

Elections and Minorities:

**Present Problems and Alternatives for
the Future**

Centre for Policy Alternatives

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Map of Sri Lanka



Introduction

May 2010 marks the first anniversary of the end of the war. Since the defeat of the LTTE, Sri Lanka had a Presidential Election in January 2010 and will have Parliamentary Elections on 8th April 2010. These two national elections held in a post war context are significant since all citizens will be able to vote without hindrance. Both these national elections, held less than three months apart from each other, set several precedents. As with the Presidential Election in January, in the forthcoming Parliamentary Elections in April there will be polling centres in former LTTE controlled areas such as Killinochchi. Candidates from different political parties, including the presidential candidates have been able to campaign in former LTTE-controlled areas. Furthermore, the Presidential Elections also witnessed a major effort by all candidates to canvass minority votes, with many politicians and supporters traveling to and campaigning in minority dominant areas particularly in the North and East.

Although the Presidential Elections were held in January 2010 and another national election is to be held in April, the quality of life for those in the North and East continues to be a key post war challenge. The significant improvement is that thousands have been able to return to their homes and communities and rebuild their lives, and the prospect of large-scale violence and displacement appears to be a thing of the past. However, although over 190,000 individuals have returned to their areas of original residence, many are unable to return to their own land due to restrictions in access, the presence of high security zones (HSZs), mines and secondary occupation.¹ There still remain over 80,000 internally displaced persons (IDPs) in emergency sites in the North.² Freedom of movement in many parts of the former LTTE controlled areas including areas in Mullaitivu and Killinochchi has been severely restricted as a result of the high military presence.

Despite the opportunity presented for people who were unable to vote in previous elections, the Presidential Elections in January also witnessed several problems -IDPs and those recently returned to the North and East were unable to freely use their franchise. These obstacles and barriers in voting were not limited to the IDP population but to minorities in the North and East. Furthermore, minority communities elsewhere in the country including the Muslim IDPs in Puttalam and the Up-Country Tamil Community faced various other issues. This brief maps issues faced by minorities during election. It focuses on the obstacles they face and presents recommendations in respect of the removal of these obstacles.

Conflicts and disasters have multiple impacts on a civilian population including their political and socio-economic life. In addition to fatalities, injuries, trauma and displacement faced by civilians, there is a major disruption of community life. Livelihoods are affected which result in many having to depend on external assistance. Social networks change with continuous migration, displacement and the change of

¹ Secondary occupation occurs when houses and land are occupied by others who are not the legal owners. For more information, please refer to Memorandum prepared by the Centre for Policy Alternatives on Land Issues Arising from the Ethnic Conflict and the Tsunami Disaster, 2005

² These only reflect IDPs who were displaced since April 2008

environment. Furthermore, IDPs and others affected by conflict and disasters face difficulties in participating in the electoral process and are marginalised from political life. In most cases, displacement also results in the infringement of fundamental rights and guarantees including the right to freedom of expression, movement and franchise. As outlined in this brief, minorities across the country have been deprived of their franchise due to various reasons including administrative barriers, the inability of relevant actors to be effective in disaster response and the absence of a legal and policy framework that protect the rights of the most vulnerable and marginalized.

The issues raised in this brief are not new and have been evident in past elections. However, what is notable is that the present elections are held in a different, post war context, where hostilities have ended and one in which polling was and will be held in former LTTE controlled areas. Furthermore, the LTTE is no longer a force to be reckoned with. Though the issues listed in this brief have been raised previously³, there has been limited progress in the improvement of available facilities and in developing a framework to address the problems faced by minorities in Sri Lanka. The right to vote and the existing problems related to this issue are an apt example of the obstacles faced by minorities who need to be treated as equal citizens and provided equal protection before the law. Although this report focuses on minorities, some of the issues highlighted in the report are not unique to minorities.

With the prospect of a Northern Provincial Council election later this year, there is a certain level of urgency in addressing these issues. The inaugural elections to the Northern Provincial Council could be a landmark event which positively impacts the lives of those living in the area, only if all its residents are allowed to exercise their fundamental right to the franchise. Depriving them of their fundamental rights more than a year after the war ended and at a time of development in the area, would be a travesty of justice.

³ For more information, please visit statements, communiqués and reports done by the Centre for Monitoring Election Violence (CMEV) at <http://cmev.wordpress.com>

Relevant Constitutional and Legal Provisions

Constitution

Article 12 (1): All persons are equal before the law and are entitled to the equal protection of the law.

Article 12 (2): No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds

Article 14 (1)(a): Every citizen is entitled to the freedom of speech and expression including publication

Presidential Elections (Amendment) Act 1988 - Section 119 B

Parliament Elections (Amendment) Act 1988 - Section 127 B

1. Notwithstanding the provisions of any other law, any registered elector who reasonably fears that due to conditions prevailing in the area within which his polling station is situated, that he is unable to cast his vote at such polling station, may make an application to the Commissioner of Elections within one week of the notice of nomination, requesting that he may be allowed to cast his vote at another polling station determined by the Commissioner, in his absolute discretion.
2. The Commissioner shall within a week of receipt of an application, inform such elector whether such application is accepted or rejected. The decision of the Commissioner shall be final and conclusive and shall not be questioned in any court of law.
3. Where such vote is cast, such vote shall be counted along with the votes of the electoral district where such elector is registered."

Challenges in the Elections in 2010 and trends

This section briefly highlights some of the obstacles faced by minorities in voting during the Presidential Elections and problems that may arise in future elections.

Issues Related to Electoral List and Registration

All who are eligible to vote need to be registered in their respective electoral districts, which are compiled, maintained and updated annually by the Department of Elections. Under the supervision of the Government Agent who is the Returning Officer for the district and the Assistant Commissioner of Elections of each district, the electoral registers are updated. Every year, enumerators are appointed to visit houses to compile the names of voters in each household and enter them in the enumeration form. The electoral registers are updated annually according to the enumeration forms received which takes on board Sri Lankan citizens who have turned 18 years of age on June 1st of that year or those who have migrated from elsewhere. Revised lists of names are then publicly displayed in the respective government offices in the areas for a period of 28 days during the month of November/December so that people are able to object and appeal. The electoral register for each district is completed by May of the next year. Though this system has been in practice for years, many citizens are unaware of the process or fail to update household lists annually or appeal during the provided time frame, which results in them being removed from the electoral list.

Due to conflicts or natural disasters or other crises, Sri Lanka has faced several decades of displacement. Although displacement has been a part of Sri Lanka's recent history, the formulation of the electoral list unfortunately does not factor in the impact of displacement. Therefore, if a person is displaced from his or her home during the period when the household enumeration takes place and period of appeal/objections, that person will not be in the list for the next year. For example, the 2008 electoral list, which was prepared in 2007 does not include those who were displaced at the time of the enumeration and had no way of appealing to the officials. Therefore thousands of IDPs who were displaced in 2007 were not included in the 2008 list and were ineligible to vote in the Presidential Elections in January 2010. These individuals will also not be able to vote in the Parliamentary Election held in April 2010. As documented by the Department of Elections, only 25,698 IDPs voted at the Presidential elections when 45,732 IDPs had registered to vote and were eligible to vote. This is an extremely low figure, compared to the over 100,000 IDPs who lived in displacement during the Presidential Elections.⁴ This will be repeated in the future, unless policy and legislative changes are not introduced immediately to take note of these special circumstances and ensure that future voters are not disenfranchised.

The situation in the North and East requires special attention. For years, thousands of IDPs have been displaced from their homes. In the case of the older IDPs such as the Muslims evicted from the North in the 1990s and IDPs from Jaffna who were displaced to the Wanni with the commencement of the

⁴ CMEV Field Visit to Jaffna, Killinochchi and Vavuniya, 22nd January 2010. These figures only refer to the 'new IDPs' and not a reference to the entire IDP population in Sri Lanka. At present the Government and humanitarian agencies distinguish IDPs according to the period in which displacement occurred. Those who were displaced after April 2008 are classified as 'new IDPs' and the rest of the displaced population are referred to as 'old IDPs'.

conflict in the 1980s, displacement has lasted decades. With returns and resettlement ongoing, there is a possibility that many of the older IDPs may return to their original homes. Although some of the older IDPs may have been able to register themselves in their temporary places of residence, there could be cases of those who were unable to register due to the conflict and continuous migration. This may especially be true with IDPs who were displaced to the Wannu, which was under LTTE control. CPA spoke to several persons in the Jaffna Islands who were previously in the Jaffna Electoral Register but were displaced to the Wannu due to the conflict for many years.⁵ Having returned to Jaffna after the end of the conflict in late 2009 and early 2010, they stated that the local Grama Sevaka (GS) informed them of their inability to vote as they were not on the Jaffna Electoral Register, due to their failure to register in 2007. Some IDPs had stated that while they were displaced in the Wannu, they failed to register on the Wannu electoral register for several reasons including continuous migration and displacement to being unaware of the process.

All IDPs and detainees have been registered by the Government several times. Their documentation has been checked, and the Government has provided them with a camp identity card that includes a photograph. Information identifying all post-war IDPs has by now been recorded by several government institutions who were present in the camps and who are now involved in returns and the resettlement processes. Despite the number of times and methods that IDPs have had to prove their status since the end of the war and obtain temporary documentation from the government, this has not facilitated their ability to vote in elections.

The return and resettlement of IDPs does not remove the barriers they face in exercising their franchise. This is especially so in the challenging circumstances of post war Sri Lanka, where returns are dynamic. Such circumstances call for a less rigid interpretation of the standard bureaucratic processes that usually govern elections in order to ensure that all citizens are treated equally and that the needs of those most vulnerable are addressed. The enumerations and compiling of electoral lists should take into account these special circumstances and provide for amendments to the electoral list, to enable the marginalised groups to vote.

Documentation Issues

Having the necessary documentation is a key factor in being able to vote. According to the notice issued by the Commissioner of Elections on 21st March 2010,⁶ several forms of identification were listed as acceptable by the Department of Elections. They are as follows:

- National Identity Card issued Department of Registration of Persons
- Valid Passport
- Valid Driving License
- Government Pensioner's Identity Card
- Elder's Identity Card
- Identity Card issued to the Clergy by the Department of Registration of Persons

⁵ CMEV Field Visit to Jaffna, Killinochchi and Vavuniya, 22nd January 2010

⁶ Media Notice No 19, Issued by the Commissioner of Elections, 21st March 2010

- The temporary identity card issued through the Department of Elections and Department of Registration of Persons for the Presidential Election-2010
- The temporary identity card issued through the Department of Elections for the Parliamentary Election 2010
- The temporary identity card issued through the Department of Elections for the Previous Provincial Council Elections (temporary identity card issued for the Eastern Provincial Council Election will not be accepted)

A similar announcement on documentation was made in December 2009 in preparation for the Presidential election in January 2010. That a number of official documents can be used to vote is a positive feature. Nonetheless, there are at least three challenges for minorities with regards to documentation. Although this announcement was made in December 2009, it was reported to CPA that many voters were unaware of the documentation requirement, did not possess the necessary documentation or were unaware of the process to obtain the necessary identity documentation to be able to vote. This was a major reason that many minorities including IDPs and those affected by the conflict did not vote. The lack of sufficient documentation has been a major obstacle not just in voting but also in obtaining land ownership and financial assistance as well as other crucial activities and entitlements.

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The inability of a large group of people in the North and East to vote due to the lack of documentation prompted the Centre for Monitoring and Electoral Violence (CMEV)⁷ to write to the Commissioner of Elections on 20th January 2010. CMEV in its letter proposed that though the special announcement of 2nd December 2009 was made, many IDPs did not have any of the documents listed by the Commissioner of Elections. To ensure that as many as possible could vote, CMEV proposed that a special case should be made for IDPs where the temporary identity card with a photograph could be used as the basis on which the respective DS could issue a certified letter that in turn could be further approved by the Government Agent (GA).

No effort was made by the Commissioner of Elections or his staff to address this issue by recognising the alternative identity document. On the 26th January 2010, the day of the Presidential elections, CMEV was informed that an announcement was made by the Commissioner of Elections that the temporary camp identity card issued by the camp authorities would be recognised as a valid form of identity for voting.⁸ While it is welcome that the Commissioner of Elections took into consideration the hardships faced by the IDPs and their special situation, it is unfortunate that this decision to recognise an alternative identity document such as the temporary camp identity card issued by an arm of the Government was not made earlier and IDPs in camps and with host families in the North and East informed in time.

⁷ CMEV was established in 1997 to monitor the incidence of election related violence. CMEV is currently constituted of several organisations including CPA, Free Media Movement and INFORM Human Rights Documentation Centre

⁸ Media Notice Issued by the Commissioner for Elections, 26th January 2010

The delay in making this decision impacted thousands of IDPs and effectively disenfranchised them. CPA was informed that if the decision was made even a few days prior to the elections, many more IDPs could have voted. For the April elections, the Commissioner on 31 March, notified that those IDPs living in camps in Vavuniya and in possession of the temporary camp identity document would be able to vote using that document. This is a welcome step that needs to be given wide publicity so that IDPs are informed and can thus exercise their franchise. Although the step to recognise the temporary camp identity document is positive, the notice only refers to IDPs living in camps in Vavuniya, effectively leaving out IDPs living in camps in other districts, IDPs living with host families and those who have recently returned. These categories and other marginalised groups needed to be recognised by the Commissioner and necessary arrangements made speedily.

The lack or destruction of documents is not only limited to those in the North and East, but is an issue among other minorities including the Up-Country Tamils. In previous elections CMEV has noted that a high percentage of eligible voters were unable to vote not only due to lack of documentation but also due to inaction by government officials such as the Divisional Secretariats (DS) in the area. In the North Western and Central Provincial Council elections in 2009, CMEV held that most among the Up-Country Tamil community relied on the temporary identity documents authorised by the GS but found out too late that they could not vote without the authorisation of the DS.⁹

As witnessed in the post tsunami context, the Government introduced speedy measures with the assistance of donors and agencies to issue documentation in a short time period. Such measures need to be introduced island wide to ensure that all citizens have their basic documentation. When providing information of such drives and when raising awareness among communities on the necessity of proper documentation, notices need to be displayed in all three languages and information communicated in a manner understandable to all concerned.

Voter education and awareness

A frequent problem in times of disasters and post disasters is the provision of information to those affected regarding their rights and the services available to them. This has been seen throughout the years in Sri Lanka, both with the conflict and the tsunami, when IDPs and others who were affected were not able to access information on the available services and assistance provided and other relevant issues. Although with time, this has improved, as seen with the displacement during 2007-2008 in the East where there was an improved system of information flow to the camps and IDPs with host families, many gaps persist. With the influx of IDPs to Manik Farm and other camps in the North and East in 2008 and 2009 and the massive humanitarian crisis in those areas, it was apparent that the Government did not have an effective system to provide information to IDPs and others affected,

Many challenges are faced in educating citizens of their rights including their fundamental right to the franchise. This is not limited to the conflict affected communities but also to minority groups who have limited information on their rights, and the methods of obtaining redress in the event of administrative and other obstacles.

⁹ CMEV Report in the Central and North Western Provincial Council Elections, 2009

host communities and agencies. Many challenges are faced in educating citizens of their rights including their fundamental right to the franchise. This is not limited to the conflict affected communities but also to minority groups who have limited information on their rights, and the methods of obtaining redress in the event of administrative and other obstacles.

Leading up to the Presidential Elections, it was evident that a number of IDPs were not aware of the election procedures in their specific context. CPA interviewed IDPs and humanitarian agencies who explained that information on elections which included applying to vote, obtaining necessary documentation, information on where to vote including where the cluster centre was based and arrangements for transport were not shared with all IDPs and in all camps.¹⁰ Although CPA recognizes that there was a large number of IDPs in camps prior to elections, this was a known fact and could not be advanced as a mitigating factor as far as the arrangements made were concerned. Therefore when elections were called, the onus was on the Government to ensure that all steps were taken to inform all affected individuals and to ensure that they were able to exercise their democratic right.

CMEV in its field visits prior to the Presidential Elections noted that information and criteria to vote and processes were not adequately shared not just among the IDPs but also among government officials involved in the process. In the Field Visit Report released on 30th December 2009, CMEV noted that IDPs had not applied to vote due to this lack of information.¹¹ CMEV further noted that local GSs were not provided proper instructions on how to proceed. Similar observations were made on another visit made by CMEV in January 2010 which not only raised issues in the North but also problems in the East. For example, CMEV raised the issue of those IDPs who were resettled in the East in 2009. CMEV found that according to UNHCR figures approximately 10,990 individuals from the Wanni were returned to the East but that the number of those registered to vote was still very low. For example, according to figures obtained from the Batticaloa Kachcheri area, of the 1,387 persons eligible to vote only 200 had applied to vote.¹² CMEV was also informed that only 52 applications out of the 200 were accepted while the others were rejected due to insufficient evidence. CMEV concluded that a major reason was that there were low numbers applying and that very few were being accepted, was due to lack of information and awareness among those applying.

At the time of the Presidential Elections, there were over 100,000 new IDPs in camps. According to the Department of Elections out of the 45,732 IDPs registered to vote for the elections only 25,698 actually voted on Election Day, amounting to around only a quarter of the new IDPs. The low numbers of those who registered and those polled, compared to the IDP figures at that time, can be attributed to several reasons listed in the present brief. CPA interviews indicate that a major factor in low applications and low numbers of votes on Election Day is directly connected to the inadequate information that was provided to IDPs.

The lack of awareness among voters is not only limited to the North and East but also faced by minorities elsewhere in Sri Lanka. Among the Up-Country Tamils it has been reported that GS and Up-Country

¹⁰ CPA interviews in the North, December 2009 and January 2010

¹¹ CMEV Field Visit, 30 December 2009 available on <http://cmev.wordpress.com>

¹² CMEV letter to the Commissioner of Elections, 20th January 2010

Superintendents assist those who they favour, resulting in many not being aware of the process or of their rights.¹³ Furthermore, those who obtain documentation face two problems. Often it has been reported that documentation relevant to the registration process is in Sinhala and that this is an obstacle to this particular group of minorities whose first language is Tamil.¹⁴ Furthermore, illiteracy among some of the more marginalized in this group is another obstacle to registration.¹⁵

Transport Issues

In order to ensure that voters who had to use cluster polling centres could access these centres, the Election Commissioner provided transport facilities. This has been a key development over the last presidential and general elections, which has proved crucial for voters who are living in extraordinary circumstances. On Election Day, CMEV released the brief “Inability of Authorities to Address the Voter Rights of IDPs and Other in the North” which drew attention to several issues that arose in the course of the day in the North.¹⁶ One significant factor for many IDPs inability to vote was due to the lack of transport to travel to polling and cluster centres. CMEV noted that in the Arunuchalam and Ramanathan camps 300 IDPs waited from 6am for buses to arrive and transport them to Killinochchi to vote. The buses had only arrived at 1.30pm and IDPs had reached Killinochchi only at 3.55pm, leaving them only 5 minutes to vote. CMEV was informed that these 300 IDPs were ultimately unable to vote, since by the time they had reached the centre, voting had ended. CMEV was further informed that these 300 IDPs were unable to return to the camps in Vavuniya on the 26th due to a lack of transport and that they had to reside in Killinochchi without any arrangements for accommodation.

CMEV was further informed that though authorities had promised to arrange transport on Election Day, there was confusion and a lack of information. For example, CMEV noted that IDPs were issued tokens for transport on the 25th and early 26th morning, and informed through the public address system that they were required to be present at 6am at a specific location to board the buses organized by the authorities. As a result, IDPs had gathered at 6am, but the first buses only arrived at 10am and the rest of the buses arrived only at 1.30pm. There was no information given to IDPs during this period, resulting in IDPs standing for hours for the buses and some not being able to vote due to the delay in transport.

The above are a few examples that CMEV was able to document on Election Day. Though concerns with transport arrangements were raised prior to elections by CMEV and assurances received by government officials that this would be addressed, there were glaring problems which resulted in the disenfranchisement of one of the most vulnerable groups in society. As a result, CPA filed a fundamental rights case in the Supreme Court on February 2010, which raised several issues accusing the authorities of violating Article 12 and Article 14 of the Constitution by not taking the necessary steps including the provision of transport on Election Day. The case was taken up on March 11. The state counsel stated that 51 buses were released on January 26 to transport voters and that similar measures will be taken for the Parliamentary Elections.

¹³ “The 2010 Presidential Election and Up-Country Tamils”, Workshop organised by HDO on 19th December 2010

¹⁴ “The 2010 Presidential Election and Up-Country Tamils”, Workshop organised by HDO on 19th December 2010

¹⁵ Id.

¹⁶ <http://cmev.wordpress.com>

In the notice issued by the Commissioner of Elections on 19 March 2010,¹⁷ it is provided that arrangements for IDPs from Vavuniya needing transport to travel to Killinochchi and Mullaitivu will be made by the GA of Vavuniya and that information will be shared with the IDPs. CPA welcomes measures taken by the authorities to address these problems and recommends that information of these arrangements be disseminated widely and in advance of Election Day.

Abuse of State Resources and other issues

The Election Commissioner on the 8th December 2009 issued guidelines based on the provisions of Article 104B (4) of the Seventeenth Amendment to the Constitution regarding the use of state resources in electoral campaigns. These rules were applicable from the 23rd November 2009 until the announcement of the final result to ensure a free, fair and equal election. The guidelines specified that no property including vehicles belonging to the state authorities should be used for campaigning. The Commissioner of Elections on 13th February 2010 issued similar guidelines for the Parliamentary elections.

Though these guidelines have been issued and publicized, they have been completely disregarded by particular actors. According to Transparency International¹⁸, there were several incidents where state resources were used by the President and his party for campaigning prior to the Presidential elections in January 2010.¹⁹

There were also other cases reported to CMEV where state resources were used for campaigning in the North prior to the Presidential elections. CMEV was informed that the previously detained and later released TNA MP Kannagaratnam was brought to Vavuniya, given a government bungalow and vehicle and asked to campaign for Mahinda Rajapaksa.²⁰ CMEV reported that recent returnees to areas in Vavuniya including villages in Chettikulam DS were provided dry rations and asked to vote for Mahinda Rajapaksa.²¹ The CMEV team was also informed of three villages in Chettikulam DS where around 1200 were provided dry rations by Minister Rishard Badurdeen in January 2010. According to media reports, opposition politicians were not allowed to campaign inside the camps prior to the Presidential elections, but Government ministers and supporters were seen campaigning within the camps.²² There were also cases where cut outs and posters of Mahinda Rajapaksa were placed prominently in and near the camps. No opposition propaganda material was displayed in this way. As a result many IDPs were only aware of the party symbol for Mahinda Rajapaksa thus limiting the choices made available to the IDPs.

¹⁷ Notice Issued by the Commissioner of Elections, 19th March 2010

¹⁸ Programme for Protection of Public Resources 1 (31 December 2009), Programme for Protection of Public Resources 2 (10 January 2010) and Programme for Protection of Public Resources 3 (19 January 2010) by Transparency International Sri Lanka

¹⁹ Id.

²⁰ CMEV Field Visit Report to Jaffna, Killinochchi and Vavuniya, 22nd January 2010

²¹ Id.

²² "Many IDPs deprived of chance to vote", Sunday Times, 31 January 2010

The lack of adequate information among IDPs and the use of state resources to campaign together may have made a significant impact on voting patterns in the North, especially among IDPs and others who had limited information and relied only on what was available to them. It also raises questions as to the free and fair nature of the elections.

The Parliamentary Election held in April 2010 have also witnessed incidents where state resources have been misused by politicians. For example, in Ampara, CMEV was informed of a meeting held on 23rd March at the Ashraff-Athaulah Memorial Hall in Pottuvil for school teachers and principals where UPFA candidates and an Eastern Provincial Council Minister had spoken.²³ As a result of the meeting, CMEV was informed that schools in Pottuvil were closed as principals and teachers were ordered to attend the meeting. CMEV was informed of the misuse of a building and staff of the National Youth Council, in Mannar during the campaign of the incumbent Minister of Re-settlement and Disaster Relief Services and UPFA candidate Rishard Badurdeen on 22nd May.²⁴

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The continued use of state resources by politicians and political parties is a blatant violation of the law and guidelines issued by the Commissioner of Elections and a complete disregard for the integrity of elections and public resources. The fact that politicians feel that state resources, property held in trust by the State for the citizens of this country, can be used and abused as they please, with no remorse for what they have done, raises serious questions regarding the quality of politicians and political parties we have at present. As noted in this brief, the use of state resources to inform minorities who have limited sources of information and who may rely purely on what they receive may influence the outcome of an election.

Violence and Elections

Violence leading upto elections and on Election Day can impact voter turnout and ultimately decide whether the elections are free and fair. In recent times elections have been marred by violence and threats. In the North and East, violence, intimidation and threats have been documented in several elections.

In the first post war national elections, violence was witnessed throughout the country. CMEV reported 178 incidents on Election Day of which 94 were categorised as major.²⁵ On Election Day, there were several blasts in Jaffna and Vavuniya town areas.²⁶ CMEV received reports of multiple explosions in Nallur, Uduppiddy, Manipay, Vaddukottai, Chavakachcheri and Tellipallai in Jaffna. In its Election Day

²³ Monitoring Election Violence in Sri Lanka Parliamentary Election 2010: Media Communiqué 3, 23 March 2010, CMEV.

²⁴ Id.

²⁵ Presidential Elections 2010: Statement on election day observations, <http://cmev.wordpress.com>

²⁶ Presidential Election 2010: Election Day Media Communiqué No 4, <http://cmev.wordpress.com>

Comminuque, CMEV reported that these acts of violence would reduce the voter turnout in the peninsula and called on the agencies of law and order to bring the perpetrators of this violence to justice.²⁷

The second post war national election held on 8th April 2010, will be held no more than 10 months after the war was won, with thousands of IDPs being resettled and the reduction in the number of IDPs in camps and with host families. Although it remains to be seen whether these elections will be free of violence on Election Day, what is certain is that the period leading up to elections has been marred by violence. As of 2nd April 2010 CMEV has recorded a cumulative total of 307 incidents including 178 major incidents.²⁸ The use of firearms has risen to 43. The 178 confirmed major incidents included 10 incidents of grievous hurt, 08 instances of hurt, 68 assaults, 25 instances of threat and intimidation, 45 instances of the misuse of state resources and 09 incidents of arson. As of 3rd April, CMEV recorded 17 major violations from the North.²⁹

It is difficult to predict whether whether minorities and others will be able to vote in a violence free setting on 8th April. Early signs however already indicate an increase in incidents as election days nears, with more incidents likely on Election Day and perhaps in the post election period. Although most politicians decry violence, they have done little to deter and prevent it. The onus is upon the Government, all political parties and law enforcement agencies to ensure that there are no incidents leading upto Election Day, on the day itself and after polls close and that civilians feel confident and secure enough to vote.

Militarisation in the North and East and its impact on Elections

The North and East have witnessed a high military presence during the conflict and even in the post war context the presence remains. While the number of checkpoints particularly in the East has significantly reduced, the military maintains a very visible presence and is heavily involved in administration particularly in the Wanni. More than 10 months after the war was won, there still are HSZs and high security areas. Large areas are occupied by the military displacing thousands of residents. Residents from these areas including Jaffna and Trincomalee continue to live in displacement and in camps or with host families. In a post war situation, there has been an obvious and dramatic change in the Wanni. Replacing the LTTE administrative buildings and security installations are government buildings, military checkpoints, stations and cantonments. The Wanni that is accessible to the public resembles a military garrison and there is increasing likelihood that the entire Wanni and possibly more areas will be controlled by the military in the future. Therefore, it seems the military will play a critical role in the North and East, including in the holding of elections and in arrangements prior to and post elections.

Militarisation in the North and East is nothing new. Elections have been held under heavy security during the conflict years. But there have been many instances where the military rather than supporting civilians right to vote, have imposed security measures which have impeded this right. For example, in the 2001

²⁷ CMEV Election Day Communiqué No 2, <http://cmev.wordpress.com>

²⁸ Monitoring Election Violence in Sri Lanka Parliamentary Election 2010, CMEV, 2nd April 2010

²⁹ Monitoring Election Violence in Sri Lanka Parliamentary Election 2010, Media Communiqué 9

Parliamentary elections, the military did not allow thousands of voters in the former LTTE controlled areas to vote, resulting in thousands being disenfranchised.³⁰

The high military presence in the North and East shows no signs of abating. The military plays a critical role in day to day activities including voting arrangements for IDPs and others in the North. IDPs who were unable to vote in the Presidential elections due to inadequate transport reported to CMEV that in addition to buses being delayed, another reason for the delay in travelling from the camps in Vavuniya to Killinochchi was the additional checking at Omanthai by the military. For IDPs who were told to be ready for transportation by 6am, and who were only given transport at 1.30pm and had to travel to Killinochchi and vote before 4pm, this was a further obstacle to voting. Although certain security measures need to be taken, this should be proportionate to the threat and should only be taken to safeguard a citizen's fundamental rights. The security measures that were in place at Omanthai should have been relaxed since IDPs who were transported in government organized buses had already been screened, rescreened and had gone through several military security measures. In such a context, one needs to question the necessity of a further security measure.

Although military presence and security measures are appreciated when there is a need for them, such measures should be taken to protect the rights of the citizens of Sri Lanka including the most vulnerable and marginalised, and facilitate their ability to vote during election time. Past experiences and examples used in this brief demonstrates that high military presence and their role in the electoral process may negatively influence potential voters, especially minorities who are reluctant to challenge the security establishment on violations or discrepancies in voting arrangements for fear of reprisals.

The Case of the Muslim IDPs from the North

Apart from the population of the North and East displaced in the last one and a half years of the conflict, there remain many more IDPs who were displaced prior to the most recent fighting and also during the tsunami. There are also approximately 80,000 Muslim 'old' IDPs who were forcibly evicted by the LTTE from the North in 1990. They constituted the North's entire Muslim population, about 5% of its total population, and were "summarily expelled" from their homes in Jaffna, Mannar, Vavuniya, Mullaithivu and Kilinochchi. Muslims from Jaffna where the majority lived were given only 2 hours to leave; elsewhere they were given 48 hours. They were caught unprepared, and with no means of transportation many walked for as long as three days, eventually staying in Puttalam because they were prevented from moving further south by government forces.³¹

Over the course of two decades they have continued to live in what are generally open camps in Puttalam which have not been affected by the conflict. They have established for themselves very basic housing and other facilities. With the defeat of the LTTE there is now a revival of interest within this community to explore their right of return. That resettlement in the North is not seen as an equal priority for all ethnic minorities is becoming a cause for concern among Muslim IDPs, whose participation in upcoming elections will therefore be of increasing importance. The Muslim IDPs have been displaced

³⁰ Thavaneethan v. Dissanayake and Others, SC FR No. 22/2002

³¹ "Ignoring two Decades", Daily Mirror, 25th February 2010

since 1990, effectively living in displacement for 20 years. Although they are classified as IDPs, assistance and attention to this group has reduced with the emergencies that were witnessed in the North and East. This has impacted the assistance provided to them and prevented any durable solutions from emerging to alter the *status quo*.

This group has been disenfranchised in elections held in the recent past - unable to return to their homes in safety, without access to the electoral registration process in the North, lacking the educational opportunities or literacy levels to understand the legal procedures to enable them to vote, and, having lost, in the process of displacement, the documentation needed to demonstrate their identities and residential places.

In CPA's discussions with those displaced and working in the area, it was evident that political affiliations and support may influence voter registration. CPA was informed that IDPs residing in camps were reliant on camp officers to inform and assist them on requirements to vote and to register in the electoral list. These camp officers are employees of the Ministry to Resettlement and are alleged to be supporters of Minister Rishard Badurdeen. As a result, CPA was informed that camp officers only register those IDPs who are seen as supporters of Minister Badurdeen and those seen to support opposition candidates are not provided assistance to register. The politicization of camp officers, who are the government officials working most closely with IDPs, has implications not only for the credibility of the electoral system but raises questions of the abuse of state resources by candidates. The IDPs who are reliant on camp officers are afraid to complain due to possible reprisals and local organizations in the area are reluctant to raise these issues since they fear that their ability to work in the area and their access to camps will be restricted if they question powerful politicians and government ministers.

Another factor affecting the IDPs in Puttalam is the lack of information and awareness among the IDPs. Although this group of IDPs has been living in displacement for 20 years, raising their awareness on their right to vote needs to be prioritised. This is largely due to the lack of awareness campaigns in the area. Local organizations working in the area stated that if they carry out awareness campaigns on the issue, they may be seen to be supporting a particular politician or political party and therefore many are reluctant to get involved in the issue. In such situations, national humanitarian organizations and election monitoring bodies need to work in partnership with local groups to disseminate information in the camps and surrounding areas.

CPA was also informed that Muslim IDPs faced problems on Election Day if there are discrepancies in how their name has been spelt on polling cards compared to how it is spelt in their identity documents. Many Muslims have long names which due to spelling or administrative error, may be spelt differently in the polling card. Several who had this problem were not allowed to vote in previous elections. Though the polling card is not mandatory for registered voters, CPA was informed that some polling agents in Puttalam insisted on proof of polling cards and would not allow IDPs to vote if they did not have one or if the spelling was different to what was displayed in their identity document. Although this was highlighted

There should be steps taken to address these issues of language to ensure that minorities and others are not disenfranchised due to a minor error in spelling.

among Muslim IDPs, this is not an issue limited to only one ethnic group. Spelling of names in Sinhala may differ to how it is spelt in Tamil and this is a factor that needs to be recognized by the authorities. There should be steps taken to address these issues of language to ensure that minorities and others are not disenfranchised due to a minor error in spelling. Furthermore, polling agents and all other government officials involved in elections need to be made aware of requirements for voting and be aware that polling cards are not mandatory for registered voters.

Elections in the future and role of minorities

Although many minorities have been unable to fully realise their fundamental rights, largely as a result of the conflict, there are several measures taken by the Commissioner for Elections that have facilitated the marginalised and vulnerable groups to vote. For example, in the Presidential elections, the application deadline for IDPs was extended several times to enable more IDPs to apply to vote. Similarly, the Commissioner for Elections recognised that many IDPs were displaced from their original places of residence and made arrangements for those who are displaced to voter in cluster centres. Further, the step taken by the Commissioner of Elections to recognise the temporary camp identity as a valid identity to vote needs to be welcomed. It enables thousands of IDPs to vote.

Though some positive measures have been witnessed, there remain several issues that impede the right to franchise of minorities. The present brief highlights some of the obstacles and barriers faced by minorities in Sri Lanka in their ability to vote. Many of these are directly due to the conflict and the natural disasters in the past few years, but some problems as already discussed are due to administrative and legal barriers or to the inaction by the relevant authorities.

In a post war context and nearly a year after the defeat of the LTTE, more needs to be more done to recognise and respect the rights of the minorities. One key issue is the need for a political solution which is formulated with the involvement of all stakeholders including minority groups and which recognises the concerns of minorities. In respect of voter rights, the Government needs to take the initiative to address the grievances of all those who are deprived of their fundamental rights including that of minority communities.

The present brief highlights many of the obstacles and barriers minorities face in relation to their fundamental right to vote. Although the present brief is not an exhaustive list of the problems, it is an indicator of present legal, policy, administrative and practical obstacles that need immediate attention. Addressing these barriers and making necessary amendments is essential in addressing the grievances of minorities and providing them with the confidence that they are equal citizens of Sri Lanka. All relevant stakeholder need to act effectively and efficiently to provide for the voting rights of minorities. Future elections including the prospect of the Northern Provincial Council elections this year underlines the urgency of the matter.

Recommendations

This brief ends with a set of recommendations to the Government, political parties, donors, humanitarian agencies, civil society and others.

Related Laws and the Constitution

- The Seventeenth Amendment to the Constitution need to be immediately implemented and the appointments to the independent commissions including the Elections Commission made.
- Amendments to the present election laws need to be made to ensure that consideration is given to special circumstances and categories such as the conflict and natural disasters.
- There needs to be strict enforcement of election laws and guidelines issued by the Commissioner of Elections and relevant Competent Authority

Election Register and Documentation

- The electoral register should be updated, taking on board those who were displaced and not resident in their original household at the time when the enumeration took place. Special measures need to be taken to take special cases into consideration and to allow for more time for appeals by the affected communities.
- Awareness campaigns should be done in all three languages as widely as possible to educate the voter on his or her rights, the process and applicable time frames. This information should be disseminated by all actors and widely displayed in public buildings.
- The Government should take immediate steps to provide documentation to those who have lost or destroyed what they had as well as to those who never had a valid form of documentation.

Process for Future Elections

- Prior to Election Day, voters should be provided information in all three languages on where their polling centre is located, transport arrangements if any, necessary documentation to vote and other relevant information.
- The Government needs to ensure that all steps are taken to ensure that IDPs who have a vote in another district are provided information in time and made aware of arrangements made.
- The Government should arrange for transport for those who need to travel to cluster centres and inform IDPs and others prior to Election Day of such arrangements.
- All regulations, guidelines and notices need to be issued in all three languages and widely disseminated.
- The Commissioner for Elections should use his office and the powers he is entrusted with to ensure that security is provided to voters, polling centres, ballot boxes and counting centres.

Violence and Militarisation

- The Government needs to take steps to reduce the high militarisation in areas and allow the civil administration to play a more active role on issues including elections.
- All candidates, supporters, political parties and others need to desist from violence leading upto elections, on Election Day and post elections. All effort should be taken by relevant actors to ensure a violence free election where all registered voters are able to vote freely.

The **Centre for Policy Alternatives (CPA)** is an independent, non-partisan organization that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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