

EXPLANATORY NOTE

This is the Report of the Commonwealth Expert Team which was present for the Presidential Election in Sri Lanka held on 17 November 2005.

This Report is reproduced here in the form in which it was signed by the members of the Team prior to their departure from Colombo on 22 November 2005. It was transmitted to the Commonwealth Secretary-General on Tuesday 29 November. He subsequently sent it to the President of Sri Lanka, the Commissioner of Elections, the political parties and Commonwealth governments. It was placed on this web-site and released to the media on Friday 16 December 2005. Printed copies of this report are available from:

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Sri Lanka Presidential Election

17 November 2005

**REPORT OF THE
COMMONWEALTH EXPERT
TEAM**



Commonwealth Secretariat

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COMMONWEALTH EXPERT TEAM

Sri Lanka Presidential Election

17 November 2005

22 November 2005

Dear Secretary-General,

Following your invitation to observe the Sri Lanka Presidential Election on 17 November 2005, we are submitting our report to you.

The Commissioner of Elections and all those working under his direct authority are to be commended for their efforts in ensuring that the arrangements for the election went smoothly in most respects. This represented a considerable improvement from the problems highlighted by the Commonwealth Observer Group in the 2004 Parliamentary elections.

In your original invitation to each of us, you stressed that we were being invited to join the Commonwealth Expert Team in our individual capacities. You asked us to report to you with our recommendations. Our report constitutes an independent judgement by the Team.

There are also some issues that need to be addressed and we have reflected these in our report. In this regard we call upon you to offer Commonwealth assistance to further consolidate the democratic process within Sri Lanka.

We have set out our conclusions and recommendations at the end of this report.

We thank you for the opportunity to participate in the Expert Team and we would like to convey appreciation for the support provided by the Commonwealth Secretariat and in particular Adaora Ikenze, Julie Broadbent and Madonna Lynch.

Yours sincerely,

H.E. Cassam Uteem

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Hon Cassam Uteem

Ms Cynthia Barrow-Giles

Mr Feroz Hassan

Senator Diana Mahabir-Wyatt

Mrs Martha Sayed

Mr Karamjit Singh CBE

Acknowledgements

We wish to place on record our sincere appreciation to the many organisations and individuals who assisted us during our time in Sri Lanka. In particular, we wish to thank the Commissioner of Elections and his colleagues for their co-operation and assistance.

We appreciate the support of the Commonwealth High Commissions, political parties, the police, the media, NGOs, local and international observers and others whose briefings greatly assisted us in our work.

We thank our various employers for allowing us to participate in the Commonwealth Expert Team.

We are grateful for the assistance rendered by the support team from the Commonwealth Secretariat.

The interpreters and drivers deserve special praise for their efforts. We also thank all those we met who warmly welcomed our presence.

We take this opportunity to wish the people of Sri Lanka well for the future.

Finally, we thank the Commonwealth Secretary-General, His Excellency Don McKinnon for this opportunity to serve the Commonwealth and to contribute towards the consolidation of democracy in Sri Lanka.

Chapter One

INTRODUCTION

Sri Lanka is facing the challenges of consolidating the democratic process against a background canvas of a society whose hallmark is a social and political mosaic of differing ethnic groups and concepts of identity. This has led to violent tensions and polarised activity, both within and outside the democratic framework.

We recognise that a review of elections in Sri Lanka would be incomplete without exploring some of the wider issues governing the operation of political parties in the country.

In this report we have sought to place the interests of the electorate at the centre of our thinking. In stating this we are not ignoring the importance of political parties and candidates and their campaigns, the Commissioner of Elections and those working with him in the electoral administration process, civil society groupings and the media. Indeed we make a number of recommendations which have implications for these stakeholders and which we consider will strengthen the democratic process.

Within the Sri Lankan context, the entire electoral process starting from registration through to the declaration of results needs to be accessible to all in an atmosphere free from any actual or perceived intimidation or violence and electoral irregularities of any kind. This must also be accompanied by high levels of public confidence about the administrative independence and integrity of the electoral process. We hope that the publication of this report and the recommendations taken together will contribute towards further enhancing the integrity and effectiveness of elections in Sri Lanka.

Following some uncertainty about timing, the Presidential election took place in November 2005. A wider canvas of constitutional issues, the peace process and economic issues dominated the agenda.

The Commonwealth Expert Team has had an opportunity to observe the Presidential Election which took place on 17 November 2005 as well as the preparations and its immediate aftermath up to the declaration of results.

The Team noted that election campaigns in Sri Lanka are characterised by intense interest. We believe that significant challenges exist namely:

- the advantages provided by incumbency in office which carries with it unequal access to resources of various kinds, including sections of the media;
- the role of money in democratic politics and its impact on increasingly expensive election campaigns;
- little transparency in relation to such issues and relatively weak accountability systems to enforce sanctions where applicable.

Debate about these issues, the clear boundaries that need to be drawn and the dangers posed to the health of the democratic process should be undertaken by a wider group than just those participating as contestants in the electoral system. All citizens have a stake in enhanced and transparent systems which identify actual and potential conflicts of interest.

The Team were struck by the high degree of interest and voter participation shown in this and previous elections. There may be lessons further afield than Sri Lanka for all those interested in the issue of voter engagement. We believe there is a responsibility on all those committed to this issue to ensure that those eligible to vote are aware and confident that they can do so within the context of a secret balloting process. Voters must also be able to appreciate the choices open to them and this means a sustained process of civic education from various sources.

Within the time and resources open to us, we have sought to meet various interest groups, observe processes and study documentation. We took special cognisance of the recommendations previously made by the Commonwealth Observer Group to the 2004 Sri Lanka Parliamentary Elections and other commentators (such as the domestic and other international observer groups).

Some of these recommendations touch on the legal and institutional framework surrounding the Commissioner of Elections. We readily acknowledge the moral authority and independent stature of the current incumbent in discharging his responsibilities. We hope that all the provisions of the Seventeenth Amendment to the constitution, which include the establishment of an independent Election Commission, will be implemented in a transparent manner

and without further delay.

Sri Lanka is a democracy in transition seeking to move on from a period of overt armed conflict. Confidence in the integrity of the democratic process is therefore essential. The Team notes that this was the first election to have taken place following the catastrophic human and economic disasters posed by the December 2004 tsunami.

We wish the people of Sri Lanka well in their endeavours.

Chapter Two

BACKGROUND

Invitation

Following an invitation from the Commissioner of Elections of Sri Lanka in September 2005 to send a Commonwealth Observer Mission to Sri Lanka for the Presidential Election scheduled for 17 November 2005, the Commonwealth Secretary-General constituted a Commonwealth Expert Team comprising of six experts. The Team was supported by three officers from the Commonwealth Secretariat. The members of the Expert Team were as follows:

Hon Cassam Uteem

Former President of Mauritius

Ms Cynthia Barrow-Giles

Head of Department of Government, Sociology & Social Work
University of West Indies
Cave Campus
Barbados

Mr Feroz Hassan

Secretary-General of the Bikalpa Dhara Bangladesh (BDP) and
former Secretary-General of the Fair Election Monitoring Alliance
(FEMA)
Bangladesh

Senator Diana Mahabir-Wyatt

Chair of Trinidad and Tobago Coalition against Domestic Violence
Trinidad and Tobago

Mrs Martha Sayed

Deputy Secretary
Independent Electoral Commission
Botswana

Mr Karamjit Singh CBE

Commissioner
Electoral Commission
United Kingdom

The Team was assisted by:

Ms Adaora Ikenze, Assistant to Observers
Ms Julie Broadbent, Assistant to Observers
Mrs Madonna Lynch, Assistant to Observers

Terms of Reference

The Terms of Reference as defined by the Secretary-General were as follows:

The Commonwealth Expert Team for the Sri Lanka Presidential Election shall observe the preparations for the election; the polling, counting and results process; and the overall electoral environment.

Activities of the Team

The Team arrived in Colombo and commenced work on 9 November 2005.

Following its arrival in Sri Lanka, the Team received briefings from political parties, non-governmental organisations, representatives of the Commonwealth High Commissions, the media, religious groups and other observer teams on the background issues relevant to the Presidential Election. In addition to meetings with different stakeholders and the interested parties, the Team studied documentation from various sources. (See Annex three).

On 13 November 2005, the Team spread out to five centres throughout Sri Lanka. These were:

- Colombo (Western Province)
- Trincomalee (Eastern Province)
- Jaffna (Northern Province)
- Kandy (Central Province)
- Galle (Southern Province)

The Expert Team observed preparations for and actual arrangements on Election Day very closely.

After observing administrative and political preparations prior to polling, voting and counting on 17 November at the different locations mentioned above, the Team reconvened in Colombo, prepared their report and departed on 23 November 2005.

Chapter Three

THE POLITICAL FRAMEWORK AND RECENT DEVELOPMENTS

Demographic and Administrative Background

The Democratic Socialist Republic of Sri Lanka is situated at the southern-most tip of the Indian sub-continent. Its population of around 19m is made up of a variety of ethnic groups, of which Sinhalese constitute around 80%, Tamils around 13% and Muslims around 7%. The main religions are Buddhism, Hinduism, Islam and Christianity, and the languages spoken are Sinhala, Tamil and English.

The island is divided into nine administrative provinces: Western, North-Western, Northern, Eastern, Southern, Sabaragamuwa, Uva and North-Central. The Northern and Eastern provinces, however, have been technically and jointly administered since 1988. There are a total of 25 administrative districts under these provinces.

Colombo, the capital, is home to 2.2 million people, while large towns with over 1 million inhabitants are Kandy, Kalutara, Gampaha, Kurunegala and Ratnapura. Other significant towns include Galle in the South, Jaffna in the North, Chilaw and Puttalam in the North-West, Trincomalee in the North-East and Batticaloa in the East.

The Economy

Two-thirds of Sri Lanka's population is rural based, and half the population lives in the more arable south-western and central zones. The dry zone, which covers 40% of the land area, is home to only about 10% of the population. The Western Province, where Colombo is situated, has the highest income per head, while the Northern and Eastern provinces, where the war has devastated infrastructure and the economy, are the poorest. Further devastation (particularly on the east coast of Sri Lanka) was caused by the December 2004 tsunami.

Sri Lanka's economy has begun to recover from the difficult circumstances of 2004 - when steep rises in the cost of living precipitated by high global oil prices led to large street protests. The human and economic cost of the December 2004 tsunami was also considerable for Sri Lanka. The trickle down effect of tsunami aid has revitalised some small scale industries, and tourism is beginning to revive. The main concerns of the predominantly rural voters remain the cost of living and the lack of employment prospects.

Post-Independence Politics and its Relevance

The Team considers that the following issues were pertinent to its terms of reference:

- it has been over seven decades since universal adult suffrage was introduced;
- under successive governments some minority communities became increasingly alienated from the political process;
- this disaffection had led to civil war which was followed by negotiations and a ceasefire agreement between the government and Liberation Tigers of Tamil Eelam (LTTE);
- one effect of the ceasefire appears to have been the de facto identification of areas that have been described as "government controlled" and "LTTE controlled areas" respectively. The Team has also heard these areas being referred to as "cleared" and "uncleared" areas respectively.

The 1994 and 1999 Presidential Elections

President Chandrika Kumaratunga came to power in 1994 with a convincing victory over her UNP rival. Her accession to power marked the end of 17 years of UNP rule dating from the inception of the Executive Presidency and she was re-elected in 1999.

Timing of 2005 Presidential Poll

In August 2005, in response to petitions filed by several groups, the Supreme Court held that the Presidential election was due by the end of November 2005. In mid-September 2005 the Commissioner of Elections announced the election date of 17 November 2005.

The 2005 Presidential Candidates

There were 13 candidates for the 2005 Presidential election. Two emerged as the leading candidates – these were the then Prime Minister Mahindra Rajapakse and Opposition leader Ranil Wickramasinghe.

Shortly before polling day four of the candidates withdrew their candidatures and appealed to their supporters to vote for the Prime Minister.

Conclusions and Recommendations made by the Commonwealth Observer Group in 2004

The 2004 Commonwealth Observer Group for the Parliamentary Elections made a number of recommendations. Three of the most significant were:

- urging the President to appoint the independent Election Commission as provided for in the Seventeenth Amendment to the Constitution (which is discussed further in the next chapter);
- the present voter registration process should be revised with complete re-registration in the North and a continuous process of voter registration;
- introducing limits on campaign spending and effective monitoring and enforcement of the law by the election management body.

For the complete list of recommendations, please see the Commonwealth Observer Group Report on the 2004 Parliamentary Elections. This can be found on the Commonwealth website www.thecommonwealth.org

Other issues identified during the 2004 Parliamentary elections

Additional issues identified by other commentators (such as international and domestic observers) on the 2004 elections included:

- providing the National Police Commission with additional resources and adopting a procedure to handle complaints against police officers;

- introducing controls to regulate media content and advertising for election purposes;
- supporting domestic observers through training and networking.

Chapter Four

THE ELECTORAL FRAMEWORK

The Constitution of Sri Lanka

Sri Lanka's current Constitution was promulgated in 1978. It introduced the office of the Executive President and established a voting system based on preferential proportional representation.

The Executive

Chapter VII of the Constitution sets out the role and powers of the President who is Head of State, Head of the Executive and of Government, and Commander-in-Chief of the Armed Forces. The President can hold office for a term of six years and for not more than two terms.

Electoral System

The functioning of the electoral system is set out in ss88-104 of the Constitution.

In order to vote, one must be:

- a citizen of Sri Lanka;
- 18 years of age 'on the qualifying date';
- of sound mind;
- not in prison or not have recently been in prison¹.

Chapter XIV of the Constitution and the *Presidential Elections Act 1981 (as amended in 1988)* set out the modalities of a Presidential election in detail.

The Seventeenth Amendment Proposing an Independent Election Commission

The Seventeenth Amendment to the Constitution sets out the role and powers of an independent Election Commission and other independent commissions such as the Public Service Commission, the Police Commission and the Judicial Service Commission. Under

¹ for details of this qualification see s89 (d)-(j)

the terms of the Seventeenth Amendment, a Constitutional Council² was established to nominate and recommend to the President members of a number of independent commissions. In 2002, in execution of its mandate, the Constitutional Council nominated members of the inaugural Election Commission. However President Kumaratunga was not in agreement with the Council's recommendations and did not set up the independent election management body as required under the Constitution.

Commissioner of Elections' Powers

Article 103 of the Constitution provides for the appointment of a Commissioner of Elections by the President. Article 104 stipulates that the Commissioner's authority is derived from relevant judicial decisions and any electoral laws that are currently in force. The Commissioner of Elections may also exercise the delegated powers of the as yet unconstituted Election Commission.

His powers include:

- prohibiting the use of state assets by any candidate or political party during a campaign;
- issuing media guidelines for election coverage;
- appointing a competent authority if this is considered necessary to ensure balance by state broadcasters;
- ensuring that the Inspector General of Police provides appropriate numbers of police officers for election purposes;
- ensuring that the state authorities comply with similar requests in respect of premises, personnel and other resources;
- recommending to the President areas where he considers that the armed forces may be usefully deployed to maintain public order during the election process.

The Supreme Court Decision of 9 November 2005

Prior to the elections and following a petition from two Presidential candidates, the Supreme Court directed the Commissioner of Elections to convene a meeting of candidate agents and "evolve suitable measures to ensure a free and fair election and for the

² Comprising the Prime Minister, Speaker, Leader of the Opposition, one Presidential nominee, five persons nominated jointly by the President and Leader of the Opposition and one person nominated by a majority of Members of Parliament belonging to minority parties. This Council has now completed its term.

avoidance of impersonation". The Commissioner wrote to the Attorney General on 6 November 2005 setting out the measures which had been agreed with agents representing the candidates:

- cluster polling stations to be located within territory in the control of the Sri Lankan Army at a minimum distance of 500 metres from the line of control;
- transport would be provided to enable voters from "LTTE controlled areas" to travel to these cluster polling stations;
- electoral officials would count the number of persons arriving from these areas and those who actually cast their votes;
- publicity would be given through advertisements in newspapers setting out the location of cluster polling stations and offences that may be committed by the improper use of any poll card or ballot paper;
- appointing special teams of electoral officers at cluster polling stations from other provinces in order to establish the identity of persons bringing poll cards;
- persons who could not establish their identity would be detained in police custody until the conclusion of the poll
- the grama niladari (junior government officials) of each division would assist the special teams in establishing the identity of voters;
- in cases where a person was not entitled to an official poll card, that person would be detained until the conclusion of the poll;
- persons who could not establish they were over 18 years of age would also be detained;
- the security of the voting process would be further enhanced by the deployment of an additional officer.

On 9 November 2005, the Supreme Court handed down a decision. The petitioners argued that the ceasefire had led to two areas controlled by the Government and LTTE respectively and that they had not been able to campaign at all in "LTTE controlled areas". They argued that this violated constitutional and statutory provisions providing for free and secret ballots.

The Supreme Court noted that the petitioners were broadly in agreement with the measures to be taken by the Commissioner. The Court also commented that the external environment and electoral procedures to be adopted highlighted "certain elements of a robotic exercise far removed from the freedom and vibrancy of a democratic election". The Supreme Court also directed that cluster polling stations should be established at a minimum distance of 1

km from the line of Army control covering the journey up to and beyond the line of control and that in order to facilitate canvassing two different vehicles would be used to transport voters.

Although one of the petitioners argued that there should be no further requirement for a person to identify himself once a poll card is provided, the Supreme Court ruled against this point. The court ruled that if a person only had a poll card and no other means of identification, officials could reasonably ask whether the person had Sri Lankan citizenship, had attained the age of eighteen years and was on the register of voters.

The Supreme Court also directed the Commissioner of Elections to ensure that sufficient police officers were deployed and, if necessary, army officers in order "to ensure the conducting of a free and fair election".

Disqualification of Registration/Ineligibility to Vote

Specific categories who are disqualified from registration include:

- persons of unsound mind;
- persons who have served a term of imprisonment of six months in the seven years proceeding the election.

Registration of Voters

The registration of voters is undertaken on an annual basis and at specific time periods during which the person can be initially registered or subsequently recorded in the draft register.

Postal Voting

Section 23 of the 1981 Presidential Elections Act (as amended) provides for the voting by post of three specific categories:

- members of the armed services, police officers, prison officers and specific categories of public servants employed in transport, post or telecommunication roles;
- any public servant who is likely to be employed on election related duties;
- candidates who may not be able to vote in person at a polling station.

Although November 9 was announced as the date for receiving postal votes, such votes could be submitted by the voter up to 4.00pm on the day of polling.

Chapter Five

THE ELECTORAL ENVIRONMENT

Voter Education

The literacy rate in Sri Lanka is one of the highest in Asia, and participation in elections is generally over 75%. The general public is very familiar with the actual process of voting. For the 2005 Presidential elections, approximately 1.12% of votes were spoiled. The Team noted from its monitoring of three daily English language newspapers that some advertisements and articles explained the voting process.

The Role of Civil Society

Sri Lanka is characterised by a very vibrant civil society. NGOs are involved in various election related activities such as:

- monitoring the election process inside polling stations, for example People's Action for Free and Fair Elections (PAFFREL);
- monitoring the level of election violence up to and including polling day, for example Centre for Monitoring Election Violence (CMEV);
- monitoring the abuse of state resources, for example Transparency International (Sri Lanka branch);
- monitoring the media, for example PAFFREL.

The Team were also informed about the existence of Citizens Committees comprising senior citizens, religious and other social leaders in communities, with a brief to promote social stability and the resolution of community disputes.

Role of the Police and Security Forces

The Team noted a widespread perception that one of the reasons why this election appeared to be relatively violence free compared to previous ones, was that the police service had a specific elections secretariat. The firm and extensive action by the police in enforcing the Commissioner of Elections' instructions and removing political posters and banners promptly was given as another reason. A further point mentioned was the directive from the President, as head of the police and armed forces that discipline and non partisan

professional behaviour on the part of these forces be maintained. The enforcement of this mandate was perceived to be seminal.

The Supreme Court judgement delivered on 9 November 2005 directing the Commissioner of Elections to ensure sufficient police officers of suitable rank to be deployed, as well as the deployment of the Sri Lankan army, to ensure the conduct of a free and fair election may also have been a significant factor. The Team observed non-partisan, professional and discreet behaviour on the part of the police in providing security to the public and polling staff on polling day. The army's presence was observed in the vicinity of the counting centres throughout the country and their role was limited to providing security. In the North and North East areas the army presence was all pervasive. As in the other areas to which they were deployed, the Team observed that they were well disciplined and orderly.

Intimidation and Violence

Although the Team were told of some instances where threats had been made to voters there was no observable evidence of such intimidation at polling stations. The Team observed parents arriving to vote with small children in their arms and persons assisting the very elderly and infirm go to the polling booths. In one central area the Team met a group of electors on polling day who said they were afraid to vote. They would not reveal the identity of those who had threatened them because they said they were afraid of retaliation. Nearby another group of voters reported a polling station where they said polling agents had been barred from observing the electoral process. Apart from these incidents, which were not substantiated, there were no complaints of abuses made to our Team.

In the North and parts of the North East almost no one turned up to vote. The Team considers that one reason for this may have been intimidation of voters, including circulation of leaflets with menacing undertones.

Chapter Six

THE CAMPAIGN

Media Coverage

The Team noted that there are five companies spanning newspaper ownership, including eight Sinhalese, four Tamil and nine English language newspapers. There are five radio broadcasters and seven TV station owners.

One of the five large newspaper companies is a nationalised asset whose newspapers carry the bulk of government notifications and advertising. Significant sections of the private media are owned by relatives of key political figures in the country.

The Team noted the highly partisan nature of media coverage of this Presidential election. The government owned media appeared to show bias towards the candidacy of Mahindra Rajapakse, then Prime Minister, whilst the privately owned media showed a distinct bias towards the opposition leader, Ranil Wickremesinghe. These observations were supported by the domestic observer group PAFFREL.

During the time available to us the Team only monitored three daily English language newspapers and their sister publications on Sunday.

This perception of the media coverage appears to have persisted throughout the campaign and on polling day. Restrictions came into force at midnight on 14 November 2005 prohibiting public rallies and other forms of overt campaigning by the candidates.

Regulation of the Media

The Commissioner of Elections has the power to appoint a competent authority in order to regulate the state media, if he considers it necessary. The Team notes that the regulatory framework governing the scope, nature and timing of media coverage during political campaigns does not appear to be comprehensive.

Use of State Assets

The Team were told that during this Presidential election, as in previous elections, there was extensive abuse of state assets in particular the use of vehicles and premises for campaign purposes. The Team noted that NGOs have introduced a measure of transparency in this area through their documentation and subsequent publication of such abuses.

Political Party Liaison

The Team were informed by the Commissioner of Elections that regular meetings occurred between himself and representatives of the Presidential candidates at election time. These meetings resulted in agreement on a number of issues such as limiting the use of banners and posters after nominations had closed.

The Role of Campaign Finance and its Regulation

The question of political party financing and the impact of that financing on the capacity of the political parties to mount a successful campaign are important influences in the electoral environment.

Neither the Constitution nor the Presidential Election Act, No 15 of 1981 make any references to political party financing. In effect, the electoral environment in which elections are conducted in Sri Lanka does not provide for limits on spending by political parties or electoral candidates. There is therefore no legal limit on election spending in the country.

The unrestricted political party financing environment within which elections are conducted thus does not:

- require political parties or candidates to keep an account of their spending;
- impose any limits on campaign financing and contributions by organisations, groups or individuals, whether domestic or international;
- require political parties or candidates to submit a report of the contributions made by individuals or corporations, whether of monetary or non monetary value;
- require parties or candidates to submit a report of names and addresses of persons who contribute to political parties;
- impose any prohibitions on financial contributions.

Thus in Sri Lanka the minimum standards for good governance in so far as campaign finance is concerned are totally lacking. Legally, nor constitutionally are there are no requirements for full or partial disclosure and consequently little accountability is expected of the political parties.

The electoral environment in which political parties and election candidates therefore operate is one which is open to influence peddling and very opaque.

The Team were told that in the absence of any formal state contribution to political parties Sri Lankan political parties are heavily dependent on private sources of funds for electioneering purposes, as they are for funding their routine day-to-day activities. A senior representative of one of the main political parties informed the Team that 90% of the total funding of the party is derived from private sources. Political parties are generally unclear as to the actual size of their membership base. The membership dues contributed by card carrying members of the party are inadequate to meet their needs, especially for the purposes of mounting Parliamentary and Presidential elections.

The Team were told that political parties do receive assistance from foreign donors and persons of Sri Lankan origin residing abroad. Where such funds are obtained they are generally used for capacity building purposes, such as financing the purchase of equipment and conducting training workshops.

Campaigning

The campaign strategies of the two main Presidential candidates appeared to be generally similar. The Commissioner of Elections, in agreement with the political parties, limited the use of electioneering paraphernalia, such as posters, leaflets and banners to a minimum level after close of nominations.

The campaign was therefore characterised by three stages:

1. Prior to nominations – the Team understood that the campaign environment was unfettered, with candidates and their supporters having the right to display political banners, posters and leaflets.
2. The immediate post nomination day phase - the use of electioneering paraphernalia was heavily circumscribed with candidates and their supporters having the right to display

posters and banners only in the immediate vicinity of the party headquarters and branches, and at their public meetings throughout the country.

3. In the third phase - that is the last 72 hours - all candidates and their supporters were prohibited from organising rallies and displaying banners. Section 70 of the Presidential Elections Act No. 15 of 1981 specifically makes provision for the punishment of any person who violates the restrictions on public meetings during the immediate period leading up to polling day.

The agreement was generally upheld by the candidates representing both the minor and major political parties. Where there was some violation of the agreement the police responded immediately and removed posters and banners. This enforcement by the Sri Lankan police thus assisted with the maintenance of law and order and contributed to political violence being kept to a minimum level.

In the context of the limitations placed on customary forms of electioneering, political parties resorted to other means of campaigning. This primarily took the form of:-

- 1) advertisements in the newspapers, radio and television, which is the most costly activity for the parties;
- 2) door to door campaigning: in this context it is important to note that door to door campaigning was not unhindered in some polling divisions. For example, in the northern and eastern polling divisions, activists representing Presidential candidates did not feel that they were freely able to undertake door to door campaigning as a direct consequence of the threats issued.

This prohibition on campaigning activity which applies to rallies and banners did not appear to apply to advertising in the media both print and electronic. The Team noted that:

- on polling day one political party published an advertisement with its party symbol asking readers to "vote wisely";
- the same newspaper published a poem in Sinhalese with a large photo of a Presidential candidate;
- on the eve of the elections two different television channels showed advertisements depicting the two main Presidential candidates;

- one television channel screened a one hour interview with one of the Presidential candidates.

The Team also noted the extensive publication of opinion surveys during the campaign and indeed on polling day itself.

Overall the campaign was dominated by the two main candidates, with the other eleven candidates being rather obscure. In essence then, despite the appearances of tremendous competition exhibited by the large number of Presidential candidates contesting the 17 November 2005 election, the campaign was effectively reduced to a “race” between two candidates.

Chapter Seven

PREPARATIONS FOR THE ELECTIONS

Notice of Elections

Notice of elections was given by the Commissioner of Elections on 19 September 2005 after the Supreme Court verdict about the timing of the election was handed out. The Team did not receive complaints about the notice from political parties or other quarters.

Logistics

The entire logistics for the election were very efficient and professional. The Team observed that officials involved in managing and looking after the logistics were thorough and experienced.

Setting up Cluster Polling Stations

In previous elections the Commissioner of Elections had established "cluster" polling stations in what are described as "cleared" areas where residents of what are described as "uncleared" areas can cross over to cast their vote. The 2004 Commonwealth Observer Group expressed a number of concerns over the integrity of the voting process in such polling stations.

The Team observed the arrangement of the cluster polling stations in reference to the Supreme Court decision. There were adequate arrangements for the polls, particularly in regard to availability of transport and staffing. In Jaffna the cluster polling stations were set up in tents.

Recruitment & Training of Election Officials:

The election officials were drawn from the public service. The Team learnt that the officials involved with the elections were given appropriate training and were being provided with instruction manuals. Targeted and specific training was provided for various levels of officials, including the police.

The Team were very impressed with the high level of proficiency demonstrated by the elections officials throughout the entire process.

Distribution of Election Materials

The Team were satisfied by the way the election materials were distributed to the polling stations, which involved detailed planning. Sufficient vehicles with adequate security personnel were deployed to transport the election materials to the various polling stations.

Postal Ballots

The Team were told that postal ballots were collected on 9 November 2005 and stored by the appropriate electoral officials in each district. During the counting phase on 17 November 2005 postal votes were verified in terms of the identity declaration and then counted. This category of votes was distinguished from other categories in the breakdown of polling results.

Chapter Eight

THE POLL AND THE COUNT

Security of the Ballot

The Team observed and were informed that the ballot boxes and materials were under the custody of the Senior Presiding Officers. They were accompanied by the police officers who spent the night guarding them at the polling stations. Overall there was adequate provision of election material and staff.

Polling Station Arrangements

The Team observed that the layouts of the polling stations were generally good, but in some cases the secrecy of the ballot was compromised because of how and where the polling booths/screens were positioned.

The Team further observed that some polling stations were not easily accessible especially to the physically challenged, elderly and parents carrying young children.

Where there was a military presence it was not evident in or around the polling stations. Overall the presence of the police officers was discreet. The atmosphere at polling stations was calm and orderly. The experienced staff conducting the elections ensured that although there were long queues in some polling stations, the voting process took a very short time. In many polling stations there were separate queues for female and male voters.

Voting Procedures

The Team observed that voting procedures were processed efficiently and all levels of electoral staff understood their different roles.

The Team observed that physically challenged voters were assisted in a reasonable and fair manner by either a senior polling official or family members. The Team were pleased with the arrangements that were provided for voters that needed assistance.

Voter Turnout

Voters turned out in large numbers except in the north and parts of the north east, arriving at polling stations very early to cast their votes.

The Team noted that the turnout in this Presidential election was characterised by the following:

- a high turnout in all areas except the North and parts of the North East area;
- the elderly and women were well represented in the voters who turned out;
- 1.12% of ballot papers were declared invalid.

The Team considers that the experience of voters in all parts of Sri Lanka except the North and parts of the North East region was a positive one in the sense that they were able to exercise their franchise. The Team has also noted that these observations cannot be taken as being indicative of the voter experience in the North and parts of the North East regions.

The very low turnout of 0.08 % in the Jaffna region is unique to the Team's experience. However, the Team noted that adequate resources had been provided in the form of transport arrangements, staffing, security and related matters.

The Team directly observed polling stations in the Jaffna area where the electorate effectively did not participate in the voting process. Characteristically the number of persons who voted throughout the day ranged from zero to ten.

This unique feature of the Sri Lankan Presidential elections might be explained by some or all of the following:

- the LTTE publicly admonishing voters to boycott the forthcoming elections;
- the circulation of leaflets with intimidating undertones which were seen by members of the Team;
- boycotting of the elections by students whose perception was that successive governments had neglected them;
- some political groups felt constrained in terms of their ability to actively campaign in these areas;
- burning of tyres and other materials on roads near the line of control.

Whatever the reasons for the low turnout, confidence in the integrity of the democratic process is essential. Of critical importance is the ability of voters to cast their ballots in secret and without fear of intimidation.

Presence of Observers

The Team were informed that it was the first time the domestic observers were allowed to have a presence inside the polling stations. PAFFREL, for example, had an extensive presence, fielding mobile observers as well. There were also a number of observers from the European Union and the Association of Asian Election Authorities who were identifiable. It is notable that PAFFREL observers had a standardised recording system.

Party Polling Agents

The two main candidates fielded polling agents at most polling stations, with the exception of Jaffna. There representatives of the much smaller New Left Front Party were visible.

Counting

The Team observed efficient processing of the ballot boxes on their receipt at the counting centres. There were clear audits of the statements received from the senior presiding officers and the police officers before any reconciliation took place.

The Team were satisfied with the effectiveness of the reconciliation exercise which cleared the way for the counting of the ballots. The Team again noted the positive impact of the experience of election officials on the manner in which the counting process was conducted.

The counting process was organised in three different stages. This ensured sufficient checks and balances and accuracy. This made the whole process smooth from beginning to end.

The Team noted the deployment of polling and counting officials reflected the wider diversity of the community.

Gender and the Electoral Process.

Within political parties women in Sri Lanka face discrimination. At the level of the political party an insignificant number of women are engaged in routine day-to-day activities of the party, and fewer function in the role of grass root party activities. With respect to the leadership of the political parties for the most part this remains exclusively male.

This paucity of women in political life despite the former female Presidents, and in the context of the strides made by women in education, in administration, in the media and in business is puzzling.

Women in Sri Lanka are in fact among the first group of women to have the right to vote. In 1931 the granting of universal adult suffrage was equally extended to men and women, yet women are marginalised and virtually excluded from political circles. Women only occupy less than 5% of the seats in the national parliament. A similar percentage obtains at the level of village and local government councils.

Paradoxically more than half the medical doctors and lawyers qualifying each year are women, the civil service is 60-70% female as is the teaching service and a high percentage of other service sector personnel are women. The number of women holding prominent positions in the media is also a visible reminder of women's growing public role in this society.

The Commissioner of Elections states that some 65% of the employees involved in the electoral process are women, which was verified by observation. They are mainly at the lower levels of the hierarchy however, although there were a few female Presiding Officers in some stations.

The representation of female voters was consistent with general population figures, and numbers of domestic women observers were outstanding.

Chapter Nine

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

1. The Team is of the opinion that the Commissioner of Elections and his colleagues ensured that the Sri Lankan Presidential election was credible in terms of efficient and effective administrative arrangements.
2. Generally there was a high turnout of voters throughout the island with the exception of the northern electoral district of Jaffna. The Team also notes with deep concern that voters in these areas did not participate in this Presidential election.
3. The Presidential candidates and their agents contributed to creating an atmosphere that was conducive to the smooth functioning of the electoral process.
4. The presence of the police both during the campaign and polling day was professional and generally discreet.
5. The quality of the voters register was satisfactory. However, challenges do remain in relation to the compilation and maintenance of a permanent voter registration process which is both credible and reliable. It is unlikely that duplication can be avoided and updating undertaken regularly unless it is completely computerised.
6. The Team noted that domestic election observers were permitted into the polling stations for the first time. This development further enhances the integrity of the electoral process. The Team were impressed with the large numbers of domestic observers in polling stations.
7. The organisational arrangements dealing with logistics, recruitment and training of staff, and distribution and retrieval of materials and counting were commendable. The Team has high praise for the electoral staff that performed their duties and functions in an efficient, impartial and professional manner.

8. The Team noted that there are considerable numbers of persons of Sri Lankan origins living and working abroad. Many have a keen interest in Sri Lankan elections and some also make donations to campaigns. The diaspora communities range from migrant workers working abroad on a temporary basis whilst their families remain in Sri Lanka to entire families settled abroad and holding citizenships of other countries. The issue of whether they should have voting rights is sensitive and there are several dimensions which need to be considered.
9. Although the Team were not able to observe the arrangements for postal voting, the Team noted that domestic and other international observers were satisfied.
10. During the electoral process there were regular meetings between the Commissioner of Elections and his colleagues and officials representing the candidates. Feedback from candidate representatives, electoral officials, domestic and international observers suggested that there was confidence in the process.
11. The polling station layout was generally consistent and adequate. However, the Team also notes that in some cases the secrecy of the ballot could have been compromised due to the positioning of the booths/screens in the polling stations.
12. The Team noted that there was no delay in the counting and declaration of the results.
13. Although there were no women Presidential candidates and a marked absence of women amongst party activists and senior positions as electoral administrators, their presence as election officials in polling stations, as domestic observers and as voters was significant.
14. The Team noted that since 1981 there has been no statutory provision for campaign finance regulation and ongoing expenditure of candidates and political parties. The Team consider that this lack of transparency has serious implications for the democratic process.
15. The role of finance in the democratic process is a key one

and few women in Sri Lanka have access to such funding. This has direct implications for the participation of women in the political process.

16. The Team note that there is no transparency in the use of the paid media activities during the election campaign.
17. The Team noted that despite recommendations from various quarters, the 17th Amendment to the Constitution has not been implemented particularly with regard to establishing an independent Electoral Commission.
18. The Team noted that considerable international assistance is being extended to the Sri Lankan electoral process particularly through the provision of capacity building to NGOs undertaking monitoring and educational activities.
19. The Team considers that the failure to implement a system of continuous registration has implications for the electoral process and democratic arrangements. The time period within which the registration process occurs has the net effect of excluding young potentially eligible voters.

The Team commend the people of Sri Lanka for creating an election environment of calm and tolerance and for casting their ballots in a peaceful manner.

Recommendations

1. Since the elections in 2000, there have been calls for the 17th Amendment to the Sri Lanka Constitution to be implemented. The Team endorse the calls for the establishment of an independent Election Commission which will further consolidate the independence, transparency, accountability and effectiveness of electoral administration in Sri Lanka.
2. The Team recommends that the independent Elections Commission should be empowered to regulate campaign finance and media usage.
3. The Team recommends that the Commonwealth commit to long term support for developing the capacity of the independent Elections Commission.

4. The Team recommends that the infrastructure supporting the Commissioner of Elections or an independent Elections Commission should be strengthened. Specific technical and resource assistance in the following areas should be considered:
 - the creation of a permanent computerised voters register with a sustained capacity to update in real time;
 - the provision of electoral identity cards;
 - the procurement of non sensitive election materials such as permanent folding screens for polling booths.
5. The Team recommends a system of continuous registration and recognises that it would be difficult to implement this without a permanent computerised voters register.
6. The Team recommends that the location of polling stations should be reviewed before the next elections with particular regard to accessibility.
7. Consistent with a decision taken by the Commonwealth Parliamentary Association that member states take immediate action to reduce gender inequality to ensure the full participation of women at all levels of the society, Sri Lanka should move expeditiously to realise the 30 percent gender equity target which has been set.
8. The Team recommends that there should be transparency in relation to disclosing financial and other contributions to candidates and parties during election campaigns. The Team also recommends that donations to political parties and elected members in the period between elections should also be fully disclosed as part of a broader good governance agenda.

ANNEX 1

Composition of the Commonwealth Expert Team

Hon Cassam Uteem (Mauritius – Chairperson)

Hon Cassam Uteem is a former President of Mauritius and has had a political career spanning over thirty years. He served as Municipal Councillor and Mayor of the City of Port Louis, Member of Parliament, Minister of Social Security, Employment and National Solidarity and Deputy Prime Minister and Minister of Industry and Industrial Technology. He was first elected President of the Republic of Mauritius in June 1992 and re-elected for a second 5-year term until 2002.

Hon Cassam Uteem is currently Board Member of the International Institute for Democracy and Electoral Assistance (IDEA), member of the “Haut Conseil de la Francophonie”, member of the Club of Madrid and founder member of the Global Leadership Foundation.

Mr Karamjit Singh (United Kingdom)

Mr Karamjit Singh CBE has been a Commissioner with the United Kingdom Electoral Commission since its inception in January 2001 and has a specific interest in Northern Ireland electoral issues. He has had a long career in various positions within the public sector including appointments as a Commissioner to national bodies dealing with complaints against the police, the selection of senior civil servants, the training of judges and investigating suspected miscarriages of justice in relation to criminal convictions.

Ms Cynthia Barrow-Giles (St Lucia)

Ms Barrow-Giles is a lecturer in Political Science at the Cave Hill Campus, University of the West Indies, Barbados. She currently serves as Head of the Department of Government, Sociology and Social Work. Her publications include *Introduction to Caribbean Politics* (2002), *Living at the Borderlines: Issues in Caribbean Sovereignty and Development* (2003) and *Party Systems, Elections and Voting in the English-speaking Caribbean 1991-2005* (2005).

Senator Diana Mahabir-Wyatt (Trinidad and Tobago)

Ms Diana Mahabir-Wyatt was appointed an independent Senator in the Parliament of Trinidad and Tobago, a position she held for eleven years. She is by profession a human resources management consultant, and is partner and director in the firm PMSL Ltd,

working in the area of performance management improvement the Caribbean.

She has been Chair of the Trinidad and Tobago Coalition Against Domestic Violence since 1988, and also chairs the Stop Elderly Abuse Now (SEAN) program, Childline (Trinidad and Tobago), Peace, Love and Understanding in Schools (PLUS) and is an Executive Member of the Boards of the Coalition for the Rights of the Child and the alternative Nobel Prize for Social Work winning organisation SERVOL. Ms Mahabir-Wyatt has been a member of various governmental commissions and committees and is on the boards of directors of several private companies.

Mrs Martha Sayed (Botswana)

Mrs Sayed joined the Botswana Independent Electoral Commission in 1999 having been a human resource practitioner in the public service. She is currently the Deputy Secretary to the Independent Electoral Commission with the responsibility of ensuring that all administrative activities in the organisation provide a conducive working environment for the staff, political parties other stakeholders and the general public.

Mr Feroz Hassan (Bangladesh)

Mr Feroz M Hassan is Secretary-General of Bikalpa Dhara Bangladesh, a Bangladesh political party, and was formerly Secretary-General of the Fair Election Monitoring Alliance (FEMA). He has participated in election observer missions in several countries in Asia and Africa. Mr Hassan has also worked as an expert for domestic observer groups in a number of countries, including Sri Lanka, Cambodia, Indonesia and Kenya.

ANNEX 2



COMMONWEALTH

NEWS RELEASE

05/76

9 November 2005

Commonwealth Expert Team to observe Sri Lanka Presidential Election

A Commonwealth Expert Team, which has been sent by Secretary-General Don McKinnon for the Sri Lanka Presidential Election, begins work on 9 November 2005. The team will be led by Hon Cassam Uteem, former President of Mauritius. The other experts are:

Ms Cynthia Barrow-Giles

Head of Department of Government, Sociology
& Social Work
University of West Indies
Barbados

Mr Feroz Hassan

Secretary-General
Bikalpa Dhara
Bangladesh

Senator Diana Mahabir-Wyatt

Chair of Trinidad and Tobago Coalition against
Domestic Violence
Trinidad and Tobago

Mrs Martha Sayed

Deputy Secretary
Independent Election Commission
Botswana

Mr Karamjit Singh CBE

Electoral Commissioner
Electoral Commission
UK.

The experts will be assisted by a staff support team led by Ms Adaora Ikenze, Political Affairs Adviser in the Political Affairs Division of the Commonwealth Secretariat.

The experts will be briefed in the capital, Colombo, by the Commissioner of Elections, representatives of the Presidential candidates and their parties, Commonwealth diplomats, international and domestic observers, representatives of civil society and state and private media.

The decision to send the Commonwealth Expert Team follows an invitation from the Commissioner of Elections.

Note to Editors:

The Expert Team's Terms of Reference are as follows, 'The Commonwealth Expert Team for the Sri Lanka Presidential Election shall observe the preparations for the election; the polling, counting and results process; and the overall electoral environment'.

The Commonwealth observed the Parliamentary Elections in Sri Lanka in October 2000 and in May 2004.

For media enquiries please contact Adora Ikenze on Mobile: +94-71 3046220 or +94-11 249 2359.

ANNEX 3

List of Meetings Held

Commissioner of Elections
Representatives from the Department of Elections
Australian High Commission
Ministry of Foreign Affairs
Human Rights Commission of Sri Lanka
Canadian High Commission
Representatives of the political parties
British High Commission
PAFFREL
EU Monitoring Mission
Inspectorate of Police
Centre for Monitoring Election Violence
Representatives of private and state media
Transparency International
Civil servants