



## **PRELIMINARY STATEMENT**

**Colombo, 18 November 2019**

### ***A peaceful and technically well-managed electoral process marred by an uneven playing field***

*This preliminary statement of the EU election observation mission (EU EOM) is delivered before the completion of the entire electoral process. The EU EOM is now only in a position to comment on observation undertaken to date, and will later publish a final report that will include full analysis and recommendations for electoral reform. The EU EOM may also make additional statements on election-related matters as and when it considers it appropriate.*

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### **Summary**

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- The 16 November presidential election took place in a climate of deep societal division. A largely violence-free electoral process was well-managed by the electoral administration. A peaceful and calm campaign on the ground contrasted with divisive rhetoric, hate speech and disinformation in traditional and social media. Only a few of the 35 registered candidates were visible throughout the campaign period. The absence of a campaign finance law and the biased coverage of the election by both private and state media contributed to an uneven playing field.
- Election day was peaceful and orderly with a few violent incidents reported. The turnout was very high at 83.72 per cent. EU observers reported positively on the voting process. All electoral materials were available and polling staff was present. Polling officials performed well. However, women were poorly represented as presiding officers. In several polling stations the position of the voting screen did not sufficiently protect the secrecy of vote. Candidate agents and citizen observers were present. EU observers assessed counting as well-organised, transparent and professional.
- Overall, the legal framework is adequate to conducting democratic elections in line with Sri Lanka's international commitments, despite some gaps. Fundamental rights and freedoms are largely protected, but some restrictions in national law exceed the country's related international obligations. Limitations on campaign processions and on dissemination of political messages during campaign periods conflict with constitutional guarantees. A legal framework for women's political participation in elections is lacking, however some progress has been made on inclusivity for women in local government.
- The Election Commission's guidelines for the media and a Code of Conduct for parties and candidates are positive elements in the legal framework, though largely voluntary in nature. Persistent parliamentary inaction left the constitutional powers of the Election Commission (EC) inadequately defined in law and limited its capacity to enforce its mandate to ensure a level playing field and to strengthen transparency in decision-making processes.
- Overall, the EC has carried out its function in a credible and professional manner. Regular consultation with political parties, candidates, the media, civil society organisations (CSOs) and the police improved the level of confidence in the institution. The electoral administration at district level was well organised and enjoyed general trust among stakeholders.

- Technical aspects of the electoral process were well administered and key operational deadlines were met. The EC and civil society organisations conducted voter awareness activities in Sinhala, Tamil and English, including tailor-made messages for persons with disabilities. The EC regularly aired voter information messages on state radio island-wide, including on how to mark preferences of up to three candidates on the ballot paper. However, the EC could have been more proactive and broader-reaching on the crucial issue of explaining the marking of voting preferences.
- The 2018 voter register contains a total of 15,992,096 voters, an increase of almost one million since the 2015 presidential election. As the registration system does not foresee a revision period before an election, some 180,000 to 200,000 voters who turned 18 in the interim were disenfranchised for the 2019 presidential election.
- Campaigning on the ground was peaceful, consisting mainly of small-scale meetings and door-to-door canvassing. The atmosphere was calm, despite a small number of violent incidents and reported threats. National security was a prominent theme in the election campaign, with strong nationalist rhetoric often used. This also brought religious and ethnic rifts to the fore. There were allegations of misuse of state resources. Recruitment to public service jobs at all levels of administration was the most commonly reported abuse. Campaigning by public officials was also frequently observed.
- The highest-profile candidates were Sajith Premadasa and Gotabaya Rajapaksa, who both attracted large crowds at rallies. They made extensive use of traditional media, with a heavy presence in paid advertising in television and the print media. Their campaigns used cross-platform electioneering tactics online, with official promotion pages adjoining third-party sites that frequently served to discredit the rival. The volume of hostile commentary was higher on SLPP-leaning sites. There was a significant gap in resources between the two main candidates and the others. The campaign on the ground and online of the Janatha Vimukthi Peramuna (JVP) party of Anura Kumara Disسانayaka was less prominent. The remaining contestants were scarcely visible.
- Political party and campaign financing remain unregulated, depriving the election of an important element of transparency. Candidates are required only to declare their assets, but sanctions for non-compliance are insignificant. With no limits on campaign advertising spending, coverage in traditional and online media was highly monetised. The two leading candidates made extensive use of traditional media, with a heavy presence in paid advertising in television and print media. The SLPP's spending online was in excess of any other campaign.
- The media environment is characterised by a high concentration of ownership divided largely along political lines, which significantly influences content. The EC has constitutional power to issue guidelines to all media, state and private, but only state media have a legal duty to comply. State media adhered to their legal requirement to allocate free airtime to candidates. The media covered the campaigns through various formats, but there was a lack of in-depth and critical editorial analysis, in particular in the broadcast media. Almost all media monitored by the EU EOM centred their reporting on the campaigns of the frontrunners. Access to the media was significantly limited for most of the other contestants.
- Overall, a damaging online environment distorted pluralistic debate and curbed voters' access to factual information on political options, an important element for making a fully informed choice. Coordinated dissemination of outright false and/or demeaning information presented in various

formats and across digital platforms, including those of traditional media, dwarfed credible news threads. Among the social media platforms, Facebook was the prime contributor to the crafting of political narratives in the public space and to setting the electoral agenda. Facebook did not take appropriate measures to ensure adherence to campaign silence rules.

- There is no legal provision for national and international election observation. Two national observation organisations, accredited at the EC's discretion, had full access to polling and counting centres. The People's Action for Free & Fair Elections (PAFFREL) deployed some 6,000 observers and the Centre for Monitoring Election Violence (CMEV) 2,000 observers. Several other groups were accredited to observe only from outside polling stations.

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*The EU EOM has been present in Sri Lanka since 11 October 2019 following an invitation from the Election Commission. The mission is led by Chief Observer Marisa Matias, Member of the European Parliament (Portugal). In total, the EU EOM deployed across the country 80 observers from 27 EU Member States, Norway and Switzerland to assess the whole electoral process against international obligations and commitments for democratic elections as well as the laws of Sri Lanka. A delegation of the European Parliament, headed by Isabel Santos MEP (Portugal), also joined the mission and fully endorses this statement. On election day, observers observed over 295 polling stations in all districts of Sri Lanka and 28 out of 38 district counting centres. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005.*

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## Findings

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### I. BACKGROUND

The eighth presidential election since the executive presidency was introduced in 1978 took place in a climate of deep societal division. National security was foremost on the campaign agenda after the killing of more than 250 people in the Easter 2019 terrorist bombings and the subsequent increase in violence and repression directed against the Muslim minority.<sup>1</sup>

Of a record 35 contenders, the most prominent were Sajith Premadasa of the New Democratic Front (NDF) and Gotabaya Rajapaksa of the Sri Lanka Podujana Peramuna (SLPP). A third high-profile candidate was Anura Kumara Dissanayaka of the National People's Power and leader of the Janatha Vimukthi Peramuna (JVP). Only one woman, Ajantha Perera of the Socialist Party, contested. The pre-election period was characterised by party splits and shifting allegiances. Outgoing President Sirisena's Sri Lanka Freedom Party (SLFP) entered into an accord with the SLPP.<sup>2</sup> More than 50 smaller parties joined forces to support either of the two most prominent candidates.

### II. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

***A legal framework generally adequate for holding democratic elections, but requiring important reform to address enduring legislative gaps, restrictions and legal uncertainties***

Overall, the legal framework is adequate to conducting democratic elections in line with Sri Lanka's international commitments, despite some gaps and weaknesses. Sri Lanka is a state party to the main

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<sup>1</sup> On 21 April 2019, Easter Sunday, local Islamist extremists targeted four hotels and three churches in Colombo and the east of the country. At least 45 children were among those killed.

<sup>2</sup> President Sirisena stood down as SLFP leader for the remainder of the election period and declared himself neutral.

international human rights treaties related to democratic elections.<sup>3</sup> Fundamental rights and freedoms in the Constitution include the rights of association, assembly and speech.<sup>4</sup>

However, the Constitution does not permit the Supreme Court to review any existing laws to ensure harmony with fundamental rights. Laws which, for example, exclude certain citizens from voting cannot be challenged, contrary to the international standards.<sup>5</sup> There are other important gaps as the Constitution does not expressly recognise a right of privacy and there is no legal framework for personal data protection.<sup>6</sup> This leaves space for arbitrary action in both spheres.<sup>7</sup> Fundamental rights are further weakened as the grounds for some restrictions in national law go beyond the country's related international obligations.<sup>8</sup>

The 2019 presidential election was held under provisions of the Constitution, several election-specific laws and a number of other legal instruments.<sup>9</sup> Non-statutory instruments, including EC guidelines for the media and a Code of Conduct for parties and candidates, are positive elements in the framework, though largely voluntary in nature. Almost all election-related laws predate the creation of the Election Commission in 2015. Fines and sanctions for certain offences have not been revised for up to 40 years, thereby diluting their dissuasive purpose.<sup>10</sup> Parliament's failure to pass laws clarifying the EC's constitutional powers has resulted in limits to its capacity to issue regulations, enforce its mandate including to ensure a level playing field.

The election legal framework for women's participation is largely inadequate, having, for example, weak rules for their inclusion in political parties, unregulated campaign finance that further hampers women's candidacies, and the lack of an independent monitoring and implementation commission on women's rights.<sup>11</sup> While recent progress has been made on inclusivity for women in local government<sup>12</sup>, a lack of constitutional safeguards to tackle discrimination against women conflicts with Sri Lanka's international legal commitments.<sup>13</sup>

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<sup>3</sup> Sri Lanka is party to the [International Covenant on Civil and Political Rights](#) (ICCPR), [Convention on the Elimination of all Forms of Racial Discrimination](#) (ICERD), [Convention on the Elimination of all forms of Discrimination against Women](#) (CEDAW), [United Nations Convention against Corruption](#) (UNCAC) and the [Convention on the Rights of Persons with Disabilities](#) (CPRD). Sri Lanka has also demonstrated commitment to democratic principles in the [South Asian Association for Regional Cooperation \(SAARC\) Social Charter](#).

<sup>4</sup> [1978 Constitution of Sri Lanka \(as Amended\)](#) (hereinafter Constitution) has been amended 19 times, lastly in 2015.

<sup>5</sup> ICCPR, GC 25 at para 1 "the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects." CEDAW, General Recommendation 23 at para. 41 "States parties should ensure that their constitutions and legislation comply with the principles of the Convention, and in particular with articles 7 and 8."

<sup>6</sup> [Draft legislation](#) on personal data is under consideration, as is a Data Regulation Authority.

<sup>7</sup> [ICCPR art. 17](#), "No one shall be subjected to arbitrary [...] interference with his privacy". See also [ICCPR, HRC General Comment \(GC\) 16](#) par. 10.

<sup>8</sup> Neither of the restrictions on freedom of speech or on peaceful assembly permitted in Sri Lanka ([Constitution](#), article 15, parliamentary privilege or racial and religious harmony) are included in [ICCPR](#), article 19(3) or article 21.

<sup>9</sup> The core laws are [Presidential Elections Act No. 15 of 1981](#), [Presidential Elections Act No. 16 of 1988](#), [Parliamentary Elections Act No. 1 of 1981](#), [Parliamentary Elections \(Amendment\) Act No. 58 of 2009](#), [Elections \(Special Provisions\) No. 14 of 2004](#), [Elections \(Special Provisions\) No. 28 of 2011](#), [Elections \(Special Provisions\) No. 35 of 1988](#). Other relevant laws include the [Penal Code](#), [Declaration of Assets Act 1975](#), [Establishment Code](#), [ICCPR Act No. 56 of 2007](#), [Public Security Ordinance 1947 \(as Amended\)](#).

<sup>10</sup> Punishment for corrupt practice includes 'rigorous' imprisonment for a period of up to 12 months, disqualification from registering to vote, a fine of LKR 500 (EUR 2.5). Many offences attract fines of between LKR 100 and LKR 500.

<sup>11</sup> [Parliamentary Elections Act, 58 of 2009](#), s. 2(4)(c). The law stipulates a minimum of one woman among party office bearers.

<sup>12</sup> [Local Authorities Elections \(Amendment\) Act, No. 16 of 2017](#), s. 27F, introduced a minimum quota of 25 per cent for women's membership of local councils, but this falls short of the Beijing Target. See CEDAW, GC 23, at para. 17: "In order to achieve broad representation in public life, women must have full equality in the exercise of political and economic power; they must be fully and equally involved in decision-making at all levels [...]."

<sup>13</sup> There is no express provision prohibiting direct and indirect discrimination against women, as required by CEDAW at articles 1 and 2.

Various legal provisions are overly restrictive, vague or contradictory. Restrictions on campaign processions and on dissemination of political messages during campaign periods conflict with constitutional guarantees. Certain legal provisions are either vague or incoherently drafted.<sup>14</sup> Previous EU EOM recommendations highlighted key areas for reform, including excessive campaign restrictions, inadequate opportunities for voter registration, the rules for campaign finance and spending, a framework for election observation and the conduct of the media. All of these remain unaddressed.<sup>15</sup>

The President is directly elected under a preferential vote system. Voters may choose in order of preference no more than three candidates from those listed on the ballot paper. If no candidate gets more than 50 per cent of valid first preference votes, then all except the two frontrunners are eliminated. The ballots of the excluded candidates are then counted for second preferences or, where there are none, for third preferences in favour of the remaining candidates. Votes from this second count are added to the top two contestants to determine the winner.

### III. ELECTION ADMINISTRATION AND ELECTION PREPARATIONS

#### *Technical preparations timely and well administered, but the EC needs well-defined laws to strengthen implementation*

The EC, established under the 19<sup>th</sup> Amendment to the Constitution in 2015, is a three-member constitutional body responsible for organising all elections, including referenda. It enjoys wide powers prescribed in the Constitution, including the enforcement of the election legal framework and the co-operation of all state authorities, including the police.

However, the EC came into operation without a simultaneous review of relevant laws. Elections before 2015 were conducted by the Commissioner of Elections assisted by the Department of Elections with internal rules and procedures aligned with established public service norms. On its establishment, the EC was not granted specific powers to issue internal regulations to support management capacity at all stages of the electoral process.<sup>16</sup> In addition, there is a lack of codified procedures to reinforce transparency in decision-making processes at various stages.<sup>17</sup> Accordingly, the EC remains in a transitional phase and in need of clearer laws to strengthen implementation.

Overall, the EC has carried out its work in a credible and professional manner. Regular consultation with political parties, candidates, the media, civil society organisations (CSOs) and the police has increased the level of confidence in the institution. The electoral administration at district level was well organised and enjoyed general trust among stakeholders. An attempt to publicly discredit the EC on Facebook was not promptly addressed by the platform, potentially undermining public trust in the integrity of the election.<sup>18</sup>

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<sup>14</sup> For example, the timeline for publication in the Gazette of the EC-issued guidelines is unclear (Constitution, article 104B(5)(c) (ii)). The provisions on one aspect of ballot paper invalidity can be misinterpreted (PEA, s. 51(1)(e)(ii)).

<sup>15</sup> See [EU EOM Sri Lanka 2015: Final Report on Parliamentary Elections](#).

<sup>16</sup> The constitutional clauses on the EC powers are sometimes prescriptive (i.e. fines for failure by public officials to comply with EC guidelines), while also leaving gaps. The EC is stated to inherit the powers of the predecessor institution, but does not go further to prescribe legislation to take into account the new governance structures.

<sup>17</sup> The law does not prescribe a specific timeline or forum for publication of EC decisions in general and in several respects, including on applications for postal voting or rejection of nominations.

<sup>18</sup> On 31 October, a Facebook fan page “Bring Back Gota” placed an advertisement on FB and Instagram, stating: “*EC is a biased commission [...] Professor Hoole [...] represents the Tamil diaspora and Western interests. He will do his best to manipulate the election results*”. The advert was removed by FB only on 5 November.

Technical aspects of the electoral process were well-administered and key operational deadlines were met. Because of the high number of candidates, the EC reviewed its operational plan to provide additional ballot boxes and more spacious polling stations and counting centres to accommodate the long ballot paper and large numbers of candidate/party agents (two per polling station and five per counting centre). Training of some 250,000 civil servants was carried out to schedule. Women are poorly represented in decision-making positions in the EC at national and district levels.

For election day a total of 12,845 polling stations were set up. Some 38 counting centres, 1,179 counting stations and 371 postal voting counting stations were established. The EC issued a poll card to each registered voter, facilitating the identification of assigned polling locations. Provisions by local authorities to give temporary identity cards to voters ensured wider inclusivity.

Assisted voting for persons with disabilities was available.<sup>19</sup> A certificate of eligibility from the local government official (Grama Niladhari) and a medical certificate were required. Internally displaced persons (IDPs) could vote in the district of their residence before becoming displaced.<sup>20</sup> IDPs could request special arrangements for casting an absentee ballot until 25 September.

Preparations for early in-person postal voting for 659,030 citizens were timely. Early voting took place on 31 October and 1, 4 and 7 November.<sup>21</sup> The EU EOM observed on 4 and 7 November in 66 postal voting stations. Postal voting was conducted in an organised manner and assessed as overall well administered. Steps to avoid traceability of ballots, as recommended by the EU EOM after the 2015 parliamentary elections, were not adopted.<sup>22</sup>

Continuous voter awareness activities in Sinhala, Tamil and English, including messages for persons with disabilities, were conducted by the EC and civil society organisations. The EC regularly aired voter information messages, including on how to vote and mark preferences on the ballot paper, island-wide on state radio.<sup>23</sup> Civil society organisations raised concerns about the absence of a robust national voter education campaign on how to mark a valid ballot paper using all vote preference options (1,2,3). Full understanding by voters of the correct method to mark preferences was an issue of importance.

#### IV. VOTER REGISTRATION

##### *There is a need for legal action to enhance voter register's inclusiveness*

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<sup>19</sup> Following the Election (Special Provisions) Act No. 28 of 2011, a person who is totally or partially visually handicapped or physically disabled may be accompanied by another person to assist in marking the ballot paper.

<sup>20</sup> According to the Internal Displacement Monitoring Centre (IDMC), as of 31 December 2018, 37,000 IDPs have been displaced by conflict and violence and 100,000 by natural disasters.

<sup>21</sup> The EC received 717,871 postal voting applications. A total of 58,841 were rejected due to incomplete data or absence of the signature of the certifying officer. Certain categories of voters can cast their vote before election day. These include candidates, members of the armed forces, police, Department of prisons, employees of the Sri Lanka government railway, Department of post and telecommunications and the central or regional transport board. Employees of the Central Bank of Ceylon or local government service may use postal voting if called for duty on election day.

<sup>22</sup> The EU EOM 2015 final report identified the lack of proper safeguards to ensure the secrecy of the postal vote as problematic, as the serial number of the ballot paper is recorded in the declaration of identity and on the envelope in which the ballot is inserted. Additionally, the ballot paper's serial number is marked on the ballot counterfoil along with the voter registration number, which allows a ballot to be traceable. The ICCPR, GC, para. 20: "States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting.... Waiver of these rights is incompatible with article 25 of the Covenant."

<sup>23</sup> National Service and City FM, two frequencies of state Sri Lanka Broadcasting Corporation (SLBC). While the SLBC also launched (after 2015 and 2018) its special election frequency, *Election FM*, the station did not enjoy high popularity.

Sri Lanka has a voluntary active voter registration system, which is compiled and maintained by the EC. The 2018 voter register contained a total of 15,992,096 voters, an increase of almost a million since the 2015 presidential election. EU EOM interlocutors expressed confidence in the accuracy and inclusiveness of the voter register. However, some 180,000 to 200,000 citizens were disenfranchised for the 2019 presidential election because the law does not foresee a revision period for the voter register to include those turning 18 between 1 June cut-off date and the election day.<sup>24</sup>

Every citizen who has reached 18 years by an annual voter registration cut-off date of 1 June is entitled to vote. Those convicted of certain offences, including corruption and bribery, are disqualified by law for periods ranging from three to seven years.<sup>25</sup> Citizens declared of unsound mind are also disqualified, but there is no clarity on the mechanisms for such declarations.<sup>26</sup> There are also no provisions for the registration of the diaspora, prisoners, homebound or hospitalised persons.

## V. CANDIDATE REGISTRATION

### *Inclusive nomination process and candidacy requirements in line with international standards*

Overall, candidacy requirements are in line with international standards and the nomination process was inclusive. Prospective candidates were proposed by registered parties or they contested as independents. Of 41 prospective candidates who paid the required deposit to the EC, 35 completed the nominations process by submitting the registration form on 7 October.<sup>27</sup> All registration applications were accepted. The list comprised 18 candidates from registered parties, 15 independents and two from unregistered parties. The record number of candidates raised much debate as to whether all were genuine contestants. The EC said, publicly, it had identified 13 who were competing merely to support one of the two most prominent candidates.

## VI. CAMPAIGN ENVIRONMENT

### *Campaign restrictions not in line with international commitments; peaceful campaign on the ground marred by divisive rhetoric and hate speech in social media*

Campaigning on the ground was peaceful, consisting mainly of small-scale meetings and door-to-door canvassing. The atmosphere was calm despite a small number of violent incidents and reported threats.<sup>28</sup> However, throughout the campaign, legal restrictions were in force against the use of a wide variety of political advertising, including flags and stickers. Anyone using private premises or

<sup>24</sup> ICCPR, GC, 25 at para. 11: “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right”. Registration of Electors (Amendment) Bill 2019 has been gazetted.

<sup>25</sup> In theory, persons disqualified for seven years could be deprived of the opportunity to vote for 11 years, due to the length of presidential terms (five years) and depending on when such elections arise relative to the start of disqualification. ICCPR, HRC, GC, 25 at para. 14: “If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.”

<sup>26</sup> Decisions as to whether a person is of unsound mind are usually made by district courts. Thereafter, an outdated mental health law means such persons are held subject to an administrative decision by the Ministry of Health, without legal clarity on review mechanisms.

<sup>27</sup> Candidates nominated by a registered (recognised) political party pay LKR 50,000 (EUR 250), and independents LKR 75,000 (EUR 375).

<sup>28</sup> On 6 November in Nuwara Eliya bodyguards accompanying a member of parliament who supported the SLPP fired shots at a group who appeared to be blocking the MP’s car, injuring two people. In separate incidents on 10 and 11 November two female UNP politicians were attacked, allegedly by SLPP supporters. UNP and SLPP offices were vandalized respectively in Neluwa and Baddegama divisions of Galle district on 3 and 4 November. A UNP office was also attacked in Divulapitiya. On 5 November former MP Sajin Vaas Gunawardena said he lodged a complaint to the police of death threats he received over his support for the NDF candidate. On 6 November the Minister of Finance, Eran Wickramaratne (UNP), lodged a complaint with the EC regarding a message he had received on Twitter warning of a bomb attack.

vehicles to promote candidates could be arrested without warrant and charged.<sup>29</sup> Processions – any movement of people along a street other than for social or religious purposes – are not permitted during the campaign and for a week after results are declared. Such legal restrictions undercut constitutional guarantees of freedom of speech and assembly and are at odds with Sri Lanka’s international commitments.<sup>30</sup>

The EC issued guidelines for the media and a Code of Conduct for parties and candidates,<sup>31</sup> as well as various directions pertaining to campaigning.<sup>32</sup> Despite legal uncertainty as to the basis of some of the EC’s directions, the Supreme Court dismissed one petition against a ban on the use of LED screens in cinemas for political advertising, thereby confirming the EC’s stance.<sup>33</sup>

The highest-profile candidates were S. Premadasa and G. Rajapaksa, who attracted large crowds at rallies. The SLPP conducted a highly organised grassroots campaign and a sophisticated political messaging strategy online, including the use of mobile phone applications. While these applications were used primarily to promote the SLPP candidate, they also obtained voters’ personal information, essential for automated micro-targeted canvassing. The S. Premadasa campaign also used social media heavily, but with markedly less investment in micro-targeting. A. K. Dissanayaka’s campaign on the ground and online was less prominent. There was a significant gap in resources between the two main candidates and the others. The remaining contestants were scarcely visible, including on social media.

National security was a prominent theme in the election campaign, with strong nationalist rhetoric used. This also brought religious and ethnic rifts to the fore. The campaign, on the ground and especially online, was marked by heightened Sinhala nationalist rhetoric and, on the SLPP side, instances of anti-Muslim invective. Groups of Buddhist monks appeared on the campaign stages of both main candidates.<sup>34</sup>

There were many allegations of the misuse of state resources. The granting of permanent jobs to temporary and contract workers at all levels of public administration was the most commonly reported abuse.<sup>35</sup> On 11 November Transparency International Sri Lanka asked the EC to take action against candidates using Air Force helicopters for campaign purposes. Campaigning by public officials was also frequently observed, including on their official social media accounts.<sup>36</sup> The EC

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<sup>29</sup> For example, [Presidential Elections Act No 15 of 1981](#) s. 74.

<sup>30</sup> [ICCP, Humans Right Committee, GC 34](#) at para. 37: “Among restrictions on political discourse that have given the Committee cause for concern are the prohibition of door-to-door canvassing, restrictions on the number and type of written materials that may be distributed during election campaigns...”

<sup>31</sup> Sanctions for non-compliance with the guidelines apply only in respect of state media and consequently compliance by private media and social media platforms is voluntary.

<sup>32</sup> For example, on withdrawal of candidates, campaigning in religious places and display of postal ballots.

<sup>33</sup> Supreme Court, petition hearing *Emerging Media vs Election Commission and Ors.*, 1 November 2019. Candidate Ajantha Perera told the EU EOM that contestants with fewer resources would have benefitted from the use of LED screens because it was a cheaper campaign method and more environmentally friendly than other forms.

<sup>34</sup> The EC Chairman reminded candidates that the use of religious symbols was banned during campaigning, as per EC media guidelines. The law does not address the engagement of religious figures in campaigning.

<sup>35</sup> For example, on 18 September, the day the election was called, the ministry of public administration issued a circular (29/2019) to secretaries of ministries, chief secretaries of provinces, heads of department and heads of state corporations and statutory boards granting permanent appointments to employees recruited on a temporary, casual (daily), substitute, contract or relief basis.

<sup>36</sup> EU observers reported the participation in SLPP campaigning of the governors of the Southern, Eastern and Western provinces. On 10 November the EC wrote to President Sirisena instructing that four governors (Western, North Western, North Central and Eastern provinces) who had been supporting candidates should go on leave until 18 November. The EC began an investigation also into the presence onstage of the head of the Government Medical Officers’ Association at the launch of the Rajapaksa campaign. The EU EOM observed a clear overlap in messaging on the Facebook pages of five governors and support pages of the SLPP. Of 24 mayors, 15 promoted the SLPP and 4 the NDF, making little distinction between governing and campaigning



Chairman sought an explanation from the Rajapaksa campaign team after newspaper adverts were published featuring endorsements of Rajapaksa by high-level past and current military figures, including the incumbent army commander.<sup>37</sup> The campaign subsequently continued to use military and police personnel in online adverts. On 8 November the President, state minister of defence and the army, and naval and air force commanders attended the opening of the new army headquarters and still incomplete defence complex, contrary to EC rules prohibiting such events during elections.<sup>38</sup> On 16 October the President and prime minister also attended the opening ceremony for an airport in Jaffna. Government announcements in the run-up to the election included a new monthly allowance for the police as well as a water project for Jaffna, which could be construed as inappropriate use of the advantage of incumbency.

S. Premadasa and G. Rajapaksa made extensive use of traditional media, with a heavy presence in paid advertising in television and print media.<sup>39</sup> A.K. Dissanayaka's team and other lower-profile candidates complained that access to traditional media was crucial given restrictions on means of contact with voters, but that traditional outlets gave them minimal or no coverage, and prohibitive prices made it hard to buy space.<sup>40</sup> Almost all candidates used the free airtime allocated by state television and radio.<sup>41</sup>

On the whole, the campaign environment across digital platforms was divisive and highly monetised. Candidates' online presence correlated with their political weight offline.<sup>42</sup> With few regulations in place, this provided for confrontational campaign strategies. The SLPP and NDF used cross-platform electioneering tactics, with official promotion pages adjoining third-party sites that frequently served to discredit the rival.<sup>43</sup> Both frontrunners were also supported by high-profile influencers, who used harsh rhetoric<sup>44</sup> and political meme pages that ridiculed opponents or featured discord.<sup>45</sup> Instances of religious leaders expressing support for candidates on YouTube were noted.<sup>46</sup>

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<sup>37</sup> In a reaction, on 27 October the EC issued a notification prohibiting the publication in the media of images of public officials and army personnel for party/candidate promotion.

<sup>38</sup> Gazette 2141/52, government notification 19 September 2019, 03 (i): "*Functions such as laying foundations, opening ceremonies . . . should not be organised or conducted during the period of election since the politicians who attend these functions may express opinions and views on the election and conduct of these functions ceremonially may lead to the promotion or cause prejudice to any party, group or candidate.*"

<sup>39</sup> Overall, paid advertisements of the two major candidates accounted for between 90 and 100 per cent in traditional media. While the proportion between them is comparable in television channels, Rajapaksa dominated in adverts placed in radio and Premadasa in print media.

<sup>40</sup> Contestants included candidates Ajantha Perera, Mahesh Senanayake (National People's Party) and Rohan Pallewatta (Jathika Sanwardana Peramuna).

<sup>41</sup> While all but four candidates used their free airtime on television (A.H. Mohamed Alavi, Aj. De Soysa, Ar. De Soysa, I. Mohamed Illayas), seven contestants did not do so in radio (A.H.M. Alavi, S. Amarasinghe, Aj. De Zoysa, Ar. De Zoysa, W.M.S. Fernando, S. Herath and I.M. Illias).

<sup>42</sup> Seventeen candidates have a Facebook page, five are on Twitter and five on Instagram. FB followers range from 740,000 to one. Only Premadasa (740,000 followers), Rajapaksa (577,000) and Dissanayaka (317,000) post daily, and among them only Premadasa has a YouTube channel (24,600 subscribers). The only female candidate has 4,984 friends on FB. Her profile is closed and features a few public campaign posts.

<sup>43</sup> The EU EOM identified 105 Premadasa- and 110 Rajapaksa-leaning pages on FB, with 11 and 15 of them respectively posting and sharing primarily negative content. A further 15 and 24 pages respectively mixed promotion of the candidate, mobilisation and negative campaigning. The EU EOM identified 167 support pages with district-level relevance; 16 per cent of Premadasa-leaning and 20 per cent of Rajapaksa-leaning pages contained negative messages.

<sup>44</sup> Of ten most followed YouTube personalities (with more than 50,000 subscribers) five regularly promoted the SLPP and G. Rajapaksa and two S. Premadasa. Latest postings from all seven included demeaning commentary. The viewership of each broadcast ranges from 25,000 to 1.8 million unique users.

<sup>45</sup> The EU EOM assessed 25 most followed political meme pages; 11 showed political bias (nine for Rajapaksa, one for Premadasa, one for Dissanayaka).

<sup>46</sup> For example, on 23 October a YouTube channel, Hari Creation, featured a Buddhist monk, Kotuwe Hamuduruwo, calling on people to vote for Rajapaksa, while noting that "*Muslim theorists are on a stage with Sajith*". Within two days the video had more than 90,000 unique views, generating 450 comments, 95 per cent of which supported the monk's statement. The monk's sermons are available via a Google app, and in at least two he calls for "*the eradication of non-Sinhala Buddhist people*". In

Social media mobilisers were also recruited at the district level. The volume of hostile commentary was higher on SLPP-leaning sites.<sup>47</sup>

## VII. CAMPAIGN FINANCE

### *Lack of campaign finance regulation contributes to an uneven playing field*

Political party and campaign financing remain unregulated.<sup>48</sup> There are no limits on contributions or spending, and no disclosure requirements, including of the origin of funding, reinforcing an uneven playing field. Candidates are required only to declare their assets, but financial sanctions for non-compliance are insignificant.<sup>49</sup>

Across all districts, EU observers noted the high-visibility campaigns on the ground of the two most prominent candidates, underscoring a considerable gap in financial expenditure and resources between them and other contestants. With no limits on campaign advertising, campaign coverage in traditional and online media was highly monetised.<sup>50</sup> Only a few other candidates, namely Anura Dissanayaka, Ajantha Perera, Mahesh Senanayake and B. Thera ventured into paid television and newspapers adverts. The SLPP's spending online was in excess of any other campaign.<sup>51</sup> The party campaigned via five custom-made mobile applications. It dominated across all categories of Google adverts and placed no fewer than 500 adverts on Facebook, including by third-parties. Total spending cannot be known, as Google shares no data, but Facebook's ad library offers some disaggregated estimates that do not factor in expenses by third-party sites. Facebook cited the absence of legally binding disclosure requirements for service providers. Such a lack of transparency and accountability in campaign finance contravenes international standards and interferes with voters' right to make an informed choice.<sup>52</sup>

## VIII. MEDIA ENVIRONMENT

### *Private and state media bias in favour of the two main candidates significantly limited access to news outlets for most candidates*

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one, available on YouTube, he threatens "to cut off the arms" of everyone who will vote for a candidate who is not a Sinhala Buddhist (416,000 views).

<sup>47</sup> It was primarily against S. Premadasa. But there was also a general hostility against Muslims and voters were threatened that if they didn't vote for G. Rajapaksa, the Sinhala Buddhists would soon become a minority. Homophobic messages were also noted.

<sup>48</sup> Draft legislation on campaign and political party financing is currently at the Legal Draftsman's Department. See recent proposals of [Commission for Investigation of Allegations of Bribery and Corruption](#).

<sup>49</sup> Six candidates have yet to hand their declarations to the EC. The period for disclosure of assets extends to the presidential inauguration date. [Declaration of Assets and Liabilities Law, No. 1 of 1975](#): "Failure to file a declaration of assets within three months of nomination may entail a fine of LKR 1,000 (EUR 5), or up to a year in prison, or both."

<sup>50</sup> According to CMEV data for the period between 14 October and 10 November. estimated campaign costs (including traditional media and outdoor campaigning) was as follows: for SLPP it was LKR 1,518 million (EUR 7.59 million), for NDF it was LKR 1,422 million (EUR 7.11 million), and for NPP it was LKR 160 million (EUR 800,000). While traditional media constituted some 62 per cent of the amount in the case of SLPP, in the case of the DNF it was some 51 per cent.

<sup>51</sup> For example, G. Rajapaksa's official page sponsored at least twice as many advertisements on FB as Premadasas and 10-times more than the JVP. The SLPP-leaning pages, identified by the EU EOM, placed by far more sponsored content than the NDF-leaning ones.

<sup>52</sup> [UN Convention Against Corruption](#), art. 7(3), "...state parties shall consider taking appropriate legislative and administrative measures [...] to enhance transparency in the funding of candidatures for elected public office...".

The media environment in Sri Lanka is diverse, with numerous outlets.<sup>53</sup> The market is characterised by a high concentration of ownership divided largely along political lines and significantly influencing content.<sup>54</sup> The state remains a major stakeholder as well serving as the media regulator.<sup>55</sup>

The Constitution guarantees freedom of expression and the right of access to information. However, it limits freedom of expression through various restrictions, contrary to international standards.<sup>56</sup> Positively, a law on the Right to Information was introduced in 2016. The media-related legal framework during elections comprises the Constitution, the PEA and the EC media guidelines, which are binding for state media.<sup>57</sup>

The EC has constitutional power to issue guidelines to all media, state and private, but only state media have a legal duty to comply.<sup>58</sup> The EC organised several meetings with all media, seeking their cooperation. On various occasions the EC Chairman publicly warned all media to comply with impartiality requirements.<sup>59</sup> Nonetheless, the EC came under strong criticism from various candidates and civil society organisations over a perceived lack of action against unbalanced political broadcasting by private media.

State media adhered to their legal requirement to allocate free airtime to candidates. However, the Sri Lanka Rupavahini Corporation decided to air candidates' addresses on *Channel Eye*, which is a less popular entertainment channel, thereby limiting public outreach.<sup>60</sup> There were no televised debates.<sup>61</sup> The media covered the campaign through various formats, but mostly newscasts and paid adverts. However, news coverage lacked in-depth and critical editorial analysis of candidates and their manifestos, in particular in the broadcast media.<sup>62</sup> The principle of the media disseminating a

<sup>53</sup> There are more than 250 outlets, including 22 TV channels (5 state-owned), 57 radio stations (21 state-owned), some 100 newspapers (20 dailies) and numerous online portals. Television, primarily in rural areas, remains the most important source of news on politics. Newspapers, while declining in circulation, still preserve significance, mainly for the older generation.

<sup>54</sup> Major private media groups (*Maharaja Broadcasting Corporation, Power House, Asia Broadcasting Corporation*) alongside the state groups, have, according to a study by Reporters Without Borders and Verité Research, a combined audience share of 77 per cent in TV and 65 per cent in radio. The private group, *Wijeya Newspapers*, claims 47 per cent of newspaper readership.

<sup>55</sup> On 9 September, the President placed the state television SLRC (*Sri Lanka Rupavahini Corporation*) under the Ministry of Defence, thus under his direct purview. The minister decides on licenses for private broadcasters in conjunction with the Telecommunications Regulatory Commission (the ministry's secretary is also the chairman of the TRC). [ICCPR, HRC, General Comment no. 34, in para. 39](#) "it is recommended that States parties [...] establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licences."

<sup>56</sup> [Joint statement on Media and Elections](#) by authoritative international bodies reads "Oversight of any rules relating to the media and elections should be vested in an independent administrative body which should address any complaints promptly."

<sup>57</sup> The only procedural safeguard provided for by the Constitution is that the restrictions are required to be prescribed by law. ICCOR, HRC, [General Comment no. 34, in para. 22](#): "Restrictions may be imposed [...] and must conform to the strict tests of necessity and proportionality". See also legal framework.

<sup>58</sup> The 21 September [media guidelines](#) oblige "every media institution to provide accurate, balanced and impartial information in [...] news bulletins and any other programme relating to political matters".

<sup>59</sup> The draft 19<sup>th</sup> Amendment Bill envisaged a change to Constitution article 104B(5) (a) – (e) by creating a duty of compliance for both private and state media with EC guidelines. The proposed changes also envisaged EC power to appoint a competent authority over private and state media in the event of contravention of EC guidelines. Ultimately, for various reasons the proposed changes were revised and replaced by the current article 104B(5) (a) – (c) of the Constitution. Consequently, the previously planned duties of and powers over private broadcasting and telecasting operators were excluded.

<sup>60</sup> On 3 October, the EC stopped the live broadcast of the UNP annual convention on state *Rupavahini*, referring to a violation of the impartiality principle. In a similarly motivated decision, on 2 November it stopped all political programmes on *ITN* state television without prior EC approval. The decision was retracted the next day due to complaints.

<sup>61</sup> The state-run *Election FM* aired discussions featuring 30 candidates.

<sup>62</sup> On 5 October, several CSOs organised a public debate in an indoor stadium for an audience of some 4,000 people and featuring nine candidates. Only Gotabaya Rajapaksa did not accept the invitation.

<sup>63</sup> State-owned television channels *ITN, Rupavahini* in Sinhalese, private channels *Derana, Hiru, Sirasa, Swarnavahini* in Sinhalese, *Shakthi* in Tamil language; radio stations *Derana FM, Sirasa FM, Neth FM* in Sinhalese; newspapers *Lankadeepa, Divaina, Mawbina* in Sinhalese, *Uthayan, Virakesari* in Tamil, *Daily News, Daily Mirror, Sunday Observer* in English; online media *hirunews.lk, newsfirst.lk* in Sinhalese, *tamilmirror.lk* in Tamil.

wide range of information, giving voters the chance to make well-informed choices, was compromised as media coverage was significantly limited for most of the contestants.

All media monitored by the EU EOM reflected political traditions, centring their reporting on the two leading campaigns and to a lesser extent on candidate Dissanayaka. The joint coverage of both candidates Premadasa and Rajapaksa accounted for 89 per cent across three most popular private TV channels and two state broadcasters. A handful of other candidates were occasionally presented, but most of the contestants were largely ignored.<sup>63</sup> State TV channels adopted similar editorial approach presenting S. Premadasa in a positive manner through his direct speeches, and at the same time they regularly covered various supporters of his candidacy to criticise G. Rajapaksa. As a result, the coverage of the latter was overall bigger (55 to 31 per cent on *Rupavahini* and 49 to 43 per cent on *ITN*), however it was mostly negative in its tone.

*Derana* and in particular *Hiru* showed one-sided and biased coverage in favour of G. Rajapaksa, dedicating him 55 and 61 per cent of overwhelmingly positive coverage, while S. Premadasa, his party and the outgoing government, in particular, were harshly criticised.<sup>64</sup> On the contrary, *Sirasa TV* offered its viewers more balanced coverage, both in time (41 and 38 per cent to S. Premadasa and G. Rajapaksa, respectively) and tone, with neutral information prevailing in the coverage of all candidates.

## IX. DIGITAL COMMUNICATIONS AND SOCIAL MEDIA

### *A coordinated distortion of the information environment online undermined voters to form opinions free from manipulative interference*

Thirty-four per cent of Sri Lankans have access to the internet and use smartphones to send and receive information. The digital literacy rate is low, leaving the online discourse prone to manipulation.<sup>65</sup> Constitutionally guaranteed freedom of expression is not explicitly extended to online content<sup>66</sup>, and in the absence of all-encompassing privacy and data protection legislation, parties do not declare their use of voters' personal data, which is collected by mobile applications or campaign staff.<sup>67</sup> Such practice is at odds with international standards.<sup>68</sup>

Among the social media platforms, Facebook is the prime contributor to the crafting of political narratives in the public space and to setting the electoral agenda.<sup>69</sup> The EC had only an informal

<sup>63</sup> Private *Sirasa* covered 19 candidates in total, most of all the monitored channels. At the same time, it devoted to both leading candidates 79 per cent, the lowest portion. On the other hand, *Derana* and *Hiru* covered only 5 candidates, and to S. Premadasa and G. Rajapaksa devoted combined 95 and 94 per cent.

<sup>64</sup> On 6 November, the UNP declared it was boycotting the political programmes of *Hiru TV* and *Hiru FM*, in protest against their preferential treatment of Rajapaksa and what it said was “the disinformation campaign, specifically targeting the UNP and ethnic minority communities”.

<sup>65</sup> Computer and digital literacy are 27.5 and 40.3 per cent respectively (2018). [Department of Census and Statistics Sri Lanka: joint declaration on freedom of expression and “fake news”, disinformation and propaganda by recognised international bodies, section 3](#), says: “States should take measures to promote media and digital literacy”.

<sup>66</sup> [UNHRC. Promotion, Protection and Enjoyment of Human Rights on the Internet, 4 July 2018](#): “[...] the same rights that people have offline must also be protected online, in particular freedom of expression...”.

<sup>67</sup> The VCAN app promoted by the SLPP (Google Play) demands registration with a National Identity Card (NIC); if permitted, it has access to a phone's geolocation, can read the content of USB storage and view network connections. The privacy and developers' pages are empty. The use of the VCAN app and enclosed private information by campaigners was confirmed to EU observers in Anuradhapura, Batticaloa, Colombo, Gampaha, Kandy, Kalutara, Kurunegala and Trincomalee.

<sup>68</sup> [ICCPR](#) art. 17, “No one shall be subjected to arbitrary [...] interference with his privacy”. [ICCPR, HRC GC 16](#) par. 10: “The gathering and holding of personal information [...] on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law.”

<sup>69</sup> As of October 2019, there are 6.5 million Facebook users, 1.1 million Instagram, 261,700 YouTube, and 182,500 Twitter users in Sri Lanka. Several million people use WhatsApp. Eight million communicate on Viber.

understanding with Facebook on the removal of hate speech and disinformation.<sup>70</sup> Citizen observers also reported harmful content online to the EC and Facebook.<sup>71</sup> However, Facebook's reluctance to take action, coupled to high levels of anonymous, sponsored content, enabled a mushrooming of hateful commentary and trumped-up stories that capitalised on long-standing ethnic, religious and sectarian tensions.<sup>72</sup> It continued also during the campaign silence, when Facebook removed only a small proportion of such paid content.<sup>73</sup> This was detrimental to the election and at odds with international standards.<sup>74</sup>

Coordinated dissemination of outright false and/or demeaning information presented in various formats and across digital platforms dwarfed credible news threads. Suppression of credible news entailed the use of sponsored content on Facebook and coordinated sharing of political memes that sow discord and political gossip, both of which served as a source for multiple posts on political support group pages. In the majority of cases, the SLPP campaign benefitted from this. One such campaign undermined the integrity of postal voting;<sup>75</sup> four narratives capitalised on underlying fears and/or recycled previously debunked information.<sup>76</sup>

The use of algorithms and human curation to mislead the debate on Twitter was observed.<sup>77</sup> It included a high number of recently registered accounts amplifying certain political messages that also appeared on political support group pages. Ten days before the election, the SLPP further skewed the online discourse by announcing a "sharing" contest for 50,000 subscribers of the SLPP app VCAN.<sup>78</sup> A few professional fact-checking organisations exposed deceptive and false stories, but their staff levels and reach are far smaller than those of political actors, and they were not supported by broadcast or print outlets.<sup>79</sup> Overall, a damaging online environment distorted public debate and

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<sup>70</sup> Facebook has not published data about requests by, or its response to, government authorities in 2019. It notes that without a written agreement with the EC, the timeline for decisions remains at its discretion. The number of removed posts is not public. FB did not consider the EC's media guidelines applicable to it.

<sup>71</sup> By 6 November the EC complaints centre has registered 102 complaints about campaign violations and hate speech online.

<sup>72</sup> The EU EOM analysed 340 Facebook pages supporting one of the two leading candidates, including 167 prominent in one district. Twenty-six of national-level and 10 per cent of local-level pages featured sharply negative content. On 25 of the most popular meme pages, the EU EOM identified 47 political memes with a menace, including sectarian undertones. The EU EOM assessed public videos by ten of the most subscribed to YouTube influencers (more than 20,000 followers each) and identified at least 10 cases of sharply divisive rhetoric, including two with a racist message.

<sup>73</sup> On 14 and 15 November the EU EOM identified at least 300 sponsored posts/adverts with campaign content. CSOs identified 700 such sponsored posts, FB removed less than half of it.

<sup>74</sup> [ICCP, HRC GC 25](#), par. 19: "*Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.*" See also [the joint declaration on freedom of expression and "fake news", disinformation and propaganda](#), sec. 4 'Intermediaries'.

<sup>75</sup> On 31 October an anonymous fan page, Iraj Production, posted "postal voting" results featuring the SLPP's victory with 95 per cent of votes cast. The post cited the EC. It was shared and re-shared 30,000 times. The post was also shared by a FB page promoting the SLPP and serving as "a mother page" for sharply negative and manipulative content against the UNP. FB closed the fan page on 6 November. The "*landslide victory of the SLPP in postal voting*" was repeated in rallies.

<sup>76</sup> These include the UNP candidate pictured with a Muslim doctor falsely accused of sterilising 4,000 Buddhist women (debunked in July 2019), a claim that the SLPP candidate is supported by a Muslim politician, who, in turn, is falsely associated with "masterminds of the Easter bombings" (debunked in July 2019). The posts and sponsored content also capitalised on anti-foreign sentiments by falsely stating that the government was giving away 18 per cent of Sri Lanka's land by signing an agreement with US.

<sup>77</sup> From 4 October to 4 November the EU EOM downloaded all tweets trending the neutral electoral hashtags #PresPollSL and #prespolls2019. Out of 2,000 accounts 500 were randomly selected for assessment. Nine per cent were established less than four months before the election, 4.62 per cent were deleted by Twitter, 28 per cent shared only negative content, and 35 per cent were only re-tweeted.

<sup>78</sup> By following the application, the EU EOM observed automated and concerted activities, including multiple sharing of the same post at odd hours (3:30am, 4:22am) but from different profiles which could indicate the activity of bogus accounts.

<sup>79</sup> Three fact-checking projects employ a robust news/photo verification methodology. They have debunked 74 false stories/statements/images by and about political figures. These included a claim of a politically motivated fight that followed a Premadasa rally, the arson of houses belonging to Rajapaksa supporters, and a letter from a cardinal opposing a big government agreement with US (the Millennium Challenge Corporation, MCC). The debunking of false postal voting results was shared just 17 times as opposed to the 30,000 shares of the false news post itself. The EU EOM also identified an organisation

curbed voters' access to factual information on political choices, an important element for making a fully informed choice.

## **X. ELECTORAL DISPUTES**

### *Lack clear procedures to assure follow-up actions for key offences*

There were two prominent but unsuccessful court cases on election matters ahead of the 2019 presidential election.<sup>80</sup> Between 8 October and 14 November the EC received 3,905 complaints in 25 District Complaint Centres and at its headquarters.<sup>81</sup> Only 27 of the complaints related to violent incidents.<sup>82</sup> EU observers reported that most of complaints recorded in the districts concerned breaches of campaign rules. The EC published consolidated daily reports on complaints received on its website, but no details of follow-up actions. EU observers noted a professional administration of district complaint centres, where complaints were responded to in various ways, including through letters of investigation to other state authorities, the removal of non-permitted campaign material, mediation in minor disputes, and coordination with the police in investigations of allegations.

Despite these measures, processing, investigation and follow-up action on complaints during the campaign period do not have clearly prescribed, codified rules to ensure stakeholder awareness and confidence.<sup>83</sup> Transparent, timely, robust intervention on various allegations was hampered by a lack of timelines and adjudication procedures to ensure clarity on dispute resolution and prosecution of offences. One constraint on EC action stems from the fact that the consent of the Attorney General is required for prosecutions of key electoral offences.<sup>84</sup> Consequently, the EC's capacity to prosecute in a timely and independent manner is curtailed.<sup>85</sup>

## **XI. CITIZEN OBSERVATION AND INTERNATIONAL OBSERVATION**

### *Active role of citizen observers*

There is no legal provision for national and international election observation.<sup>86</sup> Two organisations, accredited at the EC's discretion, were granted full access to polling and counting centres. The People's Action for Free & Fair Elections (PAFFREL) deployed some 6,000 observers, including for postal voting. The Centre for Monitoring Election Violence (CMEV) monitored campaign finance and deployed 2,000 observers, with a concentration on the north eastern regions. Both PAFFREL and CMEV monitored and reported on election violations and complaints in cooperation with the

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that was impersonating a fact-checking organisation. It was featured in the mainstream media as a guardian of fairness in online campaigning, while in practice it was striving to discredit non-partisan fact-checkers.

<sup>80</sup> A petition to the Court of Appeal against the nomination of Gotabaya Rajapaksa was dismissed on technical grounds. The Supreme Court also dismissed a challenge by Emerging Media against an EC ban on the use of LED screens for political advertising.

<sup>81</sup> Complainants, who could submit their concerns online, by phone or in person, were not obliged to identify themselves for an issue to be investigated. EC data showed that of 1,256 complaints to EC headquarters, illegal posters accounted for 287 of the allegations, 174 related to illegal campaigns and meetings, 163 to allegations of the misuse of government assets, and 158 to allegations of appointments, promotions or transfers in public posts. 113 complaints pertain to the media.

<sup>82</sup> This figure does not include violent incidents that were also recorded or reported separately to police. The violent incidents included verbal intimidation, damage to billboards and election offices and assault.

<sup>83</sup> Whereas other areas of the law, such as on objections to voter and candidate registration and results challenges, have clear timelines.

<sup>84</sup> Key election offences on campaigning, processions, meetings, polling days, and a range of offences related to ballots, fraud, and illegally printing materials (PEA s. 66-70).

<sup>85</sup> The Attorney General's office also represents both the government and the EC in criminal and civil matters. This can entail a conflict of interest if the two institutions find themselves opposed on any matter.

<sup>86</sup> The EU EOM 2015 recommended the inclusion of the right of national and international observers to observe all stages of the electoral process in the legal framework for elections.

EC and police. Several other groups, such as the Campaign for Free and Fair Elections (CaFFE), were accredited to observe but only from outside polling stations. Transparency International Sri Lanka is monitoring use of public resources and is cooperating with PAFFREL and CMEV.

The Commonwealth deployed 20 observers and the Asian Network for Free and Fair Elections (ANFREL) 41. The EC invited several other regional delegations such as the Forum of Election Management Bodies of South Asia (FEMBoSA).

## **XII. ELECTION DAY: POLLING, COUNTING AND TABULATION OF RESULTS**

### ***Peaceful and well-managed polling and counting***

Election day was peaceful and orderly. Some isolated incidents were reported but they did not significantly impact the process.<sup>87</sup>

EU observers observed opening and polling proceedings in 297 polling stations in all 22 electoral districts. The overall assessment of the conduct of opening and polling was good and very good in 93 per cent of the observed polling stations. EU observers assessed positively opening procedures. Polling stations opened on time.

Polling took place in a well-organised manner. All electoral materials were available and polling staff was present. Although there was a big number of women polling officers, the vast majority of the presiding officers were men. In most polling stations the lay out was adequate. However, in 37 per cent of polling stations observed the position of voting screens did not sufficiently protect the secrecy of the vote. In many cases voting screens were facing the presiding officer's table and polling officers were able to observe the marking of the ballot while standing next or behind a voter. Candidates' agents were present in the vast majority of polling stations observed. Citizen observer groups PAFFREL and CMEV were able to observe the voting process without undue restrictions. Polling stations closed on time. Closing was assessed as very well conducted in the observed polling stations. Counting was observed in 25 out of 38 district counting centres and was assessed as overall well-organised, transparent and professional. EU observers assessed counting staff's performance as very good. The tabulation of the results at the national level was conducted in an efficient, proficient and transparent manner.

The EC recorded approximately 250 electoral law violations on election day, mostly relating to illegal campaign activity. Police arrested some 26 people for violations including 8 for taking pictures with mobile phones inside polling stations. Overall, there was a low level of reported serious incidents.

The EC announced the final results on 17 November at 15:30. The final turnout was reported at 83.87 per cent. Invalid votes were reported at 0.85 per cent. Election results were posted throughout the night at the EC's website enhancing transparency. Gotabaya Rakapaksa of the SLPP received 52.25 per cent of the votes followed by Sajith Premadasa with 41.99 per cent. Gotabaya Rajapaksa sworn in on 18 November.

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<sup>87</sup> On election day were recorded at least 7 isolated violent incidents and at least 40 isolated cases of voter intimidation and bribery, with Matara district and the North West provinces being the most affected ones.

An electronic version of this preliminary statement is available on the mission website:  
[www.euomsrilanka.eu](http://www.euomsrilanka.eu).

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