

Joint Submission

42nd Session of the Universal Periodic Review Working Group

United Nations Human Rights Council

SRI LANKA

Introduction

1. The Asian Network for Free Elections (ANFREL) is an international NGO headquartered in Bangkok that unites 29 member organisations across 18 countries in promoting democratic elections throughout Asia. Since its formation in 1997, ANFREL has to date observed 72 elections across Asia. ANFREL is a signatory to the Declaration of Principles for International Election Observation, and previously observed elections in Sri Lanka in 2010 (presidential), 2013 (provincial council), 2015 (presidential and parliamentary), 2019 (presidential) and 2020 (parliamentary).
2. People's Action for Free & Fair Elections (PAFFREL) is the first citizen-based election watch group in Sri Lanka established in 1987. PAFFREL has since its inception observed all elections held in Sri Lanka and have produced a report/s at the conclusion of each election. Apart from monitoring elections, PAFFREL has engaged in a number of advocacy activities such as reform of election laws, voter education, democratic ideals, good governance, human rights, peace and co-existence.
3. Centre for Monitoring Election Violence (CMEV) was formed in 1997 as an independent and non-partisan organisation to monitor election-related violence. Since 1997, CMEV has monitored all national, provincial and local government elections as one of the accredited election observer organisations by the Election Commission in Sri Lanka. CMEV also has continually engaged in electoral reform discussions, voter education and the building of capacities of electoral stakeholders throughout its 25 years of operation. CMEV has been pioneered in advocating for inclusive elections to ensure the democratic rights of underrepresented communities in Sri Lanka. In Presidential Election 2019 and Parliament Election 2020, CMEV was engaged in monitoring the campaign expenses of election candidates in parallel to its general process of monitoring election violence and malpractices
4. ANFREL, PAFFREL and CMEV provide this joint submission to the United Nations Human Rights Council in advance of the examination of the fourth periodic report of Sri Lanka at the 42nd session of the Universal Periodic Review (UPR) Working Group Committee scheduled for February 2023.
5. This joint submission focuses on issues related to elections, particularly the 2019 presidential election and 2020 parliamentary elections, in Sri Lanka and makes recommendations to the government of Sri Lanka to make progress on human rights and democracy.

The 2019 Presidential Election and 2020 Parliamentary Elections in Sri Lanka

6. Section 69 of the Presidential Elections Act provides that no persons shall, at any time during the period commencing on the day of the nomination and ending one week after the date on which the result of the poll taken is declared by the Commissioner, conduct, hold or take part in any procession except for May 1 (Labour Day) or for religious or social purpose. Such restriction unduly hampers and restricts the exercise of the right of peaceful assembly enshrined in Article 21 of the ICCPR.
7. Section 74 of the Presidential Elections Act prohibits any person, from the day of nomination up to the day following the poll date, to post the flag or banner of any candidate, handbill, placard, poster, notice, photograph of a candidate, symbol, sign or drawing in any public or private premise, on any place to which the public have a right of or are granted access, on or across any public road and in or any vehicle. This provision is violating the right to freedom of expression in Article 19 of the ICCPR.
8. According to the Constitution and the Registration of Electors Act, Sri Lankan citizens who have reached 18 years of age on the qualifying date (June 1) can be registered as a voter. However, at least 200,000 young voters, to as much as 700,000 citizens who have attained the age of 18 years were deprived of their voting right in the 2019 presidential election and 2020 parliamentary elections due to the lack of legal provision for supplemental voter registers. This unduly deprives voters who are 18 years of age after the qualifying date of their right to vote under Article 25 of ICCPR.
9. Elections Act No. 28 of 2011 provides voters with physical disabilities to be assisted by a person of their choice when they exercise their voting right, but it does not include voters with other types of disabilities as defined in Article 1 of CRPD.
10. As observed in the 2019 presidential election, voters with physical disabilities, with the assistance of a person of their choice, still needed to be accompanied by the senior presiding officer and the junior presiding officer when they vote. This is contrary to the protection of the right of persons with disabilities to vote by secret ballot as stated in Article 29 of the CRPD.
11. Sri Lanka has achieved no progress on enhancing women's participation since its last UPR. Although the Parliamentary Elections Act, No. 58 of 2009 requires all political parties to ensure the inclusion of at least one woman in the list of the party's office bearers, there are no measures in place to ensure women's participation in the Parliament. Only 12 of the newly elected 225 members of parliament are women, a decrease of one seat from the previous term.
12. There was an instance of media censorship during the 2019 presidential election, where the Election Commission chief Mahinda Deshapriya told state-owned television station Independent Television Network (ITN) in a letter that "ITN cannot broadcast any political content without clearing with the Election Commission until the conclusion of the election on November 16." This is in violation of Article 19 of the ICCPR, as General Comment No. 34 stated "a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression."
13. The overall election campaign environment of both the 2019 presidential election and 2020 parliamentary elections was generally peaceful. There were recorded instances of

assault, but they appeared to be isolated and did not lead to an escalation of violence. However, abuse of state resources for campaign purposes remained significant in the elections. There were reports of misuse of state-sponsored development projects, state-owned vehicles, and public officials' misconduct.

Recommendations

14. The Parliament should remove legal provisions, such as Sections 69 and 74 in the Presidential Elections Act, which negatively affects the fairness of the playing field.
15. The Parliament should amend the Registration of Electors Act to have supplemental registers after the cut-off date to allow for the enfranchisement of all voters aged 18 on election day, thus resolving the huge numbers of disenfranchised youth.
16. The Parliament should enact a law creating stronger media self-regulation mechanisms to address breaches on media ethics, as well as forming a stronger independent self-regulation institution.
17. The Parliament should expand the definition of disabilities in the Elections Act No. 28 of 2011 to include all voters with disabilities, with assistance tailored to the type of disability that a voter has.
18. The Election Commission should perform an audit of voters with disabilities accessibility of voting venues to ensure they are adequate, and ensure the secrecy of ballots of voters with disabilities.