

# **REPORT OF THE COMMONWEALTH OBSERVER MISSION**

## **SRI LANKA'S NORTHERN PROVINCIAL COUNCIL ELECTIONS**

**21 SEPTEMBER 2013**



# COMMONWEALTH OBSERVER MISSION

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**COMMONWEALTH OBSERVER MISSION****SRI LANKA'S NORTHERN PROVINCIAL COUNCIL ELECTIONS  
21 SEPTEMBER 2013**

27 September 2013

Dear Secretary-General

Following your invitation to observe the 21 September 2013 Northern Provincial Council Elections in Sri Lanka, we have now completed our Final Report and are pleased to submit it to you with this letter.

These were landmark elections in Sri Lanka's Northern Province. In approaching our task, we were conscious that these were the first Northern Provincial Council Elections held since the end of the civil conflict in May 2009, and since the Provincial Council system was established.

We were impressed by the administrative arrangements for voting and counting made by the Commissioner of Elections and his staff across the Northern Province, who approached their duties with diligence and dedication. Election Day itself was largely peaceful, with only isolated incidents reported.

We have concluded, however, that while voters on Election Day were able to express their will, serious and fundamental shortcomings in the equally important pre-election period meant that in our overall assessment, the 21 September 2013 Northern Provincial Council Elections did not fully meet key benchmarks for democratic elections.

We were impressed by the determination and resilience of voters to exercise their franchise in the context of a compromised electoral environment. It is our sincere hope that this election will mark a forward step in the post-conflict development of the Northern Province.

We are pleased to highlight that we received full cooperation from the Sri Lankan Government and the Commissioner of Elections.

Pursuant to our mandate, we have offered a number of constructive recommendations to help improve the electoral process and environment. We hope they will be received in the positive spirit in which they are intended. Our team now departs Sri Lanka. We would very much like to thank you for the opportunity of being of service to the Commonwealth. I would also like to thank the Secretariat for all the support to the Observer Mission.

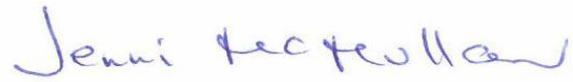
Yours sincerely,



**H E Stephen Kalonzo Musyoka**  
Chairperson



ATM Shamsul Huda



Jennifer McMullan



Examin Philbert

# Chapter One

## Introduction

The Commonwealth Observer Mission to the 2013 Northern Provincial Council Elections in Sri Lanka was led by His Excellency Stephen Kalonzo Musyoka, former Vice President of the Republic of Kenya, and comprised four eminent persons in total. A three-person staff team from the Commonwealth Secretariat supported the Observer Mission. Biographical details of each of the members of the Mission is at Annex 1.

### Terms of Reference

*“The Mission is established by the Commonwealth Secretary-General. It is to observe relevant aspects of the organisation and conduct of Sri Lanka’s Northern Provincial Council Elections which are scheduled to take place on 21 September 2013, in accordance with the laws of Sri Lanka.*

*The Mission is to consider the various factors impinging the credibility of the electoral process as a whole. It will determine in its own judgement whether the elections have been conducted according to the standards for democratic elections to which Sri Lanka has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.*

*The Mission is to act impartially and independently and shall conduct itself according to the standards expressed in the International Declaration of Principles to which the Commonwealth is a signatory. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. In its Final Report, the Mission is also free to propose to the authorities concerned recommendations for change on institutional, procedural and other matters as would assist the holding of future elections.*

*The Mission is to submit its report to the Commonwealth Secretary-General who will forward it to the Office of the Commissioner of Elections, the Government of Sri Lanka, political parties, all Commonwealth Governments and thereafter to the public.”*

### Activities

The Observer Mission arrived in Sri Lanka on 14 September 2013. During two days of briefings in Colombo, the Mission met with the Commissioner of Elections and senior officials of the Department of Elections, representatives of the major political parties contesting in the Northern Provincial Council Elections, domestic observers and civil society organisations, and representatives of Commonwealth High Commissions and the United Nations.

The Mission arrived in Jaffna on 17 September 2013, and we met with the Governor of the Northern Province, leaders and senior representatives of political parties, the leadership of the military and police respectively, civil society, media and academia.

An Arrival Statement was issued on 18 September 2013 (Annex 2). The Observer Mission was deployed from 19-22 September 2013. Observers deployed at Jaffna, Kilinochchi, Mullaitivu, Vavuniya and Mannar, met with election officials, district administration, the police, domestic and other international observers and representatives of diplomatic missions (Annex 3).

On the basis of the Mission's preliminary findings and observations, a Statement of Preliminary Findings was issued on 23 September 2013 (Annex 4). The Mission's Final Report was completed prior to departure from Jaffna on 26 September 2013 and thereafter transmitted to the Commonwealth Secretary-General.

## Chapter Two

### Political Background

#### Context

The United Peoples Freedom Alliance (UPFA) is the ruling coalition in Sri Lanka. At the helm of the UPFA is the Sri Lanka Freedom Party (SLFP), which is the single largest party in Parliament. The head of the UPFA and SLFP is President Mahinda Rajapaksa. President Rajapaksa was first elected to the Presidency in 2005, and was re-elected in 2010. It was under the leadership of President Rajapaksa that Sri Lanka decisively ended its civil war with the Liberation Tigers of Tamil Eelam (LTTE) in May 2009.

The nearly three-decade conflict with the LTTE cost the country many thousands of lives and resulted in widespread destruction and displacement. Since the end of the war, there has been extensive and widespread debate both within and outside the country on the requisite steps for reconciliation, reconstruction and rehabilitation.

Commonwealth Heads of Government decided at their biennial meeting in 2009 in Trinidad and Tobago, that Sri Lanka would host their 2013 summit. As per normal practice, Sri Lanka would hold the position of Chair-in-Office of the Commonwealth for a period of two years. Commonwealth Heads of Government reconfirmed this decision at their summit in Perth in 2011.

Since 2009, the Government has taken what the opposition in the country regards as retrogressive steps. In 2010, after President Rajapaksa's re-election to power on a wave of popular support at the end of the conflict, the 18<sup>th</sup> Amendment to the Constitution was enacted. Significant features of the amendment include the provision for the President to exercise sole discretion in appointing the Heads of key institutions such as the Elections Commission, Public Service Commission, Human Rights Commission, Judicial Services Commission and National Police Commission. The Amendment also removed Presidential term limits. The removal of Chief Justice Shirani Bandaranayake in January 2013 was also hugely controversial in the country, and put Sri Lanka under strong international spotlight.

In both 2012 and 2013, Sri Lanka was the focus of two UN resolutions passed at the Human Rights Council in Geneva, calling on the Government to establish accountability for actions in the final phase of military operations against the LTTE, and to move swiftly and resolutely towards political reconciliation.

The UN High Commissioner for Human Rights, Ms Navi Pillay, stated at the end of a week-long visit to Sri Lanka in August 2013 that democracy had been undermined and the rule of law eroded in Sri Lanka since the end of the civil war.

## Reconciliation

On reconstruction, rehabilitation and access to the Northern Province, there is acknowledgement that the Government has made huge strides forward since the end of the civil war in 2009, particularly in terms of road development and the replacement of critical infrastructure.

It is on reconciliation that it is said the Government must take more steps to find an acceptable political accommodation with the ethnic Tamil minority. Sri Lanka's own Lessons Learnt and Reconciliation Commission (LLRC) spoke of, among other things, the need for devolution. President Rajapaksa established the LLRC in 2010, to determine the circumstances that led to the breakdown of a ceasefire between the Government and the LTTE in 2002 and to identify steps to prevent such a conflict from recurring.

Mainstream political opposition in the Northern Province has long supported enhanced devolution, as well as an effective federal set up as a means to resolve historical grievances. Senior leadership of the ruling party has also spoken of the need to look at a system of self-rule within a federal set up.

Provincial Council elections were therefore seen as an important first step in the process of devolution, and ultimately sustainable political reconciliation.

## Provincial Councils

The Provincial Councils were established in nine provinces by the 13<sup>th</sup> Amendment to the Constitution in 1987, with a view to devolve powers from the centre to the periphery. The 13<sup>th</sup> Amendment was born out of the Indo-Lanka Accord of 1987, which was initiated by India to ease the then active military conflict with the LTTE.

Details of the structure of Provincial Councils, as provided for by the Constitution, are given in Chapter 3. Each province has a Governor with extensive powers, who is appointed by the President. The Governor's extensive powers have been the cause of some doubt about the possible effectiveness of Provincial Councils, especially in the context of the Northern Province.

Political debate in the country in late 2012 and in early 2013 seemed to suggest that the Northern Provincial Council elections might not be held, for a number of reasons. These included views that the 13<sup>th</sup> Amendment was not a home-grown solution to Sri Lanka's ethnic problem; that devolution was not appropriate for this particular post-conflict scenario; that all internally displaced persons had not yet been resettled and some would be disenfranchised; and that the provincial council model was not best placed to deliver on developmental needs of the people. Parliamentary debate on some of these issues was initiated, but appeared to have faded as the election date drew nearer. Two legal challenges to the holding of the Northern Provincial Council elections were also filed with the Supreme Court. There has also been speculation that land and police powers, currently under the purview of Provincial Councils, will be curtailed via legislative change.

## The Northern Province

The Northern Province was the final battleground of the civil conflict and the location of the LTTE's decisive defeat in 2009. It is partly due to the legacy of protracted civil war that the military maintains a significant presence in the Province. The military plays an active and visible role in everyday life in the Northern Province.

Though estimates of numbers of military personnel in the Northern Province vary, some commentators estimate that the Province has one of the highest military to civilian ratios in the world. Exact figures of military personnel deployed in the Northern Province are also difficult to establish. The military employs thousands of ex-LTTE cadres and youth in the province to undertake a variety of tasks such as labouring on military-run farms. Also, until late August 2013, when a new Ministry of Law and Order was announced, which will manage the police and be headed by the President, the police force's parent ministry was the Ministry of Defence. Thus establishing the number of those in the Province with an active affiliation to the armed forces is not straightforward.

The military's on-going presence in the Northern Province has given rise to disputes about land and land transfers. According to intergovernmental, media and civil society sources an estimated 9,000 families in the North are affected by what is said to be more than 6,000 acres of land being taken over by the military. The land in question is said to belong to Tamil families displaced by the conflict and it is being alleged that thorough efforts have not been made to establish the whereabouts of pre-war occupants/owners of the land or to adequately deal with currently lodged claims. It is estimated that 3,000 legal cases were originally filed against the Government in this regard.

The military is alleged by the opposition and domestic observers to have played a negative role in the 2011 Local Government Elections in the Province, including by disrupting opposition rallies, preventing voters from reaching polling stations and buying polling cards.

Since the end of the war, the office of the Governor has administered the Northern Province. The current Governor of the Northern Province is a retired military commander who was on duty in the Northern Province in the final stages of the war against the LTTE.

The most popular mainstream political party in the Northern Province is the Tamil National Alliance (TNA). The leading party, and under the name of which the Alliance contests in elections is Ilankai Tamil Arasu Katchi (ITAK). The coalition, under the banner of ITAK, won 14 parliamentary seats at the last general election in 2010.

It is against this backdrop that the 2013 Northern Provincial Council elections were announced, prepared for and administered. On 5 July 2013, the President directed the Commissioner of Elections to hold the Northern Provincial Council elections. The Commissioner issued the Nomination Notice on 11 July 2013. On 1 August 2013 the Commissioner announced that Provincial Council elections in the Northern Province,

as well as the North-Western Province and Central Province, would be held on 21 September 2013.

## Chapter Three

### The Electoral Framework and Election Administration

#### Legal Framework

The conduct of Provincial Council elections in Sri Lanka is governed by the following legislation:

- The Constitution of the Democratic Socialist Republic of Sri Lanka (1978, as amended)
- Provincial Councils Act, No. 42 of 1987
- Provincial Councils Elections Act, No. 2 of 1988
- Elections (Special Provisions) Act, No.35 of 1988
- Provincial Councils Elections (Amendment) Act No. 55 of 1988
- Provincial Councils Elections (Amendment) Act No. 29 of 1990
- Provincial Councils Elections (Amendment) Act No. 07 of 1993
- Provincial Councils Elections (Amendment) Act No. 05 of 2004
- Elections (Special Provisions) Act, No. 14 of 2004
- Elections (Special Provisions) Act, No. 28 of 2011
- Registration of Electors (Special Provisions) Act, No. 27 of 2013
- In addition the Commissioner of Elections has issued a number of guidelines governing the conduct of elections.

#### The Provincial Council Electoral System

The 13<sup>th</sup> Amendment to the Constitution, certified on 14 November 1987, established nine provinces with a view to effectively devolving powers from the centre to each Council, while the Eighth Schedule of the Constitution lists the provinces as follows: Western, North Western, Sabaragamuwa, Central, Southern, North Central, Uva, Eastern and Northern.

The Provincial Councils Election Act No. 2 of 1988 sets out the procedures for the election of members of the Council. Every Provincial Council comprises one Governor, one Chief Minister and a Board of Ministers. The number of Councillors elected is determined by the area and population of the province. In the Northern Province, Jaffna has 16 Councillors and Kilinochchi has 4, Mullaitivu 5, Mannar 5 and Vavuniya 6. A further two bonus seats are provided to the winning party, making a total of 38 Councillors.

The Provincial Council is appointed for a term of 5 years. Each Council is vested with legislative powers in terms of making statutes for the province and has a number of executive and administrative powers, including fiscal management and revenue raising. Provincial Councils also have legislative power over agriculture, education, health, housing, local government, planning, road transport, police, land and social services.

## **Constitutional Features**

The sovereignty of Sri Lanka is vested in the people and the executive power of the people is exercised by the President, who is elected by the people. The President is Head of State, Head of the Executive, Head of Government and Commander in Chief of the Armed Forces. He is also Head of the Cabinet of Ministers and appoints the Prime Minister and other Ministers from the elected Members of Parliament. Initially the President was appointed with a limit of two terms, each being a maximum of 6 years, however, the 18<sup>th</sup> Amendment to the Constitution removes the two term limit.

The 17<sup>th</sup> Amendment to the Constitution, enacted on 3 October 2001, provided for the establishment of an Independent Electoral Commission. Section 104B of the 17<sup>th</sup> Amendment sets out the powers, functions and duties of such an independent body. However, this Commission was never established and the powers foreshadowed in the 17<sup>th</sup> Amendment have been exercised since 2001 by the person occupying the position of Commissioner of Elections.

According to Section 36 (4) of the 18<sup>th</sup> Amendment, which was passed into law on 9 September 2010, the Commissioner will “continue to hold office and exercise and discharge the powers and functions vested in him under the Constitution as Commissioner of Elections until the Election Commission is constituted in terms of Article 103”. The 18<sup>th</sup> Amendment provides limited authority to the person holding the position of Commissioner of Elections.

Best practice in Commonwealth countries supports the independence of an electoral body that reports directly to the Parliament. The failure to establish a truly independent Commission is, in our view, a significant shortcoming and one that should be addressed as a priority.

## **Electoral Administration**

The Commissioner of Elections is supported by Additional and Deputy Commissioners and also by an Elections Secretariat.

Under Section 7 of the Provincial Council Elections Act, the Commissioner appointed Returning Officers for each of the five Administrative Districts in the province. Assistant Returning Officers were also appointed to assist in organising the election within each District as the representative of the Commissioner of Elections.

Traditionally, the District Secretary of the relevant district is appointed as Returning Officer who, in most cases, is a member of the Sri Lankan public service.

For this election, there were 14 polling divisions and 830 polling stations.

It was noted that domestic observers had no legislative recognition and, as a consequence, their activities are governed at the discretion of the Commissioner.

## **Voter Eligibility and Registration**

To be eligible to vote in an election, a person must be a Sri Lankan citizen, have attained 18 years of age, be of sound mind, be an ordinary resident of the relevant address and must not be serving or have served a period of imprisonment during the preceding seven years.

The voter register used for this election was last updated in 2012 and was based on house-to-house visits conducted by the Registering Officer of the District. The process of updating involves deleting the names of those voters who have died or left the country and including the names of those who have become eligible to vote having reached the qualifying age since the last update. The updated draft register with all deletions and additions was published for inspection, providing contesting political parties and the public with the opportunity to object to the addition or deletion of any names.

Under the Registration of Electors (Special Provisions) Act No. 27 of 2013, the Commissioner called for applications from people displaced by the conflict in the Northern and Eastern provinces who were unable to register their names after 2009. Both the People's Action for Free and Fair Elections (PAFFREL) and the Campaign for Free and Fair Elections (CaFFE) have assisted tens of thousands of displaced people to complete the necessary paperwork to secure their voter identification cards. 4,989 electors were subsequently registered in a Supplementary Register.

Relevant civil society organisations estimate that as many as 85,000 people have no form of identification and as such are disenfranchised from the electoral process.

## **Candidate Eligibility and Nomination**

Any person qualified to be an elector may be nominated as a candidate. The nomination must be submitted by a recognised political party or an independent group to the Returning Officer within the specified period. Independent groups are required to deposit Rs2000 for each candidate before the final day of the nomination period. Deposits made by independent groups will be returned if the nomination is rejected or if at least one candidate of an independent group is elected to the Provincial Council.

There were 906 nominated candidates for the Northern Province elections.

## **Recommendations**

1. An Independent Electoral Commission as foreshadowed in the 17<sup>th</sup> Amendment should be established as a matter of urgency.
2. A concerted effort on the part of the Department of Elections is required to reduce to an absolute minimum the number of people that have no form of identification. An official partnership with organisations such as PAFFREL and CaFFE could be considered.

3. Formal recognition of the role and importance of domestic observers would support the transparency of the electoral process.

## Chapter Four

### Election Campaign and Media Environment

#### The Election Campaign

##### The Campaign Environment

The election campaign in the Northern Province appeared to have been conducted in a compromised and subdued environment. This seemed, to the Mission, to be attributed in large part to the presence and influence of the military in the province. A background to military presence in the province is given in Chapter 2.

The role of the military in the electoral campaign was consistently described to the Mission as a significant obstacle to a credible electoral process. The Mission heard persistent reports of overt military support for particular candidates and military involvement in the intimidation of the opposition candidates, party supporters and the electorate. We noted the letter written by the Leader of the Tamil National Alliance to President Rajapaksa, requesting that the military be constrained from participating in campaign activities.

It was clear that the military's alleged involvement was a key feature of the election campaign period. Below are selected salient examples which bolstered concern in this regard.

The Commissioner of Elections wrote to the Secretary-General of the United People's Freedom Alliance (UPFA) and the National Organiser of the UPFA on 9 September 2013, noting that uniformed men were carrying out campaign activities for one of the alliance's candidates, Mr M Remaddious. According to reports of domestic observer groups accredited by the Commissioner of Elections, activities in support of this candidate included organising large campaign meetings. The Mission saw widely available photographic evidence to support this assertion. These reports include reference to local election officials being obstructed from doing their duty in enforcing relevant regulations. We also heard representations that uniformed personnel were distributing building materials in communities in the presence of the said candidate.

The Mission was told by a local official that the Grama Niladari had, in some villages in the Province, been approached by the military for a copy of the electoral register. Furthermore, in some instances this had been provided, and that it was subsequently used to conduct house-to-house investigation with a view to influencing the electoral outcome. An election official spoken to was directly approached for a copy of the electoral register by the military.

The Mission was also informed by local officials that the military was conducting meetings at the district level to advise voters on who to vote for. In addition to this,

persons employed by the military, including the frequently mentioned Civil Defence Force, were reported by domestic observer groups to have carried out door-to-door campaigns in the Kilinochchi and Mullaitivu Districts on 5 and 6 September 2013.

The Mission heard representations that the military conducted background checks on opposition candidates by repeatedly visiting their homes, including late at night. We noted that at least three opposition candidates were visited multiple times, including at night, by persons either in uniform or stating their affiliation to the military. We drew also from reports and direct testimonies that opposition candidates and their supporters faced instances of intimidation, harassment and assault. In this regard, we noted with considerable concern the reports of attacks on one of the few female candidates in this campaign, Ms Ananti Sasitharan, which took place immediately after nominations, again on 10 September 2013, and also on the eve of the elections. The attack on the eve of the elections was violent and resulted in injuries to her supporters. The attackers were reported to be wearing military uniforms.

We note with serious concern that the above mentioned attack on Ms Sasitharan's home resulted also in the violent assault on a domestic observer from the Peoples Action for Free and Fair Elections (PAFFREL), who had gone to the scene of the attack after receiving a complaint at PAFFREL's Jaffna complaint centre. According to the testimony of this observer, the attack on him continued even after he had identified himself to the attackers as an observer. The observer was subsequently hospitalised, along with 9 other people.

It was also noted that on the eve of the election, an unknown group of men, thought to be associated with the military, were reported to have visited the residence of the sister of the Ilankai Tamil Arasu Kadchi Chief Ministerial candidate, Justice C.V. Wigneswaran, and apparently without being aware of her family connections, cautioned her against voting for the Ilankai Tamil Arasu Kadchi and Justice Wigneswaran. The unknown group of men were quoted as saying they were paying visits to the homes of residents to caution them along the above-mentioned lines.

The Mission heard numerous representations from political parties and civil society groups about the voters' fear of reprisals in the light of the electoral outcome, based on an apparently widely spread rumour that voting could be traced. The source of the reprisals was consistently quoted to the Mission as coming from the security forces. In light of this the Mission found it significant that the Commissioner of Elections made a decision on the eve of polling to mix ballot boxes from different administrative divisions at the counting stage, to minimise the risk of tracing voting patterns at particular locations. Although the decision was a welcome one, it spoke to the Mission of a real and worrying threat of reprisals based on voters' choices. In this context, the Mission took seriously the secrecy of the ballot being compromised in several polling stations throughout the Province, a concern mentioned in Chapter 5.

We also noted reports by domestic observer groups and information shared by other international observer missions which spoke of the involvement of uniformed personnel in placing posters for particular candidates and "tarring" i.e. blacking out of campaign materials belonging to the opposition.

Of note also for the Mission were the observations made by the Head of the South Asian Observer Delegation at his press conference in Colombo on 23 September, with regard to the numerous ways in which the military was involved in the electoral process.

### **Breaches of regulations on campaign activity**

The Provisional Council Elections Act No. 2 of 1988 imposes several restrictions and prohibitions on campaign-related activities. These include the following:

- Electoral campaign processions could not take place at any time commencing from the first day of nominations and ending one week after the declaration of the results of the respective election.
- The number of Election Offices of candidates were limited to one notified central office in the administrative district and one notified branch office in a polling district.
- Candidates and any member of their family were prohibited from engaging in house-to-house canvassing during the period from the last day of nominations and ending on the day following the date of the poll.
- The period for public meetings was restricted from forty-eight hours before the poll until one week after the declaration of elected members of the Provincial Council in a respective Administrative District had been made by the Returning Officer.
- Campaign handbills, placards, drawings, photographs, posters, billboards and “cut-outs” depicting the candidates were not permitted except in the immediate vicinity of party offices.

The above provisions were, according to media, domestic observers and political parties, widely flouted. The Mission is of the view that with such legal restrictions placed on an election campaign environment, some breaches are inevitable.

For example, although the Provincial Council Election Act No. 2 of 1988 does not allow for campaign handbills, placards, drawings, photographs, posters, billboards and “cut-outs” depicting candidates, except in the immediate vicinity of party offices, the Mission saw a substantial number of campaign materials on display in the Province, including on polling day itself.

With regard to the content of campaign materials, the Mission noted reports of a widely seen fake campaign poster misquoting the candidate number of the ITAK’s Chief Ministerial candidate as No. 7 instead of No. 10.

### **Abuse of incumbency**

The Mission heard numerous reports of misuse of public resources, documented by independent domestic observers and some corroborated by the Commissioner of Elections, which included misuse of government personnel including teachers and Samurdhi officers, vehicles and facilities for partisan political activity.

The Mission was made aware of inducements offered by the ruling coalition and government agencies to public officials and voters. These inducements included conditional job offers, higher salaries, promises of welfare benefits and the cancellation of loans.

Below are only a few examples of the numerous instances in this regard brought to our attention by media, civil society and other international observers:

- The Mission was concerned by statements by the Governor of the Northern Province, the most senior public official in the Province, which implied that he is entitled to engage in political activities. We saw reports of the presence of the Governor at a campaign rally of the UPFA in the Jaffna District. The Mission further noted that the Commissioner of Elections reportedly issued a letter to the Secretary-General of the UPFA, stating that Governors should not engage in electioneering. The Mission was able to raise these concerns with the Governor.
- Two days prior to the election, the UPFA arranged a campaign event in front of the Vavuniya hospital. During this time public roads were blocked and approximately 150 police were reported to have been providing security for the event. Government transport was used to facilitate people to attend.
- In the run-up to the election, an ITAK meeting was organised at the Chavakachcheri Divisional Secretariat. It was also reported that an ITAK candidate used state stationery to disseminate campaign materials.

### **Election Violence**

There were several incidents of election-related violence during the campaign. We mention here only a few examples, for illustrative purposes, of the numerous widely available accounts of election violence. Candidate V Kanagaratham and his supporters were reportedly attacked when they visited Delft Island to campaign on 14 August 2013. Ten supporters of Candidate Kajadeepan were campaigning in Chavakachcheri on 13 September 2013 when they were attacked by an armed group of unidentified persons. Candidate Thyagaraja Kumarakeshwaran, reportedly received death threats from a rival party. The attack on Ms Ananti Sasitharan, already mentioned, is also highly relevant here.

Public representations were made to the Mission about the widespread posting of messages warning of violence in the event of an ITAK victory. The Mission was able to see and make photographic record of these posters.

### **Hate Speech**

The Commissioner of Elections reportedly wrote to Hon MP Mavai Senathirajah, cautioning him with regard to an alleged violation of the laws against hate speech.

## Media Environment

The media should serve to educate and empower through the dissemination of information and promotion of debate. This is also in keeping with the fundamental right of citizens enshrined in the Sri Lankan Constitution, Article 14 of which reads: “Every citizen is entitled to freedom of speech and expression including publication.” (Chapter 3 Article 14(1) a page 8).

The media environment surrounding the Northern Provincial Council elections was considered in the context of overall media freedoms in the country. Media interest in these elections was extremely high, both within and outside the country.

Sri Lanka has an active media, but media experts claim it is divided along ethnic lines. Several major media outlets are owned by the state. This includes major TV stations, radio networks and newspapers in the country’s three official languages, Sinhala, Tamil and English. According to the BBC, there are over a dozen private radio stations, and a few privately-run TV stations. Media outlets run by private entities regularly engage in political debate, and many are critical of government. The use of social media such as Twitter is picking up, and as commentators told the Mission, it is used mostly for making political statements.

Despite this, most of Sri Lanka’s independent media self-censors and many claim this is due to a history of intimidation and attacks on media offices and personnel. The 2013 ‘Impunity Index’ prepared by the *Committee to Protect Journalists* ranks Sri Lanka’s culture of impunity with regard to the murder of journalists as the fourth highest in the world, a ranking unchanged since 2012. Sri Lanka also ranks 162nd out of 179 countries in the *Reporters Without Borders* Media Freedom Index, the lowest rank among Commonwealth countries.

In 2013 alone, media freedoms have come under duress. Senior journalist and co-editor of the *Sunday Leader* Newspaper fled Sri Lanka in September, citing threats to her safety. Journalists covering the Weliveriya protest incident in August were assaulted by the military. In March the British Broadcasting Corporation announced the suspension of its broadcasts citing continued interruption and interference of BBC Tamil programming by the Sri Lankan Broadcasting Association. In June, a controversial media code of conduct was proposed by the Government, which had the potential to restrict journalists from reporting on a range of issues. The code of conduct was not taken forward.

The Mission noted specifically that Al Jazeera was blocked on Election Day, due to its coverage of the elections in the Northern Province. The Media Minister confirmed this blockage.

The Mission also noted that access to the *Colombo Telegraph*, an online news source often critical of government, was restricted in the weeks and days leading up to the election.

The Mission notes, in the context of media freedoms in the Northern Province, the multiple attacks against the popular Tamil paper, *Uthayan*. Earlier in 2013, *Uthayan* distribution offices and staff were attacked.

Early in the morning on 21 September (Election Day), a fake *Uthayan* paper was also distributed and later promoted on local television. This fake paper spread serious misinformation about ITAK and appeared to be an attempt to dissuade voters from coming out to vote. The Mission did not see any attempts by the authorities to make it known to voters that this paper was fake.

## Recommendations

1. The involvement and influence of the military in an election campaign is serious and disturbing. This involvement must be investigated and strictly avoided in the future.
2. Violent assaults on impartial domestic observers should be investigated and addressed. Awareness must be spread on the vital role that domestic observers play as independent safeguards of the democratic process.
3. The provisions regulating permissible activities during an election campaign should be reviewed.
4. Existing laws to prevent the widespread abuse of state resources during campaigns must be enforced. This can be achieved by establishing and empowering an independent Electoral Commission as soon as possible as outlined in Chapter 3.
5. To deter hate speech, existing laws need to be enforced and, where necessary, may be strengthened.
6. Political Parties must address acts of violence carried out by their supporters and actively foster a culture of tolerance.
7. Steps should be taken to develop a media culture conducive to independent and balanced reporting. All necessary measures should be put in place to protect the safety of media personnel.

## Chapter Five

### Voting, Counting and Results

The legislation governing voting in the Provincial Council Elections is covered in Chapter 3.

#### Administrative Districts and Polling Arrangements

The Northern Province consists of five districts with a total of 714,488 voters who elected 36 Council Members. The distribution of voters, and the number of polling stations and council members are given in the table below:

Electoral District	Number of Voters	Number of Polling Divisions	Number of Polling Stations	No of Provincial Council Members
Jaffna	426,703	10	526	16
Vavuniya	94,367	1	89	6
Kilinochchi	68,589	1	95	4
Mannar	72,420	1	70	5
Mullaitivu	52,420	1	50	5
<b>Total</b>	<b>714,488</b>	<b>14</b>	<b>830</b>	<b>36</b>

The polling divisions were divided into a number of polling stations based on, among other things, the number of voters, ease of communication, availability of suitable accommodation for setting up the stations and the distance between polling stations. The polling stations were identified in advance so that Poll Cards, which provided voters with details of their station could be prepared and disseminated before polling day.

Members of the security forces, Police, staff of public transport services, public servants assigned to election duties and candidates were allowed by law to cast their votes by post.

Each polling station was supervised by a Senior Presiding Officer (SPO) who was assisted by a number of Presiding Officers and support staff drawn from state departments. All polling stations visited had the required number of ballot boxes, ballot papers, indelible ink and other accessories, which appeared to have been delivered in good time.

Polling stations visited opened on time and adequate staff was present. In several cases, especially in Kilinochchi, it was noted that party polling agents were not present at the opening of the poll, and in some instances, throughout the day. Voter turnout at the start of polls was low, and none of the polling stations visited had

enough voters at 7.00 am for a queue to be formed. This seemed to have picked up in the course of the day.

For the benefit of the voters, a list of candidates, in the order in which they appeared on the ballot, their assigned numbers and details of parties and groups were displayed at a prominent place outside each polling station.

## **Voter Identification**

Voter identification was conducted by matching the voter's national identity card details to the voters' register, a paper copy of which polling staff and party polling agents consistently had. In the absence of a national identity card, the following identification documents were accepted at polling stations:

- i. Passport
- ii. Driving Licence
- iii. Government Pensioner's Identity Card
- iv. Elders Identity Card
- v. Identity Cards issued to the members of the Clergy by the Department of Registration of Persons
- vi. Temporary Identity Cards issued by the Department of Elections

Poll cards facilitated the process of voter identification.

## **Poll Card**

To expedite the voting process, the Returning Officer was responsible for preparing poll cards, which indicate the details of a voter's registration and the assigned polling station. This poll card ought to have been posted to voters at least seven days before polling day. The majority of voters seen had these poll cards, and this eased the voting process. Voters who did not have poll cards were still allowed to vote.

## **Voting**

Polling started at 7.00 am and closed at 4.00 pm. Polling stations visited were generally well laid out, with the exception of the location of some voting booths, which is detailed below. Depending on the number or gender of voters, stations had organised two queues for voters. Polling staff had clear responsibilities and appeared well trained for their respective tasks. Polling stations had separate and clearly marked entrances and exits.

The following persons were allowed inside Polling Stations: voters, candidates, polling agents, police officers on duty, polling staff, officers authorised by the Returning Officer and observers accredited by the Commissioner of Elections.

Polling stations were fully staffed. Stations were also provided with adequate security by the Police, and at places and for reasons unknown to the Mission, many

more than the stipulated three officers were present. The Mission also saw roving police units that paid visits to polling stations.

Each polling station visited had a stationary observer from the Peoples' Action for Free and Fair Elections (PAFFREL) present and the Mission observed the presence of observers from the Centre for Monitoring Election Violence (CMEV) at several polling stations. A further noticeable feature was the operation of mobile monitoring units by the Department of Elections. The presence of polling agents is discussed below.

Prior to the commencement of the polls, SPOs opened the Ballot Boxes to demonstrate to polling agents that boxes were empty before they were sealed and locked. However polling agents were not present at all polling stations for the sealing of the box. Where polling agents were present, they largely represented the two major contesting alliances, the UPFA and ITAK. There were a substantial number of cases, for example in Kilinochchi, where 17 polling stations visited did not have ITAK polling agents present at the opening, during or at the close of polling day. It was also noted that polling agents wore no distinct identification, as is provided to polling agents in other Commonwealth countries.

The Mission noted the practice of applying party stickers to ballot boxes was in use. However this practice was not consistent at the polling stations visited. The range of practices varied from stickers being put inside boxes during inspection of the same by polling agents before polling commenced; stickers being put on the exterior of the box after the box had been sealed; placing a party sticker on the exterior of the ballot box when polling closed and the box was secured by the Senior Presiding Officer; and the practice of putting stickers inside and on the exterior of the box at either the start or close of polling or both. Legislation appears to be silent on this issue, and electoral staff had different interpretations of the purpose of party stickers.

At several stations visited, voting booths were placed in close proximity to the SPOs, and at an angle that allowed SPOs to clearly see how ballot papers were being marked. When mentioned to the SPO, our Mission was given varying accounts of why the voting booth was placed in such a manner, one of the most common responses being that this was an instruction by the Department of Elections. Others cited security reasons.

It was noted that in some stations no special arrangements were in place, especially where queues were long, to facilitate voting for pregnant women, the elderly or the disabled. A single electoral officer helped voters in need of assistance. The Mission noted instances where the ballot papers of elderly voters were entirely handled by a single electoral officer, from the process of marking and folding the ballot paper to the insertion of it into the ballot box.

The closing of polls was conducted in a very professional and organised manner, and it was clear that most SPOs had substantial experience of undertaking similar duties in the past. At polling stations attended by the Mission, all those present, including polling agents, were satisfied with the arrangements for securing the box, completing the necessary paperwork and transporting the sealed box under police protection to the locations at which counting was to take place.

## Counting of Votes

The votes and preferences were counted at a single location set up by the Returning Officers. Several Counting Centres within that location were established, each being responsible for a number of polling stations. A separate Counting Centre was dedicated to postal votes. The counting was completed under the supervision of a Chief Counting Officer assisted by a large number of staff. Counting Agents were present during the count. Domestic observers on the other hand, were not present at this crucial phase, without which an observation of voting is incomplete.

Counting was conducted in the following three phases:

- i. Counting of ballot papers in each box to verify the number of ballots cast
- ii. Sorting and counting of ballot papers according to valid votes for each party or individual groups
- iii. Recording and counting of preference marked for candidates

The Mission appreciated the complexity and enormity of the task at hand in Counting Centres. However it was noted that in the second phase of counting, the manner in which ballot papers were sorted according to party preference appeared rushed and disorganised, making it difficult to determine, for counting agents and observers alike, that ballot papers were being accurately separated on the basis of party or group preference.

The zealous approach to security at Counting Centres is worthy of comment. To maintain security, all windows and doors were closed and all ventilation outlets covered. The temperature that this arrangement generated created an unsafe and inhospitable environment for all those present.

The Mission noted the high number of rejected ballot papers, at the rate of 7.25% of the total number of ballots cast. It appeared that a large number of these ballots were rejected due to voters erroneously marking their preference for three parties, rather than three candidates. This suggests that the intensity and frequency of voter education needs to be revisited.

## Declaration of Results

After compiling the results, the Returning Officer conveyed them to the Commissioner of Elections for his approval. The results, as published by the Department of Elections, were as follows:

Name of the Party/Independent Group	No. of Votes Received	Percentage %	No. of Members Elected
Ilankai Tamil Arasu Kadchi	353,595	78.48 %	30*
United People's Freedom Alliance	82,838	18.38 %	7
Sri Lanka Muslim Congress	6,761	1.50 %	1
United National Party	3,062	0.68 %	
Democratic Unity Alliance	826	0.18 %	
Eelavar Democratic Front	300	0.07 %	
Sri Lanka Mahajana Pakshaya	292	0.06 %	
People's Liberation Front	288	0.06 %	
United Socialist Party	188	0.04 %	
Democratic Party	170	0.04 %	
Socialist Equality Party	101	0.02 %	
Jana Setha Peramuna	90	0.02 %	
Our National Front	87	0.02 %	
Sri Lanka Labour Party	32	0.01 %	
Eksath Lanka Maha Sabha	15	0.00 %	
Nationalities Unity Organization	14	0.00 %	
Eksath Lanka Podujana Pakshaya	8	0.00 %	
Muslim Liberation Front	3	0.00 %	
Total votes received by non-elected independent groups	1,904		
Total Valid Votes	450,574	92.75 %	
Rejected Votes	35,239	7.25 %	
Total Votes Polled	485,813	67.52 %	
Registered Electors	719,477		

\*Including two bonus seats

## Post-results Environment

The Mission appreciated that the environment post the announcement of results remained largely calm, and attributes this to the statements and actions of the leadership of the major political alliances.

## District Specific Observations

Members of the Commonwealth Observation Mission were deployed in the five districts of the Northern Province for polling day. Important findings include the position of voter booths, long distances to polling stations in Mullaitivu, parties transporting voters to polling stations, efficiency of closing of polls and poor health and safety conditions at Counting Centres.

Below is a summary of their observations by district:

### **Jaffna**

Polling was largely peaceful. Polling arrangements at stations visited in Jaffna were well made, with staff and materials organised and ready for the start of polling at 7:00 am. Voter turnout at the opening of the polls was in single digit numbers. A local person told us that on 21 September many Hindu Tamils were fasting, which may have contributed to low turnout in the morning. As observers we were fully welcomed at polling stations and cooperated with.

Elderly persons in need of help were assisted by a single polling staff member, and the Mission witnessed an instance in which a polling staff member handled the ballot paper of an elderly voter entirely on his own, from marking and folding it to inserting it into the ballot box.

The position of voting booths seriously compromised the secrecy of the ballot at a number of stations visited. SPOs had differing reasons for why this was so, including threats to security and instructions from the Department of Elections.

The Mission met with mobile monitoring units of the Department of Elections at two polling stations.

The Mission observed the presence of PAFFREL's stationary observers at each polling station visited.

There was a great deal of confusion about the placement of party stickers in or outside the box, and the time at which these should be stuck to boxes. SPOs had differing accounts as to what the process was, and this differed to the view of the mobile monitoring unit of Election Commission officials whom we met.

The close of polling witnessed was efficient. The SPO appeared to be a very experienced official and polling agents present seemed happy with his approach to the closing of polls process.

### **Kilinochchi**

Overall, the voting was conducted in a professional manner with staff dedicated to their tasks. Polling Stations had appropriate facilities and appeared to have been well selected.

At some stations visited where two queues of voters had been formed, probably on the basis of continuous serial numbers, the number of voters between the two queues was extremely uneven. To avoid this in future, queues can be formed on the basis of odd and even numbers.

It was observed at several polling stations that voting booths were in close proximity to the SPO and at an angle that clearly exposed a voter's choices to anyone nearby.

This practice must be stopped and strict guidelines enforced to ensure the secrecy of the ballot.

It was observed that at 17 polling stations visited, polling agents of ITAK were not present, even at the opening of the poll.

It was observed outside a couple of polling stations, that the ruling party had provided buses for transporting voters to stations. Where distances are long between voters' home and polling stations, special Election Day public transport for voter movement should be considered.

The zealous approach to security at Counting Centres is worthy of comment. To maintain security, all windows and doors were closed and all ventilation outlets covered by hard boards. The temperature that this arrangement generated in the counting centre created an unsafe and unpleasant environment for all those present. Related to this is that in future, the relevant authorities may wish to consider the practice of counting on site at each polling station.

### **Mullaitivu**

Preparations for elections at the polling stations commenced the day before, with the organisation of the station and checking of election materials received for adequacy. All election materials were secured by the male election officials with the assistance of the police.

Election Day saw the officials completing preparatory activities such as posting of information in all three languages and organising the materials for use. This ensured the timely opening of the poll.

The officials, many of whom were from the district, undertook their responsibilities on the day in an efficient and professional manner; and their engagement with voters appeared to be transparent.

Facilities and provisions at the polling stations were adequate in most cases. Special provisions were made for physically challenged individuals. The positioning of the voting booths compromised the secrecy of ballot casting, as they were in direct view of the SPO. In at least two cases adjustments were made when this was raised. The long queues in some stations caused voters to wait about an hour to cast their ballots. However, the actual time it took to vote was short.

A number of voters were unable to cast their ballot mainly because they did not have officially sanctioned identification documents, instead holding displacement cards. Others were not registered at all. In one instance, the SPO made calls to enquire at which polling station an elderly female voter was registered to vote.

Generally, in Mullaitivu the distance to polling stations was long. Most voters had to walk these long distances, whilst others rode their bicycles and motorcycles. Additionally, there was no public transportation, except for two buses organised by the UPFA taking voters to polling station No.31 Kiri Ibban Vera Vidyalayan in Welioya at 0815 hours.

It was observed that throughout the district, posters and cut outs of the candidates of the governing and opposing parties were still posted on structures. Also, in two instances, vehicles with posters of candidates No.3 and No.6 were parked near a polling station and were also seen driving through the district.

At the closing of the polls, the closing process was done in a systematic manner. The entire voting process and closing of the polls was observed by party agents, domestic and international observers.

After polling, ballots were transported by police to the Counting Centres. Unlike the polling stations, the Counting Centre did not provide an acceptable working environment. Heavily guarded rooms had their windows sealed with brown paper which made them very hot and with poor ventilation.

At the end of the counting process, a relatively high number of rejected ballots were recorded.

Overall the elections were peaceful.

### **Vavuniya**

Election Day in Vavuniya was calm across the district. SPOs in all polling stations visited were well organised with their staff clearly understanding their respective duties. Police were present at all stations as were representatives of the People's Action for Free and Fair Elections (PAFFREL). The Centre for Monitoring Election Violence (CMEV) and the Campaign for Free and Fair Elections (CaFFE) had observers at some polling stations, supplemented by mobile officers.

The layout of polling stations was consistent but in some instances the SPO could see inside the voting booth. In one polling station the SPO appeared to be assisting a significant number of voters to complete their ballot but when checking with voters to see whether any undue influence was applied to vote in a particular way, the voters said the SPO did not influence them. Rather, agents of the ruling party had visited their village telling them to choose the party with the betel leaf and vote for candidate No.4.

On one occasion the Mission observer witnessed a van with a ruling party sticker on the side providing transport to approximately 15 people. One gentleman appeared to hand out IDs to them and then guided them into the polling station.

The counting location in Vavuniya was at the Central Administration complex. Nine Counting Centres were used, many without air-conditioning. Some Centres were blisteringly hot. It is difficult to see the necessity to mask all doors and windows with brown paper and have no ventilation as each Counting Centre was guarded by anywhere from 3 to 6 police officers. A review of the counting process and environment is warranted.

## **Mannar**

The polling stations visited in Mannar were well organised and efficiently operated. Staff understood their responsibilities. Materials were delivered on time. Queues were not a problem with clear directions to voters. The atmosphere was very calm.

## **Recommendations**

1. The secrecy of the ballot is paramount to any credible electoral process and must be maintained at all times. SPOs should be advised to this effect. If security is of concern, thorough security checks can be conducted before voters enter polling stations.
2. Specific guidelines should be issued to facilitate the voting of pregnant women, the elderly and the disabled when the queues are long. Those in need of assistance to cast their ballot should have the secrecy of their ballot respected.
3. In instances where distances between polling stations and voters' homes are far, special Election Day public transport for voter movement should be considered.
4. Clear instructions should be provided by the Department of Elections regarding the placement of party stickers.
5. Consideration should be given to the process of counting with a view to counting being conducted at polling stations once polls have closed. This is the practice in several Commonwealth countries.
6. The working conditions at Counting Centres must be improved, with at least appropriate ventilation provided for.
7. Domestic Observers should be given access to the counting stage. Without being able to witness the count, their observation of the electoral process is fundamentally incomplete. As mentioned in Chapter 3, the law should back domestic observers.
8. Voter education, especially with regards to marking ballot papers must be intensified to reduce the number of rejected ballots in future. The use of media in this regard could prove to be extremely effective, as seen in other Commonwealth countries.

## Chapter Six

### Conclusions and Recommendations

#### Conclusions

The 21 September 2013 elections were landmark elections, the first Northern Provincial Council Elections held since the end of the civil conflict in May 2009, and since the Provincial Council system was established. We are conscious that the Northern Province is emerging from nearly three decades of civil conflict which claimed many thousands of lives and resulted in widespread damage to infrastructure, livelihoods and displacement of the population.

We commend the Commissioner of Elections and his staff across the Northern Province, who approached their duties with diligence and dedication. The administrative arrangements for voting and counting in this election were impressive. Election Day itself was largely peaceful, with only isolated incidents reported.

These positive achievements were undermined by a compromised pre-election environment. Key concerns included the heavy presence and influence of the military, including persistent reports of overt military support for particular candidates, reported cases of the military actually campaigning for selected candidates, and military involvement in the intimidation of the electorate, party supporters and candidates. The role of the military in the electoral campaign was consistently described to the Mission as a significant obstacle to a credible electoral process.

Furthermore, the fundamental freedoms of association and assembly were constrained in the pre-electoral period. Opposition candidates and their supporters, as well as voters at large, faced instances of intimidation and harassment, and the freedom to hold campaign meetings and openly interact with the electorate was restricted.

There were numerous reported cases of misuse of public resources, ranging from misuse of government personnel, vehicles and facilities for partisan political activity to inducements offered to public officials and voters, including conditional job offers, conditional higher salaries and the cancellation of loans. The media environment appeared constricted.

We commend the voters for their commitment to the democratic process. There was a large voter turn-out of 67.52%.

The 18th Amendment to the Constitution, enacted in 2010, undermined the constitutional and legal framework for a credible and competitive election. In particular, the provision for an independent Electoral Commission has been negated.

Furthermore, there was inadequate enforcement of existing laws that provide for a level playing field for all candidates, such as the prohibition of use of state resources in electoral campaigns.

Our mandate requires us to observe and consider all aspects of the electoral process and assess compliance with the standards for democratic elections to which Sri Lanka has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments. Key benchmarks for democratic elections include provision of a reasonable legal framework; a conducive environment for an election (including the human rights situation and impartiality of state institutions); the right to participate (including freedom of association, a competitive poll, women and youth participation); universal suffrage; freedom of expression (including reasonable access to media); freedom of movement and assembly (including general campaign freedoms); transparency; rights to effective legal remedy and finally whether voters are free to express their will.

In this context, while voters on Election Day were able to express their will, serious and fundamental shortcomings in the equally important pre-election period meant that in our overall assessment, the 21 September 2013 Northern Provincial Council Elections did not fully meet key benchmarks for democratic elections.

Our mandate offers the possibility of making recommendations for the future strengthening of the electoral framework. It is in this positive spirit that we offer the following recommendations for consideration by the relevant stakeholders.

## **Recommendations**

### **The Electoral Framework and Election Administration:**

1. An Independent Electoral Commission as foreshadowed in the 17<sup>th</sup> Amendment should be established as a matter of urgency.
2. A concerted effort on the part of the Department of Elections is required to reduce to an absolute minimum the number of people that have no form of identification. An official partnership with organisation such as PAFFREL and CaFFE could be considered.
3. Formal recognition of the role and importance of domestic observers would support the transparency of the electoral process.

### **Election Campaign and Media Coverage:**

1. The involvement and influence of the military in an election campaign is serious and disturbing. This involvement must be investigated and strictly avoided in the future.
2. Violent assaults on impartial domestic observers should be investigated and addressed. Awareness must be spread on the vital role that domestic observers play as independent safeguards of the democratic process.
3. The provisions regulating permissible activities during an election campaign should be reviewed.

4. Existing laws to prevent the widespread abuse of state resources during campaigns must be enforced. This can be achieved by establishing and empowering an independent Electoral Commission as soon as possible as outlined in Chapter 3.
5. To deter hate speech, existing laws need to be enforced and, where necessary, may be strengthened.
6. Political Parties must address acts of violence carried out by their supporters and actively foster a culture of tolerance.
7. Steps should be taken to develop a media culture conducive to independent and balanced reporting. All necessary measures should be put in place to protect the safety of media personnel.

#### Voting, Counting and Results:

1. The secrecy of the ballot is paramount to any credible electoral process and must be maintained at all times. SPOs should be advised to this effect. If security is of concern, thorough security checks can be conducted before voters enter polling stations.
2. Specific guidelines should be issued to facilitate the voting of pregnant women, the elderly and the disabled when the queues are long. Those in need of assistance to cast their ballot should have the secrecy of their ballot respected.
3. In instances where distances between polling stations and voters' homes are far, special Election Day public transport for voter movement should be considered.
4. Clear instructions should be provided by the Department of Elections regarding the placement of party stickers.
5. Consideration should be given to the process of counting with a view to counting being conducted at polling stations once polls have closed. This is the practice in several Commonwealth countries.
6. The working conditions at Counting Centres must be improved, with at least appropriate ventilation provided for.
7. Domestic Observers should be given access to the counting stage. Without being able to witness the count, their observation of the electoral process is fundamentally incomplete. As mentioned in Chapter 3, the law should back domestic observers.
8. Voter education, especially with regards to marking ballot papers must be intensified to reduce the number of rejected ballots in future. The use of media in this regard could prove to be extremely effective, as seen in other Commonwealth countries.

## **ANNEX 1: Biographies of Commonwealth Observer Mission**

### **H E Stephen Kalonzo Musyoka**

H E Stephen Kalonzo Musyoka, a Kenyan national, is the immediate former Vice President of the Republic of Kenya. He has been one of the longest serving Members of the Kenyan Parliament. He was first elected in April 1985 and served uninterrupted until April 2013. During his political career he served as an Assistant Minister for Works, Housing and Physical Planning; as Deputy Speaker; and also served as Minister of Foreign Affairs (two terms); Education; Information and Tourism; and Environment. As Minister of Foreign Affairs he helped to negotiate for peace in the Sudan and in Somalia. He was a presidential candidate during the 2007 General Election, and in the 2013 General Election was the running mate for the Hon Raila Odinga, the then Prime Minister. Currently, he is the Deputy Leader of the Coalition for Reforms and Democracy and Party Leader of the Wiper Democratic Movement Kenya.

### **Jenni McMullan**

Jenni McMullan, an Australian national, is the recently retired Australian Electoral Officer and State Manager for the State of Victoria responsible for delivering Federal elections in that State on behalf of the Australian Electoral Commission. She is a career public servant having worked for a number of government agencies including the Department of Finance. She has held senior management positions in the fields of Information Technology, procurement, contracting and human resources. Mrs McMullan observed elections in Mexico in 2006 and also attended the Biennial Conference of Commonwealth Electoral Officials in Canada in 2012.

### **Dr ATM Shamsul Huda**

Dr ATM Shamsul Huda, a Bangladeshi national, obtained his MA in Modern History from Dhaka University and worked for some time as a Lecturer in the Department of History of the same University. Later on he also completed his Masters and PhD in Public Administration from Syracuse University, New York, USA. He joined the erstwhile Civil Service of Pakistan in 1966 and worked in different capacities both in Pakistan and Bangladesh. He was appointed Permanent Secretary to the Government of Bangladesh in 1991 and held charge of the Banking Division of the Ministry of Finance and Ministry of Water Resources. In 2007, he was appointed Chief Election Commissioner of Bangladesh under provisions of the Constitution of the Republic and retired in 2012 after serving a full five-year term. Dr Huda has authored many books on Development Administration and his professional articles have been published in national and international journals.

### **Examin Philbert**

Examin Philbert, a national of St Lucia, is an educator by profession and currently the Principal of the Anse Ger Secondary School. She holds the positions of Secretary of the Caribbean Association of Local Government Authorities, and, Vieux-Fort South

Constituency Council. She has a long history of trade union involvement and served as 1<sup>st</sup> Vice President of the St Lucia Teachers' Union 2008-2012, and the Executive member of the Caribbean Union of Teachers' Status of Women's Committee (2009-2011). Additional, she has served on other local and national bodies of sporting, youth and community organisations.

## **ANNEX II: Sri Lanka's Northern Provincial Council Elections 2013: Arrival Statement**

18 September 2013

**Statement by:** HE Stephen Kalonzo Musyoka, Former Vice President of Kenya

### **Jaffna, Sri Lanka**

Following an invitation from the Commissioner of Elections, the Commonwealth Secretary-General has constituted an Observer Mission to the 2013 Northern Provincial Council Elections in Sri Lanka. It is my honour and privilege to have been asked to lead the Mission, and to be in Sri Lanka for these landmark elections.

Our Mission has been drawn from across the Commonwealth, and includes persons with political, electoral and local government experience. The mission comprises Mrs Jenni McMullan, Former Electoral Officer for Victoria, Australia; Dr Shamsul Huda, Former Chief Election Commissioner, Bangladesh; and Ms Examin Philbert Secretary, Caribbean Association of Local Government Authorities, St Lucia.

Our task is to consider all the factors impinging on the credibility of the electoral process as a whole, and to assess whether the election is conducted according to the standards for democratic elections to which Sri Lanka has committed itself, with reference to its own election legislation as well as relevant regional, Commonwealth and other international commitments.

We will consider, among other things, whether conditions exist for free and competitive elections; whether the Elections Commission is independent and effective; the transparency of the process; whether candidates have been free to campaign; what role the media has played; whether voters have been free to express their will; and whether the results process is transparent.

In conducting our duties and undertaking our assessment, we will be neutral, impartial, objective and independent. We are here in our individual capacities as eminent and experienced Commonwealth citizens. The assessment by the Mission will be its own and not that of any member government. Our intent is to offer constructive support to help strengthen the democratic process in the future.

We have already met with political parties, the Commissioner of Elections, domestic observers and international partners in Colombo. Over the coming days we will be meeting with relevant stakeholders in the Northern Province, including party representatives, civil society and the media. We will then deploy across the Province to observe the conclusion of the campaigning and thereafter the voting, counting and results process. We will issue an Interim Statement after the election and a final report thereafter.

I call on all stakeholders to play their part to ensure that the remaining days of the electoral process promote confidence in voters to freely exercise their franchise,

thereby marking a forward step in the post-conflict development of the Northern Province.

### ANNEX III: Deployment Plan

OBSERVER	LOCATION
H E Mr Stephen Musyoka Martin Kasirye Amna Jatoi	Jaffna
Jennifer McMullan	Mannar Vavuniya
Dr ATM Shamsul Huda	Kilinochchi
Examin Philbert	Mullaitivu

## **ANNEX IV: Statement of Preliminary Findings**

**Jaffna, 23 September 2013** --The Commonwealth Observer Mission has been present in Sri Lanka since 14 September 2013. The mission's mandate is to observe and consider all aspects of the electoral process and assess compliance with the standards for democratic elections to which Sri Lanka has committed itself. Where appropriate, the mission may also make recommendations for the future strengthening of the electoral framework.

Since our arrival, we have met with the Commissioner of Elections and senior officials of the Department of Elections; representatives of political parties, civil society, media, police and military, Commonwealth High Commissioners, representatives of the United Nations and domestic and international observers, both in Colombo and the Northern Province. We deployed to the five districts of the Northern Province, met with electoral and other officials at the District level and observed voting, counting and the results process.

These were landmark elections in Sri Lanka's Northern Province. They were the first Northern Provincial Council Elections held since the end of the civil conflict in May 2009, and since the Provincial Council system was established. We are conscious that the Northern Province is emerging from nearly three decades of civil conflict which claimed many thousands of lives and resulted in widespread damage to infrastructure, livelihoods and displacement of the population.

This Statement outlines our preliminary findings. A Final Report will be issued at a later stage, which will contain our detailed conclusions and recommendations.

### **Key Findings**

#### **Polling and Counting**

- The administrative arrangements for voting and counting in this election were impressive.
- There was a large voter turn-out of 67.52% on polling day. We commend the voters for their commitment to the democratic process.
- The Commissioner of Elections and his staff across the Northern Province approached their duties with diligence and dedication. In the polling stations visited, the polls opened on time, election materials were well in place and overall, the process was well administered, including the closing of the poll. Inside polling stations, voters appeared to be free to express their will and officials were largely transparent in their interactions with voters and observers. We did however note that the position of voting booths often compromised the secrecy of the ballot.
- The number of women voters was high, as was the number of women polling officials. Arrangements to facilitate the voting of pregnant women, the elderly and the disabled were not uniformly applied.
- The presence of political party and independent group agents at polling stations was uneven, including at the opening of the poll. Those who were present appeared to actively carry out their role.

- There was adequate security, provided by the Police, at polling stations throughout the Province.
- We commend the decision of the Commissioner of Elections, announced on the eve of polling day, to mix ballot boxes from different administrative divisions at the counting stage, to minimise the risk of tracing voting patterns at particular locations.
- Counting Centres were centrally situated. Whilst appreciating the enormity of the task in each counting room, the counting and separating of ballot papers could in future be done in a more organised manner. The practice of sealing counting rooms, including windows, resulted in very unfavourable working conditions for all those present.
- Domestic observers were not given access to the count, which is a key stage of the electoral process.
- We noted with regret the high number of rejected ballots, at 7.5%, cast in these elections. More intense voter education, including using the media, will be required to ameliorate this phenomenon.
- The voters' register used was updated in 2012 and this marks an improvement from those used in previous elections. Notable efforts were made by civil society to facilitate voter registration.
- Election Day itself was largely peaceful, with only isolated incidents reported.

### **Constitutional and Legal Framework**

- The 18th Amendment to the Constitution, enacted in 2010, undermined the constitutional and legal framework for a credible and competitive election. In particular, the provision for an independent Electoral Commission has been negated.
- There was inadequate enforcement of existing laws that provide for a level playing field for all candidates, such as the use of state resources in electoral campaigns.

### **Electoral Environment**

Any election is a process, not an event. Despite the several positive features of the process enumerated above, we noted issues of concern with regard to the electoral environment and the pre-election period. Key among these are:

- The heavy presence and influence of the military, including persistent reports of overt military support for particular candidates, reported cases of the military actually campaigning for selected candidates, and military involvement in the intimidation of the electorate, party supporters and candidates. The role of the military in the electoral campaign was consistently described to the mission as a significant obstacle to a credible electoral process.
- The fundamental freedoms of association and assembly were constrained in the pre-electoral period. We learned that opposition candidates and their supporters, as well as voters at large, faced instances of intimidation and harassment, and that the freedom to hold campaign meetings and openly interact with the electorate was restricted. We particularly noted the reports of attacks on one of the few female candidates in this campaign.

- The media environment appeared constricted. It was reported to us that several media outlets were self-censoring when it came to in-depth or sensitive reporting on the elections. The mission noted that in the run up to the elections and on Election Day, important online and electronic media sources were inaccessible.
- Numerous reports of misuse of public resources, corroborated by the Commissioner of Elections and independent domestic observers, including misuse of government personnel, vehicles and facilities for partisan political activity, are of concern. We were also made aware of inducements offered to public officials and voters, including conditional job offers, conditional higher salaries and the cancellation of loans.

Over the next four days, we will complete our Final Report and submit it to the Commonwealth Secretary-General. He will send it to the Government of Sri Lanka, the Office of the Commissioner of Elections, political parties and relevant stakeholders, and eventually to all Commonwealth governments. Our Final Report will, in due course, be made available to the public.

Overall we are impressed by the determination and resilience of voters to exercise their franchise in the context of a compromised electoral environment. It is our sincere hope that this election will mark a forward step in the post-conflict development of the Northern Province. We feel privileged to have been part of this historic election in Sri Lanka.

### **Declaration of Principles for International Election Observation**

The Commonwealth Secretariat is a signatory to both the Declaration of Principles for International Election Observation and the associated Code of Conduct for International Election Observation Missions, which were commemorated on 27 October 2005 at the United Nations in New York.

Commonwealth Observation missions are organised and conducted in accordance with the Declaration and Commonwealth Observers undertake their duties in accordance with the Code of Conduct.