democratic it requires the presence of at least four conditions:

From the perspective of the voter:

1. the freedom to cast his or her vote without intimidation or fear;
2. a multiplicity of candidates from which to select.

From the perspective of the candidate:

3. the right to enter his or her candidature for the election;
4. the freedom to campaign and meet voters in the electoral district being contested.

These four principles are implicit in the international law on the point and are fundamental if the government of the country is to be based on the will of the people. They are also implicit in Article 93 of the Sri Lankan Constitution which states that elections 'shall be free, equal and by secret ballot'.

In the recent Jaffna and Vanni elections all these four conditions were seriously undermined.

For those areas of the North under LTTE control, and where a majority of the people live, there was no opportunity for the population to exercise their vote, even if they had wanted to. In those limited areas under the control of the Sri Lankan army and where polling took place, the choice of candidates available to the population was limited; some key political parties being forced to stay out. The result was that a small proportion of the electorate in these two electoral districts, elected a disproportionate number of members of Parliament, from a non representative sample of candidates.

While theoretically it was possible for political parties to contest the elections in the North, in practice this was rendered nugatory by the fact that the major portions of the North were inaccessible for campaigning. Even in those areas under army control, access to political parties was restricted and only the government aligned Eelam People's Democratic Party (EPDP) was in any way capable of campaigning there.

Thus the majority of the population in these two electoral districts did not have access to polling booths to cast their vote. And in those areas where the population did have access to polling booths, voters were restricted to a limited range of candidates.

There were other factors which also seriously undermined the legitimacy of the poll. There was evidence of voter intimidation by armed government surrogates (EPDP). And the electoral list in the Jaffna district had not been updated since 1986, leaving those who attained 18 years after that date without a vote.

The Conflict

Since June 1990 there have been armed confrontations between the government of Sri Lanka and the LTTE and the area most affected by the fighting has been the Jaffna district. The district has been the nerve centre of the conflict and has been subject to frequent shelling. A large number of the population have left the area because of the fighting. The economic embargo imposed by the state had restricted the supply of certain items and medicines. There is no electricity in the area and thus it was not possible for political parties to broadcast or telecast material to that area.

At the time of the election and just before, the district was divided into LTTE and government controlled areas. In the Jaffna District about 80 per cent of the area was controlled by the LTTE. The balance was controlled by government security forces together with their surrogates, the Eelam People's Democratic Party (EPDP). Only about 10 per cent of the population live in government controlled territory.

In the Vanni District, the LTTE controlled about 70 per cent of the area with the government controlling the rest.

The state has not been in a position to hold Provincial Council or local government elections in the Jaffna district since 1989.

Pre-Poll Indications

It was evident before election day that only a small percentage of the Northern population would be able to exercise their franchise. It was clear before the elections that the Commissioner of Elections would not have access to most of the Jaffna district to open polling stations and conduct the poll.

In terms of section 24 of the Parliamentary Elections Act No 1 of 1981, the Commissioner was required to designate polling booths within reasonable access to the residents to enable them to vote. Since the state had no control over 80 per cent of the population it was impossible for the Commissioner to locate booths within reasonable access to the residents.

Moreover it was not possible to locate all booths outside LTTE controlled areas and within state controlled areas, since movement between these two areas is difficult and fraught with danger. It would also have required residents to travel large distances to vote.

It was also clear before the election that only the pro-state Eelam People's Democratic Party (EPDP) could effectively campaign in the limited areas not under LTTE control. In those areas under LTTE control, campaigning was not possible at all.

Before the election the Government Agent for Jaffna was quoted in a local Sunday paper as saying that the district was not ready for the polls¹. Despite these factors the state chose to go ahead with the poll in these two districts.

The Civil Rights Movement (CRM) in a statement issued before the elections, called on the

¹ 'Sunday Times', 24 July 1994

government to invoke the consultative jurisdiction of the Supreme Court on the Jaffna polls². The CRM observed that the conditions in Jaffna did not make it possible for free and fair elections to be held in that district. The CRM observed that there was a conflict between the democratic and constitutional imperatives to hold parliamentary elections within the required time frame and the requirement that voting be free and fair. The government did not respond to this suggestion.

Seven Tamil parties had earlier rejected a proposal by the government to share the ten seats from Jaffna by submitting a common list of candidates³. This would have obviated the need for a poll in Jaffna.

Polls

These pre-poll indications were confirmed by the actual voting which took place on election day. In the Jaffna District only those persons in the government controlled islands (predominantly Kayts) and some displaced persons in camps in Puttalam and Colombo were able to gain access to polling stations to cast their vote. In the Vanni District too a large proportion of the population could not vote.

The available information suggests that of the 600,000 persons who were registered and entitled to vote in the Jaffna district, only 13,000 people cast their vote⁴. This represents about 2.32 per cent of the total registered electorate from Jaffna and should be contrasted with the voter turnout rate outside Jaffna and Vanni which was 81 per cent. This statistic would shrink further if one takes into account all those who attained 18 after 1986, but who were not on the Jaffna electoral roll. Of the total number who voted, 10,000 were from the Kayts Island.

In the Vanni district approximately 25 per cent of the electorate voted⁵. Polling took place in only 67 (42 per cent) of the 169 polling stations, since it was not possible to operate the others⁶.

In the Jaffna district 13,000 voters were able to return the disproportionately large share of 10 members of Parliament, nine of whom were from the EPDP. In the Vanni district approximately 45,280 voters (25 per cent of the electorate) returned 6 members of Parliament⁷.

In contrast 530,000 voters returned 10 members of Parliament in the Kalutara electoral district and

² Article 129 of the Constitution gives the President the power to invoke the consultative jurisdiction of the Supreme Court, if a question of law or fact has arisen which is of such nature and of such public importance that it is expedient to obtain the opinion of the Court.

³ 'Sunday Leader' 10 July 1994.

⁴ International Human Rights Law Group 'Report of the International NGO Election Observer Mission to the Sri Lankan Parliamentary Elections', p 44. [Henceforth: Law Group Report]. This Group consisted of 35 members from 13 countries and was co-ordinated by the International Human Rights Law Group at the request of Sri Lankan NGOs particularly the Movement for Free and Fair Elections (MFFE) and the People's Action for Free and Fair Elections (PAFFREL).

⁵ Report of the International Observer Group, p 22 (Department of Government Printing). Henceforth: Official Observer Group. This Group consisted of 44 international observers from 12 countries invited by the Commissioner of Elections.

⁶ Law Group Report, p 44.

⁷ Interim Report of the Movement for Free and Fair Elections (MFFE), p 28

218,000 voters returned 5 members in the Matale district. In the Polonnaruwa electoral district 167,000 voters returned 5 members⁸.

Although information from the area is sketchy, it is reasonably clear that the poll was conducted amidst serious irregularities. Much of the voting in the Jaffna District took place under the control of the EPDP⁹. The EPDP also contested the election (Independent Group 2) and there is some evidence to suggest that the group was involved in attempts at intimidating voters and polling staff¹⁰.

The Official Observer Group (invited by the Commissioner of Elections) records one incident where an armed member of the EPDP had attempted to enter a counting station at Kayts and later attempted to enter a second time armed with two hand grenades¹¹.

The Official Observer Group refers to several voting irregularities that took place at Subramaniya Vidyalaya on the island of Delft, including voters voting more than once. Voting malpractices had taken place in the presence of one of the international observers¹². Although the irregularities had been pointed out to the Presiding Officer, no action had been taken and it appears that the Presiding Officer was an accessory to these irregularities.

The International Human Rights Law (NGO) Group in its report suggests that a solution that would have permitted eligible persons to vote, yet would not have given them such a large proportion of the parliamentary seats, would have been equitable compromise¹³.

On 17 August, the day after the election, the Commissioner of Elections called a meeting of political parties to determine whether elections in these two districts had been properly held. After hearing the representatives of the political parties the Commissioner proceeded to release the results. Had he withheld the results the Commissioner could not have declared the election concluded. Under Sri Lanka's complicated electoral laws he may not have then been able to fill the 29 national seats - decided according to the proportion of votes each party obtains throughout the country.

The Two Lawsuits

The moderate Tamil party, the Tamil United Liberation Front (TULF) had earlier filed two actions seeking judicial intervention to prevent polling in the Jaffna district. In both actions the Court refused to intervene.

In the first action the TULF applied to the Court of Appeal for writs of prohibition and certiorari seeking to prevent the Commissioner of Elections from conducting the elections in the District of Jaffna. The Court refused to grant the writs holding that the application was premature.

⁸ MPFE Interim Report, p 28

⁹ Official Observer Group Report, p 27.

¹⁰ Official Observer Group, p 27. See also Movement for Free and Fair Elections (MPFE). Interim Report, p 25.

¹¹ Ibid.

¹² Id. p 28.

¹³ Law Group Report, p 49.

In a second application, a member of the TULF filed an application under Article 126 of the Constitution alleging a violation of his fundamental rights guaranteed under the Constitution. He argued that his rights to equality before the law and to equal protection of the law had been infringed by the decision to conduct elections in Jaffna. He also argued that his rights relating to freedom of assembly and free speech were also infringed.

The Supreme Court dismissed the application at the preliminary stage, holding that the decision of the Commissioner of Elections to hold elections, was not 'executive or administrative action' in terms of the constitutional provisions. The Court also held that the Commissioner could not be restrained from setting in motion the electoral process in the entire country, including Jaffna. Non joinder of representatives of other political parties was also deemed fatal to the application by the Court¹⁴.

Internally Displaced Persons

The conflict has displaced thousands of people from the Northern and Eastern parts of the country. Various estimates place this figure at between 550,000 - 800,000 (both within and outside Sri Lanka).

The current law permits displaced persons to vote from their current residence for candidates in their home districts. Thus those displaced from Jaffna could vote for candidates in Jaffna from their current places of residence.

Despite the large number of displaced persons within the country, only a small number registered to vote and a still smaller number actually voted. Several of the eligible displaced persons did not apply for a polling card or a voter authorisation letter. Of those who applied several were deemed not eligible to vote.

The displaced were required to fill in application forms and register to vote outside their places of normal residence.

However the material required by the Commissioner was detailed and required information from the applicant's home district. Moreover in what is undoubtedly a major violation of language rights, the forms were issued in Sinhala, although most displaced persons speak only Tamil¹⁵.

Some of the displaced who did apply, however, were turned down by the Commissioner of Elections. Of those who returned from India, only those who had returned prior to March 1993 were entitled to vote. At the Asikulam Camp in Vavuniya, about 700 of the 2,500 who returned from India applied for polling cards. Only 75 were given polling cards¹⁶. No reasons were given to others for turning down their application¹⁷.

The state announced that 25,000 displaced persons had applied to vote. However ultimately only

¹⁴ S C Application No 201/94. Order delivered on 25 July 1994.

¹⁵ Official Observation Group Report, p 24-25 and Law Group Report, p 32.

¹⁶ Law Group Report, p 31.

¹⁷ Ibid.

19,000 were declared eligible to vote¹⁸.

The state has previously indicated that it provides food rations to a little under 600,000 displaced persons in the country. Of this number about 275,000 live in government controlled territory¹⁹ and therefore should have been eligible to vote.

In some cases displaced voters had to travel large distances to vote. The Official Observer Group recorded one instance where displaced persons had to travel 25 miles to cast their vote²⁰. The Law Group observes that there was a lack of transport facilities for those displaced persons who wished to commute to polling stations²¹. Better security would also have encouraged voters, the Law Group observed²².

There is also some evidence to suggest that displaced persons were subject to threats from members of the EPDP²³. The Sri Lanka Muslim Congress (SLMC) had complained to the Commissioner after the poll that several of the displaced in the Puttalam district who had registered to vote had been turned down at the polling station. In the East too, several of the displaced had not received their polling cards, or had received them on the day of the poll²⁴.

International norms prohibit discrimination in relation to political rights²⁵. Article 12 of the Sri Lankan constitution contains a similar prohibition. There is a substantial body of evidence to establish that these standards were infringed during the August Parliamentary elections.

International Norms

According to Article 21 of the Universal Declaration on Human Rights (UDHR) the will of the people shall be the basis of the authority of government. Article 25 of the International Covenant on Civil and Political Rights states that all citizens shall have the opportunity to vote at periodic elections and by secret ballot.

The Draft General Principles on Freedom and Non Discrimination in the Matter of Political Rights²⁶ states that every eligible national shall be included in the election roll. The Draft Principles also

¹⁸ Ibid.

¹⁹ Status of Human Rights in Sri Lanka, 1993. Law & Society Trust Report, p 259.

²⁰ Official Observer Group Report, p 25.

²¹ Law Group Report, p 46.

²² Ibid.

²³ MFPE Interim Report, p 27.

²⁴ Law Group Report, p 45.

²⁵ Draft General Principles on Freedom and Non Discrimination in the Matter of Political Rights. Annexed to Resolution 1 (XIV) of the Sub Commission on the Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/218, para 159. Also see Article 5 of the Convention on Elimination of All Forms of Racial Discrimination.

²⁶ Annexed to Resolution 1 (XIV) of the Sub Commission on the Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/218, para 159.

guarantee the voter the freedom to vote for the candidate or candidates 'he prefers'²⁷. The political opposition is given 'full freedom' for peaceful expression, and guarantees with regard to 'their free functioning' under the Draft Principles. They also have the right to present candidates at an election²⁸.

Other international norms on the subject also guarantee the 'freedom to seek, receive and impart information and ideas of all kinds' and the equal opportunity for all citizens to become candidates²⁹

All these principles have been infringed in the recent Northern Polls and it is apparent that the election from the two electoral districts of Jaffna and Vanni lack legitimacy and public validity.

Presidential Elections

For the Presidential elections it may not be possible to ensure that all those voters in the North have access to polling stations to cast their vote. However, as a minimum, it would at least be possible to ensure that all those who are displaced and who do wish to exercise their franchise are able to do so.

For this it would require that facilities for registration be expedited and that the information sought from them is not too detailed and is sought in a language in which they are familiar.

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²⁷ Article VIII.

²⁸ Ibid.

²⁹ Resolution of the Commission of Human Rights on 'Enhancing the Effectiveness of the Principles of Periodic and Genuine Elections: Framework for Future Efforts'. 1989/ 51 of 7 March 1989, E/1989/20, chapter II, section A.

Other international norms on the subject also guarantee the freedom to seek, receive and impart information and ideas of all kinds, and the equal opportunity for all citizens to become candidates. All these principles have been enshrined in the recent Northern Polls and it is apparent that the election from the two electoral districts of Jaffna and Vanni lack legitimacy and public validity.

Presidential Elections

For the Presidential elections to be held in a free and fair manner, it is essential that all those who have access to polling stations are given their vote. However, as a minimum, it would be desirable to ensure that all those who are displaced and who wish to exercise their franchise should be able to do so. It is suggested that the following steps should be taken to ensure that all those who are displaced and who wish to exercise their franchise should be able to do so.

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