

ELECTORAL INTEGRITY

**A REVIEW OF INCIDENCE OF MISUSE OF PUBLIC
PROPERTY DURING 2019 PRESIDENTIAL ELECTION**

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Transparency International Sri Lanka (TISL) is an independent, non-governmental, non-profit and non-partisan organisation with a vision of Sri Lanka in which government, politics, business, civil society and the everyday lives of citizens are free from corruption. As the fully accredited national chapter in Sri Lanka of the Berlin-based Transparency International (TI), TISL partners and works with TI and its chapters world-wide.

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of January 2020. Nevertheless, Transparency International Sri Lanka cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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Transparency International Sri Lanka (TISL) wishes to acknowledge all those who supported the Program for the Protection of Public Resources (PPPR) to carry out their duties as a local observer group during the campaign period leading up to the Presidential Election which took place on 9th November 2019.

The PPPR team acknowledges the efforts of the Election Commission of Sri Lanka in administering and managing the Presidential Election and for inviting both local and international observation groups to engage in the process to ensure electoral integrity. The District Commissioners in particular, extended considerable support to the PPPR team to ascertain whether a violation has taken place and to pursue action where required.

The PPPR team would also like to appreciate the commitment and valued contribution of the District and Electorate Coordinators that worked long hours in challenging conditions to report incidents of public resource misuse. We thank all the media organizations for the publicity given to the PPPR's work and for assisting in communicating information to the public.

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Asoka Obeyesekere
Executive Director

INTRODUCTION

On 28th September 2019 the Election Commission of Sri Lanka (ECSL) declared the seventh Presidential Election of the Democratic Socialist Republic of Sri Lanka where a total of 35 candidates contested for the highest office in the country. This is the first Presidential Election held under the 19th Amendment to the Constitution which strengthened the powers vested in the ECSL. The 19th Amendment introduced in 2015 reinstated the powers of the ECSL that were curbed by the 18th Amendment to the Constitution. The constitutional amendment restored the ECSL's power to issue directions to prevent the use of public resources for election campaigning¹.

The 19th Amendment to the Constitution also reduced the Presidential term from 6 years to 5 years. Since this Amendment was enacted after President Sirisena's election in 2015, the President sought the opinion of the Supreme Court on the expiration of his term, i.e. whether his term of office ends after six years or five years. The Supreme Court determined that as per the 19th Amendment to the Constitution his term ends after five years. The last Presidential Election was held two years ahead of schedule on 8th January 2015, therefore the next Presidential Election was due to be held by January 2020. The 19th Amendment allows for the President to declare elections at any time after the expiration of four years of his or her term. As President Sirisena opted to complete his first term in full, and did not wish to run for office for a second term, the ECSL exercising their power under the Constitution, declared the election on 28th September 2019.

Keeping with its mandate of eradicating corruption in Sri Lanka, Transparency International Sri Lanka (TISL) launched its election observation activities on 1st October 2019 under the Program for the Protection of Public Resources (PPPR). The PPPR is based on the premise that the use of State resources (whether land, buildings, vehicles, equipment, funds, other facilities or human resources) directly or indirectly for the benefit of one political party or group, would constitute unequal treatment and political discrimination, because an advantage is conferred on one political party or group which is denied to its rivals. The core objective of this program is to uphold the integrity of the electoral process by ensuring that public resources are not misused and/or abused for propaganda during an election period, and wherever possible to take preventive action in partnership with the relevant authorities to minimize the misuse of such public resources.

Upon obtaining the required approvals from the ECSL, the PPPR team deployed a network of election observers covering all 25 Districts to specifically observe the use of public resources for election related purposes. The program opened a hotline, email address and fax number to obtain complaints from the public. On the day of the election, TISL deployed 10 mobile observers to cover 06 districts and 13 observers to 08 counting centers in 08 districts to observe the counting process.

1. Article 104B(4)(a) of the Constitution

In total the PPPR documented 116 incident reports of which 94 were submitted to the ECSL in the form of complaints. Overall, the PPPR witnessed a relatively lower amount of violations compared to the Presidential Elections held in 2010 and 2015. This could be attributed to the restoration of powers of the Election Commission of Sri Lanka and increased awareness among Public Officials and the public regarding the implications of misusing state resources in the post Sil redi era. However, among the violations documented several were significant and may have long term cost implications on the State; E.g.: hundreds of appointments given to new recruits. This report will discuss in detail the main violations that the PPPR team highlighted to the ECSL and the recommendations put forward to protect public resources during future election campaigns.

BACKGROUND TO THE 2019 PRESIDENTIAL ELECTION

The 2019 Presidential Election was crucial as it was the first Presidential Election to be held following the enactment of the 19th Amendment. Although the incumbent President Maithripala Sirisena affirmed that he would be a one term President, there were uncertainties on whether he would seek a second term. The climate of political uncertainty was aggravated in October 2018 when a constitutional crisis was triggered through the incumbent President controversially appointing the former President Mahinda Rajapaksa as the new Prime Minister. Whilst this situation was reversed 52 days after the courts issued an injunction against the dissolution of parliament, the governing coalition between the United National Party and Sri Lanka Freedom Party, was effectively over.

Thirty-five candidates sought nominations for the Presidential Election in 2019. It is noteworthy that out of the 35, there was only one female candidate. Despite the high number of candidates, the issue of proxy candidates was well visible during the election period. It was noted that there were several candidates who were focused on influencing the preferential vote for one of the leading candidates or to cause confusion amongst voters by using similar electoral names and symbols.

Moreover, the need for a stronger government through alternative voices was an initiative that emerged strongly from the time of the 2015 Presidential election. The initiative took the form of a political party formed by leading civil society organizations and activists, presenting itself as a “civil society candidate”. Such an approach was an attempt to break away from mainstream politics and establish an alternative political culture including a Cabinet of professionals under the leadership of their candidate.

Furthermore, the availability of a preferential vote was an area of conflict even before the election was declared. Before and throughout the election it was predicted that there will be close competition between the two main candidates. Therefore, the idea of casting a second preferential vote was nurtured by the political parties. The Election Commission initiated a social media campaign to educate voters on the voting system, however its reach was limited.

Since the election was held seven months after the April 21st Easter attack and given the nature and magnitude of the attack, it posed serious questions on possible implications on country’s national security. The prevailing tension and grievances expressed within the communities significantly impacted the nature of campaigns conducted by candidates.

The lack of campaign finance regulations gave room for largescale spending on election campaigning. The need for a campaign finance law was highlighted following the 2015 Presidential Election but the efforts made by Observer groups and the ECSL to bring about such a law did not succeed prior to the 2019 Presidential Election. As a result, contesting candidates invested millions in their campaigns thereby creating an unequal ground for the rest of the candidates. On the other hand, limited public access to Declarations of Assets and Liabilities of candidates continued to restrict public scrutiny on the finances of the candidates.

Candidate		Party	Votes	%
1.	Gotabhaya Rajapaksa	Sri Lanka Podujana Peramuna	6,924,255	52.25%
2.	Sajith Premadasa	New Democratic Front	5,564,239	41.99%
3.	Anura Kumara Dissanayake	National Movement for People's Power	418,553	3.16%
4.	Mahesh Senanayake	National People's Party	345,452	2.60%
5.	M. L. A. M. Hizbullah	Independent		
6.	Ariyawansa Dissanayake	Democratic United National Front		
7.	Ajantha Perera	Socialist Party of Sri Lanka		
8.	Rohan Pallewatte	National Development Front		
9.	Siripala Amarasinghe	Independent		
10.	Milroy Fernando	Independent		
11.	M. K. Shivajilingam	Independent		
12.	Battaramulle Seelarathana	Jana Setha Peramuna		
13.	Ajantha de Zoysa	Ruhunu Janatha Peramuna		
14.	Anuruddha Polgampola	Independent		
15.	Namal Rajapaksa	National Unity Alliance		
16.	Jayantha Ketagoda	Independent		
17.	Duminda Nagamuwa	Frontline Socialist Party		
18.	Aparekke Punnananda	Independent		
19.	Subramaniam Gunaratnam	Our National Front		
20.	A. S. P. Liyanage	Sri Lanka Labour Party		
21.	Piyasiri Wijenayake	Independent		
22.	Aruna de Zoysa	Democratic National Movement		
23.	Rajiva Wijesinha	Independent		
24.	Iliyas Idroos Mohamed	Independent		
25.	Siritunga Jayasuriya	United Socialist Party		
26.	Sarath Keerthirathna	Independent		
27.	Sarath Manamendra	New Sinhala Heritage		
28.	Pani Wijesiriwardene	Socialist Equality Party		
29.	Ashoka Wadigamangawa	Independent		
30.	A. H. M. Alavi	Independent		
31.	Saman Perera	Our Power of People Party		
32.	Priyantha Edirisinghe	Okkoma Wesiyo Okkoma Rajawaru Sanwidhanaya		
33.	Samaraweera Weerawanni	Independent		
34.	Bedde Gamage Nandimithra	Nava Sama Samaja Party		
35.	Samansiri Herath	Independent		

Table 1: Names and number of votes of the Presidential Candidates

LEGAL FRAMEWORK AND METHODOLOGY

LEGAL FRAMEWORK

The Program for the Protection of Public Resources was designed in January 2001 by three civil society organizations with the objective of protecting public resources from election abuse. In December 2001, it was launched as a special project of the Institute of Human Rights focusing on election-related abuses. Since then TISL has used this methodology with periodic revisions to monitor the misuse of public resources in all national level elections, the 2013 Provincial Elections and the 2018 Local Government Elections.

An understanding of the laws pertaining to the protection of public resources or property is required to understand the methodology adopted by TISL for election observation. The PPPR methodology bases its legal framework and justification for observation primarily on the Constitution of Sri Lanka. Article 28(d) of the Constitution vests a duty on each and every citizen to protect public resources and to ensure that it is free from abuse². Furthermore, according to the Constitution, sovereignty which includes the power of government, fundamental rights and the franchise, is vested with the people of Sri Lanka, and the organs of government only have exercising power conferred on them by the people.³ Jurisprudence emerging from the Supreme Court has interpreted these articles to mean that power is held in trust for the people or on behalf of the people⁴. Therefore, all public resources in the hands of elected representatives as well as public officials are held under their guardianship on behalf of its real owners – the general public.

The PPPR obtains its definition of public resources or public property from the Offences against Public Property Act where it is defined as “the property of the Government, any department, statutory board, public corporation, bank, co-operative society or co-operative-union”.⁵ In the *Hettiarachchi v. Mahaweli Authority* case, the Supreme Court of Sri Lanka has identified land, buildings, vehicle equipment, funds or other facilities or human resources owned by State or Corporations as public property. TISL and PPPR defines the term public resource as any movable or immovable property in every description that are vested in and maintained by the State and used for the purposes of the State.

2. Article 28(d) of the Constitution of 1978 states “The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly it is the duty of every person in Sri Lanka to....

(d) to preserve and protect public property, and to combat misuse and waste of public property;”

3. Article 3 of the Constitution

4. See *Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others*, (2000) 3 SLR 243 available at http://www.lawnet.lk/docs/case_law/slr/HTML/2000SLR3V243.htm and *Sugathapala Mendis v. Chandrika Bandaranaike and Others*, S.C (F/R) No. 352/2007 available at http://www.tisrilanka.org/pub/li/pdf/WA_Judgment.pdf (Last visited on 10.06.2010)

5. Section 12 of the Offences against Public Property Act, No. 12 of 1982

The Offences against Public Property Act, No. 12 of 1982 provides guidance on the misuse of the public resources. Section 5 read with section 10 of the Act state; “any person who dishonestly misappropriates or converts to his own use any movable public property shall upon conviction be punished with imprisonment of either description for a term not less than one year but not exceeding twenty years, and with a fine of one thousand rupees or three times the value of the property in respect of which such offence was committed, whichever amount is higher”. The main responsibility of prosecution under this Act lies with the Attorney General. No one has been tried under this provision for the misuse of public property for election campaigning even though cases of such misuse have existed in the past.

The primary responsibility of protecting public property is vested with Secretaries to Ministries. According to the Government’s Financial Regulation 156 (7) Ministry Secretaries are expected to exercise due economy in all financial transactions and they should also ensure that expenditure is not incurred unless absolutely necessary even though financial provisions exist, or funds are available.⁶ Similarly, Financial Regulation 127 (7) states that all Chief Accounting Officers are responsible for taking measures to ensure that the procedure laid down under Regulations 102 to 108 is followed. If a loss is caused to the government by delays, negligence, fault or fraud on the part of officers, such officers are surcharged.

Public Officials employed by the State are also considered a public resource and are particularly prone to misuse during an election period. Chapter XXXII of the Establishment Code prevents Public Officials from participating in political meetings or taking part in political activities connected with the campaign by any candidate or party except in exercising the right to vote⁷.

The PPPR is also of the view that the misuse of public resources by a public servant constitutes the offence of ‘corruption’ under the Bribery Act. A public servant who abuses public property and resources for the benefit of himself or another person and causes wrongful or unlawful loss commits the offence of corruption under the Bribery (Amendment) Act No 20 of 1994.

A comparison between the 17th, 18th and 19th Amendments to the Constitution is warranted in order to understand the powers vested in ECSL to safeguard public resources. With the introduction of Independent Commissions through the 17th Amendment, the Election Commission was empowered to prohibit the use of any movable or immovable property belonging to the State or any public corporation for election campaigning of candidates according to Article 104B (1) (a) of the Constitution. Furthermore, Article 104B (4) (a) states:

“the Commission shall have the power during the period of an election, to prohibit the use of any movable or immovable property belonging to the State or any public corporation –

- i. for the purposes of promotion or preventing the election of any candidate or any political party of independent group contesting at such election;
- ii. by any candidate or any political party or any independent group contesting at such election.

by a direction in writing by the Chairman of the Commission or of the Commissioner General of Elections on the instructions of the Commission.”

6. Financial Regulations, 1992

7. Section 1.2, Chapter XXXII of the Establishments Code Volume 1 2019

However, the mandate of the Election Commission was limited by the 18th Amendment removing the power to prevent the use of public property for election campaigning for or by any candidate, political party or independent group. The Election Commission no longer had the power to issue directions to prevent political parties from using state resources to advance their campaigns during elections and prevented the Commission from being connected to any matter related to the public service or any matter within the ambit of administration of the Public Service Commission or the Judicial Service Commission⁸.

Repealing the restrictive provisions of the 18th Amendment, the 19th Amendment to the Constitution restored the powers of the Election Commission once again empowering the Commission to issue directions to prohibit the use of public property for election campaigning. Anyone who fails to comply with the directions issued by the ECSL can be punished using Article 104GG⁹ of the Constitution and jurisdiction to hear and determine any matter relating to this is given to Provincial High Courts established under Article 154P of the Constitution.

Once an election is declared, the ECSL issues various directives on the manner in which the election should be conducted. Using Article 104B (4) (a) of the Constitution, the Election Commission issued directions on the misuse of public resources on 19th September 2019 through the Extra Ordinary Gazette No.2141/52 (the Gazette). The Gazette identified the following moveable and immovable property as State resources that should be free from abuse:

1. Use of State Vehicles for Election Campaign Purposes
2. Use of State Building & Premises for Election Campaign Purposes
3. Appointments, Transfers & Promotions for State Officials targeting Election
4. Misusing State sponsored Development Activities
5. State Officers acting in favour of Political Parties & in Breach of Official Duties
6. Giving Incentives/Equipment with Political Objectives
7. Use of State Officials & Security Resources for Election Campaign
8. State Officers using Social Media for the Promotion of or in Prejudice to Any Party, Group or Candidate
9. Manipulation of State sponsored Livelihood Grants & Allowances for Election Purposes
10. Using Equipment and Facilities of State Institutions Without Paying
11. Other Illegal Election Campaigns Using State Resources

8. Article 17 of the 18th Amendment to the Constitution

9. Any public officer, any employee of any public corporation, business or other undertaking vested in the Government under any other written law and any company registered or deemed to be registered under the Companies Act, No. 7 of 2007, in which the Government or any public corporation or local authority holds fifty per centum or more of the shares of that company, who -

(a) refuses or fails without a reasonable cause to co-operate with the Commission, to secure the enforcement of any law relating to the holding of an election or the conduct of a Referendum; or
(b) fails without a reasonable cause to comply with any directions or guidelines issued by the Commission under sub-paragraph (a) of paragraph (4) or subparagraph (a) of paragraph (5), respectively, of Article 104B,

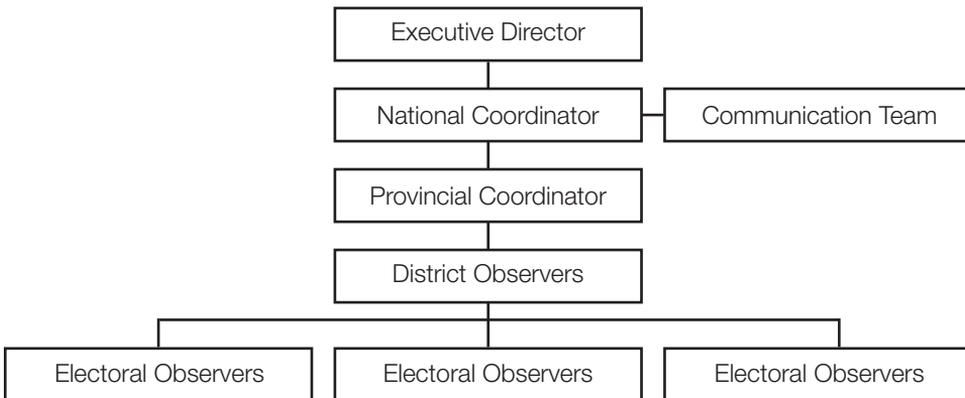
shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

During the election period, with the increasing use of social media platforms for election campaigning, the ECSL was proactive in engaging with officials attached to Facebook in trying to prevent disinformation and unethical means of campaigning. A separate complaint mechanism was established by ECSL to report fake accounts, misinformation and other disruptive behavior. ECSL also issued directives regarding the behavior of Public Officials on social media. Thus, under this directive, Public Officers who are not entitled to political rights were prevented from engaging in political campaigning even in their private capacity using any social media platform and the Public Officers who are entitled to political rights were prevented from using state resources for political campaigning on such platforms.

METHODOLOGY

The Presidential Election was declared by the Election Commission on 18th September 2019 by the Extraordinary Gazette No.2141/25. The deadline to submit nominations was 7th October 2019. As formal campaigning commences as soon as an election is declared, TISL decided to commence observation activities from 1st October and record complaints until 16th November. Going beyond the 22 Electoral Districts of the country, TISL identified and appointed 25 Administrative District Coordinators (DO) for observation purposes. The DOs supervised a total of 160 Electoral Observers (EO) who were tasked with observing violations at an electoral level. As such TISL's election observation team covered every district and electoral division of the country. Both levels of coordinators were trained on the applicable legal framework and were provided with the tools and resources necessary to observe, verify, document and report on misuse of public resources.

Operational structure chart



The PPPR methodology included two main elements:

1. Collection and verification of information
2. Dissemination of information

Information on instances of public resource misuse was obtained through three means:

- Network of Observers
- The general public
- Field visits

The DOs and EOs were tasked with observing the election campaigning at the District and Electoral levels respectively and reporting back any instances where public resources were being used for campaigning purposes. This included instances where the misuse had already taken place as well as reports of potential imminent abuse. The observer network also verified the accuracy of incidents reported by the general public and obtained the relevant evidentiary material. In all cases, reports with verified information was submitted to the ECSL in the form of complaints for either remedial or preventative action.

The general public was informed of ways in which they can engage with the observation team through trilingual advertisements in print and social media. Two hotline numbers were open to the public and these lines were connected to WhatsApp, Viber and Imo. Public were also given the opportunity to send complaints via email using the email address pppr@tisrilanka.org or fax (011-2 501 707). The advertisements publicized the PPPR's contact details and examples of potential abuse so that the public could gain a better understanding of the nature of the violations. One of the advertisements specifically targeted Public Officials reminding them of their duty to preserve public property.

In addition, field visits and internal investigations were carried out by the PPPR team to ascertain the accuracy of certain complaints. These included attending political rallies in several districts to document the use of government vehicles such as buses and helicopters, and the participation of Public Officials. It must be noted that these interventions came with a considerable element of risk which the PPPR team bore, keeping in mind their mandate and their duties.

Another important tool employed by the PPPR to verify information received through complaints was the Right to Information Act. The Right to Information Act No.16 of 2016 empowers citizens to access information held by public authorities. Since the word "citizen" includes any incorporated or unincorporated body with 75% of its members are citizens, TISL filed a total of 14 Right to Information requests with various public authorities to verify complaints received from the general public and our election observers.

While considerable resources were put into to gathering and verifying information, TISL also identified the importance of ensuring that the public was aware of the violations taking place in order for them to make informed decisions at the polls. To this end, TISL held two press conferences to discuss key issues and created a web page¹⁰ which made it possible for the general public to access details of all of the complaints that PPPR submitted to the ECSL. Details of key complaints submitted to ECSL was also emailed to stakeholders on a weekly basis.

10. <https://www.tisrilanka.org/pppr/>

In addition to the above, the following key interventions were made from 1st October to 16th November 2019:

- A series of print and social media advertisements were published, inviting the general public to act against the use of public resources for electioneering. The advertisements were trilingual.
- Two press briefings were held to keep the public informed of ongoing election violations and they were live streamed via Facebook¹¹.
- Three press statements released to the media to keep the public informed.
- Copies of the Declaration of Assets and Liabilities of six candidates was formally requested from the ECSL using the provisions of the asset declaration law.
- Continuous dialogue with local and international observer groups.
- Being present in counting centers to observe the counting process once the polling ended on election day.

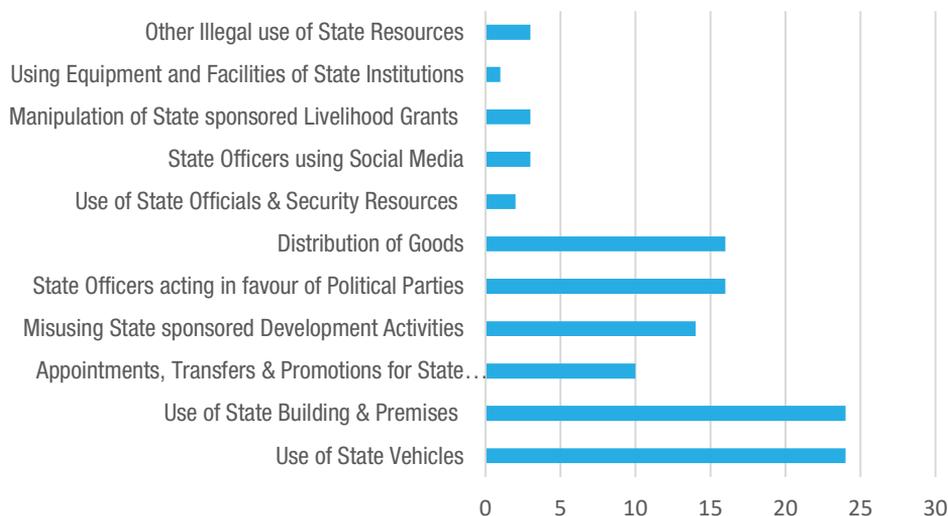
11. <https://www.facebook.com/1544194855823120/videos/393771368244899/>
<https://www.facebook.com/1544194855823120/videos/523631431553986/>

KEY OBSERVATIONS

Throughout the campaigning period, the PPPR witnessed and recorded various forms of elections violations taking place across the country. These included incidents of election violence, issues related to voter registration, misinformation on social media and the abuse of state resources. As the PPPR’s mandate is limited to the latter, other incidents were either shared with the ECSL or other local observer groups for further investigation. The PPPR within their mandate recorded a total of 116 complaints 94 of which were verified with corresponding evidence.

The highest number of complaints were recorded from the Colombo district with a total of 14 complaints being reported. The second highest number of cases were received from Anuradhapura district while the third highest number of cases of misuse of state resources were reported from Puttalam and Badulla. As mentioned above, all the complaints were recorded under 11 categories.¹² The two categories that recoded the highest number of cases during the election were; misuse of state vehicles and buildings for election campaign. The PPPR team received 24 complaints under each category which accounted for 40% of the total number of complaints.

Categories of Complains Received



12. The 11 categories are as follows: 1. Use of State Vehicles for Election Campaign Purposes Government Vehicles, 2. Use of State Building & Premises for Election Campaign Purposes Buildings and Premises, 3. Appointments, Transfers & Promotions for State Officials targeting Election Appointments, Transfers & Promotions, 4. Misusing State sponsored Development Activities Government funded activities, 5. State Officers acting in favour of Political Parties & in Breach of Official Duties Public officials, 6. Giving Incentives/Equipment with Political Objectives Distribution of Goods, 7. Use of State Officials & Security Resources for Election Campaign, 8. During the Period of an Election State Officers using Social Media for the Promotion of or in Prejudice to Any Party, Group or Candidate, 9. Manipulation of State sponsored Livelihood Grants & Allowances for Election Purposes, 10. Using Equipment and Facilities of State Institutions Without Paying, 11. Other Illegal Election Campaigns Using State Resources

GOVERNMENT APPOINTMENTS

In the first few weeks following the declaration of elections, the PPPR noted a number of instances where government appointments were given to new recruits in various parts of the country in clear violation of election laws. While some of these appointments were newly formed, others were delayed appointments that seemed to strategically coincide with the election period.

According to Direction No. 2(iii) of the Extraordinary Gazette, officers must refrain from making any recruitment, appointments and promotions and transfers of whatever nature in public institutions without the approval of the Election Commission other than those which are formally executed under the powers vested in the Commissions appointed by the Constitutional Council.

The People's Bank Naththandiya Branch, in the Puttlam District, made new appointments to applicants from several parts of the county on 7th October. One of the PPPR's Election Observers, who was informed about this event beforehand, attended the appointment ceremony and observed what was taking place while pretending to be a new recruit. By speaking to Bank Officials, the Observer discovered that prior approval was not obtained from the ECSL to make these appointments. A formal complaint was made to the ECSL on this matter. It was also revealed that such appointments were made by State Banks located in other Districts as well.

Another incident reported was regarding the Ceylon Electricity Board where appointments were made for the post of “අර්ධ පුහුණු අභ්‍යාසලාභී පාරිභෝගික සම්බන්ධීකාරක”. The new appointees were asked to report to the relevant Districts office on 28th October 2019. The PPPR was able to submit a formal complaint to ECSL with one of the appointment letters. Even though this incident was reported from one district, the PPPR team is of the view that similar appointments may have been made island wide.

Even though these appear to be one-time isolated acts carried out by different government bodies, collectively, in the long run, unplanned appointments harm the economy by adding more burden on the government.

USE OF GOVERNMENT VEHICLES

The use of government owned or rented vehicles for election purposes is a common form of misuse. In this election as well the PPPR received a number of complaints where government vehicles were being used to transport politicians to campaign rallies and for other campaign related activities. The use of Air Force Helicopters to transport candidates and their entourage was a distinct feature of the 2019 Presidential Election. Below is a brief description of PPPR's observation of this misuse.

Use of Helicopters to Transport Candidates and Politicians

The largescale use of government vehicles for campaigning purposes during previous elections resulted in the issuance of new guidelines to prevent such misuse during the 2019 Presidential Election¹³. Accordingly, Secretaries of Ministries and Heads of Departments were requested to ensure that public funds are not used to arrange Helicopter rides for campaign purposes. However, the media coverage given to the candidates revealed that at least one main candidate was using Helicopters almost on a daily basis to travel from one meeting location to another. The PPPR team witnessed the same on 10th November, where the New Democratic Front Candidate, Minister Sajith Premadasa and UNP Leader and former Prime Minister Ranil Wickremesinghe attended meetings in Nuwara Eliya, Badulla and Kegalle in Helicopters. Similar incidents were reported from Seruwawila, Kanthale and Trincomalee.



The PPPR highlighted this matter to the ECSL and requested them to ensure that State funds are not being used to pay for the use of Helicopters. PPPR team also filed an RTI application with the Sri Lanka Air Force seeking details of any copies of the receipts of payments that have been made for transporting presidential candidate to the above-mentioned locations.

13. Direction No. 5(i) of the Extra Ordinary Gazette published on 19th September 2019; “All Secretaries of Ministries / Heads of Departments should ensure that public funds are not utilized for the use of airplanes or helicopters or other vehicles for political propaganda activities”

Other Government Vehicles Used for Election Campaigning

In addition to the use of Helicopters, the PPPR recorded 24 complaints related to the use of government vehicles. These included vehicles belonging to either Ministries or Local Government Authorities. The vehicles were mainly used to carry out poster campaigns, organize and attend political meetings, and transport political supporters.

One such incident was reported in the Badulla District where a large number of vehicles were being used by one party for propaganda activities such as transporting party supporters, and organizing the meeting. The PPPR team also witnessed that vehicles were being used by the private staff of the Ministers to attend the meeting. The perpetrators were going about their business quite freely in spite of the Police being present at the location on this particular instance. The PPPR was able to photograph the perpetrators in action which was later submitted as evidence to the Badulla district election office.

The following license plate numbers were identified as Government owned number plates. Such number plates are easily identifiable as their colour is blue.

1. UP PC – 0842 - Mitsubishi Double Cab
2. WP PE – 3189 - Toyota Double Cab
3. WP PC – 3625 - Toyota Double Cab assigned to Coordinating Secretary to the State Minister of Plantation Industries
4. WP PC – 4874 - Toyota Double Cab belongs to the Ministry of Plantation Industries



IRREGULAR USE OF STATE FUNDS

The PPPR made a number of complaints to the ECSL regarding election activities conducted using State funds. These ranged from perpetuating propaganda to bestowing incentives with the aim of vote buying.



During the election period, the Ministry of Primary Industries and Social Empowerment was continuously under the scrutiny of the Election Commission. Within a timespan of a week, the Election Commission raided the Ministry twice. The Ministry had published two newspaper supplements titled 'Wadihitiyo' and 'Samurdhi' in the Dinamina newspaper respectively on 1st October 2019 and 25th October 2019 using government funds. Both these supplements were published during the election period and they included various development projects and activities carried out by the government targeting elders and Samurdhi beneficiaries. The supplement titled 'Wadihitiyo' was a new initiative carried out by the Ministry. Publishing it during the election period promoted the government at the time and the candidate Sajith Premadasa. Internal sources from the ministry revealed that approximately Rs. 600,000 has been spent for the publication of 'Samurdhi' newspaper.

PARTICIPATION OF PUBLIC OFFICIALS

The skills, knowledge of public officers and their time are deemed to be public property. Therefore, the use of public officials for electioneering is a serious violation of election laws and other laws governing the public service. While certain public officials, such as clerical staff, can engage in election related activities whilst not on official duty, others such as those who hold executive positions (e.g. Secretaries to Ministries) are strictly prohibited from engaging in electioneering even off duty¹⁴.

14. Direction No. 2(i) of the Extra Ordinary Gazette published on 19th September 2019 read together with chapter 32 of the Establishment Code of Sri Lanka

The PPPR team received a number of complaints regarding instances where public officials were engaged in election related activities. These officials range from executive level positions to lower level workers. These officials had engaged in different activities such as promoting candidates during rallies, promoting candidates on social media, participating in rallies and pocket meetings. The PPPR team had received complaints against senior officials of Samurdhi Authority who had openly campaigned for presidential candidate Hon. Sajith Premadasa. School principals fall under the category of public officials who lack political rights. Therefore, they cannot engage in any political activity even after availing leave¹⁵. However, the PPPR received a complaint against nine principals who had participated in a political campaigning meeting of the presidential candidate Hon. M.L.A.M. Hizbullah.

Throughout the election period the Election Commission closely monitored the activities carried out by The Samurdhi Authority which comes under the Ministry of Primary Industries and Social Empowerment. The PPPR received several complaints from different districts on deploying Samurdhi officials to promote the presidential candidate in the area. In one instance that was reported from the Nuwara Eliya district, Samurdhi officials had been instructed to prepare a priority list of new Samurdhi beneficiaries in the Nuwara Eliya district which resulted in promoting the current government at the time. Furthermore, the first rally of the presidential candidate Hon. Sajith Premadasa was held in Galle Face, Colombo on 10th October 2019. Officials who were working in some of the regional offices were given instructions to participate in this rally and senior officers had asked for a list of names of the participants. Each and every incident shows violation of the directions issued by the Election Commission and violation of laws and ethics governing the public sector.

During the election period, the PPPR received a number of complaints on public officials engaging in social media campaigns. Even though strict directions were issued by the Election Commission to prevent public officials from engaging in illegal social media campaigns, many such officials did engage in these activities. On the other hand, it seems impractical to monitor social media engagement of around one million public officials. These social media posts included not only promotion of candidates but also false and/or prejudicial information on candidates.

THE USE OF GOVERNMENT BUILDINGS

The PPPR received 24 complaints regarding misuse of State owned or maintained buildings. This included displaying election propaganda banners in state buildings, using state holiday bungalows for election activities, and using state buildings for meetings without payment. Even though the Direction No. 6(i) of the Extraordinary Gazette published on 19th September 2019 issued by the ECSL strictly prohibits the use of State offices, buildings, schools, other buildings belonging to the State and Circuit bungalows, it was observed that this direction was commonly violated by public officials.

From the total number of complaints, the majority of complaints were related to the use of government premises and buildings for displaying cutouts and banners. For example, cutouts and banners of Presidential Candidate Gotabaya Rajapaksha were displayed at

15. Direction No. 2(i) of the Extraordinary Gazette published on 19th September 2019

Madampe Railway station and the Hambantota General Hospital. Cutouts supporting Sajith Premadasa were displayed in Lanka Sathosa premises at Marawila. A complaint was received from one of the election observers where posters belonging to the two main candidates were displayed at the Sethsiripaya building - one of the main government buildings in Colombo.

The PPPR had also collected evidence of misuse of government bungalows and quarters. They were used for various purposes during the election time. A government quarters in Ampara belonging to the Irrigation Department of Sri Lanka was used as a district office of the Sri Lanka Freedom Party. Similarly, a government quarters belonging to the Divisional Secretariat of Ampara was used for propaganda work of New Democratic Front candidate. The quarters were used to store cutouts, and banners of the said candidate.

The PPPR team used the Right to Information to verify whether payments have been made for using government halls and premises for election meetings. Upon receiving a complaint that the library premises of the Uva Paranagama Pradeshiya Sabha were used to convene a meeting for the members of the said Pradeshiya Sabha who supports the SLPP candidate, the PPPR lodged an RTI request with the Pradeshiya Sabha asking whether any payments were made for using a government building for a political meeting. They respond clearly confirming the fact that the meeting was held violating the directions issued by the Election Commission.

Sri Lanka Podujana Peramuna supporters utilized the meeting hall of the Bandarawela Municipal Council to convene a meeting on 22nd September 2019. The PPPR once again used an RTI to confirm whether necessary payments were made to reserve the hall for such meeting. However, the Municipal Council responded to the RTI application stating that the hall was reserved for another purpose on the same day and not for a propaganda meeting - the photographic evidence possessed by the Programme team clearly proves otherwise.

ACTION TAKEN AND DIRECT INTERVENTIONS

The program for the protection of public resources is not only designed to report misuse of public resources but also works with the aim of preventing such misuses. As mentioned earlier, the 2019 Presidential Election was relatively calm when compared with the earlier Presidential Election. During the 2015 Presidential Election, the PPPR team received a large number of complaints and was able to unveil countless numbers of incidents of misuse of public property. Even though we did not observe a similar environment during the present election, the PPPR team did come across several instances where our efforts prevented large scale misuse and were able to save millions of rupees of State funds.

ONE MILLION LOAN ISSUED TO SAMURDHI OFFICIALS

The PPPR team received a complaint from an election observer about a program organized by the Ministry of Primary Industries and Social Empowerment at Suhurupaya government premises to provide cheques worth one million to Samurdhi officials. A complaint was lodged with Election Commission immediately and on the day of the program i.e. on 21st October 2019 our observers were able to visit the location. Moreover, our observers were able to record a conversation with some of the attendees which proved that the program lined up was in violation of the election laws. After passing the voice recording along with a fresh complaint, the Election Commission had raided the place immediately with a prevention order. “The Ceylon Today” reported that the ministry had planned to distribute over 100 cheques and anticipated to carry out the plan in several phases¹⁶.

IMPLEMENTATION OF A LOAN SCHEME INTRODUCED TO SAMURDHI STAFF DURING ELECTIONS

The Department of Samurdhi Development had introduced a loan scheme to its staff in 2019. The PPPR team observed that this loan scheme had been marketed as an initiative taken by the government and the “Samurdhi” supplementary newspaper published by the Ministry of Primary Industries and Social Empowerment had reported it.

Sending a complaint to the Election Commission, the PPPR team highlighted the fact that implementation of such a program during the election period could promote one candidate. Accepting the same, the Election Commission had directed the Department of Samurdhi to postpone the implementation of the loan scheme till the 16th of November 2019. The Authority had also taken prompt action to inform all the Samurdhi Bank Managers to follow the directions of the Election Commission. The PPPR team would like to appreciate the actions taken by the Department of Samurdhi Development to not implement the proposed program during the election and for following the directions given by the Election Commission.

16. <https://ceylontoday.lk/print-more/43288>

RS. 5000 LOAN TO THE ESTATE WORKERS FOR DEEPAVALI CELEBRATION

Followers of the Hindu faith celebrated Deepavali festival on 27th October 2019. A few days before the festival, several newspapers such as Aruna and Resa reported that a cabinet paper had been approved to release government funds to be given to the estate workers before Deepavali festival. Newspapers further reported that Rs.5000 will be given to one estate worker as a loan on zero interest base.

Having come across such news, the PPPR team decided to make a complaint to the Election Commission. In the complaint we highlighted that if such a payment was distributed to estate workers during the election period it can definitely promote one candidate over others. Timely intervention of the PPPR team and the Election Commission prevented this initiative of the government.

ELECTION DAY ENGAGEMENT

On the day of the election, only a few minor election violations were reported. TISL deployed 23 staff members to observe the polling booths and monitor counting centers.

The Presidential Election was held on 16th November 2019 and overall, the Election day was a peaceful one. TISL, partnering with CMEV deployed 23 staff members to observe the polling stations and monitor counting centers around the country (see the below table). Apart from these observers, all 185 election observers were vigilant about the misuse of public resources on the day of the election.

District	Number of Observers
Monitoring Counting Centers	
Puttalam	03
Kandy	02
Vavuniya	02
Batticaloa	02
Kaluthara	01
Colombo	01
Anuradhapura	01
Matara	01
Mobile Observations	
Ratnapura	03
Galle	02
Colombo	01
Gampaha	01
Monaragala	02
Matara	01

Table 2: Districts covered and number of staff members involved in observation on the day of the election

Due to the heavy rain that prevailed in some of the areas that day, ballot boxes were transported to the counting centers later than expected. This caused a delay in commencing counting procedure.

Another challenge encountered by the counting officers was the length of the ballot paper. This time the ballot paper had to accommodate names and symbols of all the 35 candidates contesting for the election and because of this, counting officers had to put extra effort to ensure the accuracy of the counting. Some of the counting centers lacked basic facilities such as sanitary facilities to the public officials who engaged in counting. Irrespective of the challenges, counting process was carried out.



PARTNERSHIPS & JOINT EFFORTS

For the first time in Sri Lankan history a presidential debate was held on 5th October 2019. March 12 Movement invited all the candidates to one public platform for a face to face discussion. TISL being a part of the March 12 Movement was actively involved in organizing this event.

Except for Sri Lanka Podujana Peramuna candidate Hon. Gotabhaya Rajapaksa other invited Presidential candidates attended the people's forum and it included the presidential candidate for New Democratic Front Sajith Premadasa, Presidential Candidate of the National People's Force Anura Kumara Dissanayake, Former Army Commander and candidate of the National People's Movement Mahesh Senanayake, presidential candidate of Frontline Socialist Party Duminda Nagamuwa, United Socialist Party presidential candidate Sirithunga Jayasuriya, National Development Front Presidential candidate Rohan Pallewatta, Presidential candidate of the Nawa Sihala Urumaya Sarath Manamendra, Presidential candidate of the Socialist Party of Sri Lanka Dr. Ajantha Perera, and Ariyawansa candidate of the Democratic United National Front.

During the event a report containing a series of proposals by the public requesting to hold a free and fair election was handed over to independent election monitors at the occasion. Some of the proposals addressed the issues surrounding the prevention of misuse of public property and illegal advertising methods, minimizing media misuse, hate speech and false news propaganda, responsible social media usage, the financial use of political parties, conduct of election monitors, using election bribes, religious places and religious clergy for electioneering.

CONCLUSION

The 2019 Presidential Election was not free from misuse of public resources. Similar to the previous elections, the government used its resources for their election propaganda. Use of vehicles and government buildings & premises for election campaigns was frequent. Another highlight was public officials using social media platform for electioneering and steps should have been taken by the relevant government bodies to raise awareness among the public officials about their political rights during the election.

Over the period with readily accessible information, people are developing a strong perception against the use of public resources for personal gain. The same mindset was visible through the social media engagement on the content TISL developed and disseminated on the misuse of public resources. This positive vibe amongst the citizens created an environment where the use of public resources for election campaign were unpleasant and unwelcomed.

The efforts made by the ECSL and their respective regional staff to prevent the misuse of public resources and uphold the integrity of the election must be appreciated. The PPPR team witnessed timely and rapid actions taken by the election officers led to a halt in the violation of elections laws. However, on the other hand we also observed that a lack of proper mechanism to monitor the progress of the complaints as one of the main shortcomings. Establishing such mechanism will in turn increase transparency of the complaint process and strengthen trust in the ECSL.

Relatively, a low number of incidents were reported during the 2019 Presidential Election when compared with the previous Presidential Election. One of the main reasons behind this is the restoration of the powers of the ECSL which empowered the Commission to take prompt action against violations of election laws. After the 2015 Presidential Election, Former Secretary to the then President and Former Telecommunication Regulatory Commission Director General were found guilty of dishonestly misappropriating Rs. 600 million to gain undue advantage to a one candidate (also known as 'Sil Redi' case). Thus, it sets an example that even the highest officials of the government can be held accountable for misusing the government funds.

Finally, the team urges the Election Commission of Sri Lanka to take necessary legal actions against the perpetrators who has violated the election law using the powers vested on the Commission by the article 104GG of the Constitution. We also appeal to the newly elected President H.E. Gotabaya Rajapaksa and other relevant government authorities to strengthen the entire legal framework by bringing electoral reforms which will ensure electoral integrity in all elections.

RECOMMENDATIONS

1. A proper mechanism must be introduced by the Election Commission to monitor the progress of the complaints. This would provide the complainant an opportunity to inquire as to the status of the investigations and action taken to address the issue.
2. Clear instructions must be issued by the Election Commission to the public officials on their political rights during an election period combined with awareness raising to strengthen the knowledge on misuse of public resources specially during the election period.
3. It is recommended that separate instructions to be issued to all the public authorities on the use of government vehicles during the election period and a system is developed to track down and identify government vehicles easily.
4. Since political party and campaign finance is unregulated, it is recommended to enact a comprehensive law on campaign finance and expenditure.
5. In the absence of a campaign finance law, the ECSL should consider issuing a set of guidelines containing the best practices on the use of funds for campaigning for the upcoming parliamentary election. This can be similar to the media guideline.
6. Capacity building and brainstorming sessions should be carried out to enhance the familiarity on Facebook community standards of internal and external stakeholders.
7. Adopt a new law on Declaration of Assets and Liabilities including international best practices or amend the existing law on disclosure, doing away with the secrecy provision.
8. Declaration of Assets and Liabilities of all the candidates should be proactively disclosed once the declarations were submitted to the ECSL and access to such declarations should be permitted without any unnecessary delay where the declarations are submitted to the ECSL by the candidates within the time frame described under Section 2(1)(dc) and proviso to the Section 3(2) of the Declaration of Assets and Liabilities Law, No.1 of 1975.
9. Election Commission of Sri Lanka should take necessary legal actions against the perpetrators who has violated the election law using the powers vested on the Commission by the article 104GG of the Constitution.

ANNEX 01 PRINT AND ELECTRONIC ADVERTISEMENTS

**Are you vigilant
About the misuse of public property during
This election period?**

**The use of state resources for
election propaganda
is a misuse of your tax money.**

**If you have information of such election violation,
Fulfill your citizen's duty by informing us
With the relevant evidence.**

Protect public property during this election.

**Program for the Protection of Public Resources (PPPR)
Transparency International Sri Lanka, 5/1, Elebank Road, Colombo 05
FAX 011 250 1707
EMAIL pppr@tislanka.org
HOTLINE
076 322 3442 076 322 3662**

TRANSPARENCY INTERNATIONAL SRI LANKA

Misuse of public property is a punishable offence

**தேர்தல் காலங்களில் பொதுச்
சொத்துக்களை முறையற்ற வகையில்
பயன்படுத்துவது பற்றி உங்களுக்குத்
தெரியுமா?**

**எந்தவொரு ஜனாதிபதி வேட்பாளரும் தனது தேர்தல்
பிரச்சார நடவடிக்கைகளுக்காக**

அரசு வாகனங்கள், உயர்கு வானூர்தி உள்ளிட்ட பொதுவற்ற வசதிகளை
பயன்படுத்தக்கூடாது.
அரசு மற்றும் கட்டுத்தரணை அமைப்புகள்,
அரசு ஊழியர்கள் மற்றும் பொது நிதி
மையறாட்ட மற்றும் அனைத்து உதவிகளை பயிற்சித்தல்
அரசு நிபந்தனைகள், புகழி உயர்வு மற்றும் இடமாற்றம் செய்தல்
போன்றன பொது சொத்துக்களை தவறான முறையில் பயன்படுத்தி
உங்களது வரிபணத்தை துஷ்பிரயோகம் செய்வதாகும்.

**உடனடி அறிவிப்புகளுக்கு
076 322 3442 076 322 3662**

TRANSPARENCY INTERNATIONAL SRI LANKA

தேர்தல் காலங்களில் பொது சொத்துக்களை முறையற்ற வகையில் பயன்படுத்து தண்டனைக்குரிய குற்றமாகும்

**මැතිවරණ කමයේ
තොදා දේපළ අයවා පරිහරණය
පිළිබඳ සිබ විමසිල්ලෙන්ද?**

**කිසියම් ජනාධිපතිවරණ අපේක්ෂාකරු
සිය මැතිවරණ ව්‍යාපාරය ප්‍රවර්ධනය කිරීම සඳහා**

රජයේ ගාන වාහන ඉවත් ගානා ඇතුළුව ප්‍රවාහන පහසුකම්
රාජ්‍ය සහ සංස්ථා සේවකයන්
රජයේ ගොඩනැගිලි හා මහජන අරමුදලින්
වාතාපවි හා ආපදා සහන බෙදා දීම
රාජ්‍ය සේවක පත්කිරීම් හා මාරු කිරීම්

**අනුභූත කර හෝ තොදා දේපළ අයවා ලෙස ගොඩනැගීම
සිව් මිදු මිදුල් අවිභාවිත කිරීමයි.**

**තොදා දේපළ රැකගැනීමේ වැඩසටහන
ඉක්මනින්ම ඉවහරණයේ ලී ලබා ගනු 5/1, එලිබැංකු පාර, කොළඹ 05
ෆැක්ස් 011 250 1707
ඊ මේල් pppr@tislanka.org
සන්නිවේදන අංක 076 322 3442 076 322 3662**

TRANSPARENCY INTERNATIONAL SRI LANKA

තොදා දේපළ අයවා ලෙස ගොඩ නැගීම සිව් මිදු ලෙස භාවිත වීමයි

ANNEX 02

GAZETTE NOTIFICATION



ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය
අති විශේෂ
The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 2141/52 - 2019 සැප්තැම්බර් මස 19 වැනි බ්‍රහස්පතින්දා - 2019.09.19
No. 2141/52 - THURSDAY SEPTEMBER 19, 2019

(Published by Authority)

PART I : SECTION (I) — GENERAL Government Notifications

Directions to prevent the misuse of movable or immovable properties belonging to the State, State Corporations or Statutory Boards during the period of an election for the promotion of or in prejudice to any party, group or candidate or obstructing the conduct of the election

THE Election Commission does hereby issue the following directions under Article 104B(04)(a) of the Constitution for the purpose of preventing the use of any movable or immovable property belonging to the State, any State Corporation or Statutory boards for the purpose of promotion or in prejudice of the election of any candidate of any political party or independent group or using such properties in a manner that would obstruct the conduct of the election.

MAHINDA DESHAPRIYA
Chairman
Election Commission

N. J. ABEYSEKERE
Member
Election Commission

S. RATNAJEEVAN H. HOOLE
Member
Election Commission

Election Commission,
Sarana Mawatha, Rajagiriya,
19th September 2019.



In terms of Article 104B(04)(a) of the Constitution "The Election Commission or the Commissioner General of Elections shall have the power during the period of the election to prohibit the use of any movable or immovable property belonging to the State or any State Corporation" for the purpose of promoting or preventing the election of any candidate of any political party or independent group contesting the election. Under Sub-Article (b) of that Article it shall be the duty of every person or officer in whose custody or under whose control such property is for the time being, to comply with, and give effect to such directions issued by the Election Commission. All Public Officers including all Secretaries to Ministries, Chief Secretaries of Provinces should comply with these directions. Also the Heads of institutions should ensure that all officers coming under their control do comply with these directions. These directions are applicable to all public institutions such as Ministries, Departments, Commissions, Provincial Councils, Local Authorities, State Corporations, Statutory Boards, State Banks, State Universities and Companies taken over by the government.

02. Officials

- (i) Since the skills and knowledge of public officers and their time are deemed to be State property, no public officer should engage in any activity to promote any party or candidate inside or outside the office premises within the prescribed office hours or after reporting to work or while on duty leave. Officers who are not entitled to political rights should not engage in political activities even after availing leave. Even the officers who are entitled with political rights may engage in political activities during office hours, only on personal leave or special leave approved in advance.
- (ii) No officer or employee is entitled to use State properties *viz.* other public officers, vehicles, communication equipment, printers, telephone facilities, photocopy machines, media equipment, circuit bungalows etc. for political activities and doing so is strictly prohibited.
- (iii) Officers should refrain from making any recruitment, appointments and promotions and transfers of whatever nature in public institutions without the approval of the Election Commission other than those which are formally executed under the powers vested in the commissions appointed by the Constitutional Council.
- (iv) The consent of the Election Commission may be granted for recruitments/ internal promotions initiated before the election is declared considered by the Secretary to a ministry or head of a department to implement without postponement under an all island programme and when the Commission is satisfied that recruitments / promotions common to whole public service or public sector are carried out without any political intervention. In any of these instances, a request should be made to the Commission.
- (v) When Public Service recruitments are made at divisional or provincial levels for the purpose of avoiding interruptions to sanitary, janitorial or maintenance services and of maintaining essential services, such recruitments should be made with the concurrence of the Election Commission and it is the responsibility of relevant authorities to carry out such recruitments in a transparent manner and free of political intervention.
- (vi) General transfers of all public officers including teachers and principals of government schools who would be deployed for election duties in the areas where election is to be held should be suspended for the period starting from the day on which the nominations are received and ending two weeks after the date of poll. Transfers of public officers or officers of State Corporations/ Statutory Boards who would not to be engaged in election duties should not be carried out political grounds during the period of election and it is the responsibility of all relevant authorities to give effect to transfers without leaving room for complaints of political intervention. This is not applicable to transfers done on disciplinary orders and if any transfer is required to be made on exigency of service or under special circumstances, such requirement should be brought to the notice of the Election Commission and approval obtained.

- (vii) It shall be an offence for any public officer who is not entitled to political rights to engage in making any propagation or statement using his/her private social media account or any other account to promote or to prejudice any political party or candidate. Public officers who are entitled to political rights even should not engaged in such propagation using the state resources and making or publishing hate speech shall be an offence.

03. Functions, Mobile Services and Trade Fairs

(i) *Functions:*

Functions such as laying foundations, opening ceremonies and vesting in the public utilizing government funds and State properties should not be organized or conducted during the period of election since the politicians who attend these functions may express opinions and views on the election and conduct of these function ceremonially may lead to the promotion or cause prejudice to any party, group or candidate.

In the case of functions scheduled before the publication of the poll notice and which cannot be cancelled or postponed, the Election Commission should be informed for instructions of the Commission to proceed ahead.

In the event of conducting such function spending government funds and if a promotion of or prejudice to any party/group or candidate has taken place at such function, the officials who organized such function should be held responsible for same. The officers who organize functions/events should bring to the notice of the Returning Officers of respective districts of such events scheduled to be held during the period of election well in advance enabling them to make arrangements to observe such events and keep records. It is strictly prohibited to make any statement or to do any act, display or distribute flags/ banners/posters/leaflets/notices promoting parties/groups or candidates at any function conducted spending State funds during the period of election and the officers or authorities of State institutions who organize or fund such functions should prevent such promotions taking place.

(ii) *Mobile Services and Trade Fairs.*

Since there is a tendency to use the mobile services and trade fairs conducted during the election period utilizing public funds and State property to facilitate the public for the promotion of or causing prejudice to parties/groups or candidates, organizing or conducting of such trade exhibitions or carnivals should be avoided during the period of the election. It should be brought to the notice of the Election Commission of any such trade exhibitions or carnivals which have been scheduled prior to the publication of the Notice of Poll to be held during the period of election and impossible to be cancelled or postponed, for instructions of the Commission. In the event of conducting such trade exhibitions or carnivals using government funds and promotion of or prejudice caused to any party/group or candidate is taken place at such trade exhibitions or carnivals, the officials who organized such events should be held responsible for same. The officers who organize mobile services and trade exhibitions should also take action to bring to the notice of the Returning Officers of respective districts of such events to be held during the period of election well in advance enabling them to make arrangements to observe those and keep records.

It is strictly prohibited to make any statement or do any act, display or distribute flags/ banners / posters /leaflets /notices promoting parties /groups or candidates at mobile services and trade exhibitions conducted spending State funds during the period of election and the official or State institutions that organize or fund such events should prevent such promotions or causing prejudice to any candidate or party or group.

04. Implementation of programmes to provide common amenities and aids and Special Projects

- (i) Long term or medium term special programmes may be implemented for the provision of facilities to the public or for the development of the country or continuous programmes to provide the citizens with common amenities and cannot be suspended due to the election. Action should be taken to ensure that no promotion of or causing of prejudice to any party/group or candidate is taking place through such special projects or continuous programmes after the issue of the Notice of Poll.
- (ii) The Election Commission will monitor whether any promotion of parties/groups or candidates is taking place through the aforesaid special projects or continuous programmes conducted during the period of election.
- (iii) During the period of election the launch of programmes to distribute State lands to conduct land kachcheris to award title deeds for State lands, deeds to transfer ownership of houses and reliefs to residents in election areas, providing subsidies, fertilizer, agro equipment for the plantation industry, and providing sports goods, kitchen and household items, equipment for self employment, bicycles, solar power lamps, building material for house constructions, release of housing loans/ compensations etc. should be suspended. However, if it is apparent that suspension of the programmes will impede the meeting of needs of the general public, the Election Commission should be consulted for necessary instructions. In the event the programmes already initiated or for which approval has already been obtained should be proceeded with, it should be the responsibility of the officers who are charged with such programmes to implement them with the participation of only the relevant officials without leaving any room for the promotion of parties/groups or candidates.

05. Vehicles

- (i) All officers in whose custody the pool of vehicles belonging to the State including motor cars, jeeps, cabs and buses, should take extra care in maintaining vehicle pools and assigning such vehicles during the period of election so as to prevent such vehicles being used for the promotion of election propaganda campaigns of any political party, independent group or candidate. It should be noted that assigned vehicles belonging to the State and vehicles rented to be used for specific duties are included in the said category. During the period of election running charts should be properly maintained particularly in respect of pool vehicles and vehicles other than assigned vehicles and the running charts should be scrutinized by a staff officer on a daily basis to make sure that such vehicles are not used for any political propaganda purpose. Action should be taken to ensure that State vehicles are not used for the promotion of or causing prejudice to any political party on the pretext that they are used for official purposes with fake entries to that effect in the running charts.
- (ii) No vehicle other than those two vehicles assigned for the purpose of providing security to H.E. the President can be operated without the exclusive registration number issued by the Department of Motor Traffic and as such no Minister, Deputy Minister, member of their staff or other person can use State vehicles or vehicles belonging to public institutions without the relevant registration number. Therefore, Secretaries of Ministries / Heads of Departments and officers in whose custody the pool of vehicles belonging to should ensure that no vehicle belonging to State Department or State institution is operated with garage numbers (fake numbers).
- (iii) All Secretaries of Ministries / Heads of Departments should ensure that public funds are not utilized for the use of airplanes or helicopters or other vehicles for political propaganda activities.

06. State offices, buildings, schools, other buildings belonging to the State and Circuit bungalows

- (i) Government offices, buildings, schools, other buildings and circuit bungalows belonging to the State too are a State property. Therefore, such buildings should not be used to conduct political meetings, discussions, etc. It should not be construed that these directions prevent the buildings and halls which can usually be reserved on payment of specified fees by any political party/ group, candidate, from being so reserved during the period of election on payment of relevant fees without causing any discrimination towards any Party/ Group / Candidate. It is strictly prohibited to provide State owned circuit bungalows, rest houses, holiday resorts free of charge to persons engaged in election propaganda activities. It is strictly prohibited to reserve any State owned circuit bungalows, rest houses, holiday resorts free of charge to persons engaged in political propaganda activities. Circuit bungalows, rest houses, and holiday resorts belonging to the State or State institutions and situated in respective areas to any politician, officer or any other persons should not be reserved on a full time basis during the period of election. Also, no person who avails accommodation at the said circuit bungalows should be allowed to engage in promoting any party, group or candidate. Any election propaganda posters, banners, cutouts, bill boards etc. to not to allowed to be displayed on State owned buildings or within their premises.
- (ii) When play grounds or bare lands and halls or such other buildings belonging to the State, Provincial Councils and Local Authorities are reserved for the purpose of holding election propaganda rallies to promote a Political Party/ Independent group or candidate, such reservation should be done in a transparent manner that no special favor, priority or discrimination is meted out to any party, independent group or candidate. Also such venues should not be reserved for the use of any party / group / candidate or for any other purpose for a prolonged period of time so that such venues are not available for the use by other parties.

07. General

- (i) State property, State institutions, vehicles, equipment, buildings, lands and public officers in particular, should not be allowed to be used for the promotion of parties, groups or candidates in relation to the election. No officer should allow any misdeeds such as attaching public officers of State institutions and vehicles belonging to the State or State institutions or rented vehicles stationed outside the electoral area to offices or institutions situated within the electoral area on the pretext that such attachments are done to carry out urgent duties or special development project work in electoral areas but used to promote (or to prejudice) parties, groups or candidates to take place. Officers, Vehicles, equipments, belonging to Media Units of any State institution including Provincial Councils, Local Authorities, State Corporations, Boards, State Banks, other Statutory institutions, and State Universities should not be used for the promotion of any party, group or candidate. If entertainment equipments such as podiums, stages, decorations and vehicles, airplanes and helicopters belonging to State institutions are usually hired under normal circumstances, such hiring during the period of election should be done in a transparent manner offering equal opportunities for all parties / groups to hire such equipments.
- (ii) Promotion of or causing prejudice to any party / group or candidate should not be done by way of broadcasting / telecasting / publishing through television, radio and press advertisement or by displaying billboards at public places spending public funds to give publicity to development programmes of the government or to anniversaries / commemorations.
- (iii) All private cable television channels, private electronic and print media institutions, websites, mobile and fixed telephone service providers should, act in such manner during the period of the election so as to not cause any breach of election laws and in compliance with the media guidelines, directions and instruction circulars issued by the Election Commission and it should be the responsibility of the regulatory bodies of such institutions to ensure the strict compliance thereto by the institutions aforesaid.

- (iv) It shall be the responsibility of the Heads of State institutions and Provincial or Regional Heads of the Local Bodies under whose custody or control such street lamp posts and telephone poles, public roads and pavements etc. fall, to prevent such properties situated within their area of authority being used for display of banners, posters, flags, billboards and other decorations and for advertising by way of painting or otherwise with the intention of promotion or prejudice of parties / groups / candidates.
- (v) The Heads of Ministries, Departments or State Institutions should take action to remove photographs, advertising boards, flags, billboards and decorations which have been erected before the commencement of the election period and are being displayed at public places for the promotion or demotion of parties/ groups / candidates. The Heads of Local Bodies and the Commissioners and Secretaries of such Bodies should take action to remove advertising boards, flags, billboards and decorations erected at public places within their area of authority.
- (vi) The directions preventing the use of State properties for the promotion or in prejudice of election of any candidate at this election should be strictly adhered to without any favour. The Secretaries to Ministries should pursue action to give instructions in this regard to the Heads of Departments, State Corporations and other institutions coming under the purview of the respective Ministry. Also, the Secretaries of Ministries and Heads of institutions should ensure that all officers of their respective institutions comply with these directions and instructions.
- (vii) Public officers should essentially draw their attention to Article 104b (02) of the Constitution which reads as "It shall be the duty of the Commission to secure the enforcement of all laws relating to the holding of the election and it shall be the duty of all authorities of the State charged with the enforcement of such laws, to cooperate with the Commission to secure such enforcement".
- (viii) Please note that the responsibility of bringing the contents of these directions to the notice of respective Ministers, Non Cabinet Ministers, State Ministers, Deputy Ministers and the staff of the Ministers lies with the Secretary to the respective Ministry while the responsibility of bringing such matters to the notice of Governors, Chief Ministers and other Ministers of the Provinces lies with the Chief Secretary and the Secretaries of the respective Provincial Ministries.
- (ix) The Secretaries to Commissions should pursue action to bring these directions to the notice of the Chairpersons and Members of such Commissions, as applicable.
- (x) In addition to the provisions of the Constitution, it is the duty of the Chief Accounting Officer or Accounting Officer of Ministries / Departments / institutions to prevent or to take action to prevent the misuse of State properties.
- (xi) Non-compliance with these directions is a punishable offence under Article 104(GG) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The term "State" wherever it appears in these directions means all State institutions including State Ministries, Departments, Provincial Councils, Local Authorities, State Corporations, Statutory Boards, Commissions, State banks, State universities, Nationalized Companies and institutions of which more than 50% of shares is held by the State or State owned companies.

The term "public officers and employees" wherever it appears in these directions means all persons who engage and are employed in the institutions aforesaid and receive a salary or allowance.

The *Gazette Extraordinary* No. 2048/12 dated 12.04.2017 issued in this regard is hereby rescinded.

ANNEX 03 PRESS RELEASES



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08/10/2019

TISL Launches Hotline to Report Misuse of Public Property; Cautions Public Officials

Transparency International Sri Lanka (TISL), today launched a hotline through which the general public will be able to report incidents where public resources are being misused for election campaigning purposes. Complaints can be submitted by calling 076 322 3662 & 076 322 3442 or via e-mail to pppr@tisirilanka.org

The Program for the Protection of Public Resources (PPPR), the election monitoring arm of TISL, has played a significant role as an election monitor since 2002 and serves as the only monitor exclusively focused on the misuse of public property. Ahead of the 2019 Presidential Election, the PPPR has mobilised 25 district level observers who will be responsible for co-ordinating 160 observers in each electorate in the country.

TISL calls on all candidates, political parties, public officials and the media to ensure compliance with regulations and circulars issued by the Elections Commission. Special attention should be drawn towards the directions contained in the extraordinary gazette notification issued by the Elections Commission, number 2141/52 of 19 September 2019. The gazette notification provides clear directions on the conduct of public officials, use of state-owned vehicles and buildings and the conduct of special events amongst other things.

TISL Executive Director Asoka Obeyesekere said, "It is important that all public officials, ranging from those working in Local Government Authorities to those employed at State Owned Enterprises, are aware of the strict penalties for violations. Failure to comply with directions of the Elections Commission could result in public officials facing up to 3 years imprisonment as per article 104GG of the Constitution".

Obeyesekere added, "it is important that public officials are mindful of incidents of misuse of public property during elections which have led to the conviction of senior officials in recent years. We hope that such instances will serve as a deterrent and will encourage those currently in public service to safeguard themselves from political interference."

21/10/2019

President's Mistimed Benefit Could Amount to At Least Rs. 360 Mn – TISL

Transparency International Sri Lanka (TISL) is deeply concerned by the recent decision made by the cabinet of ministers, allowing President Maithripala Sirisena to remain in his official residence at Mahagama Sekara Mawatha (formerly Pajet Road) in Colombo. TISL believes that the timing of the decision when the President is still in office and is the Head of Cabinet raises serious questions regarding conflicts of interest. This is underscored by the decision of the Supreme Court in 2007 regarding the premature exercise of executive power under the Presidents Entitlements Act of 1986.

Whilst former Presidents and their widows/widowers are entitled to an official residence as per the provisions of the Presidents Entitlements Act 1986, TISL wishes to draw attention to a 2007 judgment of the Supreme Court. In a fundamental rights application to the Supreme Court (SC FR503/2005) a three-judge bench ruled in favour of the petitioners, quashing the cabinet decisions on grants and entitlements to President Chandrika Bandaranaike Kumaratunga, whilst the President was in office.

In its judgement the court noted, *"The facts that have been clearly established in this case prove that the 1st respondent and the Cabinet of Ministers of which she was the head, secured for the 1st respondent benefits and advantages in the purported exercise of executive power in breach of the provisions of the President's Entitlement Act No. 4 of 1986."*

TISL is firmly of the stance that decisions pertaining to such entitlements should only be taken at such time that the sitting President ceases to hold office. Furthermore, the fact that the decision was made during an election period where the President has declared that he will remain impartial despite his party's decision to support a candidate, also raises several red flags on electoral integrity and potential corruption under the Bribery Act.

TISL Executive Director Asoka Obeyesekere said, "A conservative estimate could place the benefit afforded to President Sirisena, as a result of retaining the official residence at Mahagama Sekara Mawatha, at over 360 million rupees over a 20-year period. As this decision has been made by the cabinet of ministers led by President Sirisena the conflict of interest is deeply concerning and illustrates little consideration for the protection of public resources".

TISL calls for the cabinet to immediately revoke any cabinet decision on the entitlements of President Sirisena. As an election observer, TISL monitors and reports on the misuse of state resources during elections. Complaints can be raised with TISL on their election complaints hotline – 076-322-3442 or at pppr@tislanka.org

2019/11/11

TISL Questions Use of SLAF Helicopters to Transport Politicians to Campaign Rallies

Transparency International Sri Lanka (TISL) has drawn the attention of the Elections Commission to the use of helicopters owned by the Sri Lanka Air Force (SLAF), for the transport of politicians to and from campaign rallies. TISL is concerned that this could constitute a violation of the directions issued by the Elections Commission in its gazette notice 2141/52 and calls on the Commission to take appropriate action.

The gazette states that "All Secretaries of Ministries / Heads of Departments should ensure that public funds are not utilized for the use of airplanes or helicopters or other vehicles for political propaganda activities."

TISL has simultaneously submitted a Right to Information request to the Sri Lanka Air Force seeking details of any payments that have been made for such transportation.

TISL Executive Director Asoka Obeyesekere said, "Whilst the Elections Commission has already issued directions regarding the use of state assets including helicopters, strict oversight is required by the heads of public authorities, including the Sri Lanka Air Force, to ensure that these rules are abided by. Public officials should be vigilant given the potential legal consequences that could stem from their acts or omissions".

TISL's network of observers have reported incidents of the use of helicopters to transport candidates and senior politicians. In the past week reports have come in from rallies in Seruwawila, Kanthale and Trincomalee. The most recent report was received and photographed by TISL observers on 10 November 2019 when two helicopters were used to transport the New Democratic Front Candidate, Minister Sajith Premadasa and UNP Leader, Prime Minister Ranil Wickremesinghe, respectively to campaign rallies in Nuwara Eliya, Badulla and Kegalle.

Obeyesekere added, "If these services have been paid for, the ability of certain candidates to procure such services, raises questions around the financing of their campaigns. The candidates should use this opportunity to proactively disclose information on their campaign finances to underscore that state resources have not been misused".

There has been a significant reduction in state resource abuse complaints recorded to date by the TISL network of electorate observers, in comparison to previous Presidential elections, highlighting a potentially encouraging trend. However TISL calls on the public to remain vigilant on the misuse of public property during the final stages of the campaign period and asks that any complaints be reported to the Program for the Protection of Public Resources (PPPR) on 076 322 3442/ 076 322 3662 or via e-mail to pppr@tisrilanka.org.

A database of verified complaints of misuse of public property received through our hotline and reports from our observer network can be accessed at www.tisrilanka.org/pppr

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