



**Report of the Post-Election Assessment  
of Sri Lanka Mission**

**November 28 – December 2, 2000**

**December 28, 2000**

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## I. INTRODUCTION

From November 28 to December 2, 2000, the National Democratic Institute for International Affairs (NDI) undertook a post-election assessment mission to review the nation's electoral framework and make recommendations to assist civil society organizations and other interested parties in developing reform initiatives in the post-election period. NDI's assessment team included Andrew Ellis, NDI Senior Advisor on constitutional reform, electoral reform and decentralization, Shari Bryan, NDI Deputy Director for Central, East and West Africa Programs and Tarikul Ghani, NDI Resident Representative for Cambodia and Sri Lanka. During the week, the team met with various representatives from many of Sri Lanka's political parties and from civil society as well as international agencies, the Election Commissioner and academics. This report outlines their findings and recommendations.

The specific objectives of the mission were:

- to examine the current legal framework and electoral process in Sri Lanka;
- to make recommendations for improving the election process in Sri Lanka;
- to suggest how civil society, government officials, political party representatives, members of parliament and others can work together to develop a systematic program to advance these reforms; and
- to recommend strategies for improving Sri Lankan civil society's ability to institute political reform especially with regard to future election monitoring effort.

The 2000 parliamentary elections were, by any measure, violence-plagued, resulting in approximately 75 deaths. Thirty-four people were victims of two Liberation Tigers of Tamil Eelam (LTTE) suicide bombings before the election. Sri Lanka has experienced a gradual yet clear deterioration in the quality of elections since universal adult franchise was first exercised in 1931. Inadequacies in the legal framework governing elections and institutional weaknesses in the election administration along with evidence of fraud and manipulation have undermined the validity of recent elections. Reports written by domestic and international election observer groups assert that the 1994 parliamentary and 1999 presidential elections were wrought with serious electoral violations and violence. The 1999 electoral complaints reveal a significant increase in the major incidents of murder, arson, robbery and intimidation.

In order to deter such abuses and provide an independent check on the electoral process, the leading election monitoring organizations in Sri Lanka—the People's Action for Free and Fair Elections (PAFFREL) and the Centre for Monitoring Election Violence (CMEV)—requested and received international assistance to monitor the 2000 elections.

In July 2000, NDI had received a request from PAFFREL asking for the Institute's assistance in preparing for the upcoming parliamentary elections. In response to this request, NDI conducted an assessment in Colombo, Sri Lanka from July 26 to August 2 to determine whether NDI programming would be helpful to Sri Lankan civil society organizations.

In September 2000, NDI placed two technical experts in Colombo to work intensively with PAFFREL and CMEV in the four weeks preceding the election. In the immediate election

period, NDI deployed an additional six election monitoring experts from Asia to assist district coordinators in sensitive areas identified by the two Sri Lankan monitoring groups. NDI administered subgrants to PAFFREL and CMEV to support their election programs. NDI also undertook a coordination role by facilitating communication among international organizations and donors involved in election monitoring and the domestic monitoring groups and by separately encouraging the two Sri Lankan groups to cooperate and collaborate where mutual interests allowed. NDI staff have stayed through the election period to conduct follow up and to prepare for this post-election assessment. NDI continues to work with the civil society groups to explore post-election strategies. A report detailing NDI's election activities is available.

Sri Lanka continues to experience political violence in the post-election period. The civil war rages in the northern and eastern sections of the country, and the accompanying violence influences Sri Lankan lives beyond those borders. Rumors of suicide bombers on the loose throughout the country, including Colombo, abound. In October, the massacre of 29 Tamil detainees at the Bindunewewa rehabilitation camp—mostly former child soldiers of the LTTE who had either surrendered or were captured—set off several days of violence in the nearby plantation areas of Talawakele and Ginigathena raising fears of communal violence.

Uncertainty over Sri Lanka's political future looms large. While the civil war continues to claim lives, Norwegian efforts to facilitate peace talks between the Tamil separatists and the Sri Lankan government have generated considerable excitement about possible positive momentum both within the country and internationally. The new Parliament's initial ceremonial seating took place on October 18. Election reform appears to be a priority in the greater agenda for political reform.

## **II. BACKGROUND**

The colony of Ceylon became the Republic of Sri Lanka when it gained independence from the United Kingdom in 1948. The majority of the Sri Lankan population is Buddhist and belongs to the Sinhalese ethnic group. The Tamils are members of the Hindu ethnic minority and reside in large concentrations in the northern and eastern portions of the island. There are also a small percentage of Sri Lankans who are Christians and Muslims.

Establishing a new constitution and changing its name to the Democratic Socialist Republic of Sri Lanka in 1978, the country adopted a presidential form of government, and the president tends to dominate the political system. The unicameral parliament, composed of 225 members directly elected for six years under a system of proportional representation, is the main legislative body. The president, directly elected by universal suffrage for a six-year term, has the power to appoint or dismiss the prime minister and members of the cabinet and parliament. In 1982, a constitutional amendment was passed that allowed the president to call presidential elections before completing his or her term in office.

### *Ethnic Division and its Effect on Democracy*

The new government in Sri Lanka continues to be led by the People's Alliance (PA), led by the Sri Lanka Freedom Party (SLFP), although the PA's lead narrowed in this last election.

The PA swept both parliamentary and presidential elections in 1994, bringing Chandrika Bandaranaike Kumaratunga of the SLFP into power as President. Kumaratunga called early presidential elections in 1999 and won 51 percent of the vote, preserving the power of her coalition government and defeating candidate of the main opposition party in parliament, the United National Party (UNP). Both the SLFP and the UNP are primarily Sinhalese parties. Following the recent elections, the PA offered the position of Speaker of the House to the UNP in a conciliatory gesture and strategic move; the Speaker is Anura Bandaranaike, the brother of the President.

The UNP had maintained control of the country since 1977. Beginning in 1947, the UNP had a democratic socialist agenda and sought to protect the rights of the Tamil minority, only to later receive strong support from conservative landowning, business, and professional circles. The rise of the People's Alliance in 1993 created a significant shift in Sri Lankan politics. The SLFP, predominantly democratic socialist in orientation, advocates certain safeguards for national minorities. The current agenda of the SLFP on minority rights varies greatly from its historical views. In power from 1956 to 1960, the SLFP emphasized national heritage, allowing the party to win the support of groups advocating the recognition of Sinhala as the single official language and Buddhism as the official religion of Sri Lanka. In 1976, the Tamil political groups organized to form the Tamil United Liberation Front (TULF), which demanded a separate Tamil state in the northern and eastern parts of the island. Tamil politics have since again become more fractionalized: Tamil parties are found both in the current government coalition and in the opposition, and significant support remains for independence among some Tamils. The principal Tamil insurgent group is the Liberation Tigers of Tamil Eelam (LTTE), led by Velupillai Prabhakaran.

As Tamil demands for a separate state increased in the 1970s, the TULF became the main opposition to the UNP in the 1977 Parliament as a result of the heavy defeat of the SLFP under the first-past-the-post electoral system. The violence between the Sinhalese majority and Tamil minority during elections increased dramatically, primarily in the form of public riots. Most recently, in the 1999 presidential elections, the LTTE apparently attacked pre-poll rallies of both Kumaratunga and Wickremasinghe and attempted a suicide bombing against Kumaratunga. The LTTE has targeted Tamil opponents and Sri Lankan government leaders in numerous attacks and acts of violence.

### *Civil war*

The ongoing civil war has its roots in both British colonial experience and the country's own political system. Before the British arrived in Sri Lanka, the Tamil people had not had contact with the Sinhalese population due to their remote location in the northern and eastern portions of the island. The British brought them into contact, later to prefer the Tamil minority to the Sinhalese majority on the basis of economic factors. As a reaction, once the British left in 1947, the Sinhalese began promoting their culture and religion as the dominant ones in the country and used the legislative and constitutional frameworks of newly independent Sri Lanka to institutionalize their dominance.

Throughout the short span of its sovereignty, the Sri Lankan government has declared numerous states of emergency due to escalating violence between the Tamils and the Sinhalese majority. While some concessions have been made to appease the Tamils, for instance, the constitution officially recognizes the Tamil language, the Tamil-Sinhalese conflict remains the dominant point of contention in Sri Lanka and has led to the deaths of more than 50,000 people in the past 15 years.

### *Constitutional Reform*

According to Article 82 of the Sri Lankan Constitution, a constitutional amendment requires approval by two-thirds of the Parliament. Under Article 85, the president is required to submit any constitutional amendment passed by Parliament to a referendum.

Since coming to power in November 1994, the Kumaratunga government has been pushing to draft a new constitution with the goal of developing a basic law that will ensure the political rights and cultural identity of the Tamil minority, make government more democratic, and protect the human rights of all Sri Lankans. To accomplish these goals, the government proposed amending the constitution to terminate the powerful executive presidency, include stronger guarantees of fundamental human rights, and provide for dramatic political and administrative devolution. While all these changes are important to strengthening democracy in Sri Lanka, the devolution package was viewed by a majority of citizens as the most important and controversial. The proposed package would have devolved wide-ranging powers to regional councils including those pertaining to law and order, land policy and regional finances. This would almost certainly lead to the formation of Tamil administrations in either a combined Northern and Eastern province or a separate Northern and perhaps also in a separate Eastern province, and could thus give the Tamil community a political alternative to the LTTE.

The first draft of these reforms was presented to the country in August 1995, and then presented to the Select Committee of Parliament for further deliberation. After several months of discussion, the constitutional proposals were tabled in Parliament in October 1997. With the constitutional proposals as a basis for discussion and dialogue, the government conducted several consultations with all political parties and representatives of civil society.

The proposed reforms met strong opposition in significant sectors of Sri Lankan society. The LTTE rejected the devolution proposals. In early August 2000, the government failed to muster the needed two-thirds support to approve a revised constitutional reform bill, and the reform proposals were shelved before they were voted on. Apparently, the negotiation process had brought the UNP close to approving the bill but contentious clauses remained, including the proposal to delay the reduction of presidential powers until the end of Kumaratunga's current term of office. Parliament was dissolved shortly thereafter, setting the stage for the October 10 parliamentary elections.

### *Elections in Sri Lanka*

Having exercised universal suffrage since 1931, Sri Lanka has had a strong tradition of electoral competition and high voter participation. Literacy rates are likewise high, and there has

existed a fairly well-developed NGO sector engaged in election monitoring since the early 1980s. The country currently has a proportional preferential election system, a process of electing representatives to parliament where voters select a party on the ballot and may also rank order three top preferences on the party's candidate list. Elections at different levels have been held at regular intervals and have brought about repeated turn-overs of power.

The longstanding rivalry between the PA and the UNP, and the intensity of constituent attitudes on the ethnic conflict, have both contributed to the turbulent environment of Sri Lankan elections. Since the early 1980s, local and national elections have been seriously marred by electoral violations and abuses. Reports written by domestic and international election observer groups assert that elections were wrought with such problems as pre-election violence and intimidation, illegal use of government resources, impersonation of voters, and confusion over preferential balloting, and post election violence. The reports also stress the frustration of Sri Lankans with the weak and self-serving efforts to investigate election violations of governments formed by each of the two major political forces. This record of volatile electoral activity tarnishes the democratic process in Sri Lanka and threatens to destabilize the legitimacy of the national electoral process.

#### *October 10, 2000 Parliamentary Elections*

The term of Sri Lanka's previous parliament expired on August 24, 2000. Sri Lankan law provides for a minimum of five weeks between the dissolution of parliament and election day for the nomination of new candidates and the election campaign. President Kumaratunga called for parliamentary elections on October 10, 2000.

In a significant number of areas across Sri Lanka, the elections were affected by violence, voter intimidation and ballot rigging. A few districts experienced significant election-related disturbances leading up to and throughout the elections including a number of confirmed election-related killings. Kandy district, a continuing base for some of Sri Lanka's political elite, experienced a particularly tumultuous campaign and election period. The total number of deaths during the election period was reported to be about 75 although a large number of those were victims of LTTE suicide bombers. CMEV and PAFFREL urged the Election Commissioner to annul the voting in 17 and 23 of the electoral divisions respectively, in order to restore credibility to the electoral process in other sections of the country.

The People's Alliance won the most seats with 107 and assembled a coalition that includes four members each from the Eelam People's Democratic Party (EPDP) and the National Unity Alliance (NUA). The UNP won 89 seats. The Janatha Vimukthi Peramuna (JVP) won 10 seats, the Tamil United Liberation Front (TULF) won 5 seats, the Tamil Eelam Liberation Organization (TELO) won three, and the Sihala Urumaya, the All Ceylon Tamil Congress and an independent group Digamadulla each won a single seat. While the government coalition possesses a legislative majority, the passage of any constitutional amendment—which requires a two-thirds majority—is impossible in this Parliament without the support of both the PA and the UNP.

## *Electoral Framework*

The legal framework for parliamentary elections is set forth in three primary legal documents: the Constitution of the Democratic Socialist Republic of Sri Lanka (amended up to December 20, 1988), the Registration of Electors Act of 1980 and the Parliamentary Elections Act No. 1 of 1981 (amended up to May 31, 1999). The State of Emergency extends the powers of the police and restricts meetings and public “manifestations.” Article 93 of the Constitution states that elections shall be free, equal and by secret ballot.

The members of parliament are elected from 22 multi-member districts through a proportional preferential election system. Voters first indicate their choice of party on the ballot, and may then indicate their three preferences from the party candidates list. The parliament has 225 members who are elected for a maximum term of six years. According to Article 98 of the Constitution, 196 members are directly elected. The remaining 29 members of parliament are elected in a countrywide constituency. The political parties or independent groups for the national seats submit a list of candidates to the Election Commissioner.

The president is the head of state and chief of the army and is empowered to dissolve parliament and order a referendum against the parliamentary will on legislative questions (but not on constitutional reforms). The president holds the portfolios of Minister of Defense, Minister of Finances and Minister of Planning. The president has the power to appoint the entire cabinet, provincial governors, members and chairman of the Delimitation Commission, Commissioner of Elections, magistrates of the Court of Appeal and of the Supreme Court, Attorney General, chairman and members of the Judicial Service Commission, Ombudsman, chairman and members of the Human Rights Commission, chairman and members of the Public Service Commission, and Auditor General.

Under Article 103 of the Constitution, the Commissioner of Elections is appointed by the president and can also be removed by the president on account of “ill health or physical or mental infirmity or upon an address of Parliament. The Commissioner shall exercise, perform, or discharge all such power, duties, functions, conferred by the Parliamentary Act relating to the elections.” In theory, the powers of the Commissioner are extensive and broad covering both administrative and jurisdictional power. The Commissioner is charged with organizing the entire election process. For example, parties or independent groups apply to the Commissioner in writing to be registered, and the Commissioner’s decisions on the matter are final and cannot be called into question in any court. The Commissioner appoints an Assistant Commissioner and a Returning Officer for each electoral district and may appoint one or more persons to assist the Returning Officer in the performance of his/her duties. The Returning Officer appoints a Presiding Officer to preside over each polling station.

The Delimitation Commission divides Sri Lanka into not less than 20 and no more than 25 electoral districts, and determines the boundaries, the number of electoral districts and the number of members that each electoral district is entitled to return. Each province may itself constitute an electoral district or may be divided into two or more electoral districts.



Voter registration begins in June of each year when registration forms are delivered by Registering Officers to every household. The Election Commission then prepares two lists, A and B, for each district. One contains all the names to be added and the other the names to be deleted. The final list becomes effective only in June of the following year. Voter registration especially affects refugees and displaced people in their ability to participate in the election process. In Jaffna, for example, around 620,000 voters are registered, but less than 300,000 voters are currently believed to be living in the area. The national voter register is maintained at the office of the Commissioner and only regional parts of the register are made available for public scrutiny. The last census of the population was carried out in 1981.

Voter identification poses problems and contributes to the widespread electoral abuse of impersonation. No address, profession, identity card or voter card is legally required in order for someone to cast a ballot. The Presiding Officer can ask the voter to make a declaration of identity on an official form if the person's identity is in doubt. There are, however, polling cards that are used in place of any required identification. In theory, these polling cards are only supposed to instruct the voters of their assigned polling stations. Indelible ink is used in Sri Lanka to prevent multiple voting.

### **III. MISSION FINDINGS**

Despite the many challenges facing Sri Lanka today, most Sri Lankans interviewed by the team had a common view of the need for electoral reform and agreed on many of the specific remedies that could lead to reform. The following discussion summarizes the findings made by the team on the issues related to the electoral reform process and the role of political parties, members of parliament and civil society in that process.

#### **A. Electoral Framework**

While Sri Lankans are proud of having exercised the franchise since 1931, most representatives of civil and political society are disturbed by the marked and gradual deterioration in the quality of elections and political representation in the past several decades. As a result, most Sri Lankans believe comprehensive electoral measures should take place immediately.

Many of Sri Lanka's electoral procedures and technical arrangements have remained practically unchanged since their introduction by the British administration before independence: for example, the registration process is complex and prone to inaccuracy. The campaign period exposes an uneven "playing field" with the ruling party—whichever it may be at the time—abusing its access to government owned media and state resources including government officials for campaigning. The election administration has come under increasing pressure to restrain these excesses and has often found itself lacking the power to deal with these concerns. The years of problematic elections have resulted in citizenry disillusioned with the political process and their elected representatives.

- *Electoral System*

Many Sri Lankans discussed the need to review and revise the country's electoral system. Currently, Sri Lanka uses an open list, proportional representation system, with preferential votes for candidates. Thus, a voter has to select a party and may also choose three preferences from among the list of party candidates who are identified only by numbers. Many people believe that the preferential vote system is one of the reasons for an increase in election violence, particularly between candidates of the same party and their supporters since they are essentially contesting the election not only at the party level but also at the individual level. In its report on the October parliamentary election, CMEV suggests that an overwhelming number of election-related violent incidents were indeed between candidates of the same party. In addition, it is thought that the current system was "not paying dividends" because there is little contact between voters and their elected representatives, who represent large areas. Furthermore, many politicians expressed dissatisfaction with the current system because of the level of resources required to run an effective individual campaign in a district with an average electorate of some 400,000.

Many political parties, individual members of parliament and other opinion leaders are now recommending a change of the electoral system to a mixed "German-type system," which is a combination of single-member, first-past-the-post constituencies and the current proportional representation system. Even though the advocates of the German system did not articulate the specific mechanics of implementing such a system, there was consensus by most people that the adoption a new electoral system would help address the problems of electoral related violence and could lead parliamentarians to become more accountable to their constituents, rather than the party to which they belong. There is, however, no accompanying proposal to change the anti-defection provisions in the constitution, under which elected members who cease to belong to the party under whose banner they were elected lose their parliamentary seats.

- ***Election Commission***

Repeatedly raised as a major concern by Sri Lankans was the lack of independence and power of the Commissioner of Elections, who is charged individually, with organizing the entire elections process. Even though the team found that the current Commissioner is regarded by most people as "well intentioned" and a "man of integrity," the fact that he is appointed by the President raises doubts in most people's mind, about his ability to act as a completely independent official. While the powers provided by law to the Commissioner are reportedly extensive and broad, covering both administrative and judicial issues, most individuals interviewed did not believe that the Commissioner was allowed to fully exercise those administrative and judicial powers. Of particular importance, was the need for the Commissioner to have control over the police during elections. Most Sri Lankans with whom the team met believed changes were necessary to create a truly independent election commission, and they advocated that the Indian Election Commission be used as a model.

- ***Voter registration***

The present voter registration process came under attack by most representatives of civil and political society, who view the process as unduly time consuming, expensive, and ineffective. The current process provides that the electoral register be revised in June of each

year to include names of new voters who have reached the age of 18 (list A) and to delete the names of those dead or moved to a new residence (list B). Because the process requires nearly one year to update the register, it invariably excludes some voters.

It is alleged that a variety of problems exists, including that voters are not always provided with registration forms; forms are not always collected once a voter has filled them out; and collected forms are not always entered in either list A or B. It is even alleged that opposition supporters are excluded from the register in some areas. In addition, many internally displaced people are unable to register because they have neither the sufficient documentation nor access to their official residences. Furthermore, it is believed that citizens are unaware of their rights to review the lists prepared by the registration authority and that domestic observers are prevented from doing so. While a computerized database for the Colombo district is in process and one is being developed for the entire country, computerization of the registry alone is not thought to solve all of the registration-related problems.

- ***Voter Identification***

There is no voter identity card used in Sri Lanka, and the current system of voter identification is widely viewed as a problem that contributes to widespread impersonation. Presently, a polling card is issued to every voter through the postal system, which is supposed to inform the voters of their polling places, but is not a mandatory document for voting, and does not carry a photograph, thumbprint or equivalent. In practice, however, this polling card alone is used as proof of identity at the polling stations. Because the polling card does not carry a photo or thumbprint, it is thought to have been used extensively in impersonating voters who are absent from their home and are not in the limited categories eligible for postal votes – in particular those one million or so Sri Lankans who are working overseas. Although indelible ink is used to mark the little finger of the voter to guard against multiple voting, often the quality of the ink leaves much to be desired and can be removed by creative means.

- ***Domestic Election Observers***

While the Election Commissioner allowed independent international election observers to monitor the October 10 general election for the first time in Sri Lanka's history, the two main domestic observer groups, PAFFREL and CMEV, were denied access to polling and counting stations. Even though election officials and representatives of political parties expressed appreciation for the work of domestic organizations and supported their efforts to report on violence and fraud, there was a general acceptance of the notion that domestic observers should stay outside polling stations, so that "election officials can do their work." This limitation on the domestic election monitors runs contrary to the growing trend in the region. The inclusion of domestic monitors in the election process could be an important measure in enhancing public confidence in the election process in Sri Lanka.

- ***Policing and Law Enforcement***

Election related violence was identified by most Sri Lankans as one of the most serious election-related problems in the country, and most people pointed to a lack of law enforcement

as the reason for the perpetuation of violence. Several representatives of civil society and members of political parties noted that there are existing laws to deal with many of the problems in the electoral process, but that these laws are simply not enforced. For example, campaign posters are not permitted by law, but are often used by candidates and parties, triggering violent confrontations by opposing parties, with little or no interference by the police. Because the police do not come under the direct supervision or control of the Election Commissioner during the election period, most Sri Lankans believe that the election administration is unable to sanction the police for failure to prevent violations

- ***Election Dispute Adjudication***

Sri Lankans expressed a disenchantment and lack of confidence with the judicial system and its ability to adjudicate election related disputes, or to prosecute acts of election violence. Complaints filed by aggrieved candidates are reportedly seldom resolved during the tenure of the parliament, with cases taking years to traverse the judicial system and are often being dismissed along the way.

Likewise, cases of election violence are seldom prosecuted. Several political party and civil society representatives reported that documented cases of election violence were reported to the police, the Election Commissioner, and yet the cases failed to be prosecuted. It was even suggested that several members of the current Parliament were implicated in well-documented cases of election violence, but they have gone uninvestigated.

## **B. Civil Society**

Sri Lanka's civil society organizations have over a decade of election-related experience, as monitors of the election process, as well as reporting on acts of election related violence. Though most of the civil society organizations involved in elections are urban-based NGOs, with a concentration in Colombo and Kandy, the two election monitoring coalitions, CMEV and PAFFREL, have begun to develop a nationwide network of volunteers and organizations.

During the October 10, 2000 parliamentary elections, the election monitoring groups made courageous and forthright public statements about violations of election law by the political parties and against the escalating violence at different stages of the election. Talented and committed civil society leaders have developed and funded organizational structures that have trained volunteers to serve as domestic monitors and that have provided analytical and concise documentation about electoral malpractices to members of the government, the electoral administration, the judiciary and the government.

Most Sri Lankans, including election officials and party representatives, expressed admiration and respect for the domestic monitoring groups, particularly their assistance in reporting on election-related acts of violence. Nevertheless, most people emphasized that at present, civil society organizations are too weak to effectuate or engage in broad-based policy reform. It was noted that NGOs lack effective networks for mobilizing people and ideas; few NGOs engage parliament on legislative issues; and no channels of communication exist for NGO dialogue on policy ideas. Despite these limitations, many people suggested that civil society

could become more active in Sri Lanka by getting involved in areas such as conflict resolution and mediation; by undertaking civic education on the issue of violence; by putting pressure on political parties to reform election practices; and by supporting the reform agenda through advocacy within the parliamentary process.

The team found that some civil society organizations are beginning to focus on reform through governance programs. For example, the Marga Institute, a component organization of PAFFREL, will be conducting training planned for January 2001, for new members of parliament in collaboration with the Westminster Foundation. The training course will focus on parliamentary procedure and the operation and mechanics of democratic political parties. NGOs are also undertaking an initiative effort to reform the current electoral system and laws. Based on the findings of their election observation programs, both PAFFREL and CMEV, along with other civic organizations, are in the process of preparing a set of draft recommendations on reforming the electoral process. These recommendations will be submitted to policy makers and will be followed by extensive public consultations and an advocacy campaign.

### **C. Political Parties in Parliament**

Sri Lanka's parliament is regarded by many observers as a weak institution without the capacity to address the problems facing the country today. Serving under an executive presidency with exceptionally strong powers, the parliament has little opportunity to act as a counterbalance on policy initiatives. Many critics have called for a strengthened parliament, a move outlined in the recent constitutional reform package that failed this August. Further complicating the problem, under the current proportional representation system, citizens have no direct representatives and therefore find it more difficult to channel civic input.

Beyond these legal and constitutional limitations to the power of Parliament, members are also constrained by a further constitutional provision under which members of parliament who cease to be representatives of the party for which they were elected immediately lost their seats. While the genesis of this provision appears to lie in a praiseworthy desire to prevent corruption, its effect is to make MPs subservient to their party leaderships rather than responsible either to their electorate or to their own best judgment. Parliament thus suffers from a serious image problem in Sri Lanka. Many observers believe that MPs run for office only to receive the perquisites of the position. This, coupled with the fact that parliament sits only a few days each month and has a committee system that does not always function well, suggests to many Sri Lankans that parliament lacks any true political will to effectuate change.

Despite the serious criticisms directed at members of parliament and the institution itself, the team did find reason for cautious optimism. The recent appointment of a member of the opposition to the position of Speaker of the Parliament is considered by many as a positive development with the potential for increased bi-partisan dialogue. Likewise, a new class of freshmen parliamentarians, several of whom ran on a promise to reform members' benefits, are taking their seats in parliament for the first time. Perhaps most encouraging was that the team found that most Sri Lankans agreed on the need for electoral reform and believed that reform measures would take place.

#### **D. Electoral Reform Efforts**

There is widespread debate and much acceptance of the principle of establishing independent commissions for the Public Service, the Judiciary, Elections and the Police, and in enshrining these commissions in the constitution. Most Sri Lankans suggested that these reforms could take place separately from other issues presented in the government's constitutional reform package that failed to pass parliament this August. The leadership of the ruling party currently appears to agree to three of the four commissions, which were included in the August 2000 constitutional proposals, but not to an independent police commission, while the opposition parties indicated they support the establishment of all four commissions. One of the PA's coalition partners, the NUA, has given an ultimatum of 100 days from the date of the first sitting of the parliament (ending January 21, 2001) to begin the process of constituting these commissions.

#### **IV. RECOMMENDATIONS**

While most Sri Lankans seem to agree on the fundamental issues of electoral reform, they have not developed a process for discussing proposed reforms in a multi-partisan, inclusive manner. Rather, the team found that reform measures were being promoted within specific groupings and little attempt was made to engage other political actors. Draft legislation was reportedly being prepared by one opposition party, while civil society organizations are attempting to review reform measures to be shared later with parliament.

In order to create an electoral process that provides a framework for fair, transparent and open elections, electoral reform efforts must be broadly based and inclusive. Political parties, members of parliament and representatives of civil society should create avenues for discourse and enable the citizens of Sri Lanka the opportunity to express their views. The following recommendations are therefore made in the spirit of mutual respect for a country with a history of electoral balance and compromise, and they are intended to encourage reform efforts that are conducted in an inclusive manner to provide the fullest participation of Sri Lankan society.

##### **A. Electoral System**

Most Sri Lankans agree that the current proportional representation electoral system has serious flaws which impact election violence and member-constituency relations, and therefore should be revised. A much discussed alternative is the German model that is a combination of the proportional representation system and a single member, first-past-the-post system.

While the adoption of such a mixed system would address some of the identified problems, it would, as with any change in the electoral system, carry other consequences as well. Political party leaders, members of the election administration and civil society representatives should create forums for discussion and debate regarding the German model, and other electoral system alternatives, to ensure that any new system addresses the critical flaws in the current design.

- *Independent Election Commission*

The establishment of an independent election commission enshrined in the constitution with appropriate administrative and financial powers provided by law to administer an election free from any political pressure would be an important step to safeguard and improve Sri Lanka's democracy. While most Sri Lankans agree that the current election administration should be revised, and many people pointed to the Indian Election Commission as a useful model, there appear to be differing views about the extent to which reforms are necessary. Many people suggested that the current law provides the Election Commissioner with substantial power; however, it is not asserted because of a lack of independence. Others suggested better enforcement of electoral violations by the police and the judiciary is necessary.

Sri Lankans should evaluate reforms for an independent election commission in light of the country's current laws. Alternative models such as the Indian Election Commission must be considered in their totality – which includes both their constitutional and legal authority – and the norms and practices accepted in India.

- ***Voter Registration Process***

Sri Lanka's electoral registration procedures need to be revised. The current system is time consuming and burdensome, failing to incorporate new voters and delete deceased voters or those who have relocated. Completion of computerization of the electoral register is essential to facilitate continual updating. However, it should not be viewed as a solution to all registry problems. Enforcement of the current registration regulations should be required, and revision should be undertaken where necessary. Parties and individuals should make full use of their existing rights to scrutinize the registration process. Likewise, this right should be extended to domestic election monitoring organizations, to ensure a fair and transparent process.

A new census should be conducted as the last one was completed in the early 1980s. The results of such a census would in any event be useful for comparison with the electoral register, and consideration should be given as to whether the census enumeration could also be used as the basis both of the issue of national identity cards and of the creation of a new comprehensive electoral register which would then be updated on a continual basis.

- ***Voter Identification***

To prevent multiple voting and impersonation, steps should be taken to ensure that voters are properly identified. Sri Lankans should consider alternative methods of voter identification once a new registration process and census have taken place. Creating a photographic polling card or using the current national identity card should be considered, and should address the needs of internally displaced people, many of whom are currently unable to vote because they have no documentation or access to their previous home. The quality of indelible ink should be ensured as an additional measure in combating multiple voting and impersonation.

Sri Lankans should also address the approximately one million citizens living and working abroad. Many of these individuals are eligible to qualify as voters, but are unable to vote because no process has been established to vote from abroad. As a result, there are many

allegations that these non-resident voters are impersonated on election day. Overseas voting can be a complicated process and should not be addressed until decisions on a new electoral system are finalized. Sri Lankans should consider different models of overseas voting and consider whether procedures and timetables could be put into place to allow maximum participation by non-resident voters.

- ***Domestic Election Monitors***

To ensure transparency of the electoral process, revisions to the current election law should be made to specifically permit domestic election monitors to monitor the election process from inside the polling and counting stations. The presence of non-partisan domestic observers enhances the credibility of elections, allows citizens to be more actively involved in the electoral process, boosts voter confidence in the electoral process, and deters fraud and manipulation and exposes them should they occur. Since international observers typically remain in a polling station only briefly, domestic observers are generally stationary and with familiarity with the language, culture and the environment have access to more information.

- ***Policing and Law Enforcement***

Without confidence that security and safety will be provided by law enforcement authorities, citizens' participation in the electoral process is greatly diminished. The ongoing use of campaign violence by political parties in Sri Lanka impacts the credibility of elected officials and results in a disillusioned citizenry. Steps should be taken to ensure that police actively enforce against election violations and arrest individuals responsible for election related violence.

Many Sri Lankans suggested that the Election Commissioner should be empowered to control the police forces during elections in relation to election-related security and policing issues, which would appear to be a highly desirable reform. Likewise, domestic monitors should continue to report on incidences of violence and share information with local officials, police and members of the election administration. Civic education programs should also be instituted to encourage citizens not to participate in violence, and political parties should commit to a code of conduct that denounces violence in their campaigns.

- ***Adjudication of Election Disputes and Prosecutions***

An effective adjudication process of election disputes is a final, necessary element in a healthy electoral process and should be addressed in any upcoming election reform initiatives. Election authorities should respond to problems as they arise during the campaign period and provide immediate remedies. Election petitions that are more serious and difficult to investigate should be reviewed and adjudicated within a reasonable period of time by an independent election commission.

Likewise, prosecutions must be brought against individuals suspected of election related violence and crime. To allow criminal acts perpetuated as a method of political campaigning to go unpunished undermines the fundamental principles of free and fair elections.



## **B. Civil society**

Civil society's role in Sri Lanka's electoral process is a critical one. As unbiased elections observers, these individuals and organizations serve to enhance the credibility of elections by allowing citizens to be more actively involved in the electoral process, boosting voter confidence in the electoral process, and deterring fraud, manipulation and violence. However, civil society's ability to act as an active agent for democratic change is limited in Sri Lanka because of a lack of funding, organizational capacity and national outreach.

Steps should be taken to support civil society, both financially and programmatically, and to encourage their participation in the electoral reform process. As perhaps one of the only links between citizens and elected officials, NGOs should find avenues to incorporate the views of Sri Lankans into the current election reform debate and to serve as agents for civic education once reform measures take place.

Civil society must also begin to interact with elected officials in parliament and find methods to promote an exchange of ideas and policy suggestions. Despite the inactive nature of the parliament and the lack of a functioning committee system, party leaders and reform-minded parliamentarians should be engaged at the highest levels nonetheless.

As members of domestic monitoring organizations, NGOs should continue to pursue election monitoring and other election-related activities more professionally, enhance their capacity and involve larger numbers of citizens in the process, and push for the right to monitor inside polling stations, a right that has been extended by law in many countries.

## **C. Political Parties in Parliament**

Despite the strong executive presidency in Sri Lanka that many observers suggest should be reformed to create a more equal balance of power between the executive and the legislature, there remains ample opportunities for the parliament to function more openly and effectively, without instituting new rules or procedures.

Most people with whom the team met pointed out that parliament rarely sits the requisite number of days per month, usually only meeting two or three times in a month which is not sufficient time to accomplish legislative business. The leadership of the parties in parliament should encourage the Speaker to convene parliament every month for the statutorily mandated period. Likewise, committee chairs should convene regular committee meetings and use such forums to discuss pending legislation and upcoming policy debates, such as the electoral reform process. Committees should open their meetings to the public and encourage civic participation through public hearings and information gathering sessions.

In order to support these activities of the legislature, training and technical assistance should be provided to members of parliament on the legislative process and the role and function of committees. Likewise, electoral experts should be made available to discuss with all parties various reform alternatives and models. Finally, forums should be created where an open

exchange of the benefits and drawbacks of various electoral reform proposals can be discussed.

## Appendix A

### NDI'S POST-ELECTION ASSESSMENT TEAM

**SHARI BRYAN** is the Deputy Director for the National Democratic Institute for International Affairs (NDI) programs in Central, East and West Africa. She oversees projects in the region that focus on elections, political party assistance, legislative training and civil society strengthening. Prior to joining NDI, Ms. Bryan worked as a Democracy and Governance Advisor for the United States Agency for International Development (USAID), and she spent several years promoting women's participation in politics as the Director for International Programs at the National Women's Political Caucus. Ms. Bryan is an attorney with over ten years experience in the areas of civil, criminal and international law, as a civil litigator and as an Assistant United States Attorney. From 1993 to 1996, she served as legal advisor to the President of the Republic of Palau, a former U.S. territory in the western Pacific.

**ANDREW ELLIS** is a Senior Advisor to NDI and currently works in Indonesia, focusing on projects in constitutional reform, electoral reform and decentralization. A former Vice Chairman of the Liberal Party in the United Kingdom, Mr. Ellis has worked extensively on political development projects in Central and Eastern Europe, Asia, Latin America and the former Soviet Union. He has served previously as Technical Advisor to European Commission electoral projects in Cambodia and Palestine, and to the Organization for Security and Cooperation in Europe in Bosnia. A trained legal scholar, Mr. Ellis is an expert on comparative electoral systems and the relationship between electoral design and democratic development.

**TARIKUL GHANI** is the Resident Representative in Cambodia and Sri Lanka for the National Democratic Institute for International Affairs (NDI). Mr. Ghani was a founding member and Executive Director of the Fair Election Monitoring Alliance (FEMA) in Bangladesh. During his time with FEMA, Mr. Ghani organized several domestic election monitoring efforts in Bangladesh. He has participated in numerous election-related programs and international workshops and conferences with NDI, the International Foundation for Election System (IFES) and the Commonwealth Secretariat.