

ELECTORAL INTEGRITY

**A REVIEW OF THE ABUSE OF STATE RESOURCES AND SELECTED
INTEGRITY ISSUES DURING 2010 ELECTIONS IN SRI LANKA**



**TRANSPARENCY
INTERNATIONAL
SRI LANKA**

Building a Nation of Integrity

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INTEGRITY ISSUES DURING 2010 ELECTIONS IN SRI LANKA**



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A special mention must be made of the TISL team for their tireless effort to make this program a success, amidst challenges.

J.C Weliamuna
Executive Director
Transparency International Sri Lanka

Preface

The Program for Protection of Public Resources (PPPR) of Transparency International Sri Lanka (TISL) monitored the abuse of public resources during the Presidential and Parliamentary elections 2010. It has been a practice during elections in Sri Lanka for the candidates who wield power over public resources to misuse those resources during the elections to further one's candidature.

TISL as an independent non- government organization working towards curbing corruption in Sri Lanka, is mandated to monitor the abuse of public resources which are maintained by tax revenue collected from the people of Sri Lanka. The practice of use of public resources during elections in Sri Lanka has resulted in the massive loss of revenue, wastage of public funds and property. The objective of the PPPR was to limit and record the instances of abuses by creating public awareness and debate.

The PPPR in its monitoring of the Presidential Election also attempted to calculate the total cost of election campaigning by the two main candidates.

The abuses during the Presidential Election were monitored from between December 17, 2009 to January 26, 2010. The abuses during the Parliamentary Election were monitored from March 8 to April 8, 2010. During the course of its monitoring, the PPPR issued a total of seven interim reports reflecting the level of abuse of public resources in both elections. In addition, during the Presidential Election, the PPPR monitored the behaviour of the electronic media. A separate interim report was issued highlighting the use and misuse of the electronic media during the Presidential Election.

In reporting abuses, collecting information and the verification of the accuracy of the information is extremely important. for this purpose, the PPPR had two hotlines, a fax and email which were widely publicised for the public to report about specific abuses. The complaints received were systematically recorded. Thereafter these complaints were referred to a team of investigators for verification. It was only the information so verified that were included in the interim reports.

The abuse of state institutions, vehicles and the public transport system, state media institutions and the participation of public officers in election propoganda and the use of state employees for election campaign related work were commonly identified issues in every interim report issued during the elections. The PPPR in its reports called on the authorities to respond to the abuses highlighted demanding counter measures for rectification.

In addition to identifying the specific abuses, the PPPR attempted to calculate the cost of electioneering during the Presidential Election 2010. This proved an extremely tedious task. The absence of a Right to Information law and laws which require divulging campaign funding made this effort almost impossible. However the PPPR was able to obtain the cost to the state to conduct the election, the cost of printing and pasting posters and the cost of advertisements published in electronic and print media.

In this final report which captures an overall picture of the two main elections held in 2010, TISL recommends several landmark changes to the electoral process to raise the level of integrity of elections. It is recommended to have a caretaker government during Presidential and Parliamentary Elections to ensure objectivity in the implementation of the election law.

The need for systemic changes such as automatic audit systems is recommended to prevent abuse of public resources. It is also recommended that the powers of the Election Commission be enhanced to help the Commission to implement the election law preventing abuse of resources.

A model code of conduct too is suggested to be formulated with the participation and sanction of all stakeholders to promote self regulation during elections. Finally, it is recommended that there needs to be strict regulation of political party funding .

1. Introduction

Transparency International Sri Lanka (TISL) monitored the abuse of public resources during the Presidential¹ and Parliamentary² Elections 2010. The abuse of public resources was monitored through the Program for Protection of Public Resources (PPPR) with the intention of recording and minimising the abuse of public resources during elections in Sri Lanka through raising public awareness.

The Program for Protection of Public Resources (PPPR) was first designed in January 2001 by three civil society organizations with the objective of protecting public resources from abuse. In December 2001, it was launched as a special project of the Institute of Human Rights (IHR) focusing on the abuse of state resources during the time of the elections. TISL has since continued to monitor during the Presidential and Parliamentary Elections, the misuse of state resources to promote the election of any candidate.

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 abuse.³ Articles 3 and 4 of the Constitution vest sovereignty in the People and is exercised by the Executive, Parliament and Judiciary on behalf of the People. Jurisprudence emerging from the Supreme Court has interpreted these articles to mean that power is held in trust for the people.⁴ This power envisages the power to control and use Public Resources on behalf of the people.⁵ In Sri Lanka, the unfortunate pattern had been the use of public property during the time of the election by the party/parties or individuals in power for their campaigns. The adverse implications of such practices are best elucidated by Justice Mark Fernando in a judgement in which he states as follows.

“The use of State and Corporation resources (whether land, buildings, vehicles, equipment, funds or other facilities or human resources) directly or indirectly for the benefit of one political party or group, would constitute unequally treatment and political discrimination because thereby an advantage is conferred on one political party or group which is denied to its rivals”⁶

1. The Presidential Election was held on 26th January 2010.

2. The Parliamentary Election was held on 8th April 2010.

3. 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;”

4. See *Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others*, (2000) 3 SLR 243 and *Sugathapala Mendis v. Chandrika Bandaranaike and Others*, S.C (F/R) No. 352/2007

5. *Id.*

6. *Hettiarachchi v. Mahaweli Authority* (2000) 3 SLR 334, 342.

Public Resources are built and maintained through taxes collected mainly from the public, foreign sources of financial aid and expatriate remittances. Such collected public money is strictly expected to be used for the good and interest of the public without exceptions. Any government in power holds the accountability towards the general public in the use of such collected money and received remittances and the use of public property.

Given the continuous trend of abusing state resources during the time of the election since independence in Sri Lanka, this abuse has become the norm during the time of elections rather than an offence. This comes at a great cost to the public, and compromises the integrity of elections violating principles of equality and fair play at elections. However, the level of awareness among the public to view such practices as offence is minimal.

The Presidential Election and the Parliamentary Elections 2010 were declared by the President on November 23, 2009 and February 9, 2010 respectively.⁷ The monitoring of abuses at the Presidential Election commenced on December 17, 2010, the date on which nominations were filed by the candidates. The monitoring of abuses at the Parliamentary Election commenced on the March 8, 2010.

Since the use of print and electronic media was to play a crucial role in the propaganda campaigns, the PPPR included monitoring of media with respect to the conformity to the guidelines issued by the Commissioner of Elections on November 29, 2009.⁸

CONTEXT OF THE ELECTIONS

The Presidential and Parliamentary Elections 2010 were the first national level elections after the end of the bloody 30-year old war between Sri Lanka and the Liberation Tigers of Tamil Ealam (L.T.T.E).⁹ The need to find a political solution to ensure sustainable peace and establishing good governance practices were two vital issues that Sri Lanka needed to address in the post-war scenario.¹⁰ For the first time since the end of the war, the people in the North and East of Sri Lanka were provided with an opportunity to exercise their franchise in a relatively war-free and politically independent environment.

7. The Presidential and Parliamentary Elections 2010 were declared by gazettes numbered 1629/08 and 1640/16 respectively.

8. The abuses identified in this regard will be included in a separate report to be published by TISL.

9. The civil war in Sri Lanka ended on 19th May 2009 with the comprehensive military defeat of the LTTE which was signified by the killing of its leader Velupillai Prabhakaran.

10. The manifestos of the two main Presidential Candidates, and the Manifestos of the two main parties at the Parliamentary Election emphasized on these two broad issues.

The abuse of public resources is not limited to the period when elections are held. Mechanisms have been set up in order to ensure that public resources are utilised free from misuse and for the benefit of the public.¹¹ Constitutionally, Parliament is vested with the authority to scrutinise public finance, but Parliament alone may not be able to monitor the proper expenditure of the finances.¹² Any misuse or corruption with respect to public accounts or in public enterprises is highlighted initially by Parliament, which also has the power to examine public accounts and the functioning of public enterprises maintained at State cost.

At the time the 2010 elections were declared, there were serious constitutional issues with regard to the non- implementation of the 17th Amendment to the Constitution.¹³ The 17th Amendment provides for the appointment of an independent Elections Commission consisting of five Commissioners.¹⁴ However, this independent Elections Commission was never appointed. The incumbent Elections Commissioner operating as a 'transitional authority' had already conducted seven elections since the year 2000. The need for a full independent Elections Commission had been raised on several occasions as an important national issue.¹⁵

The National Police Commission (NPC), the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) and the Public Service Commission (PSC) are also vital to the conduct of free and fair elections. However, at the time of the elections these commissions also had not been properly constituted in the absence of the Constitutional Council. , President.¹⁶

The elections were declared at a time when a state of emergency had been declared under the Public Security Ordinance No 25 of 1947¹⁷ through which the exercise of certain fundamental rights were curtailed. Media freedom and the freedom of expression are severely curtailed by the strict enforcement of the emergency regulations even in post-war Sri Lanka affecting the integrity of the elections where

11. See Chapter of the Establishments Code and Financial Regulations 156(7) and 127 (7).

12. Article 148 of the Constitution of 1978. This Article states "Parliament will have full control over Finance. No tax, rate or any other levy shall be imposed by any local authority, except or under the authority of law passed by Parliament or of any existing law."

13. The 17th Amendment to the Constitution was passed on 3rd October 2001 by the Parliament of Sri Lanka with the intention of limiting the unchecked power of the President to appoint persons to key positions in the Government such as Judges of the Supreme Court and the Court of Appeal, Attorney General, Auditor General and members of the Independent Commissions. See "The Forgotten Constitutional Council- An analysis of Consequences of Non Implementation of the 17th Amendment" at <http://www.tisrilanka.org/?p=229>. [last visited on 3.5.2010]

14. Under Article 103 of the 17th Amendment to the Constitution.

15. Supra note 12.

16. These Commissions though existed were not appointed in the manner prescribed in the 17th Amendment to the Constitution which has compromised the independency of the

17. As Amended by Law No. 6 of 1978.

the government could prevent the dissenting political voices using emergency regulations.¹⁸

A body of ministers¹⁹ numbering over 115 were holding their portfolios when the Presidential Election was declared, which is more than 50% of members of the whole Parliament of 225.²⁰ The large body of Ministers functioning under a powerful Executive President was a perfect recipe for large scale abuse of public resources during elections.²¹ Traditionally, after the dissolution of Parliament, it is only the Cabinet of Ministers who continue to hold their portfolios. However in Sri Lanka, even after dissolution, non-cabinet and deputy ministers continued to enjoy all perks granted by the state fuelling resources for their re-election propaganda work.

18. Even after dissolution of Parliament on 8th February 2010, the Parliament was reconvened on 9th March 2010 by the President under Article 155 of the Constitution to extend the Emergency Regulations which would have otherwise lapsed.

19. Includes Cabinet, Non Cabinet and Deputy Ministers. See "Tracking Ministerial Expenditure: A Quest for the Golden Fleece" at <http://www.tisirilanka.org/?p=222> . [last visited on 3.5.2010]

20. In Sri Lanka the ministers continue to hold their respective portfolios during a Presidential Election as the Ministers are appointed from the Parliament. However during at the time of Parliamentary Election its customary in democracy that only Cabinet of Ministers that continue to hold their portfolios while the other category of ministers are required to give up the same. See "Tracking Ministerial Expenditure: A Quest for the Golden Fleece" at <http://www.tisirilanka.org/?p=222> . [last visited on 3.5.2010]

21. Though there are no reports of monitoring powerful governments in the 1980s and early 1990s during election, it can be stated that abuse was at grand scale by the party in Government during these periods.

2. Basis and Methodology

2.1 Defining Public Resources

TISL defines "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.²²

2.2 Election Law to Protect Public Resources

Article 104B (4) (a) of the 17th Amendment vests the power in the Commission or the Commissioner-General of Elections to prevent the misuse of public resources during a Presidential, General, Provincial, local authorities election and at referenda. According to this provision,

"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 purpose of promoting 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 the chairman of the Commission or of the Commissioner-General of Elections on the instruction of the Commission."

The Commissioner of Elections as empowered by Article 104, issued circulars dated December 08 2009 and February 13 2010 to prevent the abuse of public resources during the Presidential and Parliamentary Elections, respectively.²³

22. Final Report, Program for Protection of Public Resources, Transparency International Sri Lanka 2005.

23. Annexure 01

According to these circulars the following moveable and immovable property have been identified as state resources that should be free from abuse:

- I. All categories of vehicles including aircrafts and even assigned vehicles belonging to the state.
- II. State buildings including state maintained buildings and state guest houses which cannot be used free of charge.
- III. Facilities available for all public institutions and all Ministries.
- IV. Public Finance or public funds intended to be utilized for public purpose.
- V. Employees of all public institutions including statutory boards.
- VI. Personnel of the Armed Forces and Police.
- VII. State Media institutions.
- VIII. Any other category of public resources

Further, the Commissioner of Elections issued directives against the appointment, promotion and transfer of government employees during the election period. Under Article 104B (4) (a) of the Constitution, the Commissioner of Elections issued such directions by circular dated December 7 2009 for the Presidential Election.²⁴ In the Parliamentary Election, the Commissioner recognised the appointment, promotion and transfer of government employees also as an abuse of public resources by including the provision in the circular against the abuse of public resources.

According to Article 104B (5) (a) “The Commission shall have the power to issue from time to time, in respect of the holding of any election or the conduct of a Referendum, such guidelines as the Commission may consider appropriate to any broadcasting or telecasting operator or any proprietor or publisher of a newspaper as the case may be, as the Commission may consider necessary to ensure a free and fair election.” Exercising this power the Commissioner of Elections issued guidelines by notification dated December 17 2009 with the objective controlling partial media behaviour during the time of the elections.²⁵

Unlike many other countries²⁶ there are no ethical codes which bind candidates to respect the law and protect state resources in Sri Lanka.

24. Annexure 2
25. Annexure 3

2.3 Abuse and not proper use

The abuse of public resources would include as per the definition of Transparency International Sri Lanka:²⁷

- a. Wrongful use of all categories of public resources for the benefit of political parties, candidates and political appointees during the time of the election.
- b. Propaganda at the expense of public resources
- c. Political propaganda under the cover of official functions
- d. Wrongful use of state print and electronic media institutions for political gain of any political party or an individual candidate.

The PPPR monitored all instances of abuses that came to the notice of the PPPR and within the definition of abuse which also included certain categories of violations of election law set out in the Presidential Election Act No 15 of 1981 and the Parliamentary Elections Act No1 of 1981.

2.4 Other Laws Protecting Public Resources

The legal regime in Sri Lanka with respect to the use/misuse/abuse of public property is statutorily governed. The importance of public resources is enshrined in Article 28(d) of the Constitution which states that “it is the duty of every person in Sri Lanka to preserve and protect public property to combat misuse and waste of public property”. This Article of the Constitution casts a general duty on every citizen to protect public resources but it is not legally enforceable.²⁸ Conversely, citizens who do take action against the abuses of this nature are not legally protected.

The Secretaries of Ministries are also the Chief Accounting Officers of each Ministry and according to Financial Regulation (FR) 156 (7) should exercise due economy in all financial transactions and they should also ensure that expenditure should not be incurred unless absolutely necessary even though financial provisions exist or money is available. Similarly, FR 127 (7) states that all chief accounting officers are

26. In India, the Election Commission formulated a Code of Conduct for Political Parties and Candidates. This is available at http://eci.nic.in/eci_main/ElectoralLaws/compendium/vol3.pdf. [last visited : 6.6.2010]

27. The definition of abuse used here consistent with the definition use by TISL in its previous publications. See “Final Report on Abuse of Public Resources During the Presidential Election 2005” Program for Protection of Public Resources (TISL; Colombo 2005) at page 3.

28. Article 29 of the Constitution states that this Article is not enforceable. However they guide the state in all its functions.

responsible for taking measures to ensure that the procedure laid down in FR 102 to 108 is followed in case of losses caused to government by delays, negligence, fault or fraud on the part of officers.

Therefore, the primary duty of protecting resources allocated to ministries is vested in the Secretary to the Ministry. Hence during elections the Secretary should take appropriate action to prevent the abuse of public resources.

Section 12(b) of the Offences Against Public Property Act No 12 of 1982 defines public property as “ the property of the government, any department, statutory board, public corporation, bank, co-operative society or cooperative union;” According to Section 5 of the said Act, “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...”

Public officers who are maintained by the state are also considered public resources and should be free from abuse. Further, Chapter XXXII of the Establishment Code prevents the public officials from participating in political meetings or activity connected with the campaign of any candidate or party except the right to exercise their franchise.

However the misuse of public resources by a public servant would constitute the offence of ‘corruption’ under the Bribery (Amendment) Act.²⁹ A public servant who abuses 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. Therefore Section 70 of the Bribery (Amendment) Act No 20 of 1994 the term ‘corruption’ includes the abuse of public property.³⁰

29. Act No 20 of 1994.

30. It has been defined as “Any public servant who, with intent to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favour or advantage on himself, or with knowledge, that any wrongful or unlawful loss will be caused to any person or to the Government or that any wrongful or unlawful benefit, favour or advantage will be conferred on any person-

a. does or forebears to do any act which he is empowered to do by virtue of his office as a public servant;
b. induces any other public servant to perform, or refrain from performing any act which such other public servant is empowered to do by virtue of his office as a public servant;
c. uses any information coming to his knowledge by virtue of his office as a public servant;
d. participates in the making of any decision by virtue of his office as a public servant;
e. induces any other person, by the use, whether directly or indirectly, of his office as such public servant to perform, or refrain from performing any act,

shall be guilty of the offence of corruption and shall upon summary trial and conviction by a Magistrate be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one hundred thousand rupees or to both such imprisonment and fine.

The PPPR wrote to the Secretaries of all ministries who are also the chief accounting officers of the respective ministries emphasizing on the significance of their duty to protect public resources during elections.³¹ A handful of the ministry secretaries replied acknowledging the said duty and expressed their resolve to prevent the abuse of public resources.³²

2.5 Methodology

The main objective of the PPPR was to identify the instances of abuse and systemic issues which aids such abuses and disseminate the information in a move to create public awareness which could also serve as a strategy to reduce the abuse of public resources during elections. It was also intended to provide vital information to the Commissioner of Elections to conduct a free and fair poll, while taking up integrity issues affecting the electoral process.³³ Thus interim reports in all three languages³⁴ were issued to create public debate during the time of the election.

In order to achieve its objectives, the PPPR was engaged in a series of activities, summarized below:

- a. An initial press conference was held on December 22, 2010 to publicise the monitoring activities.
- b. Letters sent to the secretaries of all ministries requesting them to take all possible measures to protect state resources during elections.
- c. A series of public advertisements published in the print and electronic media in all three languages requesting the public to cooperate with the objective of the PPPR.³⁵
- d. Collecting of information of abuses and verification of such abuses through investigations.
- e. Activation of TISL's available contacts out of Colombo to support the PPPR.
- f. Release of interim reports highlighting specific abuses . The reports were publicised in mainstream media and were sent to the officials concerned including the Commissioner of Election.

31. Annexure 4

32. Annexure 5

33. TISL in many of its initiatives addressed the importance of protecting public resources during elections.

34. English, Sinhala and Tamil.

35. Annexure 6

The PPPR adopted a participatory methodology which encouraged and recorded significant public participation. An investigation team was appointed consisting of retired senior police officers with extensive investigative skills who verified the information that was recorded. The PPPR obtained the assistance of investigative journalists to investigate specific cases which required extensive investigations.

3. Analysis on Abuses of Public Resources

The PPPR in its four interim reports issued between December 17, 2009 and January 26, 2010 during the Presidential Election and the three interim reports issued between March 8, 2010 and April 8, 2010 during the Parliamentary elections highlighted the gross abuse of public resources during the two elections.

In these reports the PPPR outlined the abuse of state vehicles and aircraft, state buildings, state media and the participation of public officers in active electioneering, and the overall violation of the provisions contained in the Establishment Code. In this chapter, an attempt is made to analyse the key abuses.

3.1 Specific Abuses

3.1.1 Resources at Temple Trees [Presidential Election]

President's official residence is an asset of the public which is maintained by the public.. Many resources remain at the disposal of the Executive President given his security consideration and the exalted office he holds. However, the PPPR monitored the systematic abuse of these resources during the Presidential Election 2010. Among the main abuses were the use of the premises to hold meetings in support of the President, and the provision of meals and refreshments to participants of such meetings.

According the Presidential Election Act No 15 of 1981, no candidate can entertain, provide refreshments or any other meal to any person during or after the election. Violation of this provision constitutes the offence of treating,³⁶ which is punishable under Section 80 of the said Act.

36. According Section 77 of the said Act " Every person who, corruptly, by himself or by any other person either before or after an election, directly or indirectly, gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part the expenses of giving or providing any meat, drink, refreshment or provision or any money or ticket or other means or device to enable to procuring of any meat, drink, refreshment or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election and every elector who corruptly accepts or takes any such meat, drink or refreshment or provision or any such money or ticket or who adopts such other means or device enabling the procuring of such meat, drink, refreshment, or provision shall be guilty of the offence of treating"

The PPPR recorded 35 instances where the President had hosted different groups of persons to a meal at the Temple Trees, President's Houses in Kandy and Anuradhapura. In the absence of information as to who bears the cost of sending invitations, it is difficult to ascertain whether there was an abuse of public finances of sending the invitations. It's reported that each invitee received refreshments, the quality of which differed according to the profile of the guests. According to the information received, it appears that the President had hosted people from different walks of life. The PPPR is of the view that these meetings, despite being highlighted by the PPPR interim reports, were not effectively prevented by the Commissioner of Elections.

The PPPR in a letter dated January 5, 2010 addressed to the Secretary to the President requested him to disclose the sources of funding of these meetings and refreshments and to produce the receipts of payment by the UPFA for the use of these facilities provided by the State. To date, the Secretary to the President has not replied to the said letter. Therefore, it is unclear as to how the State managed to meet this cost.

When the media questioned the President on the use of Temple Trees for his campaign work and the continued practice of hosting people, the President responded by stating that the law was irrelevant as it was an established cultural practice to entertain visitors.³⁷

When comparing the instances of parties and other functions hosted at official residences in Sri Lanka with the instances that have taken place under the Indian system during elections, it is easy to conclude that the Election Commission of India has acted with decisiveness at election time. The following illustrates the above statement.

In India the Election Commission advised the Chief Minister of Bihar based on a reference from him seeking to host an Iftar party for about 10,000 people on state expense. The Election Commission in its advisory opinion stated that the Chief Minister cannot host it at state cost especially during elections, but permitted him to do so at his own expense.³⁸

37. See Sunday Times Article titled "I am Confident of winning with a Comfortable Majority" published on January 24, 2010, available at http://sundaytimes.lk/100124/News/nws_95.html [last visited : 7.8.2010]

38. See Instruction No 10, Model Code of Conduct at page 19 available at http://eci.nic.in/eci_main/ElectoralLaws/compendium/vol3.pdf. [last visited : 9.6.2010]

3.1.2 SLTB Buses and State Vehicles [Presidential Election]

The Sri Lanka Transport Board (SLTB) is the main operator of the country's main public transport system. SLTB is a government corporation incorporated by the Sri Lanka Transport Board Act No 27 of 2005 which comes within the purview of the Ministry of Transport.

Over 1000 SLTB buses were utilised from time to time to transport supporters of the President to the venues of the propaganda meetings. The buses identified by the PPPR were sourced from at least 98 depots situated in all parts of Sri Lanka while the statistics of the buses so used do not show the repeated use of the same buses for transporting political party supporters to different meetings.

In response to PPPR Interim Report 1 which highlighted the use of a large number of SLTB buses to transport political supporters, SLTB's Deputy General Manager B.A. Livinis denied any such misuse but stated that there is provision for the buses to be hired by anyone.³⁹ However, the PPPR was unable to trace any evidence of such payments by the UPFA to the SLTB in respect of any hires to transport supporters to political meetings. During the monitoring period the PPPR has received several complaints about the lack of SLTB buses for public transport on the days of the propaganda meetings.⁴⁰

According to the SLTB, it has only about 9,000 buses to be deployed in the entirety of Sri Lanka.

However, according to Director (Engineering), SLTB, S.B.W Jayasiriwardena, only 5,400 buses are in a roadworthy condition.⁴¹ This amounts to 1/5th of the buses that are roadworthy being used to transport party supporters. The sheer number of buses that have been used at each meeting has the effect of crippling public transport in Sri Lanka during an election period.

The position of the SLTB is that a bus can be hired for a private purpose by paying a fee of Rs. 65 per kilometre. The SLTB buses are required to be released for hires with due care being paid to the fact that it is the fundamental function and responsibility of the SLTB to ensure that the hiring of buses for a private purpose does not affect the transport service.

39. See Daily Mirror article titled "State organizations deny TISL Report" published on 2.01.2010 (page 4)

40. See interim reports 1-4 of the Presidential Election 2010.

41. Dinamina article titled "ලංකාවේ අද සාර්ථක ඉදිරි මෙහෙය" published on, January 14, 2010(page 17).

The position of the PPPR is that an essential service such as public transport cannot be used for a private purpose 'even after making the necessary payment' especially during an election considering the level of inconvenience caused to the public. This prohibition is provided under Article 104B (4) (a) of the Constitution⁴² which is reinforced by the Election Commissioner by the directives issued on December 12, 2009.

In addition to the SLTB buses, vehicles belonging to a number of ministries and helicopters belonging to the Sri Lanka Air Force (SLAF) were also used for electioneering. Bus depots were used as political party election offices. After verification, the registration numbers of the vehicles so used were published in the interim reports of the PPPR.⁴³ The misuse of such vehicles and SLAF helicopters has been clearly prohibited by directive No 4 issued by the Commissioner of Elections on December 08, 2009.

SLTB BUSES [Parliamentary Election]

The PPPR recorded a large number of buses that were used for election propaganda work including the transport of supporters of political parties. Unlike in the Presidential Election the PPPR could not monitor the abuse of the SLTB buses at the General Election in a comprehensive manner, as there were over 7,000 candidates who contested the election which made it practically impossible to monitor each candidate.

However, the three interim reports issued by the PPPR records over 500 buses that were utilised in an unlawful manner. This number is significantly less than what the PPPR recorded at the Presidential Election 2010.

42. " The Election Commission shall have the power during the period of an election, to prohibit the use of any movable and immovable property belonging to the State or any public corporation-

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

by direction in writing by the Chairman of the Commission or of the Commissioner-General of Election on the instruction of the Commission.

43. See PPPR interim reports 1-4 on the misuse of state vehicles.

OTHER STATE OWNED VEHICLES

All these abuses are in violation of Directive 4 of the circular issued by the Commissioner of Elections which called on the persons responsible to ensure that public resources are not abused during the election. A recurrent explanation is that state-owned transport can be used for private use upon payment of a fee. However, the PPPR contends that considering the inconvenience to the public is far greater, especially during elections, hiring state -owned buses should not be utilised in this manner.

3.1.3 Abuse of State Media [Presidential Election]

The PPPR monitored the media during the election campaign from December 17, 2009 to January 26, 2010. A qualitative and quantitative analysis of the media reportage was carried out and an interim report on the behaviour and conformity to the guidelines issued by the Commissioner of Elections by the media is being released by TISL. This report analyzed the quality of the coverage of the election, this section deals with the aspect of media being abused as a state resource during the period monitored.

There are four main state media institutions in Sri Lanka - namely, the Sri Lanka Broadcasting Corporation (SLBC), Sri Lanka Rupavahini Corporation (SLRC), Independent Television Network (ITN) and Associated Newspapers of Ceylon Ltd. (ANCL/Lake House). The Commissioner of Elections issued guidelines under Article 104B (5) of the 17th Amendment to the Constitution to ensure that the media does not in any way act partisan to any candidate. The PPPR in its interim report and its interim electronic media monitoring report highlighted the gross abuse of state media and the non-conformity to the guidelines issued by the Commissioner during the Presidential Election 2010.

As mentioned in the interim reports,⁴⁴ Associated Newspapers of Ceylon Ltd had printed posters and other campaign material in support of the President and also provided rolls of paper to private printing organizations for printing of propaganda material. Whether these rolls of paper and the printing of propaganda material were paid for, remain unanswered. Similarly, the PPPR report 4 issued on 23.01.2010 highlighted the appointment of nine persons of the SLFP propaganda unit to the Irattperiyakulam radio station in Vavuniya, who were paid on the basis of relief announcers in accordance with the letter of appointments issued by the SLBC Chairman.

44. PPPR Interim Reports 2 and 4 available at <http://www.tisrilanka.org/pppr/> [last visited : 4.6.2010]

This violates the directive of the Commissioner of Elections dated December 7, 2010 prohibiting any appointment, transfers and promotions in the state services and in corporations and statutory bodies. In addition, the payment made to them is an abuse of state funds. The broadcast of advertisements and other programs beneficial to one particular candidate without heeding the guidelines led to the appointment of a Competent Authority by the Commissioner of Elections under Article 104B(5)(c) of the 17th Amendment to the Constitution.

The Commissioner is permitted to appoint a Competent Authority only when such institutions contravene the guidelines. However, the scant respect shown to the directives of the Competent Authority by the Chairmen of the SLRC and SLBC who continued to violate the guidelines with impunity, compelled the withdrawal of the Competent Authority by the Commissioner of Elections. This clearly flags the level of impunity that prevails within state institutions during elections.

A key reason for the SLRC, ITN and SLBC to continue to function in a partisan manner stems from the fact that those who hold executive positions in these institutions are loyal to the ruling party and are often appointed due to their political party affiliations as opposed to suitability. This has resulted in the telecast and broadcast of programs in favour of candidates from the incumbent government. Hence this has aggravated the erosion of the independence of these institutions.⁴⁵

The Department of Government Information was also misused in a similar manner. Press conferences and events in support of the President were held regularly utilising the facilities available to the Department. Asi Disi Widwath Kathikawatha was such an event which was held at the auditorium of the Information Department, where several programmes had been held. All these activities were organized to support the incumbent President.

Parliamentary Election⁴⁶

The Commissioner of Elections under the powers vested in him by the 17th Amendment to the Constitution, issued guidelines to control the behaviour of the media to ensure impartiality in media coverage. Therefore, the Commissioner

issued the circular no PE/2010/04 on February 17 2010 to ensure that the media gives balanced coverage to all the candidates and parties. However, it was generally observed that the state media did not follow the stipulated guidelines and acted in contravention.

The PPPR in its Interim Report 2 highlighted the use of the facilities of the Sri Lanka Broadcasting Corporation (SLBC) exclusively to record the speeches of the candidates of the governing coalition. The general trend observed by the PPPR however that extensive coverage was granted in the state print and electronic media to the candidates of the government and only coverage that was adverse to the opposition was published in the state media. Therefore, the fairness that was to be maintained by the state-controlled media according to the Election Commissioner's guidelines was never achieved. The PPPR monitoring clearly brings out that the level of abuse of the state-run media was unprecedented, and in complete violation of the election laws.

3.1.4 Electioneering by State Sector Employees [Presidential Election]

The PPPR in its interim reports recorded the employment of state employees from the Sri Lanka Ports Authority, The Sri Lanka Foreign Service, the Chairman of the University Grants Commission and Vice Chancellors of the Universities of Colombo, Kelaniya and Sri Jayewardenapura, senior officers of the ministries and the Sri Lanka Armed Forces and Police in electioneering.

According to Chapter XXXII of the Establishment Code, the following are not entitled to the exercise of Political Rights other than voting at elections :-

- a member of the Judiciary
- a member of the Armed Services
- a member of the Police Force and other Peace Officers exercising Police functions under the Criminal Procedure Code (eg- Grama Niladharis)
- a Prisons Officer as defined in Section 20 of the Trade Unions Act (C.138)
- a Staff Officer or Supervisory Officer in the Public Service
- an Officer serving the Department of Elections (Parliamentary, Local Government etc.) while holding such office.

45. Refer page 6 of Interim Report 1 released on December 31, 2009 available at www.tisirilanka.org/pppr/ which names the said appointees. [last visited : 12.6.2010]

46. TISL did not carry out a content analysis of the reportage of the election by state media during the Parliamentary Elections 2010.

Therefore, the political rights of the above mentioned state employees and public officers are limited to the exercising of their franchise alone. As pointed out by the PPPR in its interim reports, the active participation in election propaganda leads to the violation of this provision of the Establishment Code.

Prominent and popular personalities who mould public opinion during elections were used in the election campaign such as the Chairman of the University Grants Commission (UGC), the Vice Chancellors of Universities and ambassadors. These public officers are also governed under the said chapter of the Establishment Code. The impact of such employment not only undermines the Establishment Code affecting the rule of law in the country but also influences the voter unfairly and illegally.⁴⁷

Each Minister is entitled to a personal staff of 15 and a Deputy Minister a staff of 10.⁴⁸ It is the general practice among most ministers to appoint supporters as personal staff members.⁴⁹ They are entitled to vehicles and other resources at the expense of the State. The numbers of the personal staff of the large body of ministers have been estimated to be about 1,000 persons and are maintained at the expense of the State. Not only do they use their time engaging in election activities, they also have direct access to public resources often using the cloak of public office to conceal large scale abuse of public resources.

These political appointments have also created confusion among ministry secretaries with respect to the accountability of these employees. The Secretary, Ministry of Public Administration, in a letter to the Election Commissioner requested for an opinion as to whether these appointees are in fact bound under the Financial Regulations which governs the whole public sector.⁵⁰

In an unprecedented manner, serving ambassadors, secretaries of ministries and military officers were engaged in political activities creating a dangerous precedent. This is an aspect which goes beyond state resources and dents the efforts of establishing good governance practices.⁵¹

47. The participation of Gotabhaya Rajapakse, Secretary, Ministry of Defence, Public Security and Law and Order directly participating in the campaign in the Presidential and Parliamentary elections for the governing party. See Reports 3 of the Presidential Election and Report 2 of the Parliamentary Election, available at www.tisrilanka.org/pppr/.

48. See Circular CSA/P1/40 issued by the President on January 4 2006.

49. (1) Private Secretary, (1) Co-ordinating Secretary, (1) Media Secretary, (2) Public Relations Officer, (1) Personal Assistant, (5) Management Assistant, (2) Office Assistant, (2) Drivers.

50. See annexed letter to the minister

51. See TISL position paper "Integrity in Recruitment in Sri Lanka Foreign Service" available at http://www.tisrilanka.org/pub/pp/pdf/PP_Foreign_Service_Eng.pdf

Parliamentary Elections

It has been previously noted that public services and state employees cannot be used in election propaganda work. However, the PPPR recorded instances where there was extensive use of state employees in carrying out election propaganda work.

The PPPR identified the extensive use of teachers and principals to carry out campaign related work and even named the principals of prominent schools engaged in electioneering. In addition, certain senior officials of ministries were involved in an outright campaign for certain candidates, in direct violation of the law.⁵²

3.1.5 Abuse of Resources in Selected Institutions [Presidential Election]

The PPPR recorded the misuse of public resources at key government institutions. Many state buildings and resources of institutions such as the National Youth Services Council (NYSC), Sri Lanka Ports Authority (SLPA), Sri Lanka Lotteries Board, Ministry of Justice, Ministry of Education and the Ministry of Animal Husbandry were utilised in propaganda work for the President. The resources were used to put up stages for meetings, printing of calendars, diaries and other propaganda material promoting the President. This is a clear abuse of public property under the general law of Sri Lanka and is a violation of the election law as set out in Section 2 of this report.

The generation of power in Sri Lanka comes at a significant cost. Electricity for hoardings and cut-outs of candidates which were illuminated were illegally tapped from the main street electricity lines. This practice contributed to a colossal loss of revenue to the State as the cost of illuminating election propaganda material is never accounted for. The illegal tapping of electricity is a punishable offence under Section 49 of the Electricity Act No 20 of 2009.

Parliamentary Election

State buildings were often used to hold propaganda meetings. The PPPR recorded the use of the school buildings and facilities to host meetings of candidates during the General Election. According to Directive 5 of the circular issued by the Commissioner of Elections State buildings cannot be utilised for any propaganda or election related work for the benefit of the candidates. However, the blatant misuse of government guest houses belonging to various departments throughout the country was recorded.

52. Chapter XXXII of the Establishments Code.

3.1.6 Abuse of the TRCSL [Presidential Election]⁵³

Upon the instructions of the Telecommunication Regulatory Commission of Sri Lanka (TRCSL), a short text message was transmitted to all subscribers of mobile phone connections by the President wishing them for the New Year 2010.⁵⁴ The mobile service providers stated that they had provided this service based on a directive from the TRCSL.

According to Section 5(f) the Telecommunications Act No 25 of 1991, such a directive may be issued by the TRCSL on the request by the Government of Sri Lanka in the interest of national security, public order and the defence of Sri Lanka. The TRCSL directive was prima facie illegal and offered an unfair electoral advantage to a particular candidate.⁵⁵ The PPPR wrote to the Chairman, Director General of the TRCSL and all the relevant mobile service providers requesting them to give reasons for such conduct.⁵⁶ However none of these officials have responded to the queries put forth by the PPPR to date.

3.2 Other Integrity Issues - Bribery

During the Presidential Election campaign an incident of an alleged attempt to bribe M. Muzzamil, a Member of Parliament received unprecedented publicity. The said MP at a press conference declared that he carried out a sting operation to expose M Y M Mustapha a Member of Parliament and supporter of Common Opposition Candidate, General Sarath Fonseka. It was alleged that the said MP Mustapha had attempted to bribe the MP Muzzamil with Rs. 30 million to win his support for the said candidate at the Presidential Election.

On June 1 2010, the Attorney General indicted the accused, MP Mustapha in the High Court of Colombo for the said offence. Besides being a serious charge, this also indicates how political parties conduct their activities particularly during elections..

53. The TRCSL is headed by the Secretary to the President.

54. See Daily Financial Times 2.01.2010 Page 1.

55. The Mobile Service Providers are not required to follow such directive.

56. Annexure 7

4. Cost of Elections

Another aspect of the integrity of the election is political party financing and campaign expenditure, both of which are not effectively regulated in Sri Lanka. The PPPR made an attempt to examine the cost of electioneering during the Presidential Election. The criteria used for such assessment is as follows.

- a. Cost of advertising
- b. Cost incurred by the state to conduct the election
- c. Cost (lawful) incurred by the Political Parties/Candidates.
- d. Wastage due to abuse of public resources

Cost of Advertising⁵⁷

The PPPR through a professional agency monitored the cost of political party advertising in the media⁵⁸ based on the rate card.⁵⁹ According to the calculation the cost of advertising at the Presidential Election was estimated to be Rs. 823,809,000⁶⁰ by the two main candidates, Tharunyata Hetak organization, which is managed by the President's eldest son (who was also a candidate at the Parliamentary Election 2010), and the other political parties. A significant expenditure was borne by Tharunyata Hetak estimated at Rs. 172,213,500. Interestingly, there is no law which demands the disclosure of funds nor is there any effective mechanism where the Election Commission can seek such information to ensure accountability of funds.

57. Annexure 8

58. Media includes electronic, web and print media.

59. A Rate Card provides the cost of placing an advertisement issued by any media organization. The terms and variable rates are provided in the rate card. During elections special rate cards are issued by media organizations (it is higher than the normal rate) .

60. This amount is only the cost of advertising excluding the cost of producing these advertisements.

Apart from media advertising, large hoardings were erected all over Colombo. Some of the hoardings directly promoted a candidate and the others displayed government development activities. In contrast to this in India, the Elections Commission prohibits the display of any campaign hoardings.⁶¹ According to instructions issued by the Indian Elections Commission, even publicity given to government development projects (reminder media) by the use of hoardings should be removed during the election period, even if such hoardings were erected prior to the declaration of the election.⁶²

Cost of Posters/Coutouts/Banners/Handbills/Manifestos/Hoardings

During elections candidates use posters, banners, handbills, hoardings and manifestos as a means of promoting their candidature. The PPPR calculated the cost of printing, pasting distributing the above mentioned propaganda material during the Presidential election 2010.⁶³ It was estimated that Rs. 75 million had been spent by each of the two main candidates. Therefore a total of at least Rs. 150 million has been spent by the two main candidates on propaganda material.

COST TO ELECTION COMMISSION

The Elections Commission declared⁶⁴ that the Department incurs approximately Rs. 3 billion for the conduct of an election. This is the amount allocated by the Treasury based on the estimate provided by the Commissioner. This is indicative of the high cost of merely conducting an election. This is however a legitimate cost which is quite essential for a democratic form of governance.

Cost Incurred by Political Parties and Cost of Wastage/Abuses

The veil of secrecy that surrounds the funding of the election finances of political parties in the absence of disclosure laws and the absence of right to information prevented the PPPR from obtaining the necessary information for estimating the cost incurred by the political parties and the cost of abuse and wastage of public resources. Though the perception is that the cost is extremely high, it is almost impossible to arrive at an exact figure of such costs due to the absence of any information with respect to the same.

61. Instruction SL No 14, Model Code of Conduct for the Guidance of Political Parties and Candidates, Compendium of Instructions, Vol 3. Issued by the Election Commission of India. available at http://eci.nic.in/eci_main/ElectoralLaws/compendium/vol3.pdf. [last visited : 6.6.2010]

62. Id.

63. Annexure 9

64. See Lakkimanews 13.11.2009 page 4.

Can Sri Lanka Sustain Such Costs?

The education budget (including the salaries for all the teachers and capital expenditure) for the year 2009 amounted to Rs 4.6 Billion.⁶⁵ The total cost of the elections including abuse of public resources and legitimate costs of campaigning and the cost incurred by the State to conduct the election is estimated to be much more. The absence of access to information on the working of government institutions and election financing for political parties has prevented the PPPR from carrying out an accurate cost assessment of the Presidential Election 2010.

When one omits the cost incurred by the State to conduct the election, the balance costs are either due to the abuse of state resources or the legitimate cost of the campaign. However, there is no system to audit the large quantities of money donated to political leaders and parties during an election. This has resulted in allegations of misuse of funds by leaders who have access to such funds.⁶⁶

65. See Daily Mirror article "Education budget cut by 42% over 3 years: DNA" May 20, 2010. <http://www.dailymirror.lk/print/index.php/news/front-page-news/11070.html> [last visited : 7.8.2010]

66. See Sunday Leader newspaper published on May 30 and June 6 2010 alleging large scale misappropriation of election funds received by Ranil Wickremesinghe during the Presidential Election 2010.

5. Conclusions

Through the analysis of the abuses and the manner in which such abuses were carried out, it can be concluded that the elections were significantly marred by the abuse of state resources and as such, the outcome of elections does not reflect the will of the people in a democracy. This has damaged the image of electoral integrity in Sri Lanka which has eroded public confidence in the electoral process.

5.1 Consequences of abuse of Public Resources

Abuse of public resources has socio-political and economic impact on a country and its population, in addition to the financial discipline of a nation. The economic impact is prima facie the most tangible of them all.

The Supreme Court in interpreting Articles 3 and 4 of the Constitution asserts that the sovereignty of the people is exercised through the Executive, Legislature and Judiciary.⁶⁷ Therefore, the power is held by the government in trust for the people. Exercising the franchise periodically is the only manner in which the people are able to exercise their sovereignty by vesting such powers in trust with the State. The abuse of public resources to enhance a candidate's/political party's campaign to garner more votes contributes to a distorted election result in addition to the cost to borne by the public.

The abuse of public resources by the party wielding power over such resources creates an uneven playing field disadvantageous to those who do not exercise such power. This has been highlighted in a Supreme Court Judgment⁶⁸ where it was held that "The use of resources of the state including-human resources for the benefit one political party or group, constitutes unequal treatment and political discrimination because thereby an advantage is conferred on one political party or group which is denied to its rivals: and such abuse was in probable derogation of the fairness and equality of a pending election to a representative body forming part of the democratic structure of Sri Lanka".⁶⁹ This highlights that the abuse of such resources also results in the blatant violation of the equality principle enshrined in Article 12(1) of the Constitution.⁷⁰

67. Supra note 4.

68. *Deshapriya v. Rukmani, Divisional Secretary Dodangoda and Others*, (1999) 2 SLR 412. Available at http://www.lawnet.lk/docs/case_law/slr/HTML/1999SLR2V412.htm [last visited : 9.8.2010]

69. Supra note 66 at 418.

70. See Article 12(1) of the Constitution of 1978. Also refer discussion on Article 12(1) in *Hettiarachchi v. Mahaweli Authority of Sri Lanka and Others*, (2000) 3 SLR 334.

The continuous abuse of public resources with impunity has eroded the rule of law. This results in adverse consequences in maintaining discipline in public service when laws and financial regulations are flouted at every election.⁷¹

Further, the abuse of public resources, could impact on the economy of the country in three ways. Firstly, the existing budget deficit can expand further due to un-budgeted costs incurred by the State as a result of the abuse of resources. Secondly, the State will be required to borrow further or resort to other measures which would invariably increase the per capita debt. Thirdly, public spending will be curtailed impacting the service delivery of the government.

There was a drastic drop in the voting turnout from the Presidential to Parliamentary election.⁷² According statistics, the percentage of voting dropped from 74.29% in the Presidential Election to 61.26% within a span of 2 months. Voter apathy is one reason for the dwindling levels of integrity.⁷³

It has been argued that the extensive and systematic use of media and other resources to publicise or market anything can manufacture consent.⁷⁴ In essence, the extensive publicity given by the media, public meetings and other instances can be used to distort the final election result. Therefore extensive use of public resources to ensure that one party or candidate gets more publicity than another creates an uneven playing field. This also strengthens the belief that persons in control of most resources are most likely to be elected irrespective of the level of merit.⁷⁵

5.2 Experiences from India

Many countries have adopted mechanisms to prevent abuse of public resources during elections. The level of independence of the Election Commission is considered one of the primary requirements that enable the Commission to take strong action against errant candidates or political parties. However, the level of independence per se not sufficient to control abuse of public resources. The power vested in the Commission complements independence in achieving this goal. For this purpose we propose to examine the independence and the powers vested in the Indian Election Commission to combat abuse of public resources during elections.

71. See Chapter 2 on the law and financial regulations of this report available at page 10.

72. See <http://www.slections.gov.lk/presidential2010/AIVOT.html> and http://www.slections.gov.lk/parliamentary_elections/AIVOT.html [last visited : 1.8.2010]

73. See Centre for Monitoring Election Violence (CMEV) Communiqué issued on Parliamentary Election Day April 8 2010. Available at <http://cmev.wordpress.com/> [last visited : 6.5.2010]

74. Edward S. Herman and Noam Chomsky, "Manufacturing Consent- The Political Economy of the Mass Media", (Pantheon, 2002).

75. Also See TISL Interim Report on Electronic Media Monitoring during the Presidential Election.

5.2.1 Autonomy Election Commission

The Election Commission in India is a Constitutional body⁷⁶ which is an institution formed in 1950 and has since been engaged in ensuring the elections held in India are free and fair and does not result in the abuse of public resources on a grand scale.

The independence of the Commission depends on the Independence of the Commissioners. The Indian Elections Commission currently constitutes of a Chief Election Commissioner, two Election Commissioners and over 300 staff. The Commissioners hold the rank equivalent to a Supreme Court judge of India and can only be removed by impeachment in Parliament upon the recommendation of the Chief Election Commissioner.⁷⁷ This type of protection of the Election Commissioner protects the Election Commission from any adverse interference from the Executive in its work and it ensures independence to implement election law even though the main members of the Commission are appointed by the President.⁷⁸

Similar protection is given to the Commissioners of Election in Sri Lanka under the 17th Amendment to the Constitution.⁷⁹ However, though the independence is guaranteed under the law, the inability to implement and give effect to the spirit of the law already in place is a major obstacle in ensuring elections in Sri Lanka free of the abuse of public resources.

5.2.2 Power of the Election Commission

In India, even though Article 324⁸⁰ does not specifically vest specific powers, the initiatives of the Commission have been given protection due to judicial creativity. The Election Commission of India in 1968 formulated the Model Code of Conduct (MCC) with the consultation of political parties.⁸¹

76. See Article 324(5) of the Constitution of India, 1950 According to this Article "Subject to the provisions of any law made by the Parliament, the conditions of service and tenure of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

provided that the Chief Election Commissioner shall not be removed from office except in a like manner and on like grounds as a judge of the Supreme Court and the conditions of service shall not be varied to his disadvantage after his appointment:

provided further, that any other Election Commissioner or Regional Commissioner shall not be removed from office except on the recommendation of the Chief Commissioner"

77. Supra note 74.

78. Supra note74.

79. See Article 103(3) of the 17th Amendment to the Constitution.

80. See Article 324(1) of the Constitution of India 1950. It reads as follows "The superintendence, direction and control of the preparation of the electoral rolls, and for the conduct of, all elections to Parliament, and to Legislature of every state and of elections to offices of the President and Vice President held under this Constitution shall be vested in this Commission..."

81. Harbans Singh Jalal v. Union of India, Civil Writ Petition No. 270 of 1997. <http://eci.nic.in> [last visited : 7.6.2010]

However, the issue of enforceability of the Model Code of Conduct (MCC) was raised and it was upheld in the case *Harbans Singh Jalal v. Union of India*,⁸² where the Court held that it was imperative that the Elections Commission of India is able to enforce the provisions of the MCC to ensure free and fair elections according to Article 324 of the Indian Constitution. Thus, the MCC became an effective part of the law in India.

The MCC consists of detailed provisions with regard to use of state resources. It addresses the use of state vehicles, including vehicles assigned to ministers and the procedure for hiring helicopters and aircrafts for campaign work. The use of State media, the prohibitions on the political party in power to declare policy and other welfare benefits, and controls on advertising are key features of the MCC.⁸³

Electioneering by the public officials is also barred by the MCC. It is a criminal offence for public officers connected with the administration of the election or any police officer under the Representation of People's Act of 1951, to engage in electioneering activities.⁸⁴ In addition to this the Elections Commission in India can also examine complaints made to it on its own and decide on the same as a quasi judicial body. This power also helps address and prevent the abuse of public resources.

When one compares the circular issued by the Commissioner of Elections in Sri Lanka under the 17th Amendment to the Constitution and the MCC, the MCC is more comprehensive in covering all possible instances of abuse of public resources.⁸⁵

Right to Information

India enacted the Right to Information Act in 2005. This Act provides for a system to access information from government and its institutions upon request and after payment of a nominal fee. The system provides citizens and pressure groups to access information from the government to keep track of its progress. If any government department or ministry is spending public finances or abusing public resources for election campaign work, a citizen can access the information to check the veracity of this. Hence the Right to Information law is a very effective mechanism in protecting public resources during elections.

82. Civil Writ Petition No. 270 of 1997 <http://eci.nic.in> [last visited : 7.6.2010]

83. See Model Code of Conduct

84. See Section 129 of the Representation of the Peoples Act 1951.

85. The Model Code of Conduct (MCC), includes specific details with respect to the extent of use of ministerial work distinguishing between ministerial work and political work. The MCC also prohibits combining Ministerial work with that of political campaign work and in such event a minister is disentitled to use his office or any resources connected with holding such office in such situation. For further details see Model Code of Conduct

The inability of the Election Commissioner in the legal and political context of Sri Lanka to take action against gross violations of election law is appalling. To contrast the competence of the Elections Commission of India gives a positive picture as how one should deal with errant candidates.

The following is illustrative of the above. Under the Model Code of Conduct for the Guidance of Political Parties issued by the Election Commission of India (ECI) declaring of government grants, welfare schemes and policy are prohibited during the election campaign period. In one such instance Minister for Human Resource Development, Arjun Singh, declared that the Government of India in furthering a policy benefitting Other Backward Classes (OBCs).⁸⁶

The ECI severely reprimanded a Cabinet Minister and the Government for declaring such policy during the campaign period of elections to be held in the state assemblies of Assam, Kerala, Tamil Nadu, West Bengal and Pondicherry and called on the Government of India to refrain from further issue of such statements.⁸⁷

86. "The Central Government of India classifies some of its citizens based on their social and economic condition as Scheduled Caste, Scheduled Tribe and Other Backward Classes (OBCs). The OBC list presented by the commission is dynamic (castes and communities can be added or removed) and will change from time to time depending on Social, Educational and Economic factors. For example, the OBCs are entitled to 27% reservations in public sector employment and higher education. In the constitution, OBCs are described as "socially and educationally backward classes", and government is enjoined to ensure their social and educational development" Sourced from http://en.wikipedia.org/wiki/Other_Backward_Class [last visited : 7.6.2010]

87. See Letter from the Election Commission of India to the Cabinet Secretary of India bearing no 437/6/2006-PLN-III dated March 10 2006 available at http://eci.nic.in/eci_main/ElectoralLaws/modelcodeofconduct_noticies.asp [last visited : 6.6.2010]

6. Recommendations

The PPPR highlights the grave abuse of public resources in previous chapters. These examples show the cost that people are compelled to bear as a result of these abuses, and how such abuses compromise the integrity of the whole election. Therefore, the PPPR would like to make the following recommendations to help overcome the abuse of public resources during future elections.

6.1 General

- I. Appointment of an independent and effective Election Commission Appointment of an independent Bribery, Police, and Public Service Commissions A Commission of Inquiry be set up to inquire into the abuses Of public resources during elections headed by a person with integrity and acceptable to the civil society.
- II. Recover the cost of abuse from the errant candidates immediately.
- III. Independent review and reports by the Commissioner General of Inland Revenue, Customs Department, Financial Investigation Unit of the Central Bank and the Auditor General on the abuse of the state resources and expenditure of campaign funds should be made mandatory.
- IV. Systems Audit of the pre and post electoral counting and recording process must be considered to ensure integrity of the process.
- V. A clearer legal definition of political advertising must be introduced to prevent use of indirect representations during the campaign free period.
- VI. The Fiscal Responsibilities Act can be amended to provide for a pre election report of the Secretary to Treasury in respect of the Presidential Election.

6.2 Neutralising Governmental Interferences through Caretaker Provisions

All Elections should to be held under a Caretaker Government. For this purpose, special mechanisms should be evolved with the following guiding principles:

- I. During Presidential Elections, the incumbent President and the Cabinet of Ministers to be permitted to attend only to routine functions that have no bearing on the election.
- II. No public ceremonies of any magnitude to take place incurring public expenditure, where the President or the Cabinet of Ministers or Members of Parliament or any candidate attends.
- III. Public sector transfers, promotions, appointments, recruitments of every description, having regard to the exigencies of the service, should not be offered without the permission of the Election Commission. However, the Election Commission must be satisfied that the intended action is taken not to promote the election of any candidate or party.
- IV. All steps must be taken by the Election Commission to ensure that no advantage is given to a candidate representing the party in power over the other candidate.
- V. In the event of the General Election, it is only the President and Cabinet that should constitute the Caretaker Government which should not include any non-cabinet or deputy ministers. The Commissioner of Elections may give appropriate directions to any of the members of the caretaker government in order to ensure a free and fair poll.
- VI. In Provincial Council and Local Authorities Elections, members of the relevant bodies shall cease to hold office, if they are to be candidates. The other principles above named shall mutatis mutandis apply. At no stage the President, Cabinet of Ministers or Member of Parliament should involve themselves in those capacities in election campaigns.

6.3 Systemic Changes

- I. Mechanism to collect data regarding state resources to be made available to the public through an official website.
- II. Automatic audit system to prevent to monitor the use of public resources during elections.
 - a. Prepare a list of inventory of public resources (i.e. personnel, vehicles etc.) and their current status.
 - b. Ensure that 'Daily Running Charts' are properly maintained in respect of all vehicles belonging to, as well as taken on lease by the State, until the election is over.
 - c. Ensure that the institution will not hire or otherwise procure any movable property for whatever purpose without the expressed approval of the Election Commission.
 - d. Ensure that no funds are released for the purpose of promoting the election of any candidate
- III. All public assets (and those that have been hired by the state) should be identifiable and public should be able to identify them easily.
- IV. Effective implementation of a Right to Information law to allow citizens access to government records.
- V. Enact political party financing laws. This should include provisions for declaration of such finances, periodical audit which should be submitted the Commissioner of Elections and an upper limit on the amount one can contribute.

6.4 Enhancing the Power of the Election Commission

The Election Commission in Sri Lanka has to be vested with the following additional powers through legislation to regulate the abuse of resources.

- I. Power to recover the cost from the abusers of resources.
- II. Quasi Judicial power to adjudicate whether an election malpractice has taken place during the election and to take action against errant candidates/supporters of candidates and political parties.
- III. Effective power to take charge of the control room and editorials of the state media institutions to ensure against the abuse of such institutions.
- IV. Capacity of the Election Commission should be increased to have a unit capable of monitoring electronic media and should have officials (or get services of the experts) who understand the working of media institutions.

6.5 Model Code of Conduct

There is an urgent need to formulate a Model Code of Conduct (MCC) with the participation of the political parties. This Code should be all encompassing, covering all issues related to elections. It has to provide elaborate instruction with respect to the use of public resources by governing party candidates.

6.6. Regulating Political Party Funding

While encouraging local party funding, it must be streamlined, particularly setting the standards (firstly on maximum contributions and secondly on disclosure of funding and transparency of funds).

The Election Commission should be able to effectively call for and hold immediate investigations into the violations of campaign financing law.

Annexures

MEDIA RELEASE NO: 10

PRESIDENTIAL ELECTION – 26.01.2010**APPOINTMENTS, TRANSFERS AND PROMOTIONS IN
STATE SERVICES AND IN CORPORATIONS AND STATUTORY
BODIES**

Complaints are being received by the Department of Elections that appointments, transfers and promotions are being made by Government and Provincial institutions including Corporations and Statutory Boards violating the provisions in the Constitution of the Democratic Socialist Republic of Sri Lanka.

2. Attention of the heads of Ministries, Departments and Corporations and Statutory Bodies is drawn to provisions in Article 104B(4) and 104(J) of the Seventeenth Amendment to the Constitution.

3. In terms of these provisions it is necessary to suspend appointments, transfers and promotions in the State Services, Corporations and Statutory Bodies during the period of an election. The period of an election is from the date on which a Proclamation has been issued to hold an election and until the date on which the result of the election is announced. The period in relation to the forthcoming Presidential Election commenced on 23rd November 2009 until ends on the date on which the result of the election is announced.

4. It is hereby notified that any appointments, transfers or promotions effected on or after 23rd November, should be cancelled forthwith.

Dayananda Dissanayake
Commissioner of Elections

Elections Secretariat,
Sarana Mawatha,
Rajagiriya 10107
December 7th, 2009

Backup of Media Release -10-07-12-09

**Guidelines to be observed by the Electronic and Print Media in regard
to Broadcasting/Telecasting/Publishing of Matters relating to the
Parliamentary General Election — 08.04.2010**

In terms of the provisions in Article 104B(5) of the Seventeenth Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka and the powers, duties and functions conferred, imposed and vested in the Commissioner of Elections and in particular to ensure voting at the above election shall free, fair and equal and by secret ballot, I Dayananda Dissanayake, Commissioner of Elections, do hereby give the following guidelines to be followed by the electronic and print media.

1. All telecasting, broadcasting and print media shall be balanced and impartial in their election reporting and shall not discriminate against any contesting political party, independent group, candidate or political party leaders in granting access to airtime.
2. Heads of all broadcasting, telecasting and newspaper institutions should ensure that the broadcast and telecast and publishing of election programmes shall not be interfered with by the President, Prime Minister, any Minister or by any other outside political interference, unless a restraint becomes absolutely necessary to prevent substantial harm to a legitimate interest, such as an act of violence. In any event, such restraint shall not be in contravention of the rule stipulating impartiality and fairness in pursuance of these guidelines. Any decision of the broadcasting or telecasting or publishing institution to restrain any programme, shall be notified immediately to the Commissioner of Elections promptly with all relevant material to justify such decision.
3. All media institutions shall provide accurate, balanced and impartial information in their news bulletins and programmes on current affairs.
4. Owing to the potential for editorial opinion to be confused and biased, electronic media are urged not to broadcast editorial opinions. However, if editorial opinion is permitted for any reason whatsoever, it is obliged also to broadcast and telecast opinions to the contrary as well.
5. News coverage of press conferences and public statements concerning political controversy called or made by the Head of the Government, Prime Minister, Ministers, Members of the Ruling party shall be subject to a right to reply with equal time by political parties opposing them.
6. It is obligatory on the part of the news department and current affairs section (or any similar section) of each institution not to air any programme during the campaign period, unless the contents of the programme are balanced.
7. If any material is broadcast covering an incident or event with any comment or contribution from any political party or candidate or a person concerned with a political party, all other political parties that have any interest or are concerned or are likely to be affected should also be given coverage in the same news item or programme.
8. Any Documentary programme or special programmes that are broadcast during campaign period should disclose the names of the script writer, announcer and the editor.
9. Air time of any programme or news bulletin should not be utilized for unsubstantiated allegations against candidates or political parties or political leaders until the election is concluded. However, if any allegations of any nature is made against a candidate, political party, independent group or political leader such party, group or person should be given equal time and prominence to counter such allegations.
10. All institutions shall act carefully and diligently in airing non election news such as coverage of official functions and crimes.
11. Coverage of President and the Prime Minister should be treated as a coverage given for the political party to which he belongs and therefore leaders of political parties and independent groups contesting elections should be given equal coverage in all programmes.
12. All electronic media institutions should act fairly in selecting participants for panel discussions and as such, the composition of a discussion should be balanced.

13. All phone-in programmes should have fair opportunities for all callers irrespective of the content of their questions and contributions. Officers handling such technical aspects of phone in programmes should be answerable for such balanced phone in programmes.
14. If any Chairperson, Member of the Boards or employees of any electronic and print media institution actively engages in political involvement, such involvement causes conflicts of interest in balance broadcasting. Hence, the management shall be informed of the following in writing in respect of such persons.
- The level of involvement of such person.
 - The nature and level of such person's employment.
 - Extent of involvement in programme making.
15. If an individual (employee or any member of the board of the broadcasting or telecasting and newspaper institution) publicly identified holding an office in a political party, such person should withdraw from journalistic functions until the election is concluded and shall not be permitted to engage in any journalistic function at any broadcasting or telecasting institution. The management must consider the implications for individuals involved in presentation and who are or might become known to the public.
16. When a person refuses to participate in a discussion or interview and chooses not to offer reasons for absence, the electronic media institution shall respect that position. Dramatic devices such as an empty chair in television should not be employed to underline a refusal but it is encouraged to employ a simple and direct announcement in that instance.
17. Any other programme which has an effect of political propaganda for and against any party, candidate or political leader, shall not be broadcast or telecast during the two days preceding the day of election.
18. A broadcaster who broadcasts or print media publishes the result of an opinion poll should identify the organization that conducted the poll, the organization or person that commissioned and paid for the poll, methodology employed, the sample size, margin of error and the fieldwork date. In addition the broadcaster or publisher should state that the poll reflects the public opinion only at the time of the poll was taken.
19. No programme where a candidate promotes the candidature of another contestant be broadcast or telecast.
20. The attention of the Chairpersons of the Sri Lanka Broadcasting Corporation and Sri Lanka Rupavahini Corporation is drawn to Article 104B(5)(b) of the Constitution, which requires them to take all steps necessary to ensure compliance with these guidelines.
21. It is considered vital that a period of silence prevails just before the date of poll to enable the voter to contemplate and consider the pros and cons of various policies announced and promises made by political parties and candidates during the election campaign. The electronic and print media are therefore requested to voluntarily refrain from broadcasting, televising or printing of discussions, debates, advertisements, etc. related to the election at least 48 hours prior to the date of poll as well as on the day of the poll.

These guidelines will be valid during the period of election which will end on the announcement of the result of the Parliamentary General Election due to be held on 08.04.2010.

Deyananda Dissanayake
Commissioner of Elections

Office of the Commissioner of Elections,
Elections Secretariat,
Sarasu Mawatha,
Rajagobya, 10107
17th February, 2010

PE-2010-Guidelines to Media

Annexure 04

සෞඳ්‍ය දේපල රැකගැනීමේ වැඩසටහන Programme for Protection of Public Resources பொதுச் சொத்துக்களை பாதுகாக்கும் நிகழ்ச்சித்திட்டம்



No. 28/2, Salford Lane, Colombo 07, Sri Lanka. Tel: 011 9804064, 011 5278788 Fax: 011 5127432 Email: ppo030@gmail.com Web: www.translanka.lk

The Secretary,

Dear Sir/Madam,

"Protection of Public Resources during Election"

TISL at present conducting a programme to monitor and investigate abuses of public property by Political Parties, Candidates and other Officials or public institution during the forthcoming Presidential Election.

A similar programme was conducted during the December 2001 & 2004 General Elections and the Presidential Elections in 2005. That exercise exposed the extent of the colossal losses to public resources as a result of such misuse. The diabolical practice of misusing state resources in the forthcoming Presidential elections is showing its ugly face again. Our present program is a continuation of Programme for Protect Public Resources. Our aim is to prevent misuse of public resources by all branches of the government, political parties, candidates and other officials or public institution.

May we draw your attention to the following sections in the Financial Regulations According to the FR 156 (7) All Chief accounting officers should exercise due economy in all financial transactions and they should also ensure that expenditure should not be incurred unless absolutely necessary even though financial provisions exists or money is available.

According to FR 127 (7) all chief accounting officers are responsible for taking measures to ensure that the procedure laid down in FR 102 to 108 is followed in case of losses caused to government by delays, negligence, fault or fraud on the part of officers.

You will no doubt agree that, you are not only the chief accounting officers but also the accounting officer for your ministry, and thereby it is your duty to take adequate and proper arrangements are made for the safe custody and preservation of resources belonging to the government, as laid down in FR 128 (1) (e).

We appreciate very much if you were to let us know of the action you take.

Thanking You,

Yours faithfully,

J.C. Wellamuna
Executive Director
Transparency International Sri Lanka



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நகர அபிவிருத்தி, புனித பிரதேச அபிவிருத்தி அமைச்சு
Ministry of Urban Development & Sacred Area Development

3 වන මහල, "සෙහිරිපාය", බත්තරමුල්ල
3rd Floor, "Sehiripaya", Battaramulla.

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MUSAD/S/O		24.12.2009

Mr J C Wellamuna,
Executive Director,
Transparency International Sri Lanka,
No.28/1, Bullers Lane,
Colombo 7

Dear Sir,

"PROTECTION OF PUBLIC RESOURCES DURING ELECTION"

I refer to your undated letter on the above matter.

I fully agree with you with regard to the matters you have raised in your letter. As the Chief Accounting Officer, I have endeavoured to take adequate and proper arrangements for the safe custody and preservation of resources belonging to the Government as laid down in FR.28 (1) (e).

In this respect, there is an ambiguity with regard to the resources allocated to the Hon Minister and his personal staff. They are entitled for allocation of vehicles, office space etc. Since they are considered to be the staff of the Ministry. (although not permanent, since the letter of appointment states that "the appointment is valid for the term of the Minister")

Since they are political appointees they do involve in political activities and for this purpose they utilize the resources legitimately allocated to them by the Ministry. It is not clear whether this could be construed as misusing state resources for political activities.

Apart from the above, I can assure you as a senior public servant, public resources will be protected and will not be misused in this Ministry.

Yours sincerely,

Dr P Ramanujam
Secretary
Ministry of Urban Development and
Sacred Area Development

PR/23

දුරකථන / අංකවල / Telephones

මහල Minister	282288	විද්‍යුත් තැපෑල E-Mail	minister@urban.gov.lk	තැපෑල Fax	286647	අමාත්‍යාංශ Secretary	282412	විද්‍යුත් තැපෑල E-Mail	drprmanujam@urban.gov.lk	තැපෑල Fax	287568
විද්‍යුත් තැපෑල E-Mail		විද්‍යුත් තැපෑල E-Mail	2864770	තැපෑල Fax	2862530	විද්‍යුත් තැපෑල E-Mail		විද්‍යුත් තැපෑල E-Mail		තැපෑල Fax	287835

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நகர அபிவிருத்தி, புனித பிரதேச அபிவிருத்தி அமைச்சு
Ministry of Urban Development & Sacred Area Development

3 වන මහල, "සෙහිරිපාය", බත්තරමුල්ල
3rd Floor, "Sehiripaya", Battaramulla.

31 JAN 2010

මගේ අංකය My No.	ඔබේ අංකය Your No.	දිනය Date
MUSAD/S/O	PRE/2010/19	06.01.2010

Mr Dayananda Disanayake
Commissioner of Election,
Election Secretariat,
P O Box 2,
Rajagiriya

Dear Mr Disanayake,

**PRESIDENTIAL ELECTION 26.01.2010
REPORT OF PROGRAMME FOR PROTECTION OF
PUBLIC RESOURCES FROM ELECTION PROPAGANDA OF PRESIDENTIAL CANDIDATES**

I refer to your letter of even number dated 4th January, 2010 on the above matter.

The issues related to the Ministry of Urban Development and Sacred Area Development raised by the Programme for Protection of Public Resources is the publishing of an advertisement in Divaina on 29.12.2009.

The occasion for publishing this supplement was signing of a gazette notification of the Development Plan for Ampara. Designing of the Development Plan is a long process which begins with preliminary design, the negotiations with all the stakeholders i.e. citizens of the town, elected representatives in the Local Authority etc. and has been going on for more than a year. We have regularly published such supplements when Development Plans are gazetted for important towns.

If it is in your view, such publication of supplement is a violation of the election law, I will be pleased, if you could kindly advise me whether we should refrain from giving publicity to the development activities undertaken by this Ministry during this period.

In any case if this constitutes the violation of the election law, I assure you we will refrain from these actions.

Yours sincerely,

Dr P Ramanujam
Secretary
Ministry of Urban Development and
Sacred Area Development

C/o. Transparency International Sri Lanka
PR/23

දුරකථන / අංකවල / Telephones

මහල Minister	282288	විද්‍යුත් තැපෑල E-Mail	minister@urban.gov.lk	තැපෑල Fax	286647	අමාත්‍යාංශ Secretary	282412	විද්‍යුත් තැපෑල E-Mail	drprmanujam@urban.gov.lk	තැපෑල Fax	287568
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இ.உ.சி முகாமைத்துவம் மற்றும் மனித உரிமைகள் அமைச்சு
MINISTRY OF DISASTER MANAGEMENT AND HUMAN RIGHTS

අංක 02, විජයා මාවත, කොළඹ 07, ශ්‍රී ලංකා
 இலங்கை உ.உ.சி முகாமைத்துவம், காலிபு 07, இலங்கை
 No. 02, Wijerama Mawatha, Colombo 07, Sri Lanka

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Mr J C Weliamuna
 Executive Director
 Transparency International Sri Lanka

Dear Mr Weliamuna

Thank you for your faxed message of regarding 'Protection of Public Resources during Election'. Your concern is admirable and, whilst it is understandable that you should draw attention to our responsibilities at this present juncture, you will appreciate that such protection of public resources should be ensured always. I am not sure therefore why you would appreciate knowing what particular action we would take now, since as you are aware, procedures to achieve this end are clearly laid down, and it is our responsibility to adhere to them throughout.

Yours sincerely,


 Prof Rajiva Weerasinghe
 Secretary
 Ministry of Disaster Management and Human Rights



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நிதி, திட்டமிடல் அமைச்சு
MINISTRY OF FINANCE AND PLANNING

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 ලේකම්, ලේකම් (වි.)
 The Secretariat, Colombo 01.

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Mr. J.C. Weliamuna
 Executive Director
 Transparency International Sri Lanka
 28/1, Bullen Lane
 Colombo 7

Dear Sir,

Protection of Public Resources during Election

This has reference to your letter dated 17th December 2009.

While acknowledging the receipt of your letter, we thank you for your interest shown in protecting public property during election period.

We wish to mention that already the Commissioner of Elections by his letter dated 08.12.2009 has sent directives on 'Misuse of Government Resources' to all Secretaries and Heads of Departments who are Chief Accounting Officers and Accounting Officers respectively and has requested them to strictly adhere to instructions given therein.

Further, Secretary to the Treasury convened a special meeting of all the Heads of Departments and Corporations and Statutory Boards on 18.12.2009 and gave necessary instructions on making necessary and adequate arrangements for the safe custody and preservation of state owned resources which is the subject of your letter under reference.

Under these circumstances, we wish to mention that adequate instructions have already been given on the above and agree that public officers are vested with the responsibility of protecting state property as per Financial Regulations referred to in your letter.

The interest taken by you in this regard is greatly appreciated.

Yours faithfully,


 Udaya Ranjith Seneviratne
 Deputy Secretary to the Treasury



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 Department of Trade, Marketing Development, Co-operatives and Consumer Services

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 No. 338, Union Place, Colombo 07, Sri Lanka

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 දිනය / Date } 2009.12. 30

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(Signature)
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Be Alert



Have you realised that every rupee that is being misused is your tax money

Any Political Party, a Presidential Candidate or any other person misusing public resources including -

- Government vehicles, helicopters, aircraft & any other form of transport
- Employees of government institutions
- Government buildings and State funds
- Special loans & state bank facilities
- Allocation of time & printing facilities in State sponsored media institutions or any other Public Property

is liable to be punished.

Stand up against the misuse of Public Resources during elections

Inform us of any misuses of public resources that you notice, with proof

Programme for Protection of Public Resources
 Transparency International Sri Lanka
 28/1, Bullers Lane, Colombo 07.

Tel : 011 5 769 769 / 011 5 654 654
 Fax : 011 5 627 432
 Email : pppr2010@gmail.com
 Web : www.tisrilanka.org

Abuse of Public Property wastes your tax money

Stand against the use of state vehicles, buildings, officials, public transport by election candidates.

Please inform us

011 5 769 769

011 5 654 654

Transparency International Sri Lanka, 28/1, Bullers Lane, Col 07.
 Fax 0115-627 432 Email: pppr2010@gmail.com
www.tisrilanka.org

Annexure 07-1



05.01.2010

Mr. Lalith Weeratunga,
The Chairperson,
Telecom Regulatory Commission of Sri Lanka,
275, Elvitigala Mawatha,
Colombo 08.

Dear Sir,

Re: Mobile Message of the President on 1st January 2010

In relation to the SMS received by mobile phone user of Sri Lanka on the 1st January 2010 by the President of Sri Lanka, Transparency International Sri Lanka would like to bring your attention to the following:

- A private telecommunication provider has admitted that the SMS was sent in accordance with a direction given by the Telecommunication Regulator Commission of Sri Lanka. As per Section 5 (f) of the Telecommunication Act no 25 of 1993, Chairperson of TRCSL could send such a message to the citizens of Sri Lanka only in the interest of national security, public order and the defence of the country. Thus the directive of TRCSL is clearly outside the scope of the law. Further this is a violation of Article 12(1) of the Constitution of Sri Lanka, (equality and equal protection of the law), which is broadly interpreted to include all arbitrary actions.
- As the direction is given with the intent of giving a person a wrongful or unlawful advantage, your direction falls within the interpretation of "corruption" within the meaning of section 70 of the Bribery Act and comes within the purview of the Bribery Commission of Sri Lanka.
- Article 104 B (2) of the 17th Amendment speaks of the duty of the Election Commission to secure enforcement of all laws relating to the holding of elections and of the authorities of state charged with the enforcement of such laws. Thus all the authorities of the state shall not misuse power to bestow a wrongful advantage to a particular candidate of the election.

Annexure 07-2

- In view of Article 12(1) of the Constitution and well recognized decisions of the Supreme Court that elections be free and fair, your office has a constitutional duty to ensure that authorities of the state do not act in such a manner as to extend undue advantage to a particular candidate at the election which has an adverse effect on electoral integrity.

It is our sincere hope that as a responsible public officer in Sri Lanka you would support and stand for democratic values uphold by the constitution of Sri Lanka. We further hope that you would take further steps to prevent repetition of similar unlawful activities.

Thank You,

For Transparency International Sri Lanka

J.C. Weliamuna
Executive Director

CC: Chairperson Bribery Commission of Sri Lanka
CEO Air Tel
CEO Dialog Telekom
CEO Mobitel

Annexure 08

COST OF ADVERTISING FROM DECEMBER 1 2009 – JANUARY 27TH 2010

UPFA

Media	Spots	Cost (Rs.)
TV	8039	289,805,200
Radio	5248	31,933,000
Newspapers	898	104,335,400
Total		426,073,600

THARUNYATA HETAK (EXCLUSIVELY FOR THE PRESIDENT)

Media	Spots	Cost (Rs.)
TV	6792	156,293,900
Radio	4300	15,919,600
Newspapers	-	-
Total		172,213,500

UNP/UNF (FOR COMMON OPPOSITION CANDIDATE)

Media	Spots	Cost (Rs.)
TV	28835	151,619,400
Radio	2691	19,502,500
Newspapers		54,400,000
Total		225,521,900

Total Cost of Advertising 823,809,000

Annexure 09

CALCULATION OF THE EXPENDITURE ON PROPAGANDA MATERIAL DURING PRESIDENTIAL ELECTION

Expenditure by political parties

•Printing of propaganda material

Criteria used for calculations

1.	(i)	Number of electorates	= 160	
		Except North and East	= 142	
	(ii)	Number of G.S. Divisions within 142 Electorates	= 6408	
	(iii)	Main cities	= 162	
	(iv)	Small towns	= 678	
	(v)	Villages	= 14236	
	(vi)	Number of posters of candidate		
	I.	Large Posters (Will be pasted in 3 rounds) [cost Rs. 12.00 each]		
		villages	= 20,000	
		small towns 5 each	= 8,000	
		main cities 60 each	= 10,000	38,000
	II.	Medium Size Posters(Will be pasted in 4 rounds) [cost Rs. 6.00 each]		
		villages	= 40,000	
		small towns 5 each	= 16,000	
		main cities 185 each	= 20,000	76,000
	III.	Small Size Posters [cost Rs. 3.00 each]		
		villages	= 42,000	
		small towns 5 each	= 34,000	
		main cities 60 each	= 20,000	92,000
	(vii)	Number of posters for propaganda during meetings. Half the cost of above		
	(viii)	Cut outs	=2500	
		cost Rs. 8000 each		

(ix)	Hoardings cost Rs. 50,000 each	=500
(x)	Banners cost of 6000 each	=1500
(xi)	Hand bills cost Rs. 12.00 each	=150,000
(xii)	Election manifesto cost Rs. 80.00 each	=100,000
2.	Pasting of posters, Distribution of hand bills and manifesto Canvassing (lunch packets, pocket money, transport, Pasting liquid, instruments)	
(i)	Number of man days 1000 per round. rounds	= 08
	Food	=Rs. 800,000
	pocket money	= Rs. 2,000,000
	Transport 20 km x Rs. 20	= Rs. 3,200,000
	Instruments	= Rs. 550,000

Cost Estimate

Posters	= Rs. 3,500,000.00
Propoganda meeting Posters	= Rs. 1,750,000.00
Cut Outs	= Rs. 20,000,000.00
Hoardings	= Rs. 25,000,000.00
Banners	= Rs. 9,000,000.00
Hand bills	= Rs. 1,800,000.00
Manifesto	= Rs. 8,000,000.00

Pasting of Posters, distributing hand bills, distributing election manifesto, Canvassing,	= Rs. 6,550,000.00
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TOTAL	= Rs. 75,600,000.00
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Annexure 10 - 1



REPORT - 01 (31 DECEMBER 2009)

A. Introduction

The abuse of public resources at elections seems to be a continuing activity in every election in Sri Lanka. The Program for Protection of Public Resources (PPPR) in its reports in 2004 and 2005 pointed out the manner in which these activities have taken place and their outcome. The trend seems even more ominous at the current Presidential Election.

It is extremely important that the public resists the use of public resources for election purposes because it is the public who bears the cost of abuse of public resources. The elected representatives are only the caretakers of public property which is at all times to be used for the benefits of the public. Just as the public condemn rape or murder, they ought to condemn and call upon law enforcement authorities to deal with those powerful persons who abuse public finance for personal gain at elections.

The Programme for the Protection of Public Resources of Transparency International Sri Lanka (TISL), evaluates the integrity of the Presidential Election 2010 in the light of the misuse of public resources/property and non compliance with the directions/guidelines introduced by the Elections Commissioner in that regard.

The Political Environment in which the Election is Held

The Presidential Election due in 2012 was advanced to 2010 by the President as per the powers vested with him. This election was called at a historically important period, in which the government defeated the LTTE ending a bloodiest civil war prevailed more than 25 years. The election is contested in an environment where 110 MPs are holding ministerial portfolios. Even after the nominations for the election, the President appointed another crossed over MP as a cabinet Minister. In addition to the Ministries and Departments, there are 168 State Corporations and Statutory Boards along with 93 companies with total control by the government. Directors of these public corporations are appointed by the Ministers and there is hardly any doubt that chairmen and directors of these corporations are appointed on political affiliations rather than on merit. The state owned companies are not subject to the government audit by the Auditor General's Department and thus not reviewable by any of the finance committees in Parliament.

The 17th Amendment to the Constitution that guarantees an independent public service ceased to exist two years ago. Since then all major positions are being filled circumventing the required screening process by the Constitutional Council. The Election Commission which is envisaged to be established under the 17th Amendment was never formed despite the fact that the present Elections Commissioner has passed his age of retirement. As a result, the Elections Commissioner is tasked to discharge all the duties and responsibilities to conduct

free and fair elections. Thus the accountability and the responsibilities of a whole commission are now vested with a single person with limited resources.

Sri Lanka has no right to information law to demand information from the state about its conduct. This prevents a transparent election process where the conduct and expenditure of public officers, institutions and political parties during the time of an election are prevented from the scrutiny of the public eye. Thus the legitimate right of the tax payer to know how their money is spent is veiled with a culture of secrecy.

B. Election Commissioner's Guidelines & Instructions

As per the powers vested with him, the Commissioner of Election issued guidelines/directions/notices with the objective of ensuring a free and fair Presidential election. For example

- Directions were issued on 08.12.2009 to all Secretaries of the Ministries, State Departments, Corporations and Statutory Bodies to prevent the abuse of public resources during election time. Among others these directions include nullification and prohibition of any appointments, transfers and promotions of employees done or intended to be done on or after the 23.11.2009. These directions were publicly announced by publishing in national newspapers on 14.12.2009.
- A set of guidelines was issued by the Commissioner on 17.12.2009 to the electronic and print media to be observed in broadcasting, telecasting and publishing of matters relating to the Presidential Election.
- A guideline dated 07.12.2009 was issued to the Police Department regarding their duties in relation to the election

Although the objectives of these guidelines/directions/notices aimed at a free and fair election it is unfortunate to note these were observed in breach than conformity. The specific abuses highlighted in this report identify such non-conformities.

C. The Cost of Propaganda

It is evident that large sums of rupees are invested by the main candidates for their campaigns in the election resulting competing at election a high cost affair. For example a 4 colour poster (medium size) approximately costs between Rs.08 to Rs.12 for a quantity over 100,000 in the initial print. A cost of a 20X20 feet hoarding to be exhibited in Colombo city limits would cost around Rs.300,000/- and a larger hoarding would cost approximately Rs.500,000/-. At present it is not scarce to see hoardings carrying political messages in almost all major junctions in many towns and villages in the country.

It is legitimate and legally accepted norm that such expenses to be borne by the candidates themselves or their political parties/independent group. Under no circumstances it is permitted to use public resources consisted of monies of the tax payers in the country for individual or political party propaganda.

The high cost of involved in election campaigns is a contributory factor for using public property by candidates who have controlled over them. Despite being immoral and illegal, abuse of public property in any circumstances is unaffordable to a developing country like Sri Lanka where burdens may have to be carried by sectors such as education, health or public transport. Given the huge sums involved in election propaganda, TISL urge the need of political parties disclosing the sources of their funding. Unfortunately, unlike many democratic countries, Sri

Lanka does not have law compelling political parties to disclose their funding together with the source.

D. Specific Instances of Abuses

By 30th December 2009, the Programme for the Protection of Public Resources of TISL has received more than eighty (80) complaints from the public and its investigators about various abuses of public property and election laws/guidelines by the candidates.

Thus far relevant verified instances are mentioned below:

01. Temple Trees

Facilities at Temple Trees, the official residence of the President, are used to entertain people from various sectors for political purposes. At these events, most of the participants were transported to the venue at State expense and were provided with food and in some instances, even with liquor. The President justified such entertainment events where the cost was borne with the public money as a "normal cultural practice."

Spending public resources for entertainment purposes and to promote candidacy of a party candidate, especially during the time of elections is clearly an unacceptable practice. During the Presidential Election in 2005, facilities at Temple Trees were abused for political propaganda activities by the then Prime Minister (the present President) and the expenditure incurred in those gatherings were never recovered by the State.

Given below are some of the groups entertained at political treats at Temple Trees in December 2009:

- 7th - Recipients of Swarnabhoomi deeds
- 8 th - Mediation Board officers
- 10th – Children of Samurdhi beneficiary families
- 10th - Officers of the Education Sector
- 11th – Members of Women Lawyers' Association
- 13th - Lawyers
- 13th - Police officers
- 14th – Artists
- 15th - Dairy farmers

(The President also conducted a series of similar gatherings at the President's House in Kandy, details of which will be given in future reports)

These gatherings are a violation of the essence of the public notice issued by the Election Commissioner on 08.12.2009 preventing the use of public property for the purpose of promoting a candidate during the election.

02. Public Buildings and Machinery

- A property belonging to the Ports Authority situated at 56/1 Mc-Callum Road, Colombo 10 is being used to print propaganda material in favor of the President. The said posters are seen in Colombo city and other parts of the country.
- A large stage to be the property of Sri Lanka Ports Authority was transported to Minuwangoda and used for the public rally on 27.12.2009, patronized by the President. Several employees from the Ports Authority and two vehicles registered as Ports Authority vehicles (registered numbers: 41 – 3995 and GJ – 2312) were discharged for this purpose.

03. Misuse of Vehicles

Vehicles belonging to various public institutions are reported to have been transporting supporters and used for propaganda across the country for the candidate of the UPFA. The vehicles of Sri Lanka Transport Board, different government ministries, departments and local government authorities were abused in this regard. Given below are few such instances:

(a) Nine lorries bearing the numbers WP-LG 4738, WP-LG 4740, WP-LG 4741, WP-LG 4742, WP-LG 4744, WP-LG 4745, WP-LG 4546, WP-LG 4547, WP-LG 4749 of Sri Lanka Ports Authority (purchased in 2009) are being released for election work of the UPFA in the Southern Province

(b) A fatal accident that took place at Koppara junction in Negombo on the night of 12.12.2009 involving a lorry bearing number LG-4608 belonging to the Ministry of Road Development and a double cab bearing no. NB 7414 belonging to the Chief Secretary of the Eastern Province. It was revealed that the lorry was transporting several cut-outs of the President at the time of the accident.

04. Use of Central Transport Board (CTB) Buses

There is almost a pattern of using CTB buses to transport crowds for meetings attended by President Rajapaksa. Three such instances are given below:

(a) The meeting of the UPFA on 27-12-2009, at Minuwangoda (Japalawatta) - Around 26 CTB buses were used to transport crowds free of charge from Nittambuwa, Attanagalla, Mattakuuliya, Udahamulla, Angoda, Wattegama and Teldeniya.

(b) The meeting held on 26-12-2009 in Alankuda Grounds in Kalpitiya - The Internally Displaced Persons (IDPs), previously displaced from Jaffna and now living in Mannar, were transported by CTB buses free of charge.

(c) Crowds for several meetings in Temple Trees were brought in CTB buses. On 13.12.2009 a large number of CTB buses were used to transport police officers from outstations (in addition to police vehicles) to the temple trees.

05. Use of Sri Lanka Air Force (SLAF) Helicopters

On 24-12-2009, a SLAF helicopter carried Ministers Dallas Alahapperuma & Anura Priyadarshana Yapa, Member of Parliament Wimal Weerawansa and Western Provincial Council Minister Udaya Gammanpila to Kandy where they participated in a public meeting attended by Technical College Staff, Women's Organisations and University Employees.

These acts violate the regulation of the Commissioner of Election issued on 08.12.2009 which prohibits the use of government motor vehicles and helicopters/aircrafts for the benefit of a candidate of the election.

06. Misuse of public officials and other public servants for political work

There are reports that many public officials from ministries and public corporations engaged in political party activities. Under the Establishments Code, Chapter XXXII, members of Armed Forces, Police, State Officers and Supervisory Officers etc. are prohibited from engaging in political activities, except to vote at an election. The Elections Commissioner, acting under the 17th Amendment to the Constitution has also prohibited usage of public officials/employees in political party activities pending an election. We give below some clear abuses in this regard:

(a) 71 security officers attached to the Ports Authority in Colombo were released for election work in the Southern Province in November 2009.

(b) Chairman of Airport and Aviation Service Ltd. had verbally ordered middle and minor grade employees of the Airport to go on duty leave to Colombo on 23-12-2009 to participate in a protest rally against a statement made by the common candidate of the opposition

(c) Several serving diplomats and officers of Foreign Service (appointed by the government outside the professional Sri Lanka Foreign Service. However the provisions of the establishment code is applicable to these officers during the tenure of their office) have returned to the country for campaign activities, while still being serving in their posts. One such instance is: Mr. Chandrapala Liyanage who is the second secretary to the consulate in Italy is presently in Sri Lanka and actively engaged in the campaign of the UPFA candidate.

(d) The Secretary to the Ministry of Defence, a key public servant of the present government, is actively engaged in political campaign for the UPFA candidate. For example he has addressed a political meeting on 19th December 2009 at a rally in Urapola, Kadugannawa. Among the other speakers were politicians.

07. Information Ministry facilities for the political programme titled 'Esi Disi'

Facilities of the Information Department head office at the Narahenpita is being used for pro-UPFA public discussions/panel discussions attended by professionals, senior public officials and selected individuals with UPFA affiliations. The programme named "Esi Desi" has been introduced to discuss issues having a direct impact on elections. This programme is operating under the patronage of the Director Information where the entire cost of the programme is borne by the Information Department.

08. State Media

Some of the key officials of few public media institutions are concurrently holding political party positions of the Sri Lanka Freedom Party, the leading constituent party of the UPFA. This results in considerable amount of public resources in those institutions being used for promotion of one candidate and the policies of UPFA. These officials include:

(a) Hudsun Samarasinghe – Chairman of the Sri Lanka Broadcasting Corporation who is the organizer for Colombo West of Sri Lanka Freedom Party (SLFP). He anchors a number of TV/radio programmes which clearly support the candidate of the UPFA.

(b) Sudharman Radaliyagoda – Deputy General Manager of the Independent Television Network (ITN) is the SLFP organizer for Kurunegala District. He anchors few TV programmes based on contemporary political issues which are clearly titled towards the candidate of the UPFA.

(c) Karunaratne Paranawithana – Chief Executive Officer of the Sri Lanka Rupawahini Corporation (SLRC) is a SLFP organizer for Ratnapura district.

(d) Lalith de Silva – Reviewer of newspapers for ITN is a SLFP organizer for Colombo district. Continuation of office of these individuals is a blatant violation of regulations issued by the Commissioner of Election on 17th December 2009 for the Electronic and Print Media. Particularly the regulation 15 states:

"If an individual (employee or any member of the board of the broadcasting or telecasting and newspaper institution) publicly identified holding an office in a political party, such person should withdraw from journalistic functions until the election is concluded and shall not be permitted to engage in any journalistic function at any broadcasting or telecasting institutions. The management must consider the implications for individuals involved in presentations and who are or might become known to the public."

Further, the regulation²⁰ states:

“The attention of the Chairpersons of the Sri Lanka Broadcasting Corporation and Sri Lanka Rupavahini Corporation is drawn to Article 154B(b) of the Constitution, which requires them to take all steps necessary to ensure compliance with these regulations.”

09. Tharunyata Hetak Advertisements

This youth organisation is reportedly receiving high contributions (by way of sponsorships) from several public institutions such as Bank of Ceylon and National Lotteries Board, both of which fall under the purview of the President. The key officials of this youth organization are the President’s sons Namal Rajapakse (chairman) and Yoshitha Rajapakse (vice chairman). A series of advertisements are carried out by this organization through radio and TV highlighting the need of a strong leader for the country. Although the advertisements do not mention a name of a candidate, it is not a secret or difficult to understand, for whom they stand for, given the direct political affiliation of this organization with the President and his regime and the content of the advertisements. The following data presents the number of spots retained by Tharunyata Hetak in the main stream TV channels and the cost involved:

**Number of Spots for advertisements by TV Channels
between 1st to 21st December 2009**

	No. of Spots
Channel EYE	501
Derana TV	305
ITN	908
Rupavahini	1285
SIRASA TV	301
Swarnavahini	254
Total spots -	3554

Total cost of the advertisements during this period, based on regular disclosed rate cards of the channels, amount to Rs.84, 027,600/-. We have observed that another amount of Rs.5, 842,000/- has been spent on radio advertisements. We note that the cost of political commercial is more than the normal rates disclosed in the rate cards. Further there is an additional cost of production, which is not ascertainable at present.

This raises the need to have a transparent political party funding in the country in addition to preventing electioneering at public expenditure.

10. Hoardings and Advertisements sponsored by Public Institutions

A large number of hoardings and advertisement sponsored by public institutions are displayed at various places in the country and published in newspapers supporting the President and his election messages. Below mentioned a few examples in this regard:

Display of Hoardings -

- (i) Hoarding displayed at Nugegoda sponsored by the State Trading Corporation
- (ii) Hoarding displayed in town hall sponsored by the Presidential Secretariat
- (iii) Hoarding displayed in Thimbirigasyaya sponsored by Presidential Operational Office
- (iv) Hoarding displayed in Matara sponsored by Sothern Development Authority
- (v) Hoarding displayed in Matara sponsored by Ruhunu Radio

Advertisements Published:

- (i) Advertisement published in Ravaya on 20.12.2009 sponsored by Board of Investment (BOI), Sri Lanka.
 - (ii) Advertisement published in Lankadeepa (Sunday Edition) 28.12.2009 sponsored by the Ministry of Tourism
 - (iii) Advertisement published in Divaina on 29.12.2009 sponsored by Urban Development Authority and the Ministry of Urban Development and Scared Area Development
 - (iv) Advertisement published in Dinamina 29.12.2009 sponsored by Lanka Sathosa.
- These are only few examples where tax payer’s money is used for the campaign of a single candidate of the election.

E. Specific Examples for the violation of the guidelines/regulations of the commissioner of Elections

(a) On 23-12-2009, Senior Supt. of Police in charge of Hambantota Division (Chandra Kumara) had, at a conference attended by officers in charge of Police stations in the District, said that no one should be permitted to remove, destroy or deface any cutouts of HE the President and that OICs will be held answerable for any incidents in this connection.

This is a blatant disregard of the guidelines issued by the Commissioner of Election to the Inspector General of Police to dismantle and remove illegal cutouts, banners posters etc.

(b) 650 people have been recruited from Matara District for the Railway Department as temporary labourers. The letters of appointment were issued after the Presidential Election was announced on 23rd of November 2009 but they were intentionally backdated to 17th November 2009 to circumvent the direction of the Commissioner of Election which prohibits any appointment to the government service after the 23rd November 2009.

(c) The hoardings, cutouts and other election related materials continue to be displayed in public places irrespective of the guidelines to the IGP by the Commissioner of Election to remove such materials.

F. Conclusion

The width and depth of abuses of state resources can be easily ascertainable from the above instances. What is of more concern is its impact on the integrity of the electoral process and the candidates who supposedly stand in election stages to safeguards the property and the rights of the people. Therefore, TISL urges the public to raise their voices against the continuation of these abuses.

Annexure 10- 2



REPORT - 02 (10 JANUARY 2010)

1. INTRODUCTION

Report 1 of the Program for Protection of Public Resources (PPPR) of Transparency International Sri Lanka (TISL) published on 31.12.2009, highlighted a number of abuses of state assets in the current Presidential Election Campaign. The report also covered some aspects of the cost of the campaign with respect to the large number of advertisements published, telecast and broadcast through the print and electronic media highlighting the need to have a transparent political party funding.

1.1 Responses to the First Report

On 1st January 2010 Daily Mirror reported the reactions by a few State Organisations as regards the TISL report.

- The Deputy General Manager News and Current Affairs of Independent Television Network (ITN) informed that he doesn't host the 'Thulawa' political programme anymore. However, he has refused to comment when queried on the conflict of interest to support a political party while holding a high post at a state media institution.

The Deputy General Manager News and Current Affairs, Mr. Sudarman Radaliyagoda, continues to hold his position and holds the final responsibility of all news and currents affairs programmes. This is a clear violation of the directions issued by the Commissioner of Elections as Mr. Radaliyagoda continues as the SLFP organiser for Kurunegala district. Although he claims that he keeps out of political programmes the direction of the Election Commissioner requires such an individual to withdraw from journalistic functions until the election is concluded.

- The Director of the Government Information Department, Anusha Palpita denied that the property of the Information Department was being used for programmes in favour of the UPFA candidate.

'Lankadeepa' on 7th January 2009, reported that the auditorium of the Information Department was used for a press briefing which was organised to extend support for the UPFA Presidential Candidate.

- Air Force spokesperson Wing Commander Janaka Nanayakkara responded that a helicopter was provided to transport the Ministers and Parliamentarians to the election rallies on payment made to use such a service.

In a letter dated 5th January 2010 PPPR requested the Air Force Commander Air Chief Marshal Roshan Goonatilleke to divulge the bill paid by the political parties in using Air Force helicopters. PPPR has so far not received any response from the Air Force Commander. It is the position of the PPPR that public assets cannot be used to promote candidates even on payment of fees, rent or any other mode of payment. This position affirms the directions given by the Commissioner of Elections.

- Sri Lanka Transport Board Deputy General Manager responded that SLTB has not hired out any SLTB bus to any political party rally although they could hire them on a charge of Rs. 65 per kilometre for a minimum of 75 kilometres.

PPPR clearly found evidence that buses of the SLTB continued to be used to commute passengers for the meetings of the President. Further it should be noted that the directions of the Election Commissioner prohibits the use of any motor vehicles of the state irrespective of the fact whether it was paid for or not.

The Presidential Secretariat in a press release issued states that the expenses related to food and other meetings/functions held at Temple Trees are being borne by the political party of the President and other voluntary contributions.

PPPR, in a letter dated 5th January 2010 to the Secretary to the President requested the copies of receipts of such payments made by the political party of the President. Moreover, the directions of the Election Commissioner prohibits the use of a government building for free of charge for election related activities and the statement issued by the Presidential Secretariat doesn't specify whether any amount is paid to the government for the use of the building including water and electricity.

2. SPECIFIC ABUSES

As of 9th January 2010, PPPR has received over 160 complaints of abuse of state resources and violation of election laws and regulations issued by the Commissioner of Elections. Of these complaints, in addition to what was covered in the first report, thus far verified instances are mentioned below.

2.1 Lake House

PPPR received several complaints of abuses of assets and resources of Lake House (Associated Newspapers of Ceylon Ltd – ANCL) in favour of the UPFA candidate. Given below are some of the confirmed information:

(a) On 05.01.2010 around 11.45pm three soldiers from the Sri Lanka Army arrived in a dark green cab bearing number SLA 0856 to collect election propaganda posters printed at Lake House sponsored by the Dinamina Newspaper. It was further reported that soldiers of Sri Lanka army are deployed to paste the posters.

(b) A fifty two (52) page four-colour supplement titled "Rata Perata Yana Gamana" (Progressive Journey of the Country) highlighting the development activities of the last four years of President Mahinda Rajapakse's government has been printed at Lake House using high quality 70gsm paper. The printing of the supplement started on 30.12.2009 under job number 48472. The supplement is to be distributed free of charge among households in Sri Lanka. The cost of

printing of each supplement is approximately Rs. 35/- and 100,000 copies are expected to be printed.

(c) An eight (8) page 4-colour supplement was printed at Lake House and distributed with Silumina Newspaper on 10.01.2010 titled Api Putheku Gana Katha Karamu (Let us talk about a son).

It has been a practice during election times in Sri Lanka to use the resources of Lake House for printing advertisements and other propaganda material for the party in power. The past practices indicate that such printing was initially done on credit basis and the relevant cost being written off subsequent to the election. At present PPPR has not received information whether the UPFA campaign has made any payment for the above publications to Lake House. It is the view of the PPPR that even with a payment, public assets cannot be used to promote or prevent the election of any candidate or party.

2.2 National Youth Services Council

The National Youth Council (NYSC) is mobilizing its officers to gather 7000 youth to a meeting to be held in Temple Tress on 12th January 2010. In a letter signed by Director (Development) Mr. H A Dharmasena, NYSC has agreed to bear the cost of transportation of this event. 7000 t-shirts have been printed by NYSC to be distributed at this meeting.

2.3 Payment of cash for Mediation Boards members

The Mediation Boards Day of 2010 which is to be held on July 18th was advanced to 8th December 2009 by a letter issued by the Ministry of Justice. The advanced event was held in Temple Trees where each mediation board member was requested to attend with 10 others. More than 3000 persons were present at the meeting. The participants were given lunch packets and different cash rewards between Rs. 500-1000/-.

2.4 Official Residence of the Leader of the Opposition

The official residence of the Leader of the Opposition is used for election propaganda work such as press briefings, meetings, distribution of leaflets and entertaining media personnel. The official residence of the Opposition Leader is state property which is expected to be used only for his official duties. Given below are two examples of such abuse.

1. On 28th December 2009 a press conference was held at the official residence of the Leader of the Opposition headed by Mr. Lakshman Kiriella M.P.

2. Another press briefing was held on 30th December 2009 at the same residence headed by Mr. Lakshman Kiriella M.P.

Both these events were geared towards the election of the Common Candidate of the Opposition.

2.5 Temple Trees and other Official Residences of the President

Temple Trees, the official residence of the President continues to be used to promote the political campaign of the incumbent President. The Presidential Secretariat has informed the public that the expenses of these events are borne by the political party of the President and on voluntary contributions. The PPPR requests the Presidential Secretariat to make public the receipts of such payments including the payments for venue and utilities in the interest of transparency and good governance.

Given below are some of the groups entertained at political treats/rallies at Presidential Residences

Temple Trees

22.12.2009- Entrepreneurs/Innovators

30.12.2009- Persons who are engaged in the Foreign Employment Industry

02.01.2010- Members of Private Bus Owners Association

03.01.2010-State Bank Employees

04.01.2010- Women members of Co-operatives

05.01.2010- Members of National Poets Association, Handicraftsmen and Dhamma School Teachers

President's House in Anuradhapura

01.01.2010-Nurses and Vocational Training Students, Indigenous Practitioners, Graduates of Ayurvedic Medicine, Teachers and Education Officials

President's House in Kandy

23.12.2009- Business Community of the Central Province

24.12.2009- Some UNP supporters of the Central Province

25.12.2009- Sanasa Bank Employees

30.12.2009 – Members of the Civil Deference Force

Apart from being an abuse of state resources, these events violate the Section 77 of the Presidential Elections Act No. 15 of 1981. Section 77 states

“every person who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing or pays or engages to pay wholly or in part expense of giving providing any meat, drink, refreshment or provision or any money or ticket or other means or device to enable the procuring of any meat, drink refreshment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrain from voting or being about to vote or refrain from voting at such election..... shall be guilty of the office of treating.”

2.6 New Year Greeting - SMS

On 01 January 2010, the mobile users of Sri Lanka received a message from the President stating the following:

“Kiwu paridi obata NIDAHAS, NIVAHAL RATAK laba dunnemi. Idiri anagathaya sarwapparakarayenma Wasanawantha Wewa! SUBA NAWA WASARAK WEWA! Mahinda Rajapaksa” (As I promised, I gave you a free and independent country. May your future be successful! Happy New Year!)

On 2nd January 2010 Weekend Financial Times reported that one of the biggest telecommunication providers in Sri Lanka, Dialog Telekom, has transmitted the President's New Year Message based on instructions received from the Telecommunication Regulatory Commission of Sri Lanka (TRCSL). All other telecom service providers too have sent the President's message to their customers.

The TRCSL is the sole telecom regulatory body in Sri Lanka whose chairman is Mr. Lalith Weeratunga (Secretary to the President). As per Section 5 (f) of the Telecommunication Act no 25 of 1991, Chairperson of TRCSL could send such a message to the citizens of Sri Lanka only in the interest of national security, public order and the defence of the country. Thus the directive of TRCSL is clearly outside the scope of the law.

It is unclear as to who paid cost of the transmission of the President's message. Cost of an SMS is estimated between 50 cents and 1 rupee. Considering there are over 12 million mobile phones in Sri Lanka the cost of such an SMS remains at a minimum of Rs. 6 Million.

PPPR has written to the Chairperson of the TRCSL and the CEOs of Telecommunication Providers of Sri Lanka seeking clarification in relation to who ordered these providers to transmit the President's message and who paid for it. No response was received from any of the parties.

2.7 Misuse of State Buildings and Vehicles

(a) The Kelaniya Bus Depot of Sri Lanka Transport Board (SLTB) located in Peliyagoda is converted into a campaign office of the UPFA candidate. Placards, flags and Hoardings are displayed within and outside the premises.

(b) The Puttlam office of SLTB is converted into a campaign office of the UPFA candidate.

(c) Use of SLTB buses to bring the crowds for UPFA candidate's meetings continues on a wider scale. Buses from the depots of Moratuwa, Panadura, Mattakuliya, Meethotamulla, Maharagama, Aluthgama, Ratnapura, Avissawella, Mavanalle, Matale, Balangoda, Kurunegala(North), Kurunegala (South) and Jaela were used to transport supporters of the President to the meeting at Minuwangoda and buses from the depots of Nawalapitiya, Wategama, Hatton, Walapone and Matale were used to transport supporters of the President to the meeting held in Ruwanwella.

(d) The Kalmunai Urban Council, which is administered by Sri Lanka Muslim Congress (SLMC), is permitting the use of its resources for the election campaign of the Common candidate of the opposition, General Sarath Fonseka. A high official of the Council further confirmed that 03 vehicles belonging to the Urban Council was used during the Election Rally held in Kalmunai on 04th January 2010.

2.8 PUBLIC OFFICERS

It is reported that many public officials from ministries and public corporations are engaged in political party activities. Under the Establishments Code, Chapter XXXII, members of Armed Forces, Police, State Officers and Supervisory Officers etc. are prohibited from engaging in political activities, except to vote at an election. The Elections Commissioner, acting under the 17th Amendment to the Constitution has also prohibited usage of public officials/employees in political party activities pending an election. The engagement of public officers in the Presidential Election 2010 has become a prominent issue and significantly affects the integrity of the election. We give below some clear abuses in this regard:

(a) Engagement of Foreign Service Officers

Several Ambassadors and heads of Consulates of Sri Lanka (who had been appointed outside the professional Foreign Service) have returned to the island and are engaging actively in the campaign for the UPFA candidates. Messers Hemantha Warnakulasuriya (Italy), Jaliya

Wickramasuriya (US), Newton Gunaratne (Myanmar), Bandula Jayasekera (Consul General-Canada), M.M Zuhair (Iran), Bennette Cooray (Phillipines), Asitha Perera (South Korea) are among them.

Bandula Jayasekera and Hemantha Warnakulasuriya have appeared in state media in support of the President and M.M. Zuhair has written numerous articles in national newspapers in support of the President. These individuals continue to be paid by the state (and they not on no pay leave) while they engage themselves in the political campaign. The above mentioned Sri Lanka's foreign consulates and embassies continue to function without a head of delegation pending the election.

(b) Misuse by Ministers' Personal Staff

A minister is entitled to nearly 5 to 10 personal staff members and other perks including vehicles, fuel, and telephone facilities. They control vital state assets worth millions of Rupees of their ministries. At present there are 110 ministers resulting in a huge personal staff, paid by the state. It is evident that most of these ministerial staff members are engaged in political activities of their ministers, who are campaigning for the UPFA. Inquiries by PPPR suggest that some of the Secretaries of Ministries are confused as to whether these personal staff members fall into the category of public officials. However, there is no doubt that they are paid with public money and thus they should not engage in political propaganda activities at the cost of the state.

(c) Secretaries of Ministries and other Public Officials

- The Secretary, Defence is actively engaged in political propaganda meetings which were widely reported in the media. He participates in a series of public meetings named "Vijayagrahanaye Kathawa ada saha heta" which directly attacks the Common Candidates of the Opposition, General Fonseka.

- S.G. Wijeyabandhu, Divisional Secretary of Attanagalla had issued a circular dated 18.12.2009 that the Coordinating Committee meeting of the Attanagalla Divisional Secretariat will be held on 28th December 2009 at 5pm. at the residence of Gampaha District Member of Parliament (MP) Sarana Gunawardena, situated at 15/3 Vijayarama Road, Gampaha. Officially such meetings are supposed to take place at the Divisional Secretariat office. Thus the political motives of this meeting are very clear.

- On 06 January 2010, Chairman of the People's Bank, W. Karunajeewa, with several other high ranking officers of the Bank had organized the distribution of election related pamphlets promoting the candidature of the President. The group was seen distributing pamphlets in the Fort Railway Station, World Market and the People's Bank head office. The chief secretary of the All Ceylon Bank Employees Association has written to the Commissioner of Elections complaining of the violation of election law in this regard.

(d) Involvements of the Police in the Election Campaign

(i) On 11 December 2009 the Commanding Officer of Special Task Force (STF) has issued a direction to distribute a leaflet among the officers of the Special Task Force. The leaflet contains details such as the war on terrorism and development projects of the present government justifying why the incumbent President should be re-elected.

(ii) The Deputy Inspector General of Police (DIG) of the President's Security Division (PSD), S.A Wickramasinghe, is actively involved in campaigning for President Mahinda Rajapaksa. On 01st January 2010 the DIG had summoned all police officers of police stations along Galle

Road from Colombo to Moratuwa for a meeting at the Auditorium of Mahanama College and delivered a speech in support of the President.

2.9 Illegal Payments

The people from Mannar who attended the public meeting in Alankuda grounds in Kalpitiya on 26 December 2009, attended by the President, were paid Rs. 500/- by the Ministry of Resettlement and Disaster Relief Services, in addition to the free transportation provided by the same ministry at the cost of the state .

3. STATE MEDIA AND GOVERNMENT INFORMATION

3.1 State Run Websites

PPPR monitored three government websites, www.gov.lk, www.defence.lk, and www.news.lk from 17 December 2009 to 05 January 2010. It is observed that these websites which are maintained through public money are used extensively for propaganda of the President.

(i) The website www.defence.lk managed by the Defence Ministry is publishing news items and propaganda material directly favouring President Mahinda Rajapaksa while carrying news items and propaganda material adverse to the Common Opposition candidate.

(ii) The government website www.gov.lk is clearly carrying propaganda articles in support of the President. Some of the titles of the news items published include the following:

- Opposition Alliance is a Mix of Animals and Reptiles
- Red Face Dayasiri walks out in fear of 'Rathu Ira' debate

(iii) Extensive propaganda news items are published in the www.news.lk website. Out of the 88 news items examined, 45 items are relevant to the Presidential Election. Out of the 45, 29 are in favour of the President's campaign and the rest was directly published against the joint opposition candidate. The website contains no moderate articles.

4. COST OF PROPAGANDA

4.1 Advertisements in media

The advertising campaign of the UPFA candidate is stretched to global level. The websites of newspapers published abroad such as the Telegraph, The Independent, The International Herald Tribune, the New York Times, The Sydney Morning Herald, The Hindu, The Indian Express, The Hindustan Times, The Guardian, and Facebook profile pages carry advertisements of the UPFA candidate. The advertising campaign of Tharunyata Hetak organization and the UPFA in print and electronic media has gone beyond Rs. 200 Million mark as of 31.12.2009, excluding the costs of foreign media advertising. As of 31st December 2009 the advertising cost in the print and electronic media of the UNF and General Sarath Fonseka remains at Rs 7,054,000. In this context it is extremely important for political parties to disclose the sources of funding for party propaganda and overall how much they intend to spend on this election. The breakdown of the expenditure of the advertisement campaigns of the two main candidates, between 1st December 2009 to 31st December 2009, is given below.

UPFA (cost excluding the campaign by Tarunyata Hetak)

Media	Spots	Cost (Rs)
TV	2376	46,540,600
Radio	2463	8,668,600
Newspapers	356	30,859,500
Total	2419	86,068,700

Tarunyata Hetak (exclusively for the President)

Media	Spots	Cost (Rs)
TV	4616	109,808,100
Radio	2245	8,791,300
Newspapers	-	-
Total	6861	118,599,400

UNF, UNP and JVP combined campaign for the Common Candidate General Sarath Fonseka

Media	No. of Spots	Cost (Rs)
TV	45	2, 106, 200
Radio	10	3,86,800
Newspapers	24	4,561,000
Total	79	7,054,000

(Above costs are estimated on the normal disclosed rate cards. Nevertheless it should be noted that election advertisements are more expensive than normal advertisements. Further this does not take into account the production cost of the advertisements)

4.2 Hoardings and Advertisements sponsored by Public Institutions

A number of hoardings had been put up in Colombo and suburbs at the cost of state institutions. Hoardings sponsored by the State Trading Corporation, Urban Development Authority, Presidential Secretariat, are displayed in Maharagama, Nugegoda, Homagama and in Colombo city limits. This is a clear violation of election laws and abuse of state money considering that these institutions are maintained tax collected from the people of Sri Lanka.

The high cost of the election campaign clearly is a contributory factor in the misuse of the public property by those in control of the same and casts a heavy burden on a developing nation such as Sri Lanka. As pointed out in our Report I, the misuse of such magnitude directly affects education, health, public transport and other basic needs of the people. This gives rise to higher taxation to meet the expenditure of these sectors.

5. CONCLUSION

The above information adequately challenges the electoral integrity and unfairness in electoral process in the country. Those who hold power, though required to protect assets of the State as a trustee, have become beneficiaries. They have displayed callous disregard for democratic values and rule of law. They realise that public finance can be abused, with impunity, for personal gain.

Annexure 10- 3



REPORT - 03 (19 JANUARY 2010)

1. INTRODUCTION

The Program for the Protection of Public Resources (PPPR) has received over 260 complaints as of 14.01.2010. A sudden influx of complaints (90 complaints) was noticed since the release of the second PPPR report on the 11th January 2010 highlighting a significant abuse of State resources pointing to an extremely ominous trend as the date of the election gets closer.

2. ABUSES

Out of thus far received complaints the verified instances of abuse of state resources are mentioned below:

2.1 PRINTING OF CALENDARS AT STATE EXPENSE TO SUPPORT THE UPFA CANDIDATE

a. State Trading General Company Limited (STGC)

STGC has printed a calendar for the year 2010 with the photograph of President and Minister Bandula Gunawardena. It is reported that 200 000 calendars were printed at a unit cost of Rs. 10-15. Thus the minimum cost of printing is two million excluding the cost of design. STGC is a fully government owned company, and its entire shares worth of 10-million rupees is held by the Secretary to the Treasury on behalf of the State. The STGC falls within the purview of Ministry of Trade, Marketing Development, Co-operative & Consumer Services.

b. Sri Lanka National Lotteries Board

The National Lotteries Board, a statutory body established under the Finance Act No 11 of 1963 has printed a calendar with family photograph of President Mahinda Rajapakse. It is confirmed that 250,000 calendars have been printed at a unit cost of Rs. 10-15/-. Thus the approximate printing cost is Rs. 2,500,000. This calendar had been widely distributed around the country.

2.2 RS. 1500 ALLOWANCE PAID TO GOVERNMENT EMPLOYEES

An allowance of Rs.1500/- was paid to Government Employees prior to and on the day of the postal vote. This was paid as it was an outstanding cost of living allowance which was not paid in the year 2009. This payment was made in an irregular manner without even getting an endorsement confirming the payment according to the Sri Lanka Teachers Union. Outstanding payments are generally added to the salary of the employee but the sudden move to make such payment can be considered an attempt to influence the postal voters.

2.3 POLICE IRREGULARITIES

On 16th January the police searched a printing press in Maradana based on a tipoff that posters derogatory of the Character of the President were being printed at that time were of General Fonseka and not the President. The owner of the press had told the media these posters were

being printed on the instructions received from a government corporation. It's confirmed that the team of police officers who carried out the raid were transferred with immediate effect based on the oral orders issued by DIG Crimes Division Anura Sennanayake. According to the regulations issued by the Commissioner of Elections on November 7 2009 all appointments, promotions and transfers of public officials are prohibited with effect from November 23 2009. Therefore such transfer is against the directive of the Elections Commissioner.

2.4 WESTERN PROVINCE EDUCATION MINISTRY

A letter has been issued by Mr. Prasanna Ranatunga, the Chief Minister and the Minister of Education for the Western Province to all Principals of schools under the Western Provincial administration. The letter required organization of a meeting of the School Development Society by January 20 with the participation of a Provincial Councillor of the governing party to inform the parents about a program sponsored by the said ministry to carry out minor repairs and repaint of the school buildings in April. Schools with student population of over 2000, between 1000-2000 and 500-1000 is to receive Rs. 150,000, 100,000 and 75000 respectively for this project.

This letter by the Chief Minister is a blatant disregard of regulation number 8 issued by the Commissioner of Election on 8th December 2009 which makes it inappropriate to hold such events with the participation of politicians during the time of an election.

2.5 UNIVERSITY VICE CHANCELLORS AND UGC CHAIRPERSON

The Chairperson of the University Grants Commission (UGC) Professor Gamini Samaranayaka, the Vice Chancellor of the University of Colombo, Professor Shanika Hirumburegama, Vice Chancellor of the Open University, Upali Vidanapathirana and the Vice-Chancellor of University of Kelaniya, Professor Sarath Amunugama have publicly expressed support to President Rajapakse at a public discussion on 6th January 2010 held at the auditorium of Government Information Department. Although academics are entitled to the political right of supporting candidates at elections, the Chairman of the UGC, Vice Chancellors and Dean of Universities are not entitled to do so as they are engaged in administrative activities, beyond political biases.

2.6 USE OF SENIOR OFFICERS OF THE SLA

- Several serving Army officers participated in state media Television programmes which were framed to support the President. On 16th January 2010, Major General Prasanna De Silva took part in an interview which directed towards highlighting the leadership given by the President during the time of the war.
- On 17th January 2010, Head of Sri Lankan Intelligence Service, Major General Kapila Hendawitharana, took part in a press briefing at Media Center for National Security to respond to the allegations of the opposition in relation to LTTE ships and funds. State intelligence (whether police or military) is an asset of the State and those who are in those branches are not expected to engage in political party activities.
- Director of Castle hospital Dr. Rani Fernando has given an interview to Rivira paper published on 17th January 2010 extending support to the President.

2.7 USE OF GOVERNMENT VEHICLES

i. Contrary to the claims of the Sri Lanka Transport Board (SLTB) that no bus is hired by any political party so far, the Udahamulla Depot Vehicle Inspection Report of 07.12.2009 confirms the use of bus bearing number CE 9748 for pasting of posters. According to the report the bus is released in the mid night of 7th December 2009.

ii. The following vehicles of the Ministry of Livestock Development are released to the Minister C.B. Ratnayake and Deputy Minister Abdul Baiz for election propaganda activities.

19-7646, 61-2676, 65-6673, 65-5647, JO-9292, JB-1001, JY- 2922, PA- 1440, 253- 3596, 19-7647, 19-1313, 64-8459.

Among these vehicles, the Defender Jeep bearing number 65-5647 was recently repaired by the Ministry incurring a cost of Rs. 1,400,000/- .

Further, vehicles 50-6350 and GA-4291 belonging to MILCO have also been used by the said Ministers for election propaganda work.

iii. The PPPR received the verified numbers of the SLTB buses used to transport UPFA supporters to the meetings held in Homagama, Ruwanwella, Badulla, Chilaw, and Miuwangoda.

- SLTB buses of following depots were used for the UPFA meeting in Monaragala: Mahiyangana – five (5) buses, Badulla – six (6) buses, Thanamalwila – two (2) buses, Wellawaya – ten (10) buses, Bandarawela – eleven (11) buses, Welisara – two (2) buses, Kepettipola three (3) buses, Kataragama – four (4) and Ragama – one (1) bus

- SLTB buses of following depots were used for the UPFA meeting in Homagama. Kalawana – four (4) buses, Homagama – twelve (12) buses, Maharagama – Two (2) buses, Meethotamulla – One (1) bus, Ratmalana – two (2) buses, Angoda – One (1) bus, Balangoda – six (6) buses, Avissawella – Four (4) buses, Embilipitiya – One (1) bus, Moratuwa – Two (2) buses, Godakawela – One (1) bus , Ratnapura – Two (2) buses, Thalagama – Three (3) buses, Mattakkuliya – One (1) bus and Udahamulla – Three (3)

The PPPR received more than 15 complaints in relation to inconveniences faced by commuters due to diversion of buses for political meetings.

iv. The double cabs bearing number WP NA – 3078 and WP NA – 8481 of the State Engineering Corporation are released for Election Campaign of UPFA. Further the rented vehicles bearing numbers 59 – 7888, 250 – 3177, 53 – 1790, 252 – 2565 and 59 – 1907 of the same corporation are also released for the election campaign of the UPFA.

v. Following vehicles were used in the support of the UPFA candidate for an election rally held on 7th January 2010 held at Pardeshiya Saba ground in Monaragala.

- LF – 5639 owned by Basnayake Nilame of Ruhunu Maha Devalaya, Katharagama
- GJ – 2312 and 40 – 0644 belonging to the Ports Authority of Sri Lanka

2.8 MODERN METHODS OF ADVERTISING CIRCUMVENTING ELECTION COMMISSIONER'S INSTRUCTIONS

There are number of hoardings displayed in public places depicting the development work of the government. Although such hoardings carry no direct name of a candidate or a political party, it is not difficult to understand that such hoardings support the campaign of UPFA. UPFA is using the modern "Reminder Media" methodology in this regard which runs through three stages: Teaser Campaign, Launch Campaign and Follow Up Campaign.

The Teaser Campaign kicked off with blue hoardings with a line running across at the bottom. The launch campaign began with the introduction of a lotus flower on the right hand side of the same hoardings which is commonly identified with the UPFA candidate. The final leg of "follow up" campaign was introduced displaying various development activities of the government reminding the public of President's contributions.

These hoardings are clearly designed to circumvent the election laws and it is unfortunate that the relevant authorities have failed to understand the motives behind these hoardings.

3. CONCLUSION

It's unfortunate to note an escalating trend of abuse of state resources as the date of the elections gets closer. As requested by the Commissioner of Elections it's the duty of all political parties and candidates to extend their support for a free and fair elections. Continuation of abuse of state resources would only question the commitment of the candidates in upholding the values of democracy and good governance

Annexure 10- 4



REPORT - 04 (24 JANUARY 2010)

1. INTRODUCTION

The 4th report of the Program for Protection of Public Resources (PPPR) focuses mainly on the cost of propaganda of the two principal candidates in addition to the continuation of the misuse of public property such the use of state vehicles, state media institutions, building and state employees.

2. COST OF PROPAGANDA

The non disclosure of sources of financing political party propaganda was raised in Reports 1 and 2 of the PPPR. Yet no response was received by TISL and the huge sums of money spent on the political party campaigning raises concern about their sources both in terms of possible use of public money and as a matter of transparency in the interest of the public.

As of 10th January 2010 the campaign of the two main candidates crossed the Rs.350 Million mark. This cost only covers the cost of publishing, broadcasting or telecasting advertisements in print and electronic media excluding the cost of production. Thus the actual cost could be much higher given the high quality of the advertisement produced for the campaign.

From 31st December 2009 to 15th January 2010 the cost of General Fonseka's Campaign has increased from Rs. 7, 054,000 to nearly Rs. 80 million marking a staggering increase. From 31st December 2009 to 15th January 2010 the cost UPFA and Tharunyata Hetak together, increased from Rs. 200 Million to nearly Rs. 378 Million. These staggering amounts spent by the political parties raise two principal questions.

- Whether the parties themselves are financing these massive advertisement campaigns and if so what are the sources of their income?

- If not who is financing these advertisement campaigns.

The following is the breakdown of the expenditure of advertising of the two main candidates as of 13th January 2010.

UPFA

Media	Spots	Cost (Rs)
TV	5339	151,041,300
Radio	3732	17,738,800
Newspapers	512	48,615,000
Total	9583	217,395,100

Tarunyata Hetak (exclusively for President)

Media	Spots	Cost (Rs)
TV	6485	146,617,800
Radio	3664	13,958,400
Newspapers		
Total	10,149	160,576,200

UNF/UNP/JVP combined for Sarath Fonseka

Media	No. of Spots	Cost (Rs)
TV	984	66,921,100
Radio	1183	8,964,800
Newspapers	24	4,561,000
Total	191	80,446,900

3. ABUSES

3.1 SRI LANKA BROADCASTING CORPORATION (SLBC)

The SLBC is involved in blatantly violating the Election Commissioner's guidelines by making irregular appointments, abusing the airtime and production of bias programs.

ABUSE OF AIR TIME

BROADCASTING TRAILERS CIRCUMVENTING THE ESTABLISHED PROCEDURES

In general all SLBC programs follow a specified schedule together with a commercial schedule for all advertisements. However at present politically bias messages are included as trailers to the program schedule which are played as part of the programmes and are not accounted for as advertisements. Further they are not recorded in the program or commercial log of the station. These trailers have been produced with the authorization of Additional Director General and an editor in Studio Number 3 of SLBC. The trailers vary from 15 seconds -3 minutes and are broadcast by all five stations namely, the main station of SLBC in Colombo, Irretaperiyakulam station in Vavuniya, Fri FM Akkaraipattu, Palali Service (Yal FM) and the Kandurata Sevaya. These stations are provided with Compact Discs (CDs) of the said trailers.

Although the political propaganda is required to be ceased by midnight of January 23rd the scheduled plans indicate broadcast of these trailer till January 25th. Considering the context in which these trailers are broadcast and given the content of these trailers they should be clearly falls within the category of advertisements. Thus this is a serious loss of revenue to the state.

ARBITRARY AUTHORIZATION OF AIR TIME

Minister of National Integration and Reconciliation, Vignyamurthi Muralitharan (Karuna Amman) had arrived at the Irattperiyakulam broadcasting station in Vavuniya and requested the OIC of the station to use the airtime from 5am to 12midnight from 19th December 2009.

The request was forwarded on 21st December 2009 to Mr. Hudson Samarasinghe, the Chairman of SLBC and the permission was granted on that day itself through a letter permitting the air time to be used between 8am-3pm every day. The radio station focuses on the listeners in the Northern Province of Sri Lanka.

Nine persons belonging to the propaganda team of the Sri Lanka Freedom Party (SLFP) (6 males and 3 females) are posted at this station at present by the said minister to carry out the broadcasting work. A letter requesting to provide accommodation for these nine persons had been issued by W. Rajendraprasad, a member of the Municipal Council Batticloa and member of the SLFP media team. However this request for accommodation was refused by the Chairman of SLBC and only had agreed to pay each of the nine members a daily rate payable to relief announcers based on the hours they work.

This is in clear violation of the guidelines to be observed by Electronic media issued by the Commissioner of Elections issued on 17th December 2009 and is in contempt of the Supreme Court order directing the state media to follow the guidelines of the Commissioner.

APPOINTMENTS

The Chairman of the SLBC has made the following appointments defying the directives of the Commissioner of Election issued on 8th December 2009 against the appointment, promotion and transfer of state employees during the time between 23rd November 2009 to 26th January 2010.

1. Mr. S. Jeevaratnakumar, was appointed as Relief Announcer and Officer in Charge of Tamil Programs of the Iraddaiperiyakulam Station on 28th December 2009.
2. Appointment of Mr. A Mahendran as the Guest Producer in the Music Division of the SLBC from 15th December 2009 by letter dated 7th December 2009.

PRODUCTION OF DEROGATORY VIRIDU

The Religious section of the SLBC has produced a Viridu program using the production personnel of the SLBC religious programs. The Ananda Samarakoon studio of the SLBC was used to record this derogatory viridu tape targeting the common opposition candidate. The production of this tape by the said section of the SLBC which is responsible for producing religious programs is clearly a misuse of state property which is prohibited by the directives issued by the Commissioner of Elections against the misuse of state property on December 8 2009.

3.2 PAPER PROVIDED BY LAKE HOUSE FOR PRINTING UPFA PROPAGANDA

The 2nd report of the PPPR highlighted the incidents of use of Lake House facilities to print propaganda material. Another 48 page supplement titled "Rata Perata Yana Gamana" was printed at two private newspaper printing press. The paper rolls for these printings were supplied by Lake House on credit basis. (note the debt number in the table below) The following table presents the details in this regard:

Date	Debt Note Number	Number of Paper Rolls Supplied	Weight (Metric Tons)	Value (Rs.)
28.12.2009	0447	66	25	2,440,304
02.01.2010	0448	161	70	5,833,882
06.01.2010	0449	66	25	2,440,304
13.01.2010	0450	66	25	2,440,304

The total cost of the above supply of paper rolls is Rs. 13,154,794/- and recorded as given on credit. Therefore Lake House should disclose whether UPFA campaign has made the necessary payments this regard.

3.3 SALARY INCREMENTS AND BONUSES

INCREASE OF POLICE BATTA

Subsequent to the meeting of 5000 police officers at temple trees, the police Batta was increased and has been added to their December (2009) salary as follows.

- a) Batta of those who joined the Police after 2006 were increased up to Rs.5400/-
- b) Those who were paid a Batta of Rs. 4000/- were given an increment of Rs. 2400/- making the total Rs.6400/-
- c) Those who were paid a Batta of Rs. 5000 were given an increment of Rs. 3000/- making the total Rs.8000/-

In essence this is an ethical practices which affects the integrity of the election process.

3.4 MISUSE OF STATE VEHICLES

PPPR holds confirmed information about the use of more than 1000 SLTB buses for the meetings of the President held in, Anuradhapura, Pollonaruwa, Kegalle, Dambulla, Ruwanwella, and Minuwangoda. This is an abuse of nearly 1/9 of the SLTB buses out of the total number of 9149 buses. The use of the SLTB buses to transport party supporters is a violation of directive no. 4 of the Elections Commissioners Directives against the misuse of public property. Secondly, it also inconveniences the public who is required to access these facilities on a daily basis. The PPPR has received many complaints from different areas about the inconveniences faced by the people due to diversion of buses.

3.4 USE OF GOVERNMENT EMPLOYEES AND RESOURCES

(A) SRI LANKA PORTS AUTHORITY

It has been reported that the Sri Lanka Ports Authority (SLPA) staff and resources have been utilized to construct the stage used for several political meetings. For example 21 minor staff and one supervisor of the SLPA were used full time for assembling the two stages for the rally held in Ruwanwella.

(B) ORGANIZING POLITICAL MEETINGS

The Senior Superintendants of Police (SSP) of the Anuradhapura and Pollonaruwa Divisions have instructed the OICs within their respective divisions to organize the Civil Defence Committee personnel and transport them in buses to the assemble at the office of the Chief Minister of North Central Province, Berty Premlal Dissananyake on 28th December 2009. The

SSPs had not instructed the OICs as to how exactly to meet the cost of transporting the personnel.

Similarly the SSPs of Anuradhapura and Pollonnaruwa had instructed the OICs of the two districts to bring Montessori teachers in the respective districts to the Office of the Chief Minister on 30th December 2009. The OICs had to organize the transport and refreshments for these persons. However since the OICs were not able to muster the number required, the OICs had deployed Women Police Constables in civilian clothes as substitutes.

(C) STAFF OF THE ANURADHAPURA DISTRICT EDUCATION DIRECTOR

It's reported that the 50 staff members including the District Education Director H.M.K Jinapala are engaged in political propaganda work. They have carried out this activity during the official working hours neglecting official duties and have been operating from a residence called 'Sanasuma' on Air Port Road in Anuradhapura. This act is in clear violation of Chapter XXXII of the Establishments Code which bans the engagement of public officers in political activities.

A vehicle belonging to the Education Department bearing number 53-1883 is used by the said group for the propaganda work. The windscreen of the vehicle got badly damaged when used by Director B.M.N Abeyratne while engaging in political propaganda activities and was repaired at Siri Motors in Anuradhapura. This is in clear violation of the directive no 4 of the directives against the misuse of public resources issued by the Commissioner of Elections on December 17 2009.

(D) POLITICAL MEETING FOR TEACHERS IN ANURADHAPURA DISTRICT

Anuradhapura District Education Director H.M.K Jinapala had summoned 1400 teachers of the said district to participate at a meeting held on 02nd January 2010 at a residence of a relative of the Chief Minister named "Sanasuma."

3.5. CLOSURE OF SCHOOLS AND USE OF SCHOOL RESOURCES

Two schools in the Anuradhapura District, Primary Section of St. Joseph's College, and Mahabodhi Vidyalaya were closed by Director Education H.M.K. Jinapala, in order to utilize the chairs of these schools for a bodhi pooja at Sri Maha Bodhiya, in Anuradhapura to bless the President. By participating and actively engaged in organizing this event the said

Director has violated Directive number 8 of the Election Commissioner issued against the misuse of public resources.

3.6 ABUSE OF ELECTRICITY

It's reported that a large cut out of President Rajapakse at Chilaw Roundabout opposite the Land Registry office is illuminated by night with two flash lights using the electricity supplied through the General Power Line.

Similarly the large cutout in Nittambuwa Sri Lanka Transport Board (SLTB) depot is lit from the electricity supply route provided through the Security Guard room of the said depot. The tapping of electricity in this manner is a gross abuse of an essential public resource which is being generated at a high cost. It's very unlikely that these are paid for by the political party since there is no separate meter to ascertain the cost of the electricity consumed for illuminating the above mentioned cut outs.

According to Section 49(1) of the Sri Lanka Electricity Act No 20 of 2009, "Every persons who takes, uses and extracts any electricity a. which is in the course of being transmitted or distributed by a transmission or distribution licensee; and
b. otherwise than in pursuance of a contract made with a distributing licensee or other electricity undertaking, shall be guilty of an offence under this Act and shall be liable on conviction after summary trial before a Magistrate, in addition to a penalty of not less than ten thousand rupees and not exceeding fifty thousand rupees, to a fine in a sum of money being the value of the loss or damage caused to the licensee as a result of the act or default constituting such offence, and any sum recovered as such additional fine shall be paid to the licensee on application made to Court by such licensee."

3.7 MISUSE OF STATE INSTITUTIONS NATIONAL YOUTH SERVICES COUNCIL

The PPPR had in its previous reports pointed the abuse of resources that should have been used for the benefit the youth of Sri Lanka by the National Youth Services Council (NYSC). Further, it's confirmed that NYSC funds, buildings, vehicles and staff were misused in printing, storing, transporting and distributing derogatory posters of the Common Candidate of the Opposition. It has been confirmed that the expenses for the above are met by the NYSC through a budget line called 'special projects.'

3.8 OPENING CEREMONIES AND ELECTION PROPAGANDA

According to Directive No. 8 in the Directions against the misuse of state property issued by the Commissioner of Elections on December 8 2009, the public officers and state employees are precluded from participating in any opening ceremony. On January 21 2010, the President opened a sports stadium in Diyagama, Homagama. Public Officers, Principals, Teachers and 5000 students of all the schools in Homagama electorate were required to participate in the opening ceremony. The event was telecast live on State Television giving undue publicity to the UPFA candidate.

CONCLUSION

The 2010 Presidential is significantly marred with abuse of state resources. This is an unfortunate trend where disregard to the law and order is rather celebrated creating immense frustration with law abiding officials and citizens of the country. PPPR sincerely hopes that whoever the winning candidate of the upcoming Presidential Election will take counter measure in future to reverse this trend.

Annexure 10- 5



PARLIAMENTARY ELECTIONS 2010 - INTERIM REPORT 1

1. INTRODUCTION

The Sri Lankan electioneering process for decades, had been tainted by allegations of gross abuse of public resources. With each passing year, elections recorded an increase in abusive practices that are synonymous with a perverse political culture.

The Program for the Protection of Public Resources (PPPR) in its reports relating to elections conducted in 2004, 2005 and 2010 highlighted the systematic abuse of public resources. The PPPR during the Presidential Election 2010 recorded an unprecedented increase in the blatant abuse of multiple state resources.

Those elected to political office are so elected for the purpose of giving representation to multiple public concerns and are entrusted with political power to make public spirited decisions for which purpose they are maintained by the tax payers' money. The politicians therefore have a duty devolving on them to exercise the conferred political power with absolute care and to use public resources with a sense of accountability and for the benefit of the public.

It is the inherent duty of every citizen to demand of their political representatives to conform to the law and uphold the trust so vested. Similarly, the citizens should call upon the law enforcement authorities and the Commissioner of Elections to take all possible action to prevent the abuse of public resources for their personal and/or political gain.

The Program for the Protection of Public Resources (PPPR) of Transparency International Sri Lanka (TISL) through this report seeks to evaluate the integrity of the Parliamentary Election 2010 on the specific aspect of the misuse of public resources and non compliance with the directives/guidelines introduced by the Commissioner of Elections in that regard.

2. THE CURRENT POLITICAL ENVIRONMENT

The Parliamentary Election 2010 is of immense historical/political significance. In the aftermath of a 25 year-old violent conflict, this election will enable thousands in the Northern Province as well as bordering districts to elect their representatives without fear of repression by the Liberation Tigers.

Yet, an Independent Elections Commission is to be constituted as per the provisions of the 17th Amendment to the Constitution. Given the prevailing political culture, it is of utmost importance to have an autonomous election body to ensure the conduct of free and fair

elections. The constitution of such a body would have enhanced the achievement of ending the protracted conflict.

Unfortunately, the non implementation of the 17th Amendment to the Constitution has failed to depoliticise vital public institutions and marked a deficit in democracy. There are practical difficulties that stem from the non implementation such as the lone Elections Commissioner fighting for greater independence whilst his stipulations are treated with scant respect. In this light, it is also an unfair burden upon a single officer with limited resources to shoulder the responsibilities of an entire Elections Commission. It is also an indictment on the role of accountability and responsibility of the said Commission.

The Sixth Parliament was dissolved at a time when over 110 MPs were holding ministerial portfolios. The portfolios were a combination of Cabinet, Non Cabinet and Deputy Minister ranks.

According to legislative practice, it is only those holding Cabinet rank who function in a caretaker role and continue to hold their portfolios until the conclusion of the election. It is only the Cabinet members who are entitled to draw from the public coffer during such period. However, in an unprecedented move the Inspector General of Police, Mahinda Balasuriya sanctioned that all ministers including non- cabinet and deputy ministers be provided with security irrespective of the dissolution of Parliament and the rules and conventions that apply. In addition to the large number of ministries and departments some of which have identical and/or overlapping functions, there are 168 state corporations and statutory boards along with 93 companies that are under state control. The directors of these public corporations are appointed by the respective ministers and there is not an iota of doubt over the selection procedure of these individuals with the primary qualification being political affiliations rather than merit. The state owned companies are not subject to government audit by the Auditor General's Department and thus not reviewable by any of the parliamentary oversight committees.

The Parliamentary Election 2010 is also conducted in the absence of Right to Information (RTI) law in Sri Lanka to demand information as a right from the state about specific conduct. This prevents a transparent election process where the conduct and expenditure of public officers, institutions and political parties cannot be subjected to public scrutiny. The legitimate right of the tax payer to know how their money is spent is concealed by the prevailing culture of secrecy.

3. ELECTION COMMISSIONER'S GUIDELINES & DIRECTIVES

The Election Commissioner is vested with the power to prevent the abuse of public resources, stall appointments, transfers and promotions in the public sector and importantly, to ensure that every individual candidate receives an unbiased media coverage during a Parliamentary Election. While exercising the powers vested in him under the 17th Amendment to the Constitution and the Parliamentary Elections Act No 1 of 1981, the Election Commissioner has issued the following guidelines and directives.

1. On 13.02.2010, the Commissioner of Elections through Circular No.PE/2010/04 issued specific guidelines to the Secretary to the President, Secretary to the Prime Minister, Secretary to Cabinet of Ministers, all Ministry Secretaries, The Public Service Commission, the National

Police Commission, Chief Secretaries of the Provincial Councils, District Secretaries, Secretaries to the Governors of the Provinces and the Provincial Public Service Commission to take necessary action to prevent the misuse of public resources during the election period starting from the date of proclamation of the election by the President on 09.02.2010 extending up to 08.04.2010. 'Public resources' according to the said circular includes state buildings, vehicles and government employees.

2. Guidelines were issued to the electronic and print media on 17.02.2010 instructing the media organisations to abide by the same when broadcasting, telecasting and publishing matters pertaining to the elections.

3. On 12.03.2010 a further directive was issued by the Commissioner of Elections to the IGP to remove all illegal election propaganda material by 15.03.2010.

Despite the directives and guidelines issued by the Commissioner of Elections for the purpose of ensuring the integrity of the election process, the specific abuses noted below points to the blatant non-conformity to the directives and guidelines.

4. SPECIFIC INSTANCES OF ABUSES

As of March 24, 2010, the PPPR has received over 126 complaints from the public and its investigators concerning various abuses of public resources and violations of election laws/guidelines by the candidates.

The following is the verified information.

4.1 USE OF GOVERNMENT EMPLOYEES

The PPPR received over 20 complaints of summoning government employees on the pretext of an official meeting for propaganda meetings of candidates.

4.1.1 TEACHERS

- Mr. Jayatissa Karunamuni, Director of Education, Negombo Zone, had summoned the Principals of the Schools within the Zone for a meeting at the Teachers' Centre in Bolawalana on 04.03.2010. He had instructed school principals to submit lists of teachers from their tutorial staff who may attend an educational meeting scheduled for the 10.03.2010 at the Negombo Town Hall. A printed form was distributed among the principals for this purpose. On 10.03.2010 the teachers in the Negombo Education Zone were transported in CTB buses free of charge to the Negombo Town Hall at 10am. Former Deputy Minister, Civil Aviation, Sarath Kumara Gunaratne had addressed the gathering emphasizing the type of political support teachers should render towards the government. The Ceylon Teachers Union has lodged a complaint with the Elections Commissioner by letters dated 06.03.2010 and 10.03.2010.

- On 15.03.2010, a meeting organized by Chief Minister, Western Province, Prasanna Ranatunga was held at the Sanasa Meeting Hall in Naiwela, Weyangoda from 9.00 am-12 noon where principals, vice principals and other officials of the Western Zone of the Education Department, were invited to participate in a discussion on education. Director of Education, Mr. Jayaratne, Western Province Chief Minister Prasanna Ranatunga, UPFA candidate for Minuwangoda, Ruwan Ranatunge and Retired SSP and former Police Media Spokesperson Ranjith Gunasekera were present.

Matters pertaining to salaries, loan, and transfers were the subject matter of discussion. A substantial part of time was devoted to the need to establish a stable UPFA administration with strong emphasis on why officials should assist in the political endeavour.

- On 15.03.2010, about 200 teachers of schools within the Western Education Zone were called to the same venue for a meeting. Director of Education Mr. Jayaratne, Western Province Chief Minister Prasanna Ranatunge were present where Governor Sabaragamuwa Province, Janaka Bandara was the chief guest. Director of Education Mr. Jayaratne in his welcome speech said that teachers as educated and intelligent persons should work towards the establishment of a strong UPFA government.

- The Principal of Ananda Balika Vidyalaya, Kotte has through the students called their parents to a meeting to discuss about the school's science laboratory on 21.03.2010. The meeting commenced at 7 00 am at the school premises. Foreign Minister Rohitha Bogollagama and his supporters distributed election propaganda material at the brief meeting. Subsequently, the principal and the tutorial staff visited Bogollagama's residence and were later seen canvassing in the Kotte area.

- Zonal Director of Education Anuradhapura, B.M.N Abeyratne through letter dated 10.03.2010 organized a meeting of all the school principals in the Anuradhapura District. The meeting was held during the morning hours of 17.03.2010 at the main hall of the Swarna Pali Balika Maha Vidyalaya, Anuradhapura. Chief Minister North Central Province, Berty Premalal Dissanayake during his speech urged all school principals to cast their preference for his son, former deputy minister Duminda Dissanayaka who is a candidate at the Parliamentary Election 2010.

- 73 teachers from schools in the Colombo District were called to attend a meeting on 18.03.2010 at the Sri Lanka Freedom Party (SLFP) Borella Office at 10 am. President, Sri Lanka Nidahas Guru Sangamaya, Borella Branch addressing the participants pledged that all their problems could be resolved if UPFA Colombo District candidate Thilanga Sumathipala is elected to parliament.

4.1.2 PUBLIC OFFICIALS

- On 16.03.2010, Secretary Defence, Gotabaya Rajapaksa together with Presidential Advisor, J.R.P. Suriyapperuma addressed a political meeting at the Sanasa Public Hall, Naiwela in the Gampaha District. Chief Minister Western Province, Prasanna Ranatunga had convened the meeting in support of Ruwan Ranatunga, a candidate at the upcoming Parliamentary Election. The Secretary Defence in his speech had solicited his support for UPFA candidates of the Gampaha District Basil Rajapaksa and Ruwan Ranatunga.

4.1.3 OTHER GOVERNMENT EMPLOYEES

- A political meeting was held on 16.03.2010 at the Aluvihare Public Grounds, Matale under the patronage of Local Government and Provincial Councils Minister, Janaka Bandara Tennakoon to muster political support through the Samurdhi Niyamakas of the District.

- On 13.02.10 200 Financial Assistants of the schools in the Ratnapura (Education) District were summoned to a meeting held at the residence of Maheepala Herath, Chief Minister for Sabaragamuwa to solicit their support for the Chief Minister's son Kanaka Herath, a UPFA candidate representing Kegalle District. Consequently, these officers seen canvassing for

Herath in the Kegalle District on 15.03.2010, a normal school day.

- A meeting was organized for the family members of civil defence personnel in the Nugegoda Police Division on March 13.03.2010 at the Bomiriya Madya Maha Vidyalaya, (where?) at 9 00 am. Education Minister Susil Premajayantha made the keynote address. The meeting was organized by the Officers-in-Charge (OICs) of police stations on the pretext of discussing the security situation. ASP II Nishantha de Zoysa, ASP III R.P. Senanayaka and all OICs of the Nugegoda Police Division were present at the political meeting.

The teachers who were invited to attend various meetings as identified above have subsequently participated in political gatherings/activities during schools hours impacting on the functions of the respective schools. The Circular issued by the Commissioner of Elections on 13.02.2010 specifically includes government employees within the definition of public resources and the above acts are in violation of the said circular.

Under Chapter XXXII of the Establishments Code, Public Officials are prohibited from participating in political rally or meetings. The PPPR highlighted the violation of the said provisions of the Establishments Code during the Presidential Election 2010.

A similar trend prevails at present in the run up to the Parliamentary Election 2010. Directive 8 issued by the Commissioner of Elections on 13.02.2010 prohibits the organizing of and/or participating in any event by any ministry or any ministry official or employee during the Parliamentary Election 2010 period. It is evident from the above cited instances that the directives of the Commissioner of Elections and the Provisions of the Establishments Code are violated with absolute disregard.

4.2 STATE VEHICLES AND PUBLIC TRANSPORT

The PPPR recorded an unprecedented level of abusing state owned vehicles during the Presidential Election 2010 by candidates. A similar trend has been recorded with regard to the Parliamentary Election. .

4.2.1 SLTB Buses

- Some 19 buses belonging to the Hakmana Sri Lanka Transport Board (SLTB) depot was used to transport UPFA supporters for a meeting organized in support of Media Minister Lakshman Yapa Abeywardena at Kotuwegoda. The number plates of the buses were , NA 2319, NA-3264, NA 63-4492, NA-4997,NA-4383,NA-5015, 63-1924,63-4771,62-1907,GB-9918,NA3704,NA4977,61-8816,63-1620,63-3798,63-3814,63-0545, 61-6269 and 62-4652. No payment has been made to the SLTB with regard to the use of the Hakmana public bus fleet.

- 69 buses were released from the Nuwara Eliya, Gampola, Nawalapitiya, Kepptipola and Ragala SLTB depots to transport supporters for a meeting on 20.03.2010 held at Simisitha Ground at the Nuwaraeliya town. It is confirmed that 50 litres of diesel were pumped to each of these buses.

4.2.2 State Vehicles

- 17 belonging to the Ministry of Education have been reportedly removed by Education Minister Susil Premajayantha and Minister for Educational Services Nirmala Kotalawala for election related work. The number plates of the vehicles so removed are

253-1740, 63-4466,64-1573,64-1582,GT-4996, 50-7696,HK 9616, 252-1269,53+-4312,302-0501,302-0500,KA-2293,58-0803,GE-1809,KE-0304,PA-9754 and 57-6489.

- Two vehicles belonging to the Sri Lanka Ports Authority (SLPA) were released for election related work in the Hambantota District. The vehicle numbers are NA-6573 and NA-6571.

- A vehicle bearing registration number 32-3556 and used by the Chairman and Vice Chairman of the Uva Development Bank was used for poster distribution purposes in the Hali Ela area in Badulla.

- A vehicle bearing number LF-4815 belonging to the Hakmana Pradeshiya Sabha was used by supporters putting up posters

- The vehicle HB-5048 of the Sri Lanka Land Reclamation and Development Co-orporation met with an accident in Angunukolapelessa killing the driver and three passengers of the vehicle on 09.03.2010. The vehicle was reportedly driven by the driver under the influence of alcohol while returning after pasting posters in the area.

- A Tata cab bearing registration number JP -5176 of the Ministry of Livestock Development is being used in Hatton and Ginigathena areas for election related work.

- A vehicle bearing the number plate 253-3819 belonging to the Urban Development Ministry is being used to paste posters in the Matale District.

The Commissioner of Elections under Directive 4 issued on 13.02.2010 has prohibited the use of state- owned vehicles for election propaganda work. The gross abuse of state owned vehicles amounts to a serious violation of the country's election law.

The hiring of SLTB buses for private purposes is an authorized activity. A large number of buses are released during election time for campaign purposes abusing this provision causing serious inconvenience to the public. The PPPR maintains its positions that buses should not be released even after payment as this provision is abused by political parties during elections. Though released on the orders of politicians, it is also noteworthy that the SLTB is never paid for such services extracted.

5. CONCLUSION

The PPPR reiterates the fact that the abuse of public resources is committed by the very persons in authority and who have physical control over the said resources. The logical consequence to this turn of events is that such blatant abuse is committed by partners of the governing coalition.

The integrity of the Parliamentary Elections 2010 is at stake considering the level of abuse of public resources during this election. The PPPR urge the Commissioner of Elections and the Police Department to play a proactive role to prevent further abuse.

Annexure 10- 6



PARLIAMENTARY ELECTIONS 2010 - INTERIM REPORT 2 (04.04.2010)

1. INTRODUCTION

The Program for Protection of Public Resources (PPPR) has received 200 complaints on the abuse of public resources as of 03rd April 2010. The complaints received relate to abuse of government funds, vehicles and buses, buildings and utilities, media institutions and public officials for electioneering. The PPPR also recorded a sudden increase of complaints since the release of the first PPPR Interim Report on 24.02.2010 which highlighted the increased level of abuses of public resources as the date of election is approaching.

2. SPECIFIC ABUSES

All the abuses recorded here are verified for their accuracy.

2.1 SLBC

The Presidential Unit of the Sri Lanka Broadcasting Service (SLBC) is extensively utilised to cover the rallies attended by the President. Thushara Sadanayaka Director Presidential Unit and Provincial Service of the SLBC has given directions to the national and regional services of the SLBC to cover the election rallies of the President in Uva, Southern, North Western, Central, Western, Northern and Eastern Provinces. Approximately 30 rallies were held in these Provinces. The orders were issued by the said director by letters issued on 19, 25 and 26 March 2010.

The extensive use of state media resources to record speeches of candidates of the UPFA which is not extended to other political parties is a violation of the guidelines issues by the Commissioner of Election on 17th February 2010. The guideline number 1 states "all telecasting, broadcasting and print media shall be balanced and impartial in their election reporting and shall not discriminate against any contesting political party, independent group, candidate or political party leaders in granting access to airtime."

2.2 GOVERNMENT EMPLOYEES

a. The Kelaniya University has made the following appointments on 18th February 2010.

- A Technical Officer
- A Telephone Operator
- A Library assistant
- Three Library Peons

Interviews were held on 18.02.2010 for the following posts: Clerical Staff, Electricians, Laboratory Peons, book binders and minor employees.

Directive number 7 of the Commissioner of Election issued on 13th February 2010 prohibits any appointment, promotion, transfer and calling for job applications and holding interviews during the period of elections starting from the date of proclamation and gazetting of the election to the date of the election.

b. The Provincial Additional Director of Education of Sabaragamuwa, together with Mallika Ranasinghe, Director of Education, Kegalle organized meetings of the Teachers of the Sabaragamuwa Province, on 16.03.2010 at 10a.m, 19.03.2010 at 11.35a.m. and 22.03.2010 at 10a.m. at St.Joseph' Girls School(Junior Section), Kegalle. The meetings were held in order to obtain personal data of the teachers in the province for computerisation. On each day large numbers of Teachers attended and supplied the required information on a printed form provided for the purpose. The Chief Minister of the Sabaragamuwa Province Mahipala Herath was present and addressed these meetings requesting support for the candidature of his son Kanaka Herath, UPFA candidate for Kegalle District. This is an abuse of state resources by a political party candidate which disrupted the smooth functioning of these meetings.

c. A request had been made by the Air Force Camp in Averiwatte, Katunayake asking the three-wheel drivers operating in Averiwatte to attend a meeting to be held at Averiwatte Temple on 16th March 2010 at 3.00p.m. Accordingly about 150 three-wheel drivers had assembled at the temple. A high ranking Officer of the Averiwatte Camp, Group Captain Allen Fernando had addressed the gathering and asked them to vote for Basil Rajapaksha and Sarath Gunaratne, UPFA candidates for Gampaha District.

d. Kurunegala District candidate Johnstan Fernando had by a letter dated 18th February 2010 addressed to Prasana Wickramasuriya Chairman, Air Port and Air Port Services Sri Lanka Ltd, BIA Katunayake, requested the release of Ten employees namely (1) V.A.Cyril Ekanayake Service No.2830 of Finance Branch (2)J.J.Jayalath Service No.2543 of Civil Engineering (Maintenance) (3) Asanka Witharanaarachchi Service No.5673 Finance Dept (4) C.D.M.S.Dissanayake Service No.3450 Transport (5) D.A.D.Anurudha Gamini Service No.4274 Transport (6) D.P.L.Samaraweera Service No 3456 Finance (7) D.B.D.Jayasighe Service No.3410 Administration (8) D.E.C.S.Edirisinghe Service No.133 Security (9) H.Rupasena Service No.2322 Mechanical Maintenance (10), M.N.G.Ranatunga Service No.5255 Human Resources for his election campaigning work from 07th March 2010 to 20th April 2010.

e. The staff of the Godagama Subharathi Maha Vidyalaya had distributed a leaflet among the students in the Primary section of the said school. The content of the leaflet was with respect to a meeting to be held at the Godagama Purana Vihara on 13th March 2010 and requested the students and parents to be present at the venue on the said date. Lal Mahinda Munasinghe, Deputy Chairman, Homagama Pradeshiya Sabha, called on the persons present at this meeting to vote for Colombo District United National Front candidate Mohan Lal Grero at the upcoming elections as he will organize English classes for the children of the said school free on charge from May 2010. The PPPR would like to note that use of school teachers to distribute leaflets of this nature during school hours is an abuse of public resources.

f. D.K.P.B.Wimalaweera, Executive, Human Resources had on behalf of the Head of Human Resources & Legal Air Port & Aviation Services (Sri Lanka) Ltd, addressed a Memorandum bearing No.HR/621/1/L dated 25th February 2010 to the Head of Civil Engineering requesting the release of eight employees from their duties from 28th February 2010 to 28th April 2010.

Although it was requested to release these employees for the purpose of raising awareness for programmes in Mattala, Hambantota it is recorded that these employees are engaged in election campaigning work at present. Further, releasing employees for a longer period of time for awareness raising programmes is an unknown practice within this service.

2.3 MISUSE OF STATE VEHICLES, BUSES AND AIRCRAFTS

PPPR Interim Report 1 highlighted the gross misuse of public transport and other state vehicles. Further complaints were received by the PPPR programme and the following are the verified misuse of such vehicles and buses.

a. It is confirmed that a helicopter belonging to the Sri Lanka Air Force was used to air drop election propaganda leaflets of the UPFA candidate Johnston Fernando in the Kurunegala District on 3rd April 2010.

b. 35 buses were used to transport UPFA supporters for a propaganda meeting presided by the President on 20th March 2010 at Aluwihare Grounds Matale at 2.00p.m. The buses were reported to Matale Sri Lanka Transport Board (SLTB) depot where Diesel was pumped into the buses. A total of 650 liters of Diesel were pumped to the buses of varying amounts 20,25,30 and 50 liters. The total cost of the Diesel so pumped is Rs. 52,000/-. The cost is borne by the Matale Bus depot.

c. 11 buses were used to transport women in the Gampaha District for a meeting organized in support of UPFA candidates in the Gampaha District. The Co-Operative sales outlets and Co-Operative Rural Banks in the Gampaha area were closed from 10a.m. to enable the female employees to attend the rally where over 3000 women compelled to participate.

d. 20 buses from the Elpitiya, Hakmana, Akuressa, Galle and Matara depots were used to transport persons for a meeting held at Samanla Ground, Galle presided by the President.

e. 37 Buses from the Welisara, Nittambuwa, Divulapitiya, Kadawatha, Gampaha and Negambo depots were used to transport supporters for a meeting held in Gmapaha District presided by the President.

f. A Double Decker SLTB bus belonging to the Ratmalana SLB Depot, has been decorated completely with Election posters of Mr.Dinesh Gunawardena, UPFA candidate for Colombo District. This bus is currently used with garage numbers to tour the electorate for propaganda activities. This bus has no route number and does not carry passengers. A CTB driver is used for this purpose.

g. Three cabs bearing numbers PB -8985, PB-8785 and PA-9739 belonging to the National Gem and Jewellery Authority are being used at present for election work of Anura Priyadarshana Yapa, UPFA candidate for Kurunagala District.

h. K.A.Baiz Deputy Minister for Live Stock Development is using government vehicle No.KE 4830 which is registered under the Secretary Ministry of Livestock Development for election campaign work in Puttlam and Kalpitiya areas.

The PPPR in its previous report highlighted the gross abuse of SLTB buses and state vehicles for propaganda work. Directive four issued by the Commissioner of Elections on 13th February 2010 prevents the abuse of state owned vehicles including helicopters and aircrafts during the time of election by the candidates. Although SLTB buses could be hired by private parties it is so far not being declared whether these buses were hired by UPFA for its election campaign work. Even though they could be hired such use cannot be justified as the absence of buses to transport the public would inconvenience the public at large. The PPPR has received complaints to this effect.

A view has been expressed that vehicles assigned to ministers can be used for election related work as a minister is entitled to a certain number of vehicles. The PPPR emphasises that these vehicles can only be used for official purposes and cannot be used for personal political party propaganda work.

2.4 UTILITIES –ELECTRICITY

A party office of Mr.Rohitha Bogallagama, UPFA Candidate for Colombo District has been set up on a land belonging to Sri Vijitharama Temple at Kotalawelapura, Ratmalana. Electricity to this office has been obtained from the main supply to the meter box of the premises of Lihiniya Florist, No. 530, Ratmalana. The meter box is located outside the Lihiniya Florist building. The tapping is done circumventing any records on the consumption of the electricity causing a loss of revenue to the state. According Section 49(1) of the Sri Lanka Electricity Act No 20 of 2009, "Every persons who takes, uses and extracts any electricity

a. which is in the course of being transmitted or distributed by a transmission or distribution licensee; and

b. otherwise than in pursuance of a contract made with a distributing licensee or other electricity undertaking, shall be guilty of an offence under this Act and shall be liable on conviction after summary trial before a Magistrate, in addition to a penalty of not less than ten thousand rupees and not exceeding fifty thousand rupees, to a fine in a sum of money being the value of the loss or damage caused to the licensee as a result of the act or default constituting such offence, and any sum recovered as such additional fine shall be paid to the licensee on application made to Court by such licensee."

CONCLUSION

The PPPR highlighted similar level of abuses of public resources for election propaganda work in its previous report. However the authorities have failed to take notice of the abuses highlighted by the PPPR, resulting in a significant increase in the level of abuse. Therefore, it's doubtful as to whether this election can be considered as 'free and fair' election when taking into account the level of abuse of public resources at the Parliamentary election 2010.

Annexure 10- 6



PARLIAMENTARY ELECTIONS 2010 - INTERIM REPORT 3 (07.04.2010)

TISL's Programme for Protection of Public Resources (PPPR) has released the third report highlighting abuses of state assets in the current Parliamentary Election campaign.

The election laws require campaigning to end 48 hours prior to the day of any election. However, it is disheartening to note that the candidates, parties and the media institutions have failed to adhere to this stipulation.

The campaigning continued by way of placing advertisements in the media, mobile text messages and house- to- house campaign in violation of the law.

The integrity of the election is clearly marred by the failure of all parties, candidates and the media to adhere to the directives of the Commissioner of Elections.

Election campaign was marred by blatant abuse of public resources with impunity and weak implementation of the law on the part of the Sri Lanka Police and the failure of the authorities such as the Elections Commission to take action are reasons for this abuse says the Program for Protection of Public Resources of Transparency International in its report issued yesterday.

Even on the eve of the Election, large cut-outs and other propaganda material were displayed along the main roads. The abuse of public resource coupled with the inefficiency of the Police is seriously lowering the integrity of the election as a whole statement said.

It has been confirmed that many persons holding important positions in the public sector are engaged in electioneering. Though a no campaign period has been declared by the Commissioner of Elections from April 6, 2010, the candidates continued their campaigns through advertisements in the media, mobile text messages and house- to- house campaigns disregarding the directive of the Commissioner of Elections statement further said.

Text of the statement is follows

Two buses belonging to the Technical Colleges in Ratnapura and Anuradhpura bearing numbers NA-6916 and NA 6912 have been released for a training program to be held in Galle from 5 – 15 March, 2010. However these buses were not returned to the said respective Training Colleges and are being used for election related work in all the Galle District.

70 Sri Lanka Transport Board (SLTB) were used to transport supporters of the UPFA for a campaign meeting held in Vavuniya by Minister Rishad Bathiyudeen on April 1, 2010. President Mahinda Rajapakse addressed this meeting.

Buses belonging to the Nittambuwa depot bearing numbers GP 9872, 69-591 and 63-1472 were sent for election campaign work to Galgamuwa on March 27, 2010. Buses bearing numbers NA 4151 and NA 3859 from the said depot were sent to Vavuniya to transport supporters for an election rally.

Two Rosa buses bearing numbers 62-5955 and NA 6975 belonging to the Sri Lanka Ports Authority (SLPA) have been sent to Colombo to be used for the election work of Hari Gupta Rohanadeera. The drivers are paid their batta and overtime despite being involved in election campaign activity in Colombo.

The PPPR in its reports issued on March 24, 2010 and April 4, 2010 the level of abuse of government employees for election related work. This is a violation of the directives issued on February 13, 2010 by the Commissioner of Elections against abuse of public resources.

The following are further instances of the use of government employees for the election campaign.

It has been confirmed that many persons holding important positions in the public sector are engaged in electioneering. The following persons have endorsed the candidature of certain candidates in advertisements published in the newspapers. Professor Shanika HImburegama, Vice Chancellor Colombo University, Dr. S.A.Weliwegama, Sri Lanka Chemistry Institute, Dr. N.L.A Karunaratne, Kamalsiri Mallikarachchi, Deputy Registrar Sri Jayewardenapura University, A Ketapotaarachchi, Senior Assistant Registrar, Post Graduate Institute of Archaeology University of Kelaniya, Abeyratne Samarakoon, Senior Assistant Librarian Kelaniya University, K.K.A.S Premadasa, Principal Mahamaya Balika Vidyalaya Kadawatha, N.G. H. Namalgamuwa, Research Officer, Post Graduate Institute of Archaeology University of Kelaniya, Udayangani Karunathileke Bandara, Research Officer Post Graduate Institute of Archaeology University of Kelaniya and V.S Iroshan, Research Officer Post Graduate Institute of Archaeology University of Kelaniya.

Mr. Gamini Wickramasingha, Chairman Bank of Ceylon (BOC), Mr. Dhanapala Senior Area Manager BOC and other officials of the said bank attended a campaign meeting of Presidential Advisor and former MP Basil Rajapakse in Ja-ela. The meeting was organised to solicit support of the employees of the Central Bank, Bank of Ceylon and the People's Bank who are Gamapaha District residents. The Chairman BOC called on the participants to vote for candidate Basil Rajapakse.

The PPPR reported in its report issued on March 24, 2010 listed the participation of Secretary Defence, Gotabhaya Rajapakse at political campaign meetings of candidates. The trend has not ceased and the Commissioner of Elections appears to be unable to persuade the Secretary Defence to refrain from engaging in electioneering. The Secretary Defence has addressed a Kotte SLFP Balamandalaya meeting on April 6, 2010. This was reported in the The Island on April 7, 2010. The newspaper also stated that the Secretary Defence addressed a series of meeting in support of several UPFA candidates.

80 Assistant Instructors of the Department of Technical Education & Training have been transferred to Galle District to engage in election related propaganda work of Minister of Vocational Training, Piyasena Gamage.

One Assistant Director of Education, five Principals and seven teachers have been campaigning for Anuradhapura District UPFA candidate Duminda Dissanayake during school hours on March 19, 2010. The campaigning activities were carried out in the Saliyapura, Shantipura and Nachchiyaduwa areas. The names of teachers are as follows.

- Saman Chandrasekera – K.B. Ratnayaka Vidyalaya
- D. S. Seneviratne – Diulwewa Vidyalaya
- K.A. Ananda- Diulwewa Vidyalaya
- Alwis Edirisinghe- Principal Parasangahewewa Vidyalaya
- Rajapakse- Principal Urawankulamawewa Vidyalaya
- Seneviratne- Principla Saliyamala Maha Vidyalaya
- Dissanayake- Principal Deaf and Blind School
- Sarath Ariyasena- Walasinghe Harishchandra Vidyalaya
- Lanka Prasad- Niwaththaka Chaiththaya Vidyalaya
- J.A.J Weerakkody- Niwaththaka Chaiththaya Vidyalaya
- Lalith Nandana- Parasankulama Vidyalaya
- R.M.K Rajapakse- Principal Bulankulama Vidyalaya
- B.M.N Abeyratne- Assistant Director of Education

On March 22, 2010, H.M.K Jinapala, Director Education North Central Province had called for a meeting of teachers to discuss the proposed development of an education scheme. Ananda Kularatne, Secretary, Ministry of Education, Chief Minister Berty Premalal Dissanayake and UPFA candidate Premasiri Hettiarachchi were also present. Though this meeting was to discuss and develop the education scheme, this meeting was in fact an election propaganda meeting in support of candidate Duminda Dissanayake, also the son of Chief Minister Berty Premalal Dissanayake.

Chapter XXXII of the Establishments Code clearly prohibits government employees from engaging in election campaign activities.

The above mentioned activities of the government employees are in direct contravention of the provisions of the Code. In addition, they are violations of the directives of the Commissioner of Elections issued on February 13, 2010.

The election laws require campaigning to end 48 hours prior to the day of any election. However, it is disheartening to note that the candidates, parties and the media institutions have failed to adhere to this stipulation.

The campaigning continued by way of placing advertisements in the media, mobile text messages and house- to- house campaign in violation of the law.

The integrity of the election is clearly marred by the failure of all parties, candidates and the media to adhere to the directives of the Commissioner of Elections.

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