



STATEMENT OF JOINT IRI AND NDI PRE-ELECTION ASSESSMENT MISSION TO SRI LANKA'S 2019 PRESIDENTIAL ELECTION

October 9, 2019

SUMMARY

This statement is offered by a joint international pre-election delegation organized by the International Republican Institute (IRI) and the National Democratic Institute (NDI). The delegation's purpose was to accurately and impartially review electoral preparations in advance of Sri Lanka's upcoming November 16 presidential election, and offer recommendations that could help improve the prospects for transparent, secure and credible elections, as well as public confidence in the process. This statement is also informed by an inclusion assessment conducted in Sri Lanka by NDI's gender, peace and conflict, and citizen participation experts during the first half of September. The inclusion assessment, which involved meetings with a diverse set of stakeholders in Colombo, Jaffna, and Batticaloa, examined the opportunities for and barriers to participation of women and marginalized communities in the electoral process.

Members of the IRI-NDI delegation included: Ambassador Karl Inderfurth, former Assistant Secretary of State for South Asian Affairs at the U.S. Department of State; Kara Bue, former Deputy Assistant Secretary of State for Political-Military Affairs; Maria Chin Abdullah, Malaysian Member of Parliament; S.Y. Quraishi, former Chief Election Commissioner of India; Manpreet Singh Anand, Regional Director for Asia and the Pacific, NDI; and Scott Mastic, Vice President for Programs, IRI.

From September 30 to October 4, 2019, the delegation met with: party representatives from across the political spectrum; the Election Commission; members of Parliament; government officials; civil society representatives, including leaders of citizen election observer groups; women political activists; representatives of media-related organizations; and representatives of the international and diplomatic communities. IRI and NDI conducted this mission in accordance with the Declaration of Principles for International Election Observation¹ and recognize that it is the people of Sri Lanka who will determine the credibility and legitimacy of their elections and their country's democratic development. The delegation therefore offers this pre-election statement in the spirit of supporting and strengthening democratic

¹ Available at <https://www.ndi.org/DoP>

institutions and processes in Sri Lanka. The delegation is deeply grateful to all those with whom it met and who shared their views freely.

As in 2015, Sri Lanka is facing a consequential national election, one that could determine the future direction of the country's democratic institutions. It provides an opportunity for the country to reinforce its commitment to pluralism and peaceful coexistence. The Easter Sunday attacks in April 2019 threatened to undermine the harmony that Sri Lanka has long-sought. Crucial to the country's underlying peace and security is its ethnic harmony, which may prove vulnerable during the electoral period. Constitutional amendments enacted following the last presidential election established an independent Election Commission, which has earned the trust and recognition of almost every stakeholder who met with the delegation. Sri Lanka, however, faces significant challenges in this election:

- The absence of the country's most prominent leaders -- the president, prime minister and leader of the opposition -- from the ballot is expected by Sri Lankan stakeholders to result in a more open field. This might result in the possibility that none of the candidates reach the absolute majority needed to secure the presidency in the first round of ballot counting. As a result, this would trigger the need for the Election Commission to take into consideration voters' second and third preferences under Sri Lanka's preferential voting system.²
- Partisan private media outlets are exacerbating a toxic media environment.
- Social media has the potential to become a conduit for election-related information. However, its abuse contributes to misinformation, disinformation and hate speech against candidates or minority groups.
- Generally, there was a low level of concern about potential pre-election violence. However, this security assessment could change in the event of uncertainty over the final electoral outcome.
- Lack of campaign finance laws reduces the overall transparency of the election process and potentially obscures questionable transactions and conflicts of interest. It opens to the door to illicit forms of finance, including from foreign sources, as well as abuse of state resources.
- Women and other marginalized groups continue to face barriers for political participation, such as the high cost of campaign financing, routine violence and discrimination, in person and online, and entrenched stigma and stereotypes around their capacity to effectively lead.
- Significant numbers of Sri Lankan voters are disenfranchised. This includes nearly two million Sri Lankans abroad. In addition, an estimated 180,000 youth who will be 18 years old on election day and have not yet been included on the electoral roll.

In light of the above findings, the delegation offers recommendations for the consideration of the Election Commission, government, political parties, and other electoral stakeholders for the presidential election as well as for the upcoming parliamentary elections. Key recommendations include:

² Under Sri Lanka's preferential voting system, each eligible voter can select up to three candidates on the ballot, prioritized by order of preference. During the first ballot count, only first-preference votes are considered. If none of the candidates receive more than 50 percent of first-preference votes, the Election Commission conducts a second count to allocate second- and third-preference votes to the top two candidates from the first count. Whichever candidate receives more votes after the second count is declared the winner.

- **Media Bias:** The Election Commission should promulgate stronger guidance on the responsible and ethical use of media -- print, broadcast, and social -- and promotional materials by candidates and their supporters during the election campaign. Public and private media outlets should abide by this guidance, especially in relation to unbiased and equitable coverage of all candidates. Following the presidential election, Parliament should consider legislation, in conjunction with the Election Commission, to curb hate speech, misinformation and disinformation in private media, while protecting freedom of expression and access to information.
- **Campaign Finance:** To increase the transparency of the electoral process and empower citizens to make more informed choices, presidential candidates should make public the asset and liability declarations they submit to the Election Commission. Over the long-term, Parliament should take up the issue of campaign finance limits, reporting, and foreign contributions.
- **Voter Education:** The Election Commission, political parties, media, and civil society should increase voter education initiatives, especially regarding the preferential vote system and ballot marking. There should be an increase in targeted voter education campaigns for women, young people and citizens who live in rural areas, focusing on the importance of each citizen's vote, access to electoral dispute resolution mechanisms, and accessibility and accommodations for persons with disabilities.
- **Code of Conduct:** Sri Lanka's political parties should agree to a voluntary, multiparty Code of Conduct facilitated and enforced by the Election Commission that is consistent with best practices, and helps mitigate the potential for violence and the spread of misinformation, disinformation and hate speech.

ELECTORAL CONTEXT

As the oldest democracy in Asia, Sri Lanka has a strong tradition of conducting credible electoral and political processes. Constitutional reforms enacted in 2015 ensure the strength, integrity and independence of the Election Commission, which stakeholders generally consider to be a well-respected institution. Police independence from political influence has been strengthened through constitutional measures; the military does not play a role in election security. Representatives of Sri Lanka's civil service and police are detailed to the Election Commission during the electoral period, ensuring that elections are routinely well-run and that election administration is deeply institutionalized.

Political party dynamics are shifting rapidly, and this year's election is expected to be more competitive than past contests. Given this unprecedented party landscape, election experts predict that it will be even more difficult than in the past for a single political party to achieve the absolute majority needed to win the election in the first round of counting ballots. This would trigger a count of voters' second- and third-preference votes under Sri Lanka's preferential voting system to determine the winning candidate. A partisan media environment, especially among privately-owned outlets, could deprive voters of the unbiased information they need to select their preferred candidate. Partisan media, combined with the proliferation of social media, could also be instrumental in the dissemination of misinformation, disinformation and hate speech against individual candidates or vulnerable groups. In addition, the potential misuse of public resources could give an unfair advantage to specific candidates and reduce trust in the process.

Ten years after the end of Sri Lanka's civil war, the country's peace came under assault by the Easter Sunday terrorist attacks of April 21, 2019. Heightened security concerns during the presidential election could fuel fear-based and divisive campaign rhetoric, particularly against the Muslim community and ethnic minority groups. Traditional and social media will be under increased scrutiny not to inflame communal tensions. Political parties and candidates will be potentially constructive or disruptive conduits of information as they engage voters. In addition, election officials and citizen election observers will need to maintain the strictest impartiality as they carry out and monitor the polls.

MAIN OBSERVATIONS

Election Administration

The 19th amendment to Sri Lanka's constitution, brought into force after the 2015 elections as part of a larger set of reforms, established an independent Election Commission. In general, local stakeholders that met with the delegation view the Election Commission as impartial and having the capacity to conduct credible elections. There is also a high level of trust in the electoral roll (voters list). The annual voter registration process is considered to be effective overall, but there are still some challenges in access for persons with disabilities, transgender individuals, and women. In addition, approximately 180,000 young people who will have turned 18 by election day will be unable to vote, because they came of age after the May 31, 2018 cut-off date.

There is a view among some that for the first time since the executive presidency was established in 1978, the outcome may be impacted by citizens' second- and third-preference votes. The delegation, however, noted a low level of understanding of the preferential vote system, especially regarding how the second- and third-preference votes would be counted. This is a clear gap in voter education that could result in an increased number of rejected ballots or the possibility of post-election unrest if voters are not well-informed about how preferential votes are allocated to determine the winning candidate.

The electoral framework gives the Election Commission the authority to direct the work of government institutions and public servants. Exercising this authority, the Commission has issued guidelines for the media, as well as directions for public servants to prevent the misuse of public resources for political gain. As in previous elections, the Election Commission enforces a silence period on campaigning and other electoral authorities 48 hours before the end of the voting. Absentee voting is restricted to government workers -- police, military, and civil servants. Out of country voting and proxy voting are not allowed, resulting in the disenfranchisement of approximately two million migrant workers currently living abroad. Members of the diaspora who wish to vote must meet the criteria for voter registration and be in the country on polling day.

Media and Information Environment

In general, private media outlets, including mainstream media, were described to the delegation as highly partisan, proxies for political actors, and, at times, a source of misinformation and disinformation. This reduces citizens' opportunity to make a well-informed decision in selecting their preferred candidate. The media environment is highly polarized, with ownership of private outlets resting with political elites.

While the Election Commission does not have any authority over privately-owned media, it has full control of state media during the election period. This is seen by some stakeholders as a way to ensure unbiased and equitable coverage on state media. Others noted the need for the Election Commission to use its authority with state media to curtail hate speech or the spread of misinformation and disinformation.

A number of civil society organizations, including journalist groups, expressed concern about Sri Lanka's national television network, the Sri Lanka Rupavahini Corporation (SLRC), being transferred from the Media Ministry to the Ministry of Defence ahead of the presidential election. While internet penetration and social media are drivers of historical narratives and political debates, television broadcasting by the traditional media remain the most important medium of public communication. With this in mind, the SLRC move, some felt, does not bode well for balanced broadcasting and equal access for all political groups. Traditional and social media will be under increased scrutiny not to inflame communal tensions, as has recently been the case amid allegations Facebook is being used to incite violence against Muslim communities. Civic activists, however, also noted that recent internet and social media shutdowns have curtailed their ability to communicate and conduct their own activities.

Given the possibility of no candidate getting an absolute majority during the first-preference count, some stakeholders noted the need for the Election Commission to widely broadcast nonpartisan voter education messages in state media, particularly regarding ballot marking as it relates to preferential voting.

Security and Electoral Violence

The Sri Lanka police is responsible for ensuring the security of the country's electoral processes. Police independence from political influence has been strengthened through constitutional measures, and stakeholders noted that the police at the national level is generally seen as neutral or unbiased. There are concerns, however, about the role of local-level officers in administering electoral security and responding to electoral violence. Pre-electoral violence was not highlighted as a significant concern, although some worried about intimidation aimed at suppressing turnout among marginalized communities. There was a higher level of concern about possible post-election violence, depending on the conduct of the election and the behavior of losing candidates and their activists. Voters' low level of understanding of the mechanics of the preferential voting system was cited as a specific potential trigger of electoral violence.

Campaign Finance

In Sri Lanka, there are currently no laws governing campaign finance, nor public mechanisms to monitor campaign spending. Specifically, there is no legislation requiring candidates to report their campaign contributions or expenditures. This reduces the overall transparency of the election process and potentially obscures questionable transactions and conflicts of interest. In addition, candidates must use their personal funding and professional networks to finance their campaigns. This represents a significant barrier to the participation of women, youth, and marginalized groups with limited access to funding. It also opens to the door to illicit forms of finance, including from foreign sources, as well as abuse of state resources.

The Election Commission currently collects asset and liability declarations from candidates. A recent ruling by the Right to Information (RTI) Commission decided that these declarations fall under RTI and, therefore, should be available to citizens upon request. The delegation heard suggestions that asset and liability declarations, in the interest of transparency, should be made available to the public. It was suggested to the delegation that other legislation would prevent the Election Commission or individual citizens from making the declarations public. However, there are no barriers to candidates themselves making them public.

Political Parties and Candidates

For the first time since the creation of the executive presidency in 1978, none of the country's most prominent leaders -- the president, prime minister or leader of the opposition -- was nominated as a candidate. Unlike in previous elections, when there were two dominant candidates and the winner obtained an absolute majority of first-preference votes, many expect that the combination of candidates in this election will result in no candidate receiving more than 50 percent of the vote, triggering the count of second- and third-preference votes.

Around the world, and especially in situations with higher risk of electoral tensions or violence, domestic institutions and international organizations such as NDI and IRI have helped political parties negotiate codes of conduct committing them to conduct respectful and policy-based campaigns, and to avoid the dissemination of misinformation, disinformation and hate speech. In Sri Lanka, individual parties have adopted codes of conduct, which are difficult to enforce, but have not agreed to a multi-party code of conduct yet for this election. Some stakeholders noted the high potential for abuse of state resources by candidates and their supporters in the pre-electoral environment. Such abuse can take many forms, including state subsidies for transportation, materials and other in-kind contributions.

Women's Inclusion

Sri Lanka is rightfully proud of having elected the world's first female head of government.³ However, the percentage of women in parliament remains extremely low at 5.7 percent of the representatives (13 out of 225 MPs), with low levels of women in the cabinet and other appointed political leadership roles as well. While Sri Lanka introduced a 25 percent quota for women at the local level in 2018, there has been no effort to introduce similar quotas at the provincial or national levels.

Women not related to established political families face a number of barriers to running for office, including the high cost of financing campaigns, routine violence and discrimination both in person and online, and entrenched stigmas and stereotypes around their capacity to effectively lead in politics. Perpetrators of violence against women in politics include family members, party colleagues, opposition politicians, and the general public. There currently are no laws that explicitly criminalize violence against women in elections or provide any protections. Sanctions provided for in the legal framework lack effective enforcement. Young women, in particular, face challenges linked to both their gender and their age. At the same time, Muslim women in politics, civil society, and business, as well as some Muslim men, are actively working to enhance Muslim women's political participation and leadership.

³ Sirimavo Bandaranaike became the world's first female head of government when she was elected as Prime Minister of Sri Lanka in 1960.

Inclusion of Marginalized Groups

Among marginalized groups that the delegation and inclusion assessment team met with, elections have been increasingly perceived as a mechanism to further entrench elites. This further perpetuates barriers to marginalized communities' electoral and political participation. The lack of campaign finance regulations, including lack of spending limits, creates very high financial barriers for candidates outside the party establishment, especially for women, minorities, and young people who are not part of the elite.

Ethnic and Religious Minorities

It may be more difficult than in previous elections for a single political party to achieve, with their base alone, the absolute majority needed to win the election outright. Thus, there are strong political incentives to attract minority voters. Minority communities, however, expressed a great deal of frustration and disappointment, born out of the dashed expectations for change and reform since the end of the civil war. This is particularly acute among Tamil communities and could dampen their participation in the election.

Minorities generally have access to appropriate documents for registering to vote and to accessing polling locations for casting their ballots. However, some stakeholders noted that there could be efforts to use intimidation, violence, and abuse of state resources to suppress Tamil and Muslim votes in the East and, in particular, Muslim villages ensconced in majority-Sinhala areas. There is some fear that religious-nationalist groups will seek to engage in targeted violence against the Muslim community to suppress the Muslim vote.

Youth

Many young Sri Lankans who were not yet eligible to vote during the 2015 presidential election will turn 18 years old by November 16. Approximately 180,000 came of age after the cut-off date for the annual electoral roll for 2018, which will be used for this year's electoral process. There is a perception amongst some that young people are not enthusiastic about this presidential election. Young people feel that they are often either ignored by political parties or used as an opportunity for the party to strengthen its position in an area or with a particular minority group, which could lead to apathy and low voter turnout among youth. There are few opportunities for Sri Lankan youth to collectively organize politically. They face significant barriers to accessing leadership positions within movements and parties, due to the perception that they are inexperienced, lack of support from political parties, and the high cost of entering politics and funding campaigns.

Persons with Disabilities

Persons with disabilities face several barriers to voting, including less accessible voter education and information on party platforms, insufficient physical access to polling stations, and lack of ability to vote independently and in secrecy. Under the Presidential Election Act, two types of accommodations are allowed: assisted voting and transportation that allows a person with disabilities to pull up to the polling station. The voter list is now designed to include information on voters' needs for special assistance or accommodation, but the approval process is seen as cumbersome and confusing. While the Election Commission has

made some efforts to assess the types of accommodations voters need through a survey, the findings will not be ready in time to be used for the presidential election.

Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Voters

Members of the LGBTI community face broader social discrimination, which impacts their ability to participate as voters, party activists, and candidates. Some politicians use derogatory LGTBI terminology as a way to attack their opponents. The transgender community faces additional challenges with changing gender on their national ID, which impacts the ability of transgendered men and women to register and vote. Because of this, members of the transgender community are at risk of being accused of voter fraud if they attempt to vote with documentation stating a gender that does not match their physical appearance. This significant barrier drives many to decide not to vote at all.

Civil Society, Including Citizen Election Observation

There is a high level of engagement of civic activists in Sri Lanka's political and electoral process. For the November 16 presidential election, civic groups plan to engage in voter education, media monitoring and election observation. Civil society organizations are also encouraging political parties and candidates to campaign based on specific policy proposals with citizens, including through a multiparty candidate dialogue conducted on October 5. Citizen observer organizations reported that they plan to cooperate to monitor the election, with the goal of deploying long- and short-term observers.

RECOMMENDATIONS

The delegation offers the following recommendations for consideration in the lead up to the presidential election and thereafter.

Election Commission

- As part of its voter education efforts, educate voters about the voting process, including marking their second and third preferences under Sri Lanka's preferential voting system.
- Publish sample (specimen) ballots early enough to allow political parties and civil society groups to educate voters on the voting process, including preferential voting.
- Given the higher likelihood that no candidate will receive an absolute majority during the first preference count, ensure that poll workers and counting officials are adequately trained to administer the preferential voting process.
- Encourage employers to allow employees, in accordance with the law, to take time off to travel to their place of registration to vote.
- Deploy observation teams to known hotspot areas in the North, East, and key Muslim-majority areas to ensure equal access to the vote as well as rapid response to violence and intimidation, and prioritize the deployment of Tamil-speaking police officers to Tamil-speaking communities.

Women's Participation and Youth

- Increase targeted voter education campaigns for women, young people and the 70 percent of Sri Lankans who live in rural areas, focusing on the importance of each citizen's vote, access to electoral dispute resolution mechanisms, and accessibility and accommodations for persons with disabilities.

- Publish guidelines for police officers working to safeguard the elections to ensure they act professionally and in an unbiased manner, seeking the protection of all citizens regardless of gender, ethnicity, religion, sexual orientation or political affiliation.
- Prioritize recruitment and training of an increased number of women police officers and election personnel at checkpoints and polling stations, especially in Muslim concentrated areas.
- Enhance the participation of young people by strengthening relationships with active, national youth-led organizations.

Media

- State and private media should follow Election Commission guidelines, especially those regarding ethical, equitable, and unbiased coverage of all candidates.
- In coordination with the Election Commission, state media should publish and broadcast public service announcements to increase voters' media literacy and educate citizens on the voting process, including preferential voting.
- In the longer-term, media companies should consider creating a joint, independent watchdog unit to provide guidance and oversight on ethical reporting, including on electoral processes.

Joint Efforts to Mitigate Violence and Combat Hate Speech

- The Election Commission, election observer groups, and other civic organizations, including those involved in interreligious and inter-communal dialogue, should actively monitor the election period for early warning signs of rising violence.
- The Election Commission and civil society should collaborate to monitor and report on misinformation, disinformation and hate speech, and abuse in the print and electronic media (including online) and on social media platforms.
- The government, civil society and social media companies should work together to develop coordination mechanisms to detect hate speech on their platforms, and to swiftly address instances of misinformation, disinformation and hate speech reported by Sri Lankan authorities, political parties or civic organizations.

Political Parties and Candidates

- To increase the transparency of the election process and empower citizens to cast informed votes, presidential candidates should make public the asset and liability declarations they submitted to the Election Commission.
- Sri Lanka's political parties should agree to a multiparty Code of Conduct that is consistent with regional norms and best practices, and helps mitigate the spread of misinformation, disinformation and hate speech. This Code could include:
 - a) A commitment to promote policy alternatives responding to the interests, the concerns and the needs of all the citizens of Sri Lanka, and promote consensus building on issues of national importance;
 - b) Establishing mechanisms for the meaningful inclusion of women, young people, ethnic and religious minorities, persons with disabilities, and LGBTI communities in their policy-making, representation and mobilization;
 - c) Ensuring that none of the party's pamphlets, newsletters, posters, political broadcasting on any media, nor their speakers at political rallies uses language

that is abusive, inflammatory, or divisive; or threatens or incites violence in any form against any other person or group of persons;

- d) A commitment not to use state resources for partisan gain; and
- e) A mechanism by which violations of the Code of Conduct will be addressed in a timely and transparent manner.

Parliament (post-election)

- Enhance the transparency and inclusiveness of elections by enacting campaign finance legislation regulating both domestic and foreign contributions to political parties and candidates, as well as expenditures.
- Strengthen the legal framework to ensure accountability for the misuse of state resources for partisan gain.
- Enable registration and voting by citizens who turn 18 years old on or before election day, and consider mechanisms to enfranchise Sri Lankan citizens abroad.

Civil Society

- Conduct targeted voter education campaigns, particularly on the preferential voting system, and accessibility and accommodations for persons with disabilities.
- Disabled persons organizations should engage with the election commission to expand available assistance at polling stations. This should include streamlining the process of securing the assistance that is already available - transportation and assisted voting - and ensuring that the process is clear, easy, and readily available for all voters who require assistance.
- Citizen election observer groups should prioritize the recruitment of women and young people as observers. They also should continue including persons with disabilities as election observers and engage with disabled persons organizations to help overcome logistical barriers around providing assistance to observers with disabilities.
- Work to sensitize election authorities about the barriers faced by the transgender community, especially with regards to the gender reflected in their national IDs.

International Community

- Provide full support to domestic and international observers monitoring the presidential election.
- Follow up with the Election Commission on recommendations made during past elections, focusing on the stringent application of the laws to increase the inclusion, transparency and accountability of the process.

IRI and NDI are nonprofit, nonpartisan organizations dedicated to supporting and strengthening democratic institutions worldwide through citizen participation, openness and accountability in government. For more information about IRI, please visit www.iri.org. For more information about NDI, please visit our website, www.ndi.org. The delegation expresses its appreciation to the U.S. Department of State for supporting this mission.