

Sri Lanka Presidential Election

8 January 2015



The Commonwealth

Commonwealth Observer Group

Presidential Elections of Sri Lanka 8 January 2015

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Commonwealth Observer Group
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13 January 2015

Dear Secretary-General

Following your invitation to observe the 8 January 2015 Presidential Election in Sri Lanka, we have now completed our final report and are pleased to submit it to you with this letter.

These were important elections in Sri Lanka, evidenced by the impressive voter turnout of 81.52% on election day. We commend the commitment of the Sri Lankan people to their democratic process, which has a long and proud history. We also commend the smooth transfer of power and the peaceful conduct of all stakeholders in the post-election environment.

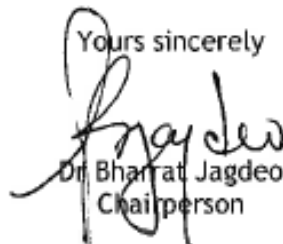
Election day was peaceful and well managed. The Office of the Commissioner of Elections played an outstanding role in ensuring that voting, counting and the transmission of results in this 2015 Presidential election was efficient and transparent. We believe that the Commissioner of Elections and his staff, given their commitment to a credible polling process, are a credit to the country.

The above-mentioned aspects of the election took place, however, in extraordinary circumstances, as the pre-election environment was marked by a widespread and flagrant abuse of state resources, violence and the violation of election laws. All of this made for a remarkably unequal playing field for contesting candidates. This feature of elections in Sri Lanka must change in order to avoid the high level of unease we witnessed in the run up to election day on 8 January 2015.

Overall, we believe that the results of the election reflected the will of the people of Sri Lanka. The extraordinary circumstances, however, prevailing prior to the day polling took place mean that we cannot deem the election as meeting all the key benchmarks for a democratic election.

We have, in accordance with our mandate, offered recommendations to help improve future elections in Sri Lanka. As our team now departs Sri Lanka, we would like to thank you for the opportunity to be present in the country during this important time.

Yours sincerely


Dr. Bharat Jagdeo
Chairperson



Maria Chin Abdullah



Dr Sally Kosgei



Dr Cam Calder



Sa-Adatu Maida



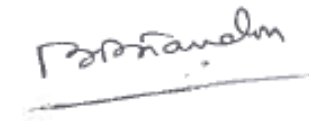
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Chapter 1

Introduction

Following an invitation from the Commissioner of Elections of Sri Lanka, the Commonwealth Secretary-General, Mr Kamallesh Sharma, constituted an Observer Group for the 8 January 2015 Presidential Election in Sri Lanka. The Group was led by Dr Bharrat Jagdeo, the former President of the Republic of Guyana, and comprised eight eminent persons from around the Commonwealth. A full list of members is at Annex 1. The Group was supported by a five-member staff team from the Commonwealth Secretariat.

Terms of Reference

The Terms of Reference for the Group are as follows:

“The Group is established by the Commonwealth Secretary-General at the invitation of the Commissioner of Elections of Sri Lanka. The Group is to consider the various factors impinging on 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 the country has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.

The Group is to act impartially and independently. 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. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections.

The Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Sri Lanka, the Commissioner of Elections, political parties taking part in the elections and thereafter to all Commonwealth Governments.”

Activities

The Commonwealth Observer Group (‘the Group’) arrived in Sri Lanka on 2 and 3 January 2015 and issued an official Arrival Statement on 4 January (Annex 2).

Following their arrival, the Group met with a range of key stakeholders in the country. These included the Commissioner of Elections, representatives of the main candidates, domestic observer groups, civil society, legal and media experts and Commonwealth High Commissioners. The Group maintained

contact with these stakeholders throughout their stay in Sri Lanka. The Group attended the final campaign rallies of the two main candidates.

Four teams of two persons each were deployed from 6-10 January to the Northern, Eastern, North Central and Southern provinces respectively. To enhance their understanding of provincial contexts, Observers met with election officials, police representatives, representatives of political parties, and domestic and international observers, during their deployment.

A fifth team comprising the Chairperson remained in Colombo and visited various parts of the Western Province on election day. The Chairperson of the Group also had meetings with senior officials of the police, members of the diplomatic corps based in Colombo and the Heads of other international observation teams.

The Group observed voting and counting procedures on election day in their deployment locations. Subsequent to election day teams in the Eastern and North Western provinces remained in situ to observe the post-election environment. In Colombo, the Chairperson attended the inauguration of the newly elected President.

On the basis of the Group's initial findings and observations, the Chairperson issued an Interim statement on 10 January 2015 (Annex 3). The Group's Final Report was completed in Colombo prior to departure on 14 January 2015 and thereafter transmitted to the Commonwealth Secretary-General.

Chapter 2

Political Background

Presidents of Sri Lanka are elected by direct franchise, for a term of six years. The previous Presidential election in Sri Lanka was held in January 2010. The 1978 Constitution of Sri Lanka allows for Presidential elections to be called after the completion of four years of a Presidential term.

Former President Mahinda Rajapaksa of the Sri Lanka Freedom Party (SLFP) was first elected to power in 2005. After decisively ending the military conflict with the Liberation Tigers of Tamil Eelam (LTTE) in 2009, the President sought re-election to office two years early. He was re-elected for his second term on 27 January 2010.

In September 2010, then President Rajapaksa's Government passed the 18th Amendment to the Constitution, which removed the two-term limit on the office of the Presidency. This was seen widely as an indication of the former President's intention to run for a third term in office.

The provisions of the 18th Amendment to the Constitution also concentrated power in an Executive Presidency by altering the manner in which the appointments and removals of the Chairpersons or members of the Elections Commission, the Human Rights Commission, the National Police Commission, the Public Service Commission and the Finance Commission, among others, are made. Likewise, the manner in which the appointments and removals of persons to the offices of the Chief Justice and the Judges of the Supreme Court, the President and Judges of the Court of Appeal and members of the Judicial Service Commission, were made was amended.

Under the 17th Amendment to the Constitution, no persons shall be appointed to the foregoing Commissions and Offices by the President *except* on the recommendation of the Constitutional Council to be constituted under Chapter VIIA. The 18th Amendment repealed the provision for a Constitutional Council and substituted it with a Parliamentary Council which did not have the same composition and powers. The Constitutional Council envisaged was to comprise:

- the Prime Minister,
- the Speaker,
- the Leader of the Opposition in Parliament,
- one person to be appointed by the President
- five persons appointed by the President, on the nomination of both the Prime Minister and the Leader of the Opposition, and
- one person nominated upon agreement by the majority of the Members of Parliament belonging to political parties or independent groups other than the respective political parties or independent

groups to which the Prime Minister and the Leader of the Opposition belongs and appointed by the President

Whereas under the 17th Amendment the President can act only on the recommendation of the Constitutional Council, the 18th Amendment removed the need for such a recommendation. Instead, the President was vested with the power to make appointments and was required to seek only the *observations of a Parliamentary Council* whose reduced composition was viewed as being favourable to the President. The Parliamentary Council comprised:

- the Prime Minister;
- the Speaker
- the Leader of the Opposition
- a nominee of the Prime Minister, who shall be a Member of Parliament and
- a nominee of the Leader of Opposition, who shall be a member of Parliament.

If the Parliamentary Council failed to communicate its observations through the Speaker within the specified period, the President shall forthwith proceed to make the aforesaid appointments.

The 18th Amendment to the Constitution subsequently became a key criticism of former President Rajapaksa's Government.

Legal considerations

In 2014 a significant section of the legal community in Sri Lanka opined that the 18th Constitutional amendments' removal of presidential term limits could not be applied retroactively to a President who took oath of office in his second term, at a time when a two-term limit was in place.

In November 2014 then President Rajapaksa sought the opinion of the Supreme Court with regard to his eligibility to run for a third term as per the 18th Amendment. It is understood that the Supreme Court subsequently gave a favourable ruling to the President in this matter, although this ruling has not been made available to the public by the apex court or the Government. It was the first time that a President sought a third term in office in Sri Lanka.

Announcement of the polls

On 20 November 2014 former President Rajapaksa signed a Gazette notification expressing his desire to seek a third term in office. On 21 November the Commissioner of Elections declared that elections were scheduled for 8 January 2015. The Commissioner called for nomination papers for candidates to be filed on 8 December 2014. 19 candidates subsequently submitted their nomination papers. Of these 19 candidates, only two were considered serious contenders, one being the incumbent President and the

other, Mr Maithripala Sirisena representing the New Democratic Front, an alliance of major opposition parties.

The Opposition: The New Democratic Front

The New Democratic Front's (NDF) Presidential candidate, Mr Maithripala Sirisena, was until 21 November, a senior Cabinet Minister and General-Secretary of the ruling party, the Sri Lanka Freedom Party.

The NDF was led by the United National Party (UNP), which at the time led the opposition benches in Parliament. It had the support of a majority of other electorally significant political parties as well. These parties were: the Buddhist Nationalist Jathika Hela Urumaya; the Tamil National Alliance which dominates the North of the country; the Sri Lanka Muslim Congress and the All Ceylon Muslim Congress, both representing the Muslim minority, the Democratic Party led by retired General Sarath Fonseka; and a segment of the Ceylon Worker's Congress which represents Tamils of Indian origin. Former President and former Head of the Sri Lanka Freedom Party, Ms Chandrika Bandaranaike Kumaratunga also backed the NDF.

Significant crossovers

It is significant to note that the Jathika Hela Urumaya, Sri Lanka Muslim Congress, All Ceylon Muslim Congress and Ceylon Worker's Congress were all part of former President Rajapaksa's governing coalition until the 2015 Presidential Election was announced by the Commissioner of Elections.

Mr Maithripala's campaign thus secured five defections from the Cabinet and at least a dozen members of Parliament. The defections of the All Ceylon Muslim Congress and Sri Lanka Muslim Congress were significant as they had helped President Rajapaksa's coalition maintain a two-thirds majority in Parliament.

Former President Rajapaksa's campaign won the support of several local level councillors from opposition parties, as well as secured the defection of the General Secretary of the UNP.

Chapter 3

Electoral Framework and Election Administration

National Legal Framework and International and Regional Commitments

The Sri Lankan Constitution guarantees fundamental rights and freedoms, including freedom of expression, assembly, association, and participation in elections.

The key documents providing the legal and regulatory framework for the conduct of the election are:

- The Constitution (1978 as amended)
- The Presidential Elections Act, No. 15 (1981)
- The Presidential Elections Act, No. 16 (1988)
- The Presidential Elections Act, No. 35 (1988)

In addition, Sri Lanka has signed or agreed to some significant regional and international commitments and instruments relevant to the conduct of elections. These include:

- International Convention on Civil and Political Rights (1980)
- Convention on the Elimination of all forms of Discrimination Against Women (1981)
- International Convention on the Elimination of all forms of Racial Discrimination (1982)
- Convention on Rights of People with Disabilities (2007)
- South Asian Association for Regional Cooperation - Charter on Democracy (2010)
- Commonwealth Charter (2012)

Electoral System

The President of Sri Lanka is directly elected using a single-round system of preferential voting (also known as Supplementary Voting). Each voter can either express a single or a maximum of three preferences on the ballot.

In order to be declared President, a candidate must secure more than half of all valid votes cast (50% +1). If no candidate secures the requisite 50% +1 then all but the top two candidates are rejected and the remaining preferences on the ballot for the rejected candidates are taken into account. The preferences for the top two candidates are then added up and the candidate with the most votes is declared the winner.

The President is elected in a single national constituency for a six-year term. As mentioned in Chapter 2 the President can call for an election at any time

after serving four years on a term. The 18th Constitutional Amendment of 2010 *removed* term limits.

Sri Lanka's administrative structure consists of nine Provinces divided into 25 Administrative Districts, from which there are 22 Electoral Districts.

Election Administration

In 2001, the 17th Amendment to the Constitution with Article 103 provided for the establishment of an independent Election Commission with a mandate to conduct free and fair elections and referenda. The Commission comprised five members, one of whom was to be appointed Chairperson by the President. A Commission was to be supported in its administrative and operational functions by a Commissioner-General of Elections. The Commissioner-General of Elections, appointed by the Commission, was envisaged to manage the day-to-day operations of the Commission, including appointing other officers of the Commission.

With the passage of the 18th Amendment to the Constitution in 2010, the powers of the Commission were weakened. The number of Commissioners was reduced from five to three. The Commissioners were now appointed directly by the President. In addition, until the establishment of the Commission, the mandate and functions of the Commission were vested in the Commissioner of Elections.

Department of Elections and Commissioner of Elections

As the envisaged independent Elections Commission has not been established, the management and conduct of the 2015 election was the responsibility of the Commissioner of Elections, as mandated by the 18th Amendment. The current Commissioner of Elections is Mr Mahinda Deshapriya.

The Commissioner of Elections is operationally situated within the Department of Elections. The functional arrangements for the Department place its operational and financial oversight under the Executive President. The Department of Elections, which has been in existence since 1955, has continued to execute a bulk of the mandate conferred on the envisaged Election Commission. The specific procedures, guidelines and regulatory framework for the conduct of the Presidential Election are provided by the Presidential Elections Act No. 15 of 1981 (PEA).

The Commissioner of Elections appoints a Returning Officer for each Electoral District. Twenty-two Returning Officers were appointed for this Presidential election, and each was supported by an Assistant Returning Officer. Returning Officers appoint Presiding Officers, who are in charge of polling stations. For the 2015 election, there were 12, 314 polling stations.

Voter Eligibility and Registration

In order to be eligible to vote, one must be a citizen of Sri Lanka, be of sound mind and ordinarily resident at their noted address. The age of franchise is 18 years. All eligible voters are added to the voters' register.

The voter register is reviewed and revised annually based on a house-to-house enumeration exercise. This exercise is conducted at the district level by Registering Officers, who are appointed by the Commissioner of Elections. Following the enumeration exercise, the new register is displayed for four weeks to allow electors to submit claims and objections. The register used for the 8 January 2015 election was compiled from the 2013 electoral list.

For this election, the final voters' register contained a total of 15,044,450 eligible voters. The gender disaggregation was estimated to be 7.7 million females and 7.3 million males.

There are no provisions for overseas registration or voting.

Candidate Eligibility and Nominations

To qualify as a candidate for Presidential elections, a person must be a citizen of Sri Lanka, and be at least 30 years of age. A person is disqualified if the person is of unsound mind or is an un-discharged bankrupt or insolvent.

For the nomination process, the PEA stipulates that prospective candidates nominated by recognised political parties deposit a sum of 50,000 Rps and independent candidates deposit a sum of 75,000 Rps on submission of their nomination papers. If the number of votes secured by a candidate does not exceed 1/8 of total votes cast their deposit is forfeited.

For the 2015 election there were 19 candidates, 17 of whom were nominated by a political party, and two independent candidates. There were no female candidates.

Election Offences and Petitions

The PEA outlines a series of election offences, corrupt and illegal practices. These include: bribery; treating; undue influence; impersonation; illegal voting; false statements; and intimidation. Each offence is punishable by a fine and/or imprisonment.

Any candidate may file an election petition with the Supreme Court, to complain of an undue return or undue election. A petition must be submitted within 21 days after the publication of the official results of the election in the Gazette. The Court will endeavour to conclude the trial within six-months after the presentation of the petition.

Chapter 4

Campaign and Media Environment

Official campaign period

The official campaign period was from 9 December 2014 till midnight on 5 January 2015, which is when an official 'silence' period began before polling took place on 8 January.

The campaign environment

The election campaign was lively and competitive. Campaign rallies were well attended, door-to-door campaigning was widely used and campaign material was displayed across the country. There was a palpable sense of election related debate and discussion taking place among the citizenry.

Alongside this however, the Group noted a deep sense of unease among the opposition, civil society and in the media with regard to what could have happened in the remaining days of the campaign, on election day and in its aftermath. This unease appeared to be fuelled by a high number of incidents of violence, the unchecked use of state resources, speculative media stories, and unhelpful campaign rhetoric. These factors were compounded by a perceived sense of total impunity for offending parties. The Group noted several positive actions were taken to mitigate fears and anxieties, such as civil society groups exposing and therefore curbing acts of violence, the Commissioner issuing directives to relevant authorities such as the Secretary of Law and Order, and the effective force order issued by the Inspector General of the Police with regard to police duties. Despite this however, the Group noted that unsettling uncertainty prevailed, and this is an indictment of the recent political culture surrounding major elections in Sri Lanka.

The campaign environment was also clearly marked by an unequal contest. According to credible reports from the media, national observer groups and independent commentators, the key features of the campaign period were the widespread and flagrant abuse of the state resources, violence, the violation of election laws with regard to promotional material and the denial of campaign rally venues to the opposition candidate, all in support of the campaign of the incumbent President. Each of these are taken in turn below.

The use of state resources

The key violations in this regard were the comprehensive bias of state media against Mr Sirisena's campaign, the use of military personnel and public officials in support of the incumbent President's campaign, the expenditure of Government monies on inducements such as religious attire and the extensive use of state-owned public transport. Credible reports from civil society organisations, as well as the Group's monitoring of mainstream media

reporting lead the Group to conclude that these abuses of state resources did take place with flagrant disregard for the law, were serious in nature, and disallowed for a fundamental requirement of an election contest: a level playing field for those contesting.

Accordingly, it appeared that former President Rajapaksa's campaign had access to a wide range of state resources, including public buildings, senior public officials, public transport and state media.

The Group notes that its finding in regard to the use of state resources is similar to the observations of the two previous Commonwealth observation exercises in Sri Lanka in 2010 and 2013 respectively.

Violence

The Group noted that several significant instances of violence took place during the campaign period, which heightened an atmosphere of unease in the lead up to election day. The majority of incidents of violence were targeted at supporters of Mr Sirisena, or at his campaign offices and venues. While every instance of violence is serious and must be condemned, the Group feels it is pertinent to mention some illustrative examples. They are as follows: the 17 December attack on the campaign rally venue of Mr Sirisena, the 21 December attack on supporters of Mr Sirisena at a bus stand, the 29 December attack on artists campaigning for Mr Sirisena in Karunegala and the 5 January shooting of three persons at the venue of Mr Sirisena's final campaign rally, which resulted in one fatality.

The Group condemns the reported assault on two election officials on 5 January in the east of the country, in which a junior Cabinet minister was involved. Of grave concern is that political party office bearers were connected to this violence. Recalling the report of the Commonwealth Expert Team to the 2010 Presidential Election, the Group notes that the trend of violence involving political party members continues as a feature of elections in Sri Lanka.

The Group welcomed the multiple public statements made by the Commissioner of Elections to strongly caution against the use of violence on election day.

The Group noted with concern the reports of incidents of violence which took place after election day.

Campaign rally venues

With regard to the denial of campaign rally venues for Mr Sirisena, the Group heard from authoritative sources that local authorities had denied venues to Mr Sirisena's campaign for the block period of 8 December to 8 January. The Group took seriously such reports, as the ability to campaign is a basic requirement in an electoral contest. We note that the Commissioner of

Elections in some instances took actions to ensure that campaign rally venues were released.

Campaign material

Sri Lanka's election law clearly disallows for the display of cut-outs, posters and promotional material for candidates in public spaces, unless this is at the venue of a campaign meeting or campaign office. Observers noted that this law was widely flouted predominantly by the incumbent President's campaign. Observers noted reports that much of this material in both urban and rural areas was removed in the latter half of the campaign period, upon the active intervention of the Commissioner of Elections.

Police response

The Police's primary responsibility in the election campaign period was to maintain law and order, ensure the enforcement of election law and investigate election related incidents, as well as take preventive action against unrest and violence.

The Group noted reports of instances of police inaction in the first half of the election campaign period, especially in relation to the illegal display of campaign material and the use of state resources. We note that the Police committed to disciplinary action against officers who did not perform their duties with regard to election law violations in the campaign period.

It was also noted that the perception of police response to election law violations did improve as the campaign period progressed. The police performed exceptionally well on election day itself, which is discussed further in Chapter 5 of this report.

Campaign finance

The Group noted reports that hundreds of millions of rupees were spent on election campaigning. Sri Lanka does not have legislation on campaign finance.

The role of domestic observer groups

The robust, timely and thorough reporting of domestic observer groups was a key feature of the election campaign period. Their election monitoring work, carried out through an island-wide network of employees and volunteers, brought to light some of the key excesses of the campaign period, such as abuse of state resources and instances of violence. The dedicated state media-monitoring unit of one of these domestic groups is particularly worthy of mention.

Domestic observer groups also worked closely with the Commissioner of Elections and the Police to ensure that election law violations were

addressed. The Group felt that these groups were frontline advocates of the democratic process in this election.

The media and information environment

Fair coverage of Presidential election candidates in state media is guaranteed in the Presidential Elections Act, which is part of the legal framework governing the conduct of the campaign period. The Commissioner of Elections is meant to regulate and supervise state media coverage during this time. The 1978 Constitution of Sri Lanka also guards freedom of speech and expression.

It appeared that a variety of sources of information were used in the campaign period and that coverage of the elections was widespread. In private media, there was visible coverage and debate on various aspects of the electoral process, including coverage of promotional material of both candidates. It was noted however that this coverage was not always balanced or objective.

Both candidates' campaigns also used electronic and print media to convey campaign messages on a daily basis. Social media was also used to a large extent in the election campaign period.

State media

The Group heard representations and saw credible monitoring data suggesting that Mr Sirisena's campaign received little to no coverage in state media in the campaign period, while former President Rajapaksa's campaign was given extensive coverage. This practice was in clear contravention of the media guidelines issued by the Commissioner of Elections.

Furthermore the Group noted with serious concern that whatever little coverage Mr Sirisena received in state media tended to malign him personally and discredit his campaign and his supporters, as well as rallying public sentiment against minority groups that were supporting him.

The Commissioner's further directives to the media of 13 December 2014 were noted, but it was also observed that the Commissioner lacked sufficient enforcement powers to take action against violating bodies.

Chapter 5

Voting, Count and Results

Sri Lanka's Presidential election was held on 8 January 2015. Voting was scheduled from 0700 to 1600 hours in 12,314 polling stations across the country.

Polling stations were located within public facilities such as schools and community centres. A Senior Presiding Officer and a Junior Presiding Officer who were supported by five to six polling assistants managed a polling station. In addition, candidate and party polling agents, and accredited domestic and international observers were authorised entry into polling stations and counting centres.

Campaigning was prohibited 48 hours before election day. During this period, all campaign materials in public spaces were to be removed.

There was a highly visible police presence on election day. The Group noted that in most places the presence of police was reassuring and did not appear to deter voters.

Key Procedures for Opening and Voting

The key stated procedures for the opening and voting are as follows:

Opening

- Shortly before 7:00am, the Senior Presiding Officer invites any polling agents, and observers, present to inspect the empty ballot box;
- The box is locked and sealed, the key to the ballot box is sealed in an envelope that candidate representatives can also place their seal on.

Voting and Closing

- Electors approach the first polling official one-by-one. This official confirms the voter's poll card and identity document against the voters register and calls out the name of the voter for the benefit of candidate representatives. An identity document is compulsory whereas the poll card is not.
- The voter moves to another official, who inspects the smallest finger on the elector's left hand for indelible ink; the finger is then marked with indelible ink.
- The next official records the elector's identification number on the counterfoil of a ballot paper, makes the official mark in the space provided, and issues that ballot paper to the elector.
- The elector proceeds to a voting booth, marks and folds their ballot paper, and places it in the ballot box.

- Voting concludes at exactly 1600hrs, and no vote may be cast after that time.
- At the close of the polls, in the presence of polling agents and observers, the ballot slot is sealed and the box is wrapped in official tape. At this time polling agents are also able to affix their own seals to the ballot box.
- The Senior Presiding Officer completes the ballot papers account form, and packages all materials ready for transportation to designated counting centres.
- The ballot box and other materials are transported to the counting centre in accordance with instructions from the Returning Officer.

The Elections (Special Provisions) Act No. 28 of 2011 outlines provisions for assisted voting, which enables a voter requiring physical assistance to have a person of their choice assist them in voting.

Assessment of the Opening and Voting

On election day, Commonwealth Observers reported a peaceful process that was well managed and transparent, with voters free to exercise their franchise. Candidate agents and domestic and international observers were present at the majority of polling stations observed. Turnout of voters was high particularly at the outset of voting. The use of opaque wooden ballot boxes was noted.

Some of the key observations of the Group were:

- In all polling stations observed, voting commenced on time and polling stations were well-administered.
- The voters register appeared to be credible, insofar as it accurately reflected the electors who had registered.
- The Group was impressed with the conduct and professionalism of the election officials. Polling officials were competent and diligent in carrying out their duties. It was noted that many of the polling officials were drawn from the civil service.
- There was a noticeable number of female polling officials, including at Returning Officer and Presiding Officer level in some districts.
- Polling agents/candidate representatives were present in a majority the polling stations, as were accredited domestic and other international observers.
- While there did not appear to be any attempt to subvert the voting and counting procedures, there was some inconsistency noted in the application of stated procedures by polling officials.

- Observers noted that the prescribed layout for polling stations did not always guarantee the secrecy of the ballot.
- At most polling stations observed, priority was given to people with disabilities, the elderly, the infirm, and pregnant women.
- Some Presiding Officers appeared to find their duties at the close of voting challenging, evidenced by the length of time taken to complete the reconciliation process.

Key Procedures for Counting and Results Tabulation

The key stated procedures for the count and results process are as follows:

- Once all the ballot boxes for a particular counting centre are received, counting commences.
- The seals on the ballot box are verified and the box is then unlocked.
- All ballot papers from the ballot box are removed and the empty box is presented for inspection by counting agents and observers.
- Ballot papers are sorted and counted into bundles of 50 but not inspected, and the total number of ballot papers removed from each ballot box is recorded.
- Ballot bundles from all the boxes are then combined and sorted according to votes cast for a candidate, with rejected ballot papers sorted according to the reason for which they were rejected. A Returning Officer must reject a ballot paper if it:
 - is missing the official mark; or
 - contains writing or a mark by which an elector might be identified;
- The number of votes for each candidate, and the number of rejected ballot papers, is recorded.

Assessment of the Counting, Results Tabulation and Transmission

Overall the count process was regarded as highly transparent. Counting procedures were followed meticulously, with candidates, party agents, and domestic and international observers afforded a clear view of the entire process. The results tabulation process was efficient and preliminary results were announced in the early hours of the morning.

Some of the key observations of the Group were:

- In conducting the count, counting officials were extremely methodical and diligent. The counting process was overall highly transparent.
- It was noted that most of the count occurred late into the night due to the need for the ballot boxes to be transferred to their designated counting centres.

- Candidate representatives and domestic and international observer groups were welcomed to the counting centres to observe the process.
- The police was visible at counting centres.
- The swift and timely transmission of district by district results via electronic media removed any concerns that results might be interfered with.

Overview of observations by deployed teams

Four teams of two persons each were deployed from 6-10 January to the Northern, Eastern, North Central and Southern provinces respectively. To enhance their understanding of provincial contexts, Observers met with election officials, police representatives, representatives of political parties, and domestic and international observers during their deployment.

Western Province (Colombo, Gampaha and Aluthgama)

- Voter turnout was large and consistent throughout the day.
- Despite concerns of potential pre-election and election day violence, election day was peaceful and orderly.
- Police officials were present in high numbers at polling stations, however they maintained a discreet presence.
- The counting process witnessed was transparent and conducted with a great deal of efficiency.

Eastern Province (Batticola, Kalmunay and Ampara)

- Polling officials were professional and gender diversity was observed.
- Election day began efficiently and with precision. The voting process was carried out swiftly and expeditiously. As a result very few queues at polling stations were witnessed.
- Police officers were observed assuming the role of election officials, checking voter identification documents.
- The atmosphere at counting stations was one of focussed quiet excitement. Counting centre staff adhered closely to the cumbersome regulations they had to follow.
- The post-election atmosphere was calm as people quietly went about their business as usual.

Northern Province (Kilinochchi and Mullaittivu)

- The distribution of schoolbooks and bags to voters from the house of a local government official on the day prior to election day was observed.
- There was a confident team of election officials, candidate representatives and domestic observers present.
- Generally, voters turned out early and, by midday, it appeared that, at most polling stations, a large number of the registered electors had voted.
- Voter turnout was impressive, which might have been facilitated by the mobile loudspeaker that travelled around the area encouraging citizens to vote.
- The high number of female voters and election staff was positive.
- At the counting centre an atmosphere of excitement was noted. The process was observed to be transparent and counting officials were diligent.
- There was a high number of rejected ballot papers.

North Western and North Central Province (Anuradhapura, Polonnaruwa, Kurunegala and Puttalam)

- Elections officials, District Secretaries and the police all showed significant readiness for the elections. They by and large seemed at ease and prepared, and displayed a willingness to engage.
- In each district, dedicated 'complaints centers' were established, staffed by a Senior Presiding Officer and additional electoral staff
- Police mentioned that 'communication centers' had been established to ease information flow between stakeholders.
- Voting day was relatively calm and peaceful as people went about their normal duties.
- There were satisfactory logistical arrangements for the conduct of polling day.
- Polling officials and police followed stated election day procedures diligently. In some cases however the positioning of ballot booths compromised the secrecy of the ballots as it allowed electoral staff and police to look directly into the booth.

- It is significant and commendable that candidate agents were present at polling stations, which allowed for them to witness voting.
- Voting was efficient and marked by a high turnout of voters, as evidenced by visibly long queues
- Counting was conducted according to set procedures.
- Final results were posted at the entrance of each counting centre. It was noted that some result sheets were adequately filled while others were left incomplete.
- The number of female electoral staff and police officers tasked with managing election day is a credit to the country.

Southern Province (Galle, Hambantota and Matara)

- In clear violation of the 48 hour campaign silence period, cut-outs and posters remained very visible throughout the areas visited.
- Although the polling station layout was in compliance with guidelines from the Commissioner of Elections, the layout did not guarantee the secrecy of the ballot.
- At some the polling stations, the presence of armed police officials appeared to have an intimidating effect. At one polling station observed, a police officer appeared to be checking the identification documents and poll cards of voters. Polling officials did not seem empowered to challenge this.
- Vote counting proceeded well and transparently, and in the presence of several candidate representatives.

The Results

The Commissioner of Elections announced the final results at a press conference late on the morning of 9 January 2015. The final vote totals are as follows:

Candidates	Votes	% (Votes Cast)
Maithripala Sirisena	6,217,162	51.28 %
Mahinda Rajapaksa	5,768,090	47.58 %
Arachige Rathnayaka Sirisena	18,174	0.15 %
Namal Rajapaksa	15,726	0.13 %
Ibrahim Miflar	14,379	0.12 %
Total Valid Votes Cast	12,123,452	
Total Rejected Votes	140,925	
Total Votes Cast	12,264,377	

Total Registered Voters 15,044,490

Turnout % 81.52

Chapter 6

Conclusion and Recommendations

Conclusions

These were important elections in Sri Lanka, as an incumbent President was seeking an unprecedented third term in office under a recent constitutional amendment. This was reflected in the response of the electorate, they turned out in extremely high numbers to exercise their franchise on 8 January. The overall 81.52% turnout is an example for other Commonwealth countries.

The Office of the Commissioner of Election played an outstanding role in ensuring a peaceful polling process took place on 8 January. The Office had many hurdles in its way in the pre-election period, including the fears and anxieties of many stakeholders, which appeared to have been generated by the blatant violations of election law and use of violence by contesting candidates. We hope that moving forward a political culture can be nurtured in which the electorate and political actors can approach an election with a greater degree of trust and ease.

Election Day itself was peaceful and its conduct impressive. Election officials approached their duties with diligence and dedication, and for this they must be commended. The integrity displayed and high levels of trust enjoyed by the Commissioner of Elections himself were unique and remarkable.

The above-mentioned credible aspects of the election took place in extraordinary circumstances. The pre-election period was clearly marked by an unequal contest, and the violation of election law was rife. The use of violence, which resulted in one fatality and dozens of injuries, fuelled the atmosphere of unease and sense of disquiet in the run up to the election.

The legal and institutional framework for elections in Sri Lanka must also be revisited. The lack of an independent Elections Commission, the lack of appropriate enforcement powers for the Office of the Commissioner of Elections, and the provisions of the 18th Amendment to the Constitution mean that the current framework does not provide the basis for credible elections, despite the exceptional service of individuals within the Department of Elections.

The swift declaration of results allowed for an equally quick transfer of power from the incumbent to the newly elected President. The smooth transition and the peaceful conduct of all stakeholders in the post-election period is a sign of a mature democracy.

Overall, the results of the election reflect the will of the people of Sri Lanka, and election day was credible and transparent. However the pre-electoral environment and the weak legal and institutional framework governing elections in Sri Lanka mean that all the key benchmarks for democratic elections were not met.

We wish to wholeheartedly thank all of the stakeholders with whom we met during our mission in Sri Lanka. Their insight and support was invaluable to us as we carried out our work. We wish them and the people of Sri Lanka well as they continue their democratic journey.

Recommendations

The Institutional and Legal Framework

- An independent Election Commission should be established in accordance with the provisions of Articles 103 and 104 of the Constitution, as inserted under the 17th Amendment.
- A review be conducted of the provisions of the 18th Amendment to the Constitution which affect the manner in which appointments are made to other key institutions that directly or indirectly affect elections, such as the judiciary.
- A review be conducted of the legal and regulatory framework governing the conduct of elections to strengthen enforcement and compliance with election law.

Compliance with Election Laws

- The independent Election Commission, when established, should prioritise election law compliance.
- Penalties provided for under the Presidential Elections Act No.15 of 1981 for election offences should be reviewed to more effectively deter violations.

Election Day Procedures

- Improved training of polling officials be undertaken to ensure greater consistency in the application of election procedures.
- A review of the layout of polling stations should be considered, with particular attention on the placement of the voting booth, to ensure the secrecy of the ballot is paramount.
- Polling procedures be reviewed, especially with regard to the practice of recording the voter identification number on the ballot counterfoil.
- The practice of the presence of police personnel inside polling stations should be reviewed.

- Procedures for assisted voting be reviewed, to ensure clarity and consistency.

Campaign Finance

- Legislation to strengthen the rules on campaign finance be enacted.
- Mechanisms to regulate campaign finance, to ensure transparency and accountability, be developed and adopted.

ANNEX 1: Biographies of Commonwealth Observer Mission

Dr Bharrat Jagdeo (Guyana) - Chair

Dr Jagdeo was President of the Republic of Guyana from 1999 to 2011, prior to which he held the portfolio of Minister of Finance in the Guyanese Government. Dr Jagdeo holds a number of global leadership positions in the areas of sustainable development, green growth and climate change. In 2013 Dr Jagdeo led a Commonwealth High Level Team of Experts to identify solutions for unlocking resources to enable small, developing and climate-vulnerable Commonwealth countries to combat climate change.

Ms Sa-Adatu Maida (Ghana)

Ms Sa-Adatu Maida is an Election Commissioner in Electoral Commission of Ghana. She has previously worked for the West Africa Network for Peace Building and the United Nations Development Programme. Ms Maida observed elections for the Commonwealth in the Gambia in 2011 and 2012 and in Swaziland in 2013. She has a Master's degree in Sustainable International development with a focus on Conflict Management and Resolution.

Mr Brij Behari Tandon (India)

Mr Brij Behari Tandon is a former Chief Election Commissioner of India. Before his appointment to the Election Commission of India, Mr Tandon was a member of the Indian Administrative Service for 36 years. He has observed elections for the Commonwealth in Maldives and Bangladesh, both in 2008, and has also separately observed elections on behalf of the Government of India. Mr Tandon also served as a member of the Commission on Constitutional and Electoral Reforms of Mauritius from 2001-2002.

Dr Sally Kosgei (Kenya)

Dr Sally Kosgei is a former Cabinet Minister and Member of Parliament of Kenya. She has served the Government of Kenya in various positions, including as the Head of Public Service, Permanent Secretary to the Ministry of Foreign Affairs, Secretary to the Cabinet and in senior Ambassadorial positions. Ms Kosgei has also remained a lecturer at the University of Nairobi.

Ms Maria Chin Abdullah (Malaysia)

Ms Maria Chin Abdullah is the Chairperson of BERSIH 2.0, a large coalition of national organisations in Malaysia that spearheads efforts for electoral reform and democracy. Ms Abdullah has coordinated election observation exercises in Malaysia, including for the 13th General Election of 2013. Ms Abdullah is also a gender and rights activist, and her organisation focuses on promoting women's political participation in Malaysia. She holds a Master's degree in Urban Planning.

Dr Cam Calder (New Zealand)

Dr Cam Calder is a graduate of Otago University in New Zealand and Cambridge University where he took his degree in Medicine. During his career, he has been active in the health sector, business and international sport administration. He has recently retired as a Member of Parliament where he chaired the Education and Science Committee as well as a number of Parliamentary Friendship Groups.

Mr Qamar Zaman Kaira (Pakistan)

Mr Qamar Zaman Kaira is a former member of Cabinet of Pakistan. He has held various ministerial positions, and has also served as the Governor of the Gilgit Baltistan province in Pakistan. Mr Kaira was first elected to a local government position in 2001, and went on to be elected as a member of the National Assembly of Pakistan in 2002. Mr Kaira holds a Master's degree in Philosophy, is a visiting lecturer, and is the Information Secretary of a political party in Pakistan.

Mr Eldred de Klerk (South Africa)

Mr Eldred de Klerk is a rule of law and election security specialist. He is a former Head of Monitor Training for the Independent Electoral Commission (IEC) of South Africa. He also served as Head of Police Training at the Centre for Conflict Resolution and on the Change Management Team of the South African Police Service. He has assisted and advised on complex political and policing challenges in a number of countries including Namibia, Kenya, Northern Ireland and Zimbabwe. He currently serves as a conflict resolution specialist with the IEC in South Africa and is a Principal Associate with Africa Analysis.

Ms Lainy Malkani (United Kingdom)

Ms Lainy Malkani, is a journalist with more than 18 years broadcast experience in news and current affairs. As a reporter and presenter for both radio and television she has covered a number of high profile events in the UK and led teams of experienced reporters, producers and researchers to produce live events for broadcast. In 2012, Lainy set up the Social History Hub, a social enterprise designed to bring different generations of communities together to celebrate a common understanding of shared historical experiences. Ms Malkani is currently working on an oral history project documenting the history of Caribbean indentured labourers told through the personal stories and experiences of descendants living in the UK.

Commonwealth Secretariat Staff Team

Ms Katalaina Sapolu, Director, Rule of Law Division and Staff Team Leader

Ms Victoria Holdsworth, Interim Director, Communications Division

Ms Clara Cole, Political Officer, Electoral Support, Political Division

Ms Amna Jatoui, Political Officer, Asia/Europe Section, Political Division

Ms Tiffany Chan, Programme Assistant, Political Division

ANNEX 2: Arrival Statement



Commonwealth Observer Group

Sri Lanka Presidential Election, 8 January 2015

Arrival Statement by Dr Bharrat Jagdeo, Chairperson

Following an invitation from the Commissioner of Elections, the Commonwealth Secretary-General has constituted an Observer Group to the 8 January 2015 Presidential Election in Sri Lanka. It is my honour and privilege to have been asked to lead the Group, and to be here in the country for these elections.

Our nine-member Observer Group has been drawn from across the Commonwealth, and includes former politicians and members of parliament, former members of election commissions and representatives of civil society and the media. The Group is supported by a staff team of five, led by Ms Katalaina Sapolu, Director of the Rule of Law Division at the Commonwealth Secretariat.

Sri Lanka has among the oldest democratic traditions in the Commonwealth.

The Commonwealth recently observed the 2010 Presidential election and the 2013 Northern Provincial Council elections.

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 national election-related legislation as well as Commonwealth and other international commitments.

We will consider, among other things, whether conditions exist for credible elections, including a fair election environment; whether public media has been impartial; the transparency of the entire process; whether voters are free to express their will; and whether the counting and results process is transparent.

In conducting our duties and undertaking our assessment, we will be neutral, impartial, objective and independent. The Group has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly.

We are here in our individual capacities as eminent and experienced Commonwealth citizens. The assessment by the Group 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 country. In so doing, the Group will make recommendations to the authorities concerned on institutional, procedural and other matters as would assist the holding of such elections in the future.

We have already met with the Commissioner of Elections, national observer groups, and representatives of the two main candidates. Over the coming days we will be meeting Commonwealth High Commissioners, representatives of the police as well as civil society groups. We will then deploy across the country to observe the conclusion of the campaign and thereafter the voting, counting and results process.

We will issue an Interim Statement after the election and the Group will submit a final report to the Commonwealth Secretary-General, who will forward it to the Government of Sri Lanka, the Commissioner of Elections, and leaders of political parties, and thereafter to all Commonwealth Governments.

On behalf of the Commonwealth Observer Group I wish the people of Sri Lanka well as they embark upon this election. We encourage all Sri Lankans to do their part to ensure that a peaceful and credible process takes place on 8 January.

ANNEX 3: Interim Statement



Commonwealth Observer Group

Sri Lanka Presidential Election, 8 January 2015

Interim Statement by Dr Bharrat Jagdeo, Chairperson

The Commonwealth Observer Group commends the people of Sri Lanka for the spirit in which they participated in this important election. The high voter turnout of 81.52 per cent reflects positively on the Sri Lankan people's strong commitment to the democratic process.

The Group further commends the key political actors for accepting the results of the election and for reinforcing in their public statements the need to respect the rule of law in the days to come.

The Commonwealth Observer Group has been present in Sri Lanka since 2 January 2015. The Group's mandate was 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 Group will make recommendations for the future strengthening of the electoral process.

The Group was tasked with considering, among other things, whether conditions existed for credible elections, including a fair pre-election environment; the transparency of the entire process; whether voters were free to express their will; and whether the counting and results process was transparent.

Over the next four days and before our departure, the Group will complete its Final Report for submission to the Commonwealth Secretary-General. Following this, he will send it to the Office of the Commissioner of Elections, the Government of Sri Lanka, political parties, relevant stakeholders, and eventually to all Commonwealth governments. The Final Report will, in due course, be made available to the public.

Upon arrival in Sri Lanka, the Group held meetings with the Commissioner of Elections, domestic observers, representatives of political parties, civil society and media monitors, the police, legal and constitutional experts, Commonwealth High Commissioners, Ambassadors resident in Sri Lanka, the United Nations Resident Coordinator and international observers. The Group also attended two rallies at the end of the election campaign.

Observer teams were deployed in Colombo, the Northern, North Western, East, and Southern Provinces where they also met local officials and domestic observers.

During these meetings, concerns were raised about a number of factors during the campaign, notably:

- The widespread abuse of state resources, including the comprehensive bias of state media against the Common Opposition Candidate and his supporters; the use of military personnel and public officials to support the President's campaign; the blatant use of Government monies, handouts and gifts to induce voters; and, the extensive use of state-owned public transport for campaigning by the incumbent.
- The use of violence, mainly targeting supporters of the Common Opposition Candidate, or at his campaign offices and rallies. Complaints were also made regarding attacks on the supporters of the incumbent President and a reported assault on two election officials on 5 January in Trincomalee.
- The violation of election law with regard to promotional material and the denial of campaign rally venues to the Common Opposition Candidate.

Other major concerns raised were:

- The potential role of the armed forces and that of private security personnel formerly employed by the armed forces to disrupt the election or to intimidate voters.
- Security arrangements around the transmission of ballot boxes to the counting centres and integrity of the counting process and transmission of results.
- The selective disruption of public transport on election day, thereby disallowing people to cast their votes.
- The lack of power vested in the Commissioner of Elections to enforce electoral law.
- The non-independence of key public institutions and the lack of an established Elections Commission.
- The possible disenfranchisement of large numbers of voters in opposition strongholds.

Prior to the elections, the Observer Group sought assurances from key actors regarding some of the critical concerns raised:

- The police provided assurances that all law and order personnel would fall under the authority of the police and that neither political nor military influence could intervene in the police line of command.
- It was made clear to the Group that in the event of an extreme situation, the army could only be deployed following an instruction from the Commissioner of Elections, and that any military deployment under these circumstances would fall under the command of the police.
- Special police units had been set up and armed policemen would be present at all polling stations with back-up patrols and Special Task Force officers would be present at counting centres to maintain election law. The Group was informed that police would provide security to ensure the safe transmission of ballot boxes from the polling booths to the counting centres.
- The Commissioner of Elections provided a comprehensive outline of his remit and the procedures on election day. These included assurances regarding the safe transmission of ballot boxes to the counting centres, integrity of the counting process and the transmission and announcement of results.
- The Commissioner had directly intervened in several cases where election law had been flouted, including in the abuse of state media by the incumbent party. In response to queries regarding potential violence, the Commissioner said that it was in his power to order a re-poll if necessary. He added that provisions had been made to ensure that people affected by recent flooding would be able to vote.

Commonwealth Observers found that:

- The election campaign period was marked by an unequal contest with extensive, large-scale abuse of state resources. They noted the comprehensive bias of state media against the Common Opposition Candidate's campaign; the use of military personnel and public officials to support the President's campaign; the use of Government monies, gifts and other inducements; and, the widespread use of state-owned public transport by the incumbent.
- The Common Opposition Candidate's campaign received little to no coverage in the state media in clear contravention of the provisions of the Constitution, the Presidential Elections Act and relevant guidelines issued by the Commissioner of Elections. The high penetration of state run radio, television and newspaper across the island, and especially in rural areas, increases the burden of responsibility on state media to take seriously its obligation as a public resource for citizens.
- Significant instances of violence in the campaign period had credible links to political party office bearers and created an atmosphere of fear and intimidation with concerns about potential violence on election day.
- Sri Lanka's Election law disallowing the display of cut-outs, posters and campaign material for candidates in public spaces was systematically flouted outside of campaign venues or campaign offices.
- Some local authorities had denied the Common Opposition Candidate use of public spaces for campaign venues, in contravention of Sri Lanka's election law. The ability to campaign is a basic requirement for an electoral contest.

On election day, the Group observed a peaceful and well-managed process with a high voter turnout. They found that:

- Voters appeared to exercise their franchise freely with the bulk of voters turning out in the first half of the day, allowing for a smooth and timely closing of the polls.
- Election officials managed the polling process efficiently, including the opening and closing of the polls. There appeared to be no substantial challenges to the voter register at polling stations observed.
- Polling stations were laid out as per instructions from the Commissioner of Elections, however this layout did not in all instances guarantee that the secrecy of the ballot was provided for.
- There was a visible police presence on polling day and during counting.
- Vote counting was conducted transparently, with counting officials working diligently and with dedication into the early hours of the morning. Domestic observer groups were allowed access to vote counting centres for the first time at this election.
- The declaration of results was swiftly relayed to media and to the public.

The Group commends domestic observer groups and civil society for the role they played in monitoring and reporting during the election period. Their robust and fearless work ensured that democratic processes were safeguarded.

The efforts, integrity and determination of the Commissioner of Elections was deeply impressive throughout the election period. All major stakeholders stated that they had faith in his ability to deliver, despite the limitations of the role. His staff are also to be commended for their professionalism and dedication under challenging circumstances. The Group recognises that the Office of the Commissioner of Elections lacks the necessary powers of enforcement with regard to election law violations and also lacks legislative independence from the Executive. Furthermore, in the absence of an independent Elections Commission, Sri Lanka's electoral framework does not provide for the basic conditions for democratic elections.

The outcome of the 2015 election reflected the will of the people of Sri Lanka. It is however the view of the Group that the inadequate electoral and legal framework coupled with an unequal pre-electoral environment means that this electoral contest did not comply with all the key benchmarks for democratic elections.

ANNEX 4: Deployment Plan

PROVINCES	TEAM MEMBERS
Western Province	Dr Bharrat Jagdeo (Chair) Ms Katalaina Sapolu
Western Province	Ms Victoria Holdsworth Ms Clara Cole Ms Amna Jatoi Ms Tiffany Chan
Eastern Province	Dr Cam Clader Dr Sally Kosgei
Northern Province	Mr Qamar Zaman Kaira Ms Lainy Malkani
North Western Province	Mr Eldred de Klerk Ms Sa-Adatu Maida
Southern Province	Mr Brij Behari Tandon Ms Maria Chin Abudallah

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

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