

**IN THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*Presidential Elections Act 1981.
Election for the Office of President
holden on the Twenty sixth day of
January 2010.*

Sarath Fonseka,
No. 6, 37th Lane,
Queen's Road,
Colombo 3.
And presently detained at
The Navy Headquarters,
Colombo 1.

PETITIONER

**S.C. PRESIDENTIAL ELECTION
PETITION NO. / 2010**

Vs.

1. Mahinda Rajapakse,
"Temple Trees",
Galle Road,
Colombo 3.
and
Medamulana,
Weeraketiya.
2. Mohomed Casim Mohomed Ismail,
No 118, Soysa Watta,
Welisara, Ragama.
3. Achala Ashoka Suraweera,
Susiri Place,
Muruthalawa.
4. Channa Janaka Sugathsiri Gamage,
No 51, Piliyandala Road,
Maharagama

5. W.V. Mahiman Ranjith,
No. 3, 34th Lane, Queen Road,
Colombo 3.
6. Anura Liyanage,
No. 7, Sumner Place,
Colombo 8.
7. Sarath Manamendra,
No. 50, Ketawalamulla Lane,
Colombo 9.
8. M.K.Sivajilingam,
Ammankoviladi,
Velvetithurai.
9. Ukkubanda Wijekoon,
No. 24/6, 4th Lane,
Pitakotte, Kotte.
10. Lal Perera,
No. 7/9B, Sewana Mawatha,
Gangabada Road, Suwarapola,
Piliyandala.
11. Sirithunga Jayasuriya,
No. 57/7, D.S. Fonseka Road,
Colombo 5.
12. Wickramabahu Karunarathne,
No. 17, Barrack Lane,
Colombo 2.
13. Idurus Mohomed Ilyas,
No 68, Masjid Road,
Puttalam.
14. Wije Dias,
No. 301 1/1, Main Road,
Aththidiya, Dehiwala.
15. Sanath Pinnaduwa,
No. 240/1D, Boralugoda,
Athurugiriya.

16. M.M. Mohomed Musthafa,
No 16, Ramakrishna Road,
Colombo 6.
17. Battaramulla Seelarathana Thero,
No 185/B, Dewala Road,
Thalangama South, Koswatta,
Battaramulla.
18. Senarathne De Silva,
No 5/B, Webada Road, Negombo.
19. Aruna de Soysa,
"Susiri", Nape,
Kosgoda.
20. Upali Sarath Kongahage,
No. 02, Community Road,
Obehena Road,
Madiwela.
21. Muthubandara Themini-mulla,
No. 3/1, Sanghamitta Mawatha,
Kandy
22. Dayananda Dissanayake,
Commissioner of Elections,
Elections Secretariat,
Sarana Mawatha,
Rajagiriya.
23. Razik Zarook PC,
31/1 Horton Place,
Colombo 7.
24. Kalinga Indatissa,
325 ½ Thimbirigasyaya Road,
Colombo 5.
25. Hudson Samarasinghe,
Chairman,
Sri Lanka Broadcasting Corporation,
Torrington Square,
Colombo 7.

26. Wimal Weerawansa,
21/1 Asoka mawatha,
Jayanthipura,
Battaramulla.

RESPONDENTS

TO: HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

On this 16th day of February 2010.

The **Petition of Sarath Fonseka** the Petitioner above named, whose name is subscribed below, respectfully states as follows : -

1. The Petitioner, Sarath Fonseka, is a person who was a candidate at the above election, and claims to have had a right to be returned or elected at the above election.
2. Consequent to a Proclamation made under Article 31(3a)(a)(i) of the Constitution of the Democratic Socialist Republic of Sri Lanka, an Election for the office of President of the Republic of Sri Lanka was held on the 26th day of January 2010. The candidates who contested the said election are those whose names are set out hereinafter at paragraph 4, namely, the Petitioner and the 1st to 21st Respondents above named.
3. The 1st Respondent above named, who was the candidate nominated by the United People's Freedom Alliance (hereinafter referred to as the UPFA), was declared elected in terms of Section 56 of the Presidential Elections Act No. 15 of 1981, by Gazette Extraordinary No. 1,638/10 dated 28th January 2010 issued

under the hand of the 22nd Respondent, Commissioner of Elections, notifying the result of the said Election.

4. Set out hereunder are the votes polled by each of the candidates who contested at the said election, as declared by the 22nd Respondent, Commissioner of Elections:-

Mahinda Rajapakse (1st Respondent)	6,015,934	57.88%
Sarath Fonseka (Petitioner)	4,173,185	40.15%
Mohomad Cassim Mohomad Ismail	39,226	0.38%
Achala Ashoka Suraweera	26,266	0.25%
Channa Janaka Sugathsiri Gamage	23,290	0.22%
W.V. Mahiman Ranjith	18,747	0.18%
Anura Liyanage	14,220	0.14%
Sarath Manamendra	9,684	0.09%
M.K. Sivajilingam	9,662	0.09%
Ukkubanda Wijekoon	9,381	0.09%
Lal Perera	9,353	0.09%
Sirithunga Jayasuriya	8,352	0.08%
Vickramabahu Karunaratna	7,055	0.07%
Idroos Mohomad Ilyas	6,131	0.06%
Wije Dias	4,195	0.04%
Sanath Pinnaduwa	3,523	0.03%
Mohamed Musthaffa	3,134	0.03%
Battaramulle Seelarathana Thero	2,770	0.03%
Senaratna de Silva	2,620	0.03%
Aruna de Zoysa	2,618	0.03%
Sarath Kongahage	2,260	0.02%
M.B. Themiminulla	2,007	0.02%
Valid Votes	10,393,613	99.03%
Rejected Votes	101,838	0.97%
Total Polled	10,495,451	74.49%
Registered Electors	14,088,500	

5. The 22nd Respondent is a made a party hereto in view of the averments hereinafter contained in respect of the conduct of the said Election.
6. The 23rd, 24th, 25th & 26th Respondents have been made parties hereto as they have committed the corrupt practices as pleaded in paragraphs 16(B) & 16(C) hereof as agents of the candidate, the 1st Respondent. The 20th Respondent has already been made a party hereto and also has committed the corrupt practices as pleaded in paragraphs 16(B) & 16(C) hereof as an agent of the candidate, the 1st Respondent.

GROUNDS

7. The Petitioner states that the Election of the 1st Respondent to the Office of President of Sri Lanka is void and/or undue on any one or more of the following grounds:
 - (a) That by reason of the occurrence of the incidents and the commission of the acts set out in paragraph 8 hereof, there was General Intimidation as stated in Section 91(a) of the Presidential Elections Act, by reason of which the majority of voters were or may have been prevented from electing the candidate whom they preferred, namely, the Petitioner.
 - (b) That by reason of the occurrence of the incidents and the commission of the acts set out in paragraph 9 hereof, there was General Treating as stated in Section 91(a) of the said Act, by reason of which the majority of voters were or may have been prevented from electing the candidate whom they preferred, namely, the Petitioner.
 - (c) That by reason of the occurrence of the incidents and the commission of the acts set out in paragraph 10 hereof, there was General Bribery as stated in Section 91(a) of the said Act, by reason of which the majority

of voters were or may have been prevented from electing the candidate whom they preferred, namely, the Petitioner;

- (d) That by reason of the occurrence of the incidents and the commission of the acts set out in paragraphs 11 and 12 hereof, which constitute other misconduct and other circumstances as stated in Section 91(a) of the said Act, by reason of which the majority of voters were or may have been prevented from electing the candidate whom they preferred, namely, the Petitioner;
- (e) That by reason of the Non-Compliance with the provisions of the said Act relating to the Election as stated in Section 91(b) of the said Act, for the reasons set out in paragraph 13 hereof, the aforesaid Election was not conducted in accordance with the principles laid down in the provisions of the said Act, and that Non-Compliance affected the result of the Election;
- (f) That by reason of the corrupt practices as set out in paragraph 14 hereof, the 1st Respondent is guilty of the corrupt practice of treating under Section 77 read together with Section 91(c) of the Presidential Elections Act.
- (g) That by reason of the corrupt practices as set out in paragraph 15 hereof, the 1st Respondent is guilty of the corrupt practice of bribery under Section 79 read together with Section 91(c) of the Presidential Elections Act.
- (h) That by reason of the corrupt practices set out in paragraph 16(A) hereof, the 1st Respondent is guilty of the corrupt practice of making false statements under Section 80(1)(c) read together with Section 91(c) of the Presidential Elections Act.

- (i) That by reason of the corrupt practices set out in paragraphs 16(B) & 16(C) hereof, the said agents of the 1st Respondent named therein, namely the 20th, 23rd, 24th, 25th & 26th Respondents, are guilty of the corrupt practice of making false statements under Section 80(1)(c) read together with Section 91(c) of the Presidential Elections Act.

8. **GENERAL INTIMIDATION : CONCISE STATEMENT OF MATERIAL FACTS ON WHICH THE PETITIONER RELIES**

There was general intimidation committed in connection with the election. This consisted of acts of intimidation. These acts of intimidation are set out below.

<u>DATE OF COMPLAINT</u>	<u>DISTRICT & ELECTORATE</u>	<u>INCIDENT /COMPLAINT</u>
23.12.2009	Puttlam / Chilaw	Wife of UNP Janabala Secretary , M D Jude Nishantha assaulted by unknown thugs requiring medical attention in Mundel Hospital for head injuries. Complaint made to Mundel Police.
24.12.2009	Kurunegala/ Alawwa	Dec. 20, 2009: Group of UNP workers campaigning for the Petitioner were assaulted by unknown thugs in Alwva Town early morning. Police action not taken.
24.12.2009	Ratnapura/ Kalawana	UNP Local Government Group Leader Shayanaka Molligoda's Tippers bearing Nos. SGLA 7913 and SLGE 0096 stoned by UPFA Thugs. Complaint made to Kalawana Police about 10 persons who were involved in stoning. No action taken by Kalawana Police.

24.12.2009	Vanni/ Vavuniya	Group of unknown UPFA workers unlawfully entered the IDP Camp at Settikulam and threatened the refugees and demanded that they vote for the 1 st Respondent or else that they all will be killed if they campaign for the Petitioner.
24.12.2009	Matale/ Dambulla	UNP Office at Kumbukkandanwela damaged by unknown thugs. UNP Janabala workers threatened with death. Incident reported to Sigiriya Police but no action taken.
24.12.2009	Matale/ Dambulla	UNP Election office at Kumbukkadawala has been attacked by UPFA thugs
24.12.2009	Ratnapura/Kalawana	Shooting at and stoning the two Tippers belonging to Jayanatha Molligoda PS Member of Kalawana and a complain has been made to the Kalawana Police
24.12.2009	Vanni/ Vavuniya.	A group of persons who came from Colombo entered the camp illegally, got the inmates of the Ananada Kumaraswami IDP Camp to gather at one place and threatened to kill them unless they vote for the 1 st Respondent.
26.12.2009	Hambantota/ Tangalle	Dec. 25 night: UPFA Thugs have damaged the residence of W A Francis at Weeraketiya, Hakuruwela, active supporter of the Petitioner. Estimated damage to premises around Rs.75,000/- and ejected the residents. Complaint to Weraketiya Police.
28.12.2009	Polonnaruwa/Polonnaruwa	Inspector Polonnaruwa Police has requested the all Police Officers /Policemen to bring at least ten Civil Defense persons to be involved in the election campaign of the 1 st Respondent.
29.12.2009	Kalutara / Bandaragama	During the protest staged in Bandaragama on the arrest of Rev Dambara Amila Thero, UPFA Thugs attacked the protestors and injured over 10 of the protestors causing hospitalization due to injuries. Complaint made at Police Station Bandaragama

29.12.2009	Mahanuwara/ Nawalapitiya		H.M. Manjula Bandara of Nawalapitiya has been attacked by thugs roaming about intimidating the voters.
30.12.2009	Matara / Matara		Petitioner's party office maintained by local UNP Workers, attacked at 01.30 a.m. by UPFA Thugs who came in a white van. Offenders have shot into the air with weapons and chased of the party workers who were in the office.
30.12.2009	Matara/Matara		UNP Election offices situated at Makavita and Nagaha Junction has been attacked by thugs who came in white vans around 1.30 in the morning.
31.12.2009	Anuradhapura/Mihintale		Rathnapala resident at Sivalakulama, Puliyankulama in the Galenbindunuwewa electorate has been short at using a firearm issued to farmers and caused damages. These firearms may be used for further election violence.
02.01.2010	Gampaha/Kelaniya Kiribathgoda -		attack by thugs on SF supporters engaged in canvassing the voters legally
03.01.2010	Gampaha/Wattala		Attacking PS Member Malcolm Perera while he was riding a motor bicycle by a group of thugs of the UPFA who came in vehicle number GG-6677
03.01.2010	Colombo/Kelaniya		Attacking the group of people who were engaged in canvassing for SF in Kiribathgoda in Kelaniya and damaging vehicles by unknown thugs.
03.01.2010	Kandy/ Nawalapitiya		Attack by an armed gang of over 100 persons on about 150 persons who were engaged in the distribution of Petitioner supporters who were canvassing for the Petitioner.
10-1-2010	Galle	Hikkaduwa	A. G. Sirisoma was attacked and assaulted by unknown persons
11-01-2010	Galle	Hiniduma	UNP Pradeshiya Sabha Members,

			namely, Premalal Liyanage, Mangala Liyanage, P. Widuramarasinghe, M. Dayaratne were assaulted causing injuries and damaged the vehicle by PA thugs.
11-01-2010	Galle	Karandeniya	Office in Mahagoda, Madakumbura, Kekiriya Junction, Mandorawala, Kurundugaha, Uragasmanhandiya were attacked and damaged.
11-1-2010	Galle	Karandeniya	UNP supporter Hewage Nuwan was assaulted by UPFA thugs
11-01-2010	Gampaha	Minuwangoda	Election Office that was operated at the house of Leelananda Padmasiri in Medagampitiya, Divulapitiya was attacked and destroyed.
12-1-2010	Hambantota	Beliatta	House of Senanayka was damaged using firearms
12-1-2010	Kurunegala	Galgamuwa	R. Piyadasa was assaulted
12-1-2010	Batticalo Kalkuda	Kalkuda	Hand Grenade was thrown and exploded.
13-01-2010	Polonnaruwa	Minneriya	M.G. Wasantha, Prematissa, Kamani Kulawardena were assaulted
13-1-2010	Polonnaruwa	Polonnaruwa	A.M. Somadasa was assaulted and his home and lorry were damaged.
13-01-2010	Matale	Dambulla	Election Office of Petitioner at No. 786 B, Dambulla - Anuradhapura was attacked and damaged for six times.
13-1-2010	Colombo	Kolonnawa	UNP supporters were assaulted by UPFA thugs in White Van
14-01-2010	Kurunegala	Dodamgaslanda	UNP Office was attacked and damaged by UPFA thugs.
14-01-2010	Kandy	Kundasale	UNP supporter D.K. Nawaz was intimidated through a telephone call

14-01-2010	Colombo	Kolonnawa	UNP Urban Council Member Kamal Jayakody and his supporters were assaulted and were hospitalized.
14-01-2010	Matara	Kamburupitiya	UNP Election Office was attacked and damaged
14-01-2010	Monaragala	Wellawaya	Habawaluwewa UNP Office was attacked and damaged.
14-01-2010	Hambantota	Beliatta	M.Dayasena, D.D. Ranjith, V.A.K. Sarath, S. Agampodi, H.K. Chaminda Ariyapala and Gunadasa were assaulted causing injuries and some of them were hospitalized. Houses of Upali Palihakkara, Arman Perera, Dananjaya Senanayake were attacked and damaged. Election Office in Vijyasiripura, Godawela, Kambussawela were attacked and damaged. Kusumawathie Kuruppuarachchi, mother of 2, was shot dead on the way from a meeting of the Petitioner's supporters and others got injured in Tissamaramaya.
14-01-2010	Polonnaruwa	Medirigiriya	Election office at Divulakkadawela was attacked and one Chandrasekara who was there was assaulted causing injuries.
15-01-2010	Galle	Ambalangoda	UNP Polling Agent D.M. Darshana was assaulted and was hospitalized with injuries
15-01-2010	Polonnaruwa	Polonnaruwa	UNP supporter K. Prasad Hemantha's House and Rice Mill was attacked and damaged by UPFA thugs
15-01-2010	Kegalle	Kegalle	Public Meeting was attacked by UPFA thugs
15-01-2010	Galle	Karandeniya	Eight Election Offices of the Petitioner in operation in Karandeniya were destroyed.
-do-	Kandy	Naula Menikhinna	Petitioner's supporter Siththi Basha's house was attacked and destroyed
15-01-2010	Kandy	Kundasale	Election Offices were attacked

-do-	Nawalapitiya		Chairman of Vtakadeniya UNP branch office was assaulted causing injuries
-do-	Matara	Matara	Parliamentarian Sagala Rathnayake's Office in Matara was attacked and destroyed. Police entries have been made.
16-01-2010	Balangoda		area residents of Viliyawaththa. Threatened by UPFA thugs
16-01-2010	Anuradhapura	Horoupathana	Election Office of the area was attacked and damaged. Mr. A. Dinapala was assaulted by unidentified persons
16-01-2010	Anuradhapura	Nochchiyagama	Three Wheeler of Nishantha Sujeewa Bandara was damaged
16-01-2010	Puttalam	Anamaduwa	U.N.P. Pradeshiya Saba Member R.M.Ajantha Sadaruwan' shop and Petitioner's Office was set fire and destroyed by people using T56 Guns.
16-01-2010	Polonnaruwa		Houses of D.G. Ranasingha, H.A. Darmarathne, S.K. Kulawardana, Miss M.S. Kamani Kumari, Sunil Senarathna, Fedrick Punchi Hewa, Nevil Wera Kumara, K. Premathilaka, T.M. Jayalath, Wasantha Kumara were attacked and damaged by thugs on 13 th and 14 th of Januaray 2010.
16-01-2010	Polonnaruwa	Polonnaruwa	House of UNP National Youth Front Nilanka Punchihewa was set on fire
16-01-2010	Anuradhapura	Kalawewa	Petitioner's Election Office at Kalunduwa Thambuththegama, Rajanganaya Road was attacked and destroyed.
-do-	Colombo	Kolonnawa	House of the Chairman of Urban Council was attacked, UC Member's hose attacked. And Opposition Leader of Kotikawaththa-Mulleriyawa was attacked and damaged.

-do-	Gampaha	Biyagama	UNP activist, Sirisena Panawala's house was attacked and inmates were intimidated.
17-01-2010	Batticaloa	Padiruppu	Eleven supporters of Sarath Fonseka were assaulted by UPFA thugs
17-01-2010	Rathnapura	Rakwana	U.N.P. supporter H.N. Hemdasa's house was attacked and valuable goods were destroyed by an unknown gangs
17-01-2010	Gampaha	Attanagalla	Fifteen incidents were reported in this area from 16-12-2009 to 12-01-2010 (destroying cutouts of Sarath Fonseka, attacking supporters houses by P.A. supporters)
17-01-2010	Puttalam	Kalpitiya	Patrick Perera a supporter of Sarath Fonseka was assaulted by People's Alliance supporters and hospitalized with injuries.
17-01-2010	Rathnapura	Rakwana	Sarath Fonseka's Election Office was destroyed and those who were there were taken as hostages.
17-01-2010	Kurunegala	Kurunegala	Election Office at Major. Milton Gunawardana's building was destroyed
17.01.2010	Anuradhapura	Kalawewa	PA Thugs came in three vehicle Nos.54-5830 black Fargo,51-0786 White Town ace and 325-3356 Double Cab and caused damages to property of Petitioner's supporters.
17.01.2010	Galle	Ambalangoda	The house of Harrison Petitioner's supporter, living behind the Police station at Ambalangoda had been attacked by a group of thugs of the PA. They have assaulted the inmates of the house too. 5 people of this house had been hospitalised
17.01.10	Kandy	Ududumbara	On 16th January 2010 the Artist returning after a meeting caused damages to the UNP Office situated at Hasalaka in front of the house of Y.A.Piyadasa traveling in vehicle No.32 Sri 1352.

			They also threatened the wife of Piyadasa.
17.01.10	Anuradhapura	Thambuthegama	several thugs attacked the UNP Office at Ragina Junction at Thambuthegama and also attacked the record bar close to the UNP office and robbed money and the items belonging to the record bar.
17.01.10	Kandy	Hasalaka	The Security Inspector of the CTB Depot at Hasalaka one Mr. R M P G Navaratne assaulted by thugs
17.01.10	Anuradhapura	Talawa	Today at about 1.p.m. Lakshman Jayatilleke of Talawa, Gangasiripura was not well and resting at home when threatened by UPFA thugs, who also robbed the cash in the house
18.01.10	Kurunegala	Wariapola	On 18.01.2010 between 12 and 1 am at Ambakadawara Kanatte Wewa, Wariapola about 15 thugs of the UPFA had assaulted some supporters of General Sarath Fonseka and killed one Dammika Herath by hitting him with iron rods on the head
18.01.2010	Kegalle	Aranayake	The owner of Rajapaksa stores and two of his brothers, Petitioner's supporters, had been assaulted and they have taken treatment from the hospital
18.01.10	Gampaha	Mahara	On 17.01.2010 at about 2.30 a.m. the house of Mr. KBSM Jayasiri which is situated at Rodahenawatta, Henagama was stoned and the roofing sheets were damaged
18.01.10	Kurunagala	Mawathagama	At about 1. a.m. a crowd of thugs had come armed with weapons to the house of Mr. Ajith Rohana, the Chief Organiser of the UNP situated at Wellawa Maha kandegama and threatened the people in the house with death and caused damages
18.01.10	Kurunagala	Mawathagama	On 18.01.10 early morning about 50 thugs came in 3 vehicles to the Nape Junction at Mawathagama and caused damages to the office of Petitioner.
19.01.10	Kandy	Gampola	The UNP Office at No.42 Angamana, Gampola on TB Panabokke Mawatha, had had been attacked by some thugs and two cut-outs of General Fonseka and the electrical switches damaged

19.01.10	Galle	Elpitiya	JVP MP Mr. Gamlath had been assaulted at Gurugodalla in Elpitiya by some thugs
19.01.10	Hambantota	Mulkirigala	The Blue Brigade members are terrorising the supporters of Sarath Fonseka and threaten to assault them and damage their houses
19.01.10	Kurunegala	Bingiriya	On the 16th night a group of thugs assaulted UNP supporters at Bingiriya.
19.01.10	Matale	Matale	One Lingeswaran alias TS Weerasinghe Igeneswaran who was attending to propaganda work with regard to the meeting which was held on 15.01.10 in support of Gen. Fonseka complained that her husband did not return home after the meeting. The next day his body was found near the rail track in Kandy having been brutally assaulted and murdered
19.01.10	Polonnaruwa	Dimbulagala	The Office of Petitioner at Dimbulagala Siripura had been attacked
19.01.10	Kandy	Nawalapitiya	during the afternoon the supporters of Gen Fonseka who were attending to canvassing work in Kurunduwatta Galpaya Nawalapitiya had been assaulted by some PA thugs
19.01.10	Kandy	Wattegama	threats caused to the UNP and JVP supporters working at the CTB depot
19.01.10	Jaffna	Kilinochchi	Two people who had been supporting Gen Fonseka in the election campaign had assaulted by thugs
19.01.10	Badulla	Mahiyangana	Jayawardene of Mahapitiya Village had been abducted by some PA thugs
20.01.10	Colombo	Kaduwela	At about 1.10 am a crowd of people who came in 3 vehicles attacked the election office of the UNP at 112, Bomiriya, Kaduwela and caused damages to the office and robbed several item
20.01.10	Trincomalee	Trincomalee	UPFA thugs threatening voters
20.01.10	A'pura	Notchchiagama	H Kusumawathie a SF supporter of No 64 Rathanapala Mw. Notchchiagama complains that at 2 am a group of thugs vandalized her shop

20.01.10	Galle	Hiniduma	A meeting to be held with police permission in the Nagoda District has been obstructed by UPFA supporters by destroying the decorations and posters.
21.01.10	Gampaha	Wattala	On the 20 th night some people in a white van had arrived at the Wattala and Jaela area and have taken the polling cards of the residents by force
21.01.10	Kurunegala	Alawwa	PA thug has been terrorising UNP Supporters by carrying a T81 weapon in a threatening manner
22.01.10	Digamadulla	Pottuvil	MP Chandradasa Galappathi and MP Wasantha Piyatissa were distributing election leaflets from Amparai to Akkaraipattu, Tirukovil and Potuvil just before the Akkaraipattu town when attacked by UPFA thugs
22. 01.10	Galle	Hiniduma	were coming to the meeting when their vehicle was stopped and they were assaulted. Sampath Srilal and about 20 others were injured and were taken to the Hiniduma hospital.
22.01.10	Gampaha	Kalagedihena	EA Siripala of Sapugastenne, Kalagedihena, and Namatissa along with some friends were assaulted by an unknown group of people when they went canvassing for SF
22.01.10	Batticaloa	Nth/Sth	UPFA thugs intimidating the voters in the Puttalam north and south areas
22.01.10	Ratnapura	Ratnapura	On the night of the 21 st 12 thugs forced themselves into the houses of the Hakamunwa village. They tore the polling cards and threatened the voters with death if they voted
22.01.10	Trinco	Trinco	UPFA thugs terrorising the supporters of the General in the Kappalthurai and Ambuvelupuram areas. District organisers Sivapathan and Polling officer T Vimalleshvari have been threatened with death
22.01.10	Matale	Matale	On the night of the 21 st RP Dayananda's residence at Rathgammanman Madawela had been looted and ransacked. He is now in Colombo in fear for his life

22.01.10	Kalutara	Horana	To day the following offices of the General have been attacked: Handapangoda, Bathugampola, Mahaingiriya, Ingeriya, Maputugala.
22.01.10	Digamedulla	Amparai	For the security of the Polling stations in the Digamadulla District female Police
22.01.10	Colombo	Kotte	Tiran Alles' house was bombed. This was done by the UPFA thugs
22.01.10	Polonnaruwa	Polonnaruwa	On the 17 th Jan some people arrived in vehicle Nos.32Sri4610 and 50-2040 to attack the UNP office and the residence at Galtalawa.
23.01.10	A'pura	Mihintale	AB Arunolis of Ipologama Eppawala was visited by 25 thugs at about 11 p.m. He was told not to work for the General or else he would be killed. They caused minor damage and left
23.01.10	Kegalle	Deraniyagala	Petitioner's offices at Tigala, Dhiowita, Udugampola and Ahettigama were burnt to the ground by UPFA thugs
23.01.10	Badulla	Hali Ela	The UNP Hathakma and Ketawela offices were burnt and destroyed on the night of the 22nd.
23.01.10	Kalutara	Agalawatte	Petitioner's office at Urugoda has been destroyed by some people.
26.1.10	Kandy	Nawalapitiya	SchoolUPFA Thugs chased away identified UNP/ G Sarath Fonseka voters at the following polling stations. 1. Dolosbage Junior School 2. Alagolla Junior School 3. Senadhikari Junior School 4. Yatapaana Junior School 5. Galpaya

9. **GENERAL TREATING : CONCISE STATEMENT OF THE MATERIAL FACTS ON WHICH THE PETITIONER RELIES**

There was general treating committed in connection with the election. The said acts of treating, consisted of the providing and serving food and drink, free of charge. The treating was done by the 1st Respondent, and his servants and agents acting on his instructions. The treating was done at:

- (a) “Temple Trees”, the officially designated residence of the Prime Minister of Sri Lanka which was illegally occupied by the 1st Respondent as one of his several residences and used as his election campaign office;
- (b) President’s House in Kandy; and
- (c) President’s House in Anuradhapura.

The treating was done between 23rd November 2009 (date of Proclamation of the election) and 26th January 2010 (date of Election.)

The treating was of the groups of electors mentioned below. Each of the above events had at least 3,000 participants. Some of the Public Officers so treated were officials directly involved in the election process such as Police Officers, Public Sector Trade Union members, and even members of the Attorney General’s Department.

These acts of treating are set out below.

Date	Group	Residence
7 th December 2009	Recipients of Swarnabhoomi Deeds	Temple Trees
8 th December 2009	Mediation Board officers	Temple Trees
10 th December 2009	Children of Samurdhi beneficiary families	Temple Trees
10 th December 2009	Officers of the State Education Sector	Temple Trees
11 th December 2009	Members of the Women Lawyers’ Association	Temple Trees
12 th December 2009	Attorneys-at-Law (including those from the Attorney General’s Department)	Temple Trees

13 th December 2009	Police Officers	Temple Trees
14 th December 2009	Trade Union members	Temple Trees
14 th December 2009	Artists	Temple Trees
15 th December 2009	Dairy Farmers	Temple Trees
20 th December 2009	Invitees to the Fourth Presidential Environmental Awards Ceremony	Temple Trees
21 st December 2009	New Manufacturers Forum	Temple Trees
21 st December 2009	Provincial Council Candidates who were not elected	Temple Trees
22 nd December 2009	Principals & Teachers of Central Province	Kandy President's House
22 nd December 2009	SLFP Activists in Central Province	Kandy President's House
23 rd December 2009	Group of UNP dissidents and former members	Kandy President's House
23 rd December 2009	Invitees to Fourth Convention of Sanasa	Kandy President's House
23 rd December 2009	Invitees to Meeting of members of Medarata Janatha Front and Kandy District United Front	Kandy President's House
24 th December 2009	Invitees to Meeting organized by Tharunyata Hetak	Kandy President's House
24 th December 2009	Invitees to Felicitation of Sportsmen & Sportswomen of the Central Province Presentation of Certificates	Kandy President's House
24 th December 2009	Kandy Professionals Meeting	Kandy President's House
27 th December 2009	Invitees to Meeting of members of the Civil Defence Force Anuradhapura	Anuradhapura President's House
27 th December 2009	Public Service United Nurses Union members	Temple Trees
28 th December 2009	Vocationally trained youth, representatives of Youth Organizations and Sports Associations	Anuradhapura President's House
29 th December 2009	Invitees to Meeting of Businessmen of the North Central Province	Anuradhapura President's House
29 th December 2009	Meeting of 5,000 persons who purportedly left UNP & JVP	Anuradhapura President's House
30 th December 2009	Invitees to Meeting of Teachers of Dhamma Schools and Pre Schools	Anuradhapura President's House
31 st December 2009	Ayurveda Physicians	Temple Trees
1 st January 2010	Students and Teachers studying Vocational and Industrial Training Institutes	Temple Trees
4 th January 2010	Female Family Health Officers	Temple Trees

4 th January 2010	Persons living around “Temple Trees” and each were given gifts	Temple Trees
5 th January 2010	Handicraftsmen, National Poets Association, Dhamma School Teachers	Temple Trees
8 th January 2010	Meeting of 3,000 representatives of the Community Water Project of Urban Development Ministry members of the Nenasala	Temple Trees
11 th January 2010	Graduates	Temple Trees

10. **GENERAL BRIBERY : CONCISE STATEMENT OF MATERIAL FACTS ON WHICH THE PETITIONER RELIES**

There was general bribery committed in connection with the election by the 1st Respondent or with his knowledge or consent or by his agents. These acts of bribery took place between 23rd November 2009 (date of Proclamation of the election) and 26th January 2010 (date of Election.) These acts of bribery are set out below.

- (a) The 1st Respondent increased or caused the increase of salary of State officials (numbering approximately 1 million) by Rs. 2500/- outside the approved Budgetary provisions.
- (b) The 1st Respondent caused members of the Civil Defence Force to be granted permanency in employment.
- (c) Subsequent to the meeting with Police officers at “Temple Trees”, the official residence of the 1st Respondent on 13-12-2009, Police batta (to approximately 200,000 police personnel) was increased and added to the December 2009 salary.
- (d) The “Mediation Board day” was held on the 8th of December 2009 (instead of the scheduled 18th July 2010) at the official residence of the

1st Respondent. More than 3000 people were present, as each mediation board member was requested to attend with ten others. Lunch and cash rewards were given to all participants.

- (e) The Railway Department recruited 650 people from the Matara District as temporary labourers on 23rd November 2009. However, the appointments were backdated to read 17th November 2009 (to circumvent the provisions of law / guidelines prohibiting such recruitments).
- (f) People from Mannar who attended a public meeting in support of the 1st Respondent at the Alankuda Grounds in Kalpitiya were paid Rs.500/- each by the Ministry of Resettlement and Disaster Relief Services.
- (g) 40 persons nominated by Minister Karuna Amman were employed by the Eratteperiyakulam, Vavuniya Office of the Sri Lanka Broadcasting Corporation on or around 21st December 2009 till the conclusion of the poll.
- (h) All Officers of the Sri Lanka Fisheries Corporation were promoted with increases in salary with effect from 1st December 2009.
- (i) Promotions were effected to persons employed within the National Housing Development Authority by letter dated 10th December 2009.
- (j) State officials attached to the Ministry of Public Administration and Home Affairs were granted permanency in service by virtue of circular no. EST-4/PEMNT/03/0201 dated 25th November 2009.

11. **OTHER MISCONDUCT OR OTHER CIRCUMSTANCES: USE OF STATE RESOURCES: CONCISE STATEMENT OF MATERIAL FACTS ON WHICH THE PETITIONER RELIES**

There were other misconduct or other circumstances which occurred between 23rd November 2009 (date of Proclamation of the election) and 26th January 2010 (date of Election.) These incidents were also contrary to the Guidelines issued by the Commissioner of Elections dated 8th December 2009, and consisted of the use of State resources towards promoting of the candidature of the 1st Respondent, between the 23rd November 2009 (the date of proclamation of the election) and 26th January 2010 (date of election).

These acts of the use of State resources are set out below.

- (a) Use of a large stage belonging to the Sri Lanka Ports Authority for the public rallies promoting the candidature of the 1st Respondent.
- (b) Vehicles belonging to the Sri Lanka Ports Authority were deployed to the Southern Province to transport supporters and used for propaganda of the 1st Respondent.
- (c) 20 Vehicles belonging to the Ministry of Road Development used to transport cut-outs of the 1st Respondent.
- (d) Use of several hundreds of buses belonging to the Central Transport Board to transport, free of charge, supporters of the 1st Respondent to rallies held right around Sri Lanka in support of his candidature.
- (e) Use of Sri Lanka Air Force helicopters to transport family members of the 1st Respondent, Ministers, Members of Parliament, Directors and

Heads of Statutory institutions, to public meetings in support of the candidature of the 1st Respondent.

- (f) Use of facilities/head office of the Department of Government Information to record the programs promoting the candidature of the 1st Respondent, at the expense of the Department of Government Information.
- (g) Public officials employed by, and vehicles belonging to, the Sri Lanka Ports Authority were used during working hours to set up stages for public meetings in support of the 1st Respondent.
- (h) The following State institutions sponsored hoardings/advertisements supporting the candidacy of the 1st Respondent at the places set out below:
 - Hoarding at Nugegoda by the State Trading Corporation
 - Hoarding at Town Hall (Colombo) by Presidential Secretariat
 - Hoarding at Thimbirigasyaya by Presidential Operational Office
 - Hoarding at Matara by Southern Development Authority
 - Advertisement published in the “Daily News” 24th November 2009 by the Water Supply & Drainage Board and Ministry of Water Supply & Drainage.
 - Advertisement published in the “Daily News” 24th November 2009 by the Ministry of Constitutional Affairs and National Integration.
 - Advertisement published in the *Ravaya* 20th December 2009 by Board of Investment
 - Advertisement published in the *Lankadeepa* (Sunday) 28th December 2009 by Ministry of Tourism
 - Advertisement published in the *Divaina* 29th December 2009 by Urban Development Authority and Ministry of Urban Development and Sacred Area Development

- Advertisement published in newspapers by Telecommunications Regulatory Authority
 - Advertisements published in all newspapers by State Institutions at State expense promoting the candidature of the 1st Respondent.
- (i) Contrary to the guidelines issued by the Commissioner of Elections, a senior police officer, on 23rd December 2009, directed the OICs of the District that they should not permit the removal of cut outs of the 1st Respondent.
- (j) The Telecommunications Regulatory Commission of Sri Lanka in violation of the Telecommunication Act and especially section 5 thereof, directed mobile phone operators to transmit a New Year's Day greeting / message from the 1st Respondent to their respective subscribers (totalling 13.5 million), which message was supportive of the election campaign of the said 1st Respondent. Such facility was not given to the Petitioner although it was requested by the Petitioner.
- (k) The following State buildings and vehicles were misused for the election campaign of the 1st Respondent:
Kelaniya - Sri Lanka Transport Board Bus Depot, Peliyagoda - used as campaign office of the 1st Respondent, placards, hoardings, flags displayed within and outside the premises.
Puttalam - Sri Lanka Transport Board Office - used as campaign office of the 1st Respondent.
- (l) Propaganda on Government websites in favour of the election campaign of the 1st Respondent, and against the candidacy of the Petitioner (www.gov.lk, www.defence.lk, www.news.lk)

- (m) 140 vehicles belonging to the Ministry of Livestock Development, MILCO, State Engineering Corporation, were used in the election campaign of the 1st Respondent.
- (n) 220 vehicles belonging to the Mahaweli Authority of Sri Lanka were used in the election campaign of the 1st Respondent.
- (o) Officers of the Mahaweli Authority of Sri Lanka were used in the election campaign of the 1st Respondent.
- (p) Two schools in the Anuradhapura District (St. Joseph's College - Primary Section, and Mahabodhi Vidyalaya) were closed to enable the chairs to be used for a Bodhi Pooja to invoke blessings on the 1st Respondent.
- (q) 71 security officers / employees attached to the Sri Lanka Ports Authority were released to carry out election work for the 1st Respondent in the Southern Province.
- (r) Several serving Ambassadors, diplomats and officers of the Ministry of Foreign Affairs have been actively involved in the election campaign of the 1st Respondent while still being officially in State employment. Hemantha Warnakulasuriya (Ambassador to Italy), Bandula Jayasekera (Consul General - Canada), and M M Zuhair (Ambassador to Iran), Jaliya Wickremasuriya (Ambassador to US), Palitha Kohona (Permanent Representative to the UN), Newton Guanratne (Ambassador to Myanmar), Nihal Jayasinghe (High Commissioner to the United Kingdom) made statements to the print and electronic media, supportive of the candidacy of the 1st Respondent. These persons were based at the Lakshman Kadirgamar Institute for international Relations, Horton Place, Colombo 7, and carried out a campaign for the re-election of the 1st Respondent at state expense. These persons, while in Sri Lanka,

continued to receive their official emoluments, and their respective consulates/embassies were compelled to function, until the conclusion of the election, in the absence of a head of mission.

- (s) Sub Lieutenant Yoshitha Rajapakse of the Sri Lanka Navy, a son of the 1st Respondent, while serving as an Officer in the Sri Lanka Navy, appeared on the electronic media and at public meetings, making statements supportive of the candidacy of the 1st Respondent.
- (t) Gotabhaya Rajapakse, while serving as Secretary to the Ministry of Defence made statements to the print and electronic media and addressed public meetings, supportive of the candidacy of the 1st Respondent.
- (u) Lalith Weeratinga, while serving as Secretary to the President made statements to the print and electronic media and addressed public meetings, supportive of the candidacy of the 1st Respondent.
- (v) Lakshman Hulugalle, Director General of the Media Centre for National Security, which is not a legally valid office, made statements to the print and electronic media and addressed public meetings, supportive of the candidacy of the 1st Respondent.
- (w) W. Karunajeewa Chairman, Chandrasiri de Silva, Director of the Peoples Bank organized the distribution of leaflets at the Colombo Fort Railway Station, World Market, and at the Head office of the People's Bank, on 6th January 2010, promoting the candidature of the 1st Respondent.
- (x) The Commandant of the STF issued a direction to distribute a leaflet directing the officers of the STF to vote for the 1st Respondent.

- (y) Lt. General Jagath Jayasuriya, Commander of the Sri Lanka Army, made statements to the print and electronic media and addressed public meetings, supportive of the candidacy of the 1st Respondent.
- (z) Major General Shavindra Silva, while serving in the Sri Lanka Army, made statements to the print and electronic media and addressed public meetings, supportive of the candidacy of the 1st Respondent.
- (aa) Major General S. Manawadu, while serving in the Sri Lanka Army, made statements to the print and electronic media and addressed public meetings, supportive of the candidacy of the 1st Respondent.
- (bb) Senior Police officers summoned all police officers of police stations along Galle Road from Colombo - Moratuwa, Gampaha, Negombo, Colombo South, Colombo Central to meetings, at which they delivered a speech canvassing the re-election of the 1st Respondent.
- (cc) High officials of all the Universities in Sri Lanka including the Vice Chancellors made statements to the print and electronic media and addressed public meetings, supportive of the candidacy of the 1st Respondent.
- (dd) Many Heads of State Media, or State controlled media organisations, continued to hold positions within political parties supporting the 1st Respondent, contrary to the Regulation 15 of the “Guidelines to be observed by the Electronic and Print Media in regard to Broadcasting/Telecasting/Publishing of Matters relating to the Presidential Election”, issued on 17th December 2009 by the 22nd Respondent Commissioner of Elections. The Chairman of the Sri Lanka Broadcasting Corporation, Hudson Samarasinghe, (25th Respondent hereto) is also the SLFP Organiser for the Colombo West Electorate.

Deputy General Manager of the Independent Television Network Sudharman Radaliyagoda holds the position of SLFP Organiser for the Kurunegala District. The reviewer of the newspapers for ITN Lalith de Silva, functions as an SLFP organizer for the Colombo District. CEO of the Sri Lanka Rupavahini Corporation Karunaratne Paranavitane is the SLFP organizer for the Ratnapura District. These persons participated in news programs and discussions and used their official positions in their respective media organizations to promote the candidacy of the 1st Respondent.

- (ee) Ariyaratne Athugala, Chairman, Sri Lanka Ruapvahini Corporation, Anura Siriwardena, Chairman, ITN and Mahinda Abeyesundera, Editor, Dinamina newspaper, while holding their respective positions, made statements to the print and electronic media and addressed public meetings, supportive of the candidacy of the 1st Respondent.
- (ff) Several serving high officers of the Sri Lanka Army, made statements to the print and electronic media and addressed public meetings, supportive of the candidacy of the 1st Respondent.
- (gg) The Commissioner of Elections issued Guidelines dated 17th December 2009 with regard to the conduct of Electronic and Print Media with regard to the Presidential Elections 2010.
- (hh) Notwithstanding the said directives, and in direct contravention of the Order of Your Lordships' Court dated 15th January 2010 in SC FR Application No.957/2009, the State Media including the Sri Lanka Rupavahini Corporation, Sri Lanka Broadcasting Corporation, as well as the State controlled Independent Television Network Limited and Associated Newspapers of Ceylon Limited, have deliberately acted in a manner extremely partial and favourable to the 1st Respondent, by

carrying news items, documentaries and advertisements advocating his election and totally defamatory of and against the Petitioner. The Petitioner was not given the right of response to such items.

- (ii) The said institutions have gratuitously carried the news items, documentaries and advertisements advocating the election of the 1st Respondent thereby causing loss of revenue to the State.
- (jj) Associated Newspapers of Ceylon Ltd actively promoted the candidacy of the 1st Respondent in its daily and weekly newspapers and publications by including over 10 pages of propaganda material for the 1st Respondent in each such publication.
- (kk) The Sri Lanka Rupavahini Corporation refused to broadcast paid advertisements submitted by the Petitioner despite the Petitioner having indicated the ability to make full payment in advance.
- (ll) The State media gave live coverage to meetings at which the 1st Respondent participated while the Petitioner's such meetings were not given any publicity at all, or virtually none.
- (mm) On 17th December 2009 Sri Lank Rupavahini Corporation was given the sole right to televise live the proceedings of nomination day at the Elections Secretariat. It showed the handing over of nominations by all 22 candidates except the Petitioner.
- (nn) The Associated Newspapers of Ceylon Limited has carried false statements with regard to arms deals allegedly carried out by the son-in-law of the Petitioner.

(oo) Notwithstanding, and in contravention of, the specific direction of the Commissioner of Elections, the Sri Lanka Rupavahini Corporation and the Sri Lanka Broadcasting Corporation failed to afford the Petitioner a reasonable amount of airtime to reply to defamatory statements made against him.

12. **FALSE STATEMENTS WHICH CONSTITUTE OTHER MISCONDUCT OR OTHER CIRCUMSTANCES :**
CONCISE STATEMENT OF MATERIAL FACTS ON WHICH THE PETITIONER RELIES

These false statements of facts are in relation to the personal character of the Petitioner as set out below.

- (A) The 1st Respondent, during the last few days of the election campaign, falsely alleged and presented a fake document purporting to be an alleged agreement between the Petitioner and the Tamil National Alliance which would lead to the division of Sri Lanka in the event of the Petitioner being elected President of Sri Lanka.
- (B) The 20th, 25th & 26th Respondents, as agents of the 1st Respondent, during the last few days of the election campaign, falsely alleged and presented a fake document purporting to be an alleged agreement between the Petitioner and the Tamil National Alliance which would lead to the division of Sri Lanka in the event of the Petitioner being elected President of Sri Lanka.
- (C) Commencing approximately at 1 p.m. on the day of the Election, 26th January 2010, Upali Sarath Kongahage, Razik Zarook, Kalinga Indatissa, Hudson Samarasinghe & Wimal Weerawansa (the 20th, 23rd, 24th, 25th & 26th Respondents hereto) made false statements, that the

petitioner was not qualified to be elected as President of Sri Lanka, and that even if the Petitioner were elected as President he will be disqualified from holding such office. These false statements were broadcast without break until the close of poll at 4 p.m. by Sri Lanka Rupavahini Corporation, Sri Lanka Broadcasting Corporation, Lakhanda and the Independent Television Network. These false statements repeatedly broadcast on the above media had a deterrent effect preventing voters supporting the Petitioner from exercising their franchise. The said Upali Sarath Kongahage, Razik Zarook, Kalinga Indatissa, Hudson Samarasinghe & Wimal Weerawansa were supporters of the 1st Respondent, and had been actively engaged in speaking and working to promote the candidacy of the 1st Respondent throughout the period from the nomination to the close of the poll. The said institutions which broadcast the said false statements were owned and/or controlled by the State and therefore by the 1st Respondent, and were agents of the 1st Respondent. The said false statements were made and broadcast with the knowledge and consent of the 1st Respondent.

The Petitioner further states that 10,495,451 voted over a period of 9 hours on 26th January 2010 at an average of 1.15 million votes per hour and that the said false statements had a direct bearing on the voters in that the electors were made to believe that the Petitioner was not eligible to be elected as the President of Sri Lanka and a vote cast in his favour would be wasted and thus affected the free and fair exercise of the people's franchise.

13. **NON-COMPLIANCE WITH THE PROVISIONS OF THE PRESIDENTIAL ELECTIONS ACT: CONCISE STATEMENT OF MATERIAL FACTS ON WHICH THE PETITIONER RELIES**

(A)

There were instances of non-compliance with the provisions of the Presidential Elections Act. Threatening and chasing away by UPFA thugs

of counting agents of all candidates [*other than the agents of the 1st Respondent*], and the failure of the election officers and police and security forces personnel to prevent this, and thereafter election officers continuing with the count in the absence of the said counting agents.

Matale District

Counting agents of all candidates [*other than the agents of the 1st Respondent*] were threatened and chased away by unknown thugs from all counting centres in the Dambulla, Laggala, Matale and Rattota Electorates.

Ratnapura District

Counting agents of all candidates [*other than the agents of the 1st Respondent*] were threatened and chased away by unknown thugs from all counting centres in the Rakwana and Balangoda Electorates.

Puttalam District

Counting agents of all candidates [*other than the agents of the 1st Respondent*] were threatened and chased away by unknown thugs from all counting centres in all Electorates in this District.

Kurunegala District

Counting agents of all candidates [*other than the agents of the 1st Respondent*] were threatened and chased away by unknown thugs from all counting centres in all Electorates in this District.

Gampaha District

Counting agents of all candidates [*other than the agents of the 1st Respondent*] were threatened and chased away by unknown thugs from all counting centres in all Electorates in this District.

Anuradhapura District

Counting agents of all candidates [*other than the agents of the 1st Respondent*] were threatened and chased away by unknown thugs from all counting centres in all Electorates in this District.

Polonnaruwa District

Counting agents of all candidates [*other than the agents of the 1st Respondent*] were threatened and chased away by unknown thugs from all counting centres in all Electorates in this District.

(B)

- (1) After the count was concluded, 65 ballot papers, many clearly with a “x” or “1” in front of the “swan” symbol of candidate Sarath Fonseka were found in Ratnapura, wrongly bearing an indication of the reverse thereof that same were rejected votes. Several hundreds of burnt ballot papers were also found in the vicinity.
- (2) Eastern Provinces / Vavuniya / Killinochchi - Many voters, including IDPs, were effectively disenfranchised in the provinces due to the irregularities on the part of the Government in organizing documentation (including identification documents and delivery of polling cards), and the failure to provide transport facilities to IDPs, notwithstanding previous assurances of transport facilities.

- (3) Failure to provide transport facilities to residents of IDP camps in the North. As a result only 5,000 out of 100,000 eligible and registered voters could cast their votes.
- (4) Over 627,000 Polling Cards were not delivered to registered voters.
- (5) Colombo District
Notwithstanding prior notification that the sealing of ballot boxes for postal voting would commence at 7.30a.m. on 4th of January 2010, when the Petitioner's polling agents arrived at the designated place by 7.30 a.m. it was apparent that sealing of ballot boxes had concluded by that time.

14. **CORRUPT PRACTICE BY CANDIDATE UNDER SECTION 91(C) OF THE ACT: TREATING : CONCISE STATEMENT OF MATERIAL FACTS ON WHICH THE PETITIONER RELIES & FULL PARTICULARS OF CORRUPT PRACTICES**

Corrupt practices of treating contemplated under Section 91(c) of the presidential Elections Act were committed in connection with the election by the 1st Respondent and/or with his knowledge or consent or by his agents.

The said acts of treating, consisted of the providing and serving food and drink, free of charge. The treating was done by the 1st Respondent, and his servants and agents acting on his instructions. The treating was done at:

- (a) "Temple Trees", the officially designated residence of the Prime Minister of Sri Lanka which was illegally occupied by the 1st Respondent as one of his several residences and used as his election campaign office;
- (b) President's House in Kandy; and
- (c) President's House in Anuradhapura.

The treating was done between 23rd November 2009 (date of Proclamation of the election) and 26th January 2010 (date of Election.)

The treating was of the groups of electors mentioned below. Each of the above events had at least 3,000 participants. Some of the Public Officers so treated were officials directly involved in the election process such as Police Officers, Public Sector Trade Union members, and even members of the Attorney General's Department.

These acts of treating are set out below.

Date	Group	Residence
7 th December 2009	Recipients of Swarnabhoomi Deeds	Temple Trees
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10 th December 2009	Children of Samurdhi beneficiary families	Temple Trees
10 th December 2009	Officers of the State Education Sector	Temple Trees
11 th December 2009	Members of the Women Lawyers' Association	Temple Trees
12 th December 2009	Attorneys-at-Law (including those from the Attorney General's Department)	Temple Trees
13 th December 2009	Police Officers	Temple Trees
14 th December 2009	Trade Union members	Temple Trees
14 th December 2009	Artists	Temple Trees
15 th December 2009	Dairy Farmers	Temple Trees
20 th December 2009	Invitees to the Fourth Presidential Environmental Awards Ceremony	Temple Trees
21 st December 2009	New Manufacturers Forum	Temple Trees
21 st December 2009	Provincial Council Candidates who were not elected	Temple Trees
22 nd December 2009	Principals & Teachers of Central Province	Kandy President's House
22 nd December 2009	SLFP Activists in Central Province	Kandy President's House
23 rd December 2009	Group of UNP dissidents and former members	Kandy President's House
23 rd December 2009	Invitees to Fourth Convention of Sanasa	Kandy President's House

23 rd December 2009	Invitees to Meeting of members of Medarata Janatha Front and Kandy District United Front	Kandy President's House
24 th December 2009	Invitees to Meeting organized by Tharunyata Hetak	Kandy President's House
24 th December 2009	Invitees to Felicitation of Sportsmen & Sportswomen of the Central Province Presentation of Certificates	Kandy President's House
24 th December 2009	Kandy Professionals Meeting	Kandy President's House
27 th December 2009	Invitees to Meeting of members of the Civil Defence Force Anuradhapura	Anuradhapura President's House
27 th December 2009	Public Service United Nurses Union members	Temple Trees
28 th December 2009	Vocationally trained youth, representatives of Youth Organizations and Sports Associations	Anuradhapura President's House
29 th December 2009	Invitees to Meeting of Businessmen of the North Central Province	Anuradhapura President's House
29 th December 2009	Meeting of 5,000 persons who purportedly left UNP & JVP	Anuradhapura President's House
30 th December 2009	Invitees to Meeting of Teachers of Dhamma Schools and Pre Schools	Anuradhapura President's House
31 st December 2009	Ayurveda Physicians	Temple Trees
1 st January 2010	Students and Teachers studying Vocational and Industrial Training Institutes	Temple Trees
4 th January 2010	Female Family Health Officers	Temple Trees
4 th January 2010	Persons living around "Temple Trees" and each were given gifts	Temple Trees
5 th January 2010	Handicraftsmen, National Poets Association, Dhamma School Teachers	Temple Trees
8 th January 2010	Meeting of 3,000 representatives of the Community Water Project of Urban Development Ministry members of the Nenasala	Temple Trees
11 th January 2010	Graduates	Temple Trees

15. **CORRUPT PRACTICE BY CANDIDATE UNDER SECTION 91(C) OF THE ACT: BRIBERY: CONCISE STATEMENT OF MATERIAL FACTS ON WHICH THE PETITIONER RELIES & FULL PARTICULARS OF CORRUPT PRACTICES**

Corrupt practices were committed in connection with the election by the 1st Respondent or with his knowledge or consent or by his agents. These corrupt practices took place between 23rd November 2009 (date of Proclamation of the election) and 26th January 2010 (date of Election.) These corrupt practices consisted of acts of bribery are set out below.

- (a) The 1st Respondent increased or caused the increase of salary of State officials (numbering approximately 1 million) by Rs. 2500/- outside the approved Budgetary provisions.
- (b) The 1st Respondent caused members of the Civil Defence Force to be granted permanency in employment.
- (c) Subsequent to the meeting with Police officers at “Temple Trees”, the official residence of the 1st Respondent on 13-12-2009, Police batta (to approximately 200,000 police personnel) was increased and added to the December 2009 salary.
- (d) The “Mediation Board day” was held on the 8th of December 2009 (instead of the scheduled 18th July 2010) at the official residence of the 1st Respondent. More than 3000 people were present, as each mediation board member was requested to attend with ten others. Lunch and cash rewards were given to all participants.
- (e) The Railway Department recruited 650 people from the Matara District as temporary labourers on 23rd November 2009. However, the appointments were backdated to read 17th November 2009 (to circumvent the provisions of law / guidelines prohibiting such recruitments).

- (f) People from Mannar who attended a public meeting in support of the 1st Respondent at the Alankuda Grounds in Kalpitiya were paid Rs.500/- each by the Ministry of Resettlement and Disaster Relief Services.
- (g) 40 persons nominated by Minister Karuna Amman were employed by the Eratteperiyakulam, Vavuniya Office of the Sri Lanka Broadcasting Corporation on or around 21st December 2009 till the conclusion of the poll.
- (h) All Officers of the Sri Lanka Fisheries Corporation were promoted with increases in salary with effect from 1st December 2009.
- (i) Promotions were effected to persons employed within the National Housing Development Authority by letter dated 10th December 2009.
- (j) State officials attached to the Ministry of Public Administration and Home Affairs were granted permanency in service by virtue of circular no. EST-4/PEMNT/03/0201 dated 25th November 2009.

16. **CORRUPT PRACTICES : FALSE STATEMENTS WITH THE KNOWLEDGE AND CONSENT BY THE CANDIDATE AND/OR BY HIS AGENTS WITH HIS KNOWLEDGE AND CONSENT AS CONTEMPLATED IN SECTION 91 (C) OF THE ACT: CONCISE STATEMENT OF MATERIAL FACTS ON WHICH THE PETITIONER RELIES & FULL PARTICULARS OF CORRUPT PRACTICES**

Corrupt practices were committed in connection with the election by the 1st Respondent or with his knowledge or consent or by his agents. These corrupt practices consisted of acts of false statements of fact in relation to the personal character or conduct of the Petitioner made for the purpose of affecting the result of that election set out below:

- (A) The 1st Respondent, during the last few days of the election campaign, falsely alleged and presented a fake document purporting to be an alleged agreement between the Petitioner and the Tamil National

Alliance which would lead to the division of Sri Lanka in the event of the Petitioner being elected President of Sri Lanka.

- (B) The 20th, 25th & 26th Respondents, as agents of the 1st Respondent, during the last few days of the election campaign, falsely alleged and presented a fake document purporting to be an alleged agreement between the Petitioner and the Tamil National Alliance which would lead to the division of Sri Lanka in the event of the Petitioner being elected President of Sri Lanka.
- (C) Commencing approximately at 1 p.m. on the day of the Election, 26th January 2010, Upali Sarath Kongahage, Razik Zarook, Kalinga Indatissa, Hudson Samarasinghe & Wimal Weerawansa (the 20th, 23rd, 24th, 25th & 26th Respondents hereto) made false statements, that the petitioner was not qualified to be elected as President of Sri Lanka, and that even if the Petitioner were elected as President he will be disqualified from holding such office. These false statements were broadcast without break until the close of poll at 4 p.m. by Sri Lanka Rupavahini Corporation, Sri Lanka Broadcasting Corporation, Lakhanda and the Independent Television Network. These false statements repeatedly broadcast on the above media had a deterrent effect preventing voters supporting the Petitioner from exercising their franchise. The said Upali Sarath Kongahage, Razik Zarook, Kalinga Indatissa, Hudson Samarasinghe & Wimal Weerawansa were supporters of the 1st Respondent, and had been actively engaged in speaking and working to promote the candidacy of the 1st Respondent throughout the period from the nomination to the close of the poll. The said institutions which broadcast the said false statements were owned and/or controlled by the State and therefore by the 1st Respondent, and were agents of

the 1st Respondent. The said false statements were made and broadcast with the knowledge and consent of the 1st Respondent.

The Petitioner further states that 10,495,451 voted over a period of 9 hours on 26th January 2010 at an average of 1.15 million votes per hour and that the said false statements had a direct bearing on the voters in that the electors were made to believe that the Petitioner was not eligible to be elected as the President of Sri Lanka and a vote cast in his favour would be wasted and thus affected the free and fair exercise of the people's franchise.

CONCLUSION

17. The Petitioner states that by reason of the separate and/or cumulative effect of the facts and circumstances set out in paragraphs 8 to 16 above, the majority of electors were or may have been prevented from electing the candidate whom they preferred, namely the Petitioner, and/or the result may have been affected.
18. The Petitioner states further that by reason of the of the separate and/or cumulative effect of the facts and circumstances set out in paragraphs 8 to 16 above, the said election was not free and fair, and thereby the majority of electors were or may have been prevented from electing the candidate whom they preferred, namely the Petitioner, and/or the result may have been affected.
19. The Petitioner states that by reason of the corrupt practices pleaded in paragraph 14 above, the 1st Respondent is guilty of the corrupt practice of treating under Section 77 read together with Section 91(c) of the Presidential

- Elections Act and therefore the said election of the 1st Respondent be declared void and/or undue.
20. The Petitioner states that by reason of the corrupt practices pleaded in paragraph 15 above, the 1st Respondent is guilty of the corrupt practice of bribery under Section 79 read together with Section 91(c) of the Presidential Elections Act and therefore the said election of the 1st Respondent be declared void and/or undue.
 21. The Petitioner states that by reason of the corrupt practices pleaded in paragraph 16(A) above, the 1st Respondent is guilty of the corrupt practice of making false statements under Section 80(1)(c) read together with Section 91(c) of the Presidential Elections Act and therefore the said election of the 1st Respondent be declared void and/or undue.
 22. The Petitioner states that by reason of the corrupt practices pleaded in paragraphs 16(B) & 16(C) above, the said agents of the 1st Respondent named therein are guilty of the corrupt practice of making false statements under Section 80(1)(c) read together with Section 91(c) of the Presidential Elections Act and therefore the said election of the 1st Respondent be declared void and/or undue.
 23. The Petitioner states that by reason of the of the separate and/or cumulative effect of the facts and circumstances set out in paragraphs 8 to 16 above, the election of the 1st Respondent is void and/or undue, and the Petitioner ought to have been returned.
 24. The Petitioner states that in the circumstances that the majority of electors had in fact and in law returned the Petitioner as the duly elected President of Sri Lanka and is therefore entitled to a declaration that the Petitioner was duly elected and ought to have been returned as the President of Sri Lanka

25. The Petitioner states that he is therefore entitled to declarations and determinations and reliefs sought hereinafter.
26. The Petitioner further states that by reason of the by reason of the separate and/or cumulative effect of the facts and circumstances set out in paragraphs 8 to 16 above, the Petitioner had a majority of the votes, and is therefore entitled to a scrutiny of the ballots.
27. The Petitioner's Affidavit is annexed hereto, in support of this Petition.

WHEREFORE THE PETITIONER HUMBLY PRAYS: -

- (a) That Your Lordships' Court be pleased to determine and declare that the election of the 1st Respondent above named was void;
- (b) That Your Lordships' Court be pleased to determine and declare that that the return of the 1st Respondent above named was undue;
- (c) That Your Lordships' Court be pleased to determine and declare that the Petitioner was duly elected and ought to have been returned as the President of Sri Lanka;
- (d) That Your Lordships' Court be pleased to order a scrutiny of all the ballots cast at the said election held on 26th January 2010, to be carried out by the 22nd Respondent and his officials in the presence of the Petitioner and the 1st to 21st Respondents and/or their authorised representatives;

- (e) That Your Lordships' Court be pleased to award the Petitioner costs, and such other and further relief as to Your Lordships' Court shall seem meet.

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SARATH FONSEKA
PETITIONER