

ELECTORAL INTEGRITY

A REVIEW OF INCIDENCE OF MISUSE OF PUBLIC PROPERTY DURING 2020 PARLIAMENTARY ELECTION

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

www.tisrilanka.org

Transparency International Sri Lanka
5/1, Elibank Road
Colombo 05
Sri Lanka

Phone: +94 011 4 369 781
Fax: +94 011 2 501 707

tisl@tisrilanka.org
www.tisrilanka.org

facebook.com/tisrilanka
twitter.com/tisrilanka

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

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ACKNOWLEDGEMENT

The Programme for the Protection of Public Resources (PPPR) team acknowledges the efforts of the Election Commission of Sri Lanka in administering and managing the Parliamentary Election to ensure electoral integrity. The District Commissioners in particular, extended considerable support to the PPPR team to ascertain whether a violation has taken place and to pursue action where required. The PPPR team would also like to appreciate the commitment and valued contribution of the District and Electorate Coordinators that worked long hours in challenging conditions to report incidents of public resource misuse. We thank all media organizations for the publicity given to the PPPR's work and for assisting in communicating information to the public.

The PPPR team would like to acknowledge The Asia Foundation, the International Republican Institute (IRI), Open Society Foundations (OSF) and the Ministry of Foreign Affairs, Norway for their support without which this programme would not have been possible. A special note of gratitude is also extended to the TISL and PPPR teams that worked gruelling hours during the election period and for their commitment towards integrity and democracy. It is their hard work that exposed numerous cases of election law violations and increased understanding of the implication of the misuse of public resources. Last but not least, we acknowledge the courage of all the citizens that took a stand against the misuse of public resources by submitting complaints and evidence to the PPPR.

Asoka Obeyesekere
Executive Director

1. INTRODUCTION

The Democratic Socialist Republic of Sri Lanka held its ninth Parliamentary election on 5th August 2020 against the backdrop of a rapidly spreading global pandemic and amidst strict social distancing measures to prevent the spread of COVID-19 in the country. Sri Lanka was at a critical juncture, caught between the compulsion to hold the Parliamentary elections and the necessity to protect public health.

The election was initially scheduled to be held on the 25th of April, following the dissolution of the 8th Parliament on the 2nd of March. However, due to the strict lockdown enforced to prevent the spread of COVID-19, the election was first postponed to the 20th of June and finally, to the 5th of August. Due to the prevailing situation of the COVID-19 pandemic, the absence of a Parliament quickly escalated into an internal political crisis which generated contentious views amongst politicians, civil society, and the public. Several fundamental rights cases were also filed with the Supreme Court where following consideration, the justices refused leave to proceed with the cases.

The Election Commission of Sri Lanka (ECSL) decided to hold the Parliamentary Election on the 5th of August 2020. The ECSL faced the daunting task of ensuring that the election would be held while strictly adhering to the health guidelines issued by the government in order to prevent the spread of COVID-19. In order to ensure this could be done, the ECSL held a mock election in June 2020 to evaluate the efficiency of the proposed safety measures.

This Parliamentary election had a total of 70 registered political parties and a total of 7,452 candidates of which 3,652 candidates represented political parties and 3,800 candidates represented independent groups. Comparatively, the 2015 Parliamentary elections had only 6,151 candidates from 12 political parties and 24 independent groups. One notable difference during the Parliamentary election of 2020 was the increase in the number of contesting female candidates from 556 candidates during the previous election in 2015 to 819 female candidates in 2020.

The ECSL is vested with the power to issue directions to prevent the misuse of public resources for election campaigning. In upholding its mandate of eradicating corruption in Sri Lanka, Transparency International Sri Lanka (TISL) launched its election observation activities on the 1st of March 2020, under the Programme for the Protection of Public Resources (PPPR). The Programme for the Protection of Public Resources primarily focuses on the misuse of public property during election campaigning in violation of the directives gazetted by the ECSL.

The fundamental objective of this programme is to sustain the integrity of the electoral process by ensuring that public resources are not misused and/or abused for propaganda from the time the election is announced, to the end of the election. PPPR takes preventive action whenever possible, when such misuse occurs or is reported, and such complaints are filed directly with the ECSL.

This year, PPPR revamped its monitoring activities, by developing a web platform titled 'Ape Salli' to facilitate the filing of complaints and to inform the public about the general overview and nature of the complaints received. The PPPR team appointed 25 District observers and 160 Electorate observers in each of the Administrative Districts and Electorates to observe and report on the misuse of public resources during the election campaign period. On the day of the election, PPPR deployed 84 mobile observers to cover polling stations within the 25 Districts.

This year, it was quite evident that the vulnerability of the public due to the Covid-19 pandemic and the internal political crisis was exploited to the advantage of contesting candidates during their campaigns. The PPPR team however, continued to receive complaints even during the lockdown and curfew periods. Moreover, in comparison with the 2019 Presidential Election, the number of complaints received by TISL was higher during the 9th Parliamentary election due to the increased number of candidates and the preferential voting system.

The PPPR documented a total of 180 incident reports of which 161 were submitted to the ECSL in the form of complaints and to the Election Dispute Resolution (EDR) units at each district level. During the election period, the highest number of complaints were recorded under three categories. 42 complaints were recorded as misuse of government vehicles and 41 complaints as misuse of government officials. The PPPR additionally received 40 complaints on the misuse of special projects initiated by the government. The highest number of complaints were recorded from Hambantota, Matara and Puttalam.

ABOUT THIS REPORT

The following report will comprehensively discuss the violations and misuse of public property that the PPPR team reported to the ECSL as well as the actions taken and will also propose recommendations to protect public resources during future election campaigns.

2. BACKGROUND

2.1 The Socio-Political context before the Ninth Parliamentary election

It is important to briefly touch on the socio-political context that existed in the lead up to the 9th Parliamentary election. One highlighted political turn of events was when Sri Lanka's 7th President, Maithripala Sirisena controversially attempted to dismiss the former Prime Minister, Ranil Wickremesinghe and appoint former President Mahinda Rajapaksa as Prime Minister instead on 26th October 2018. President Sirisena sought to prorogue and dissolve the Parliament on 9th November 2018 and called for a general election on 5th January 2019. The United People's Freedom Alliance withdrew from the coalition government after Mahinda Rajapaksa was sworn in as the new Prime Minister. As a result, a Constitutional crisis arose within the nation since such actions were perceived as a clear breach of the Constitutional provisions on the appointment and removal of the Prime Minister and on the dissolution of parliament. The Parliament reconvened on 14th November 2018, and Mr. Mahinda Rajapaksa lost a no confidence motion. Eventually, the Supreme court suspended the unconstitutional dissolution of the Parliament and in its ruling stated that the President has no power to dissolve the Parliament prior to four and half years into its term.¹ Further, an interim order was issued by the Court of Appeal suspending Mahinda Rajapaksa's appointment as the Prime Minister.

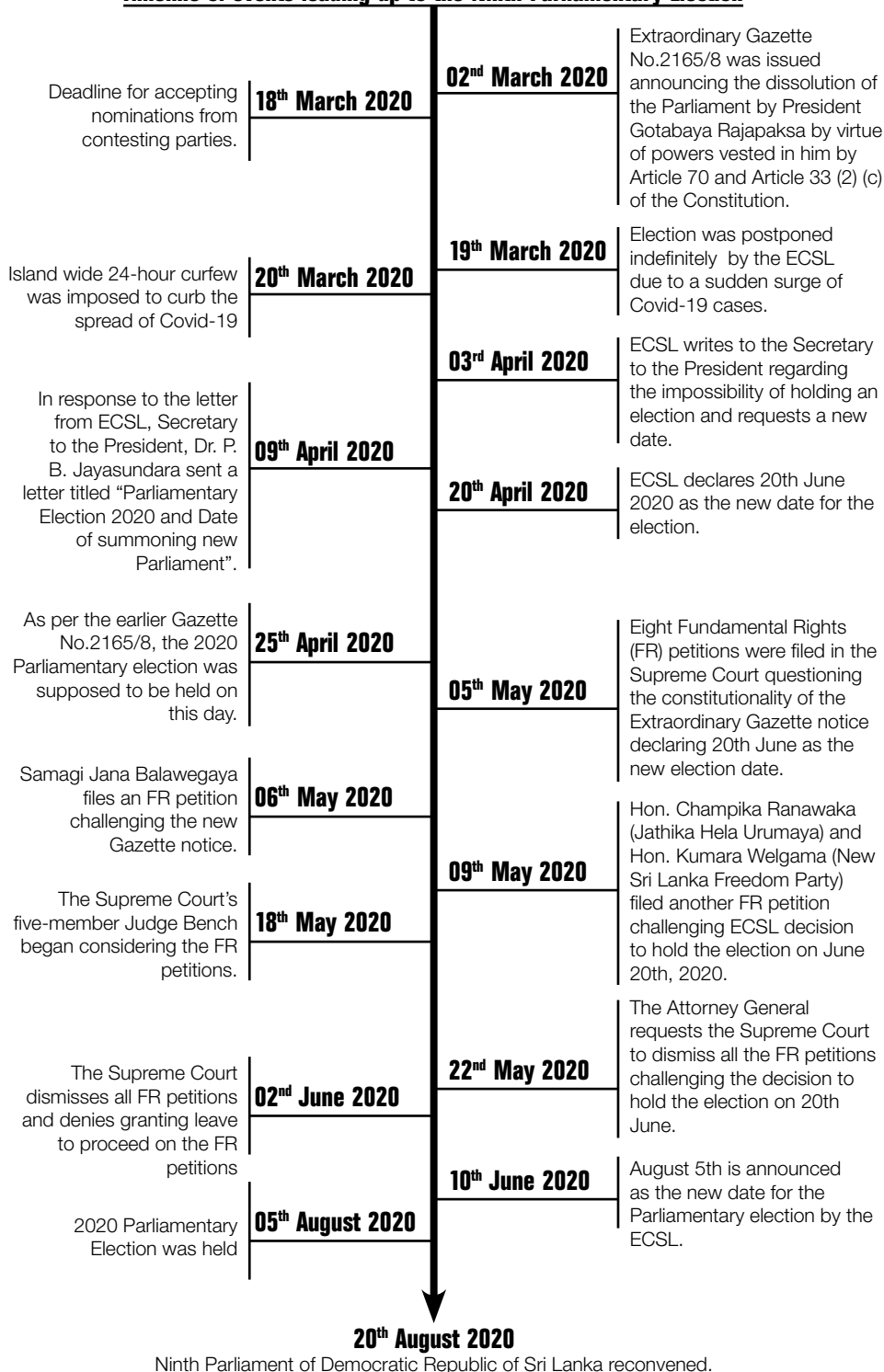
Against a backdrop of the political attrition between the President, Prime Minister and Government, several churches around the country and prominent hotels in the capital were targeted by a terrorist group in a series of suicide bombings on Easter Sunday, 21st April 2019. These attacks plunged the country into a state of emergency and serious questions were being asked on the state of national security under the government at the time. These were the first such attacks in the country since the fall of the LTTE a decade earlier.

Six months following the Easter Sunday attacks, Sri Lanka held its 9th Presidential Election with a total of 35 candidates on 16th November 2019. Gotabaya Rajapaksa won the election polling 52.24% of the valid votes and was sworn in as President the following day. With the onset of a global pandemic mere months into the term of the new President and the subsequent seemingly indefinite postponement of the parliamentary election, it is fair to say that the 9th Parliamentary election took place an unprecedented political climate.

1. SC. FR Application No. 351/2018

2.2 Ninth Parliamentary Election

Timeline of events leading up to the Ninth Parliamentary Election



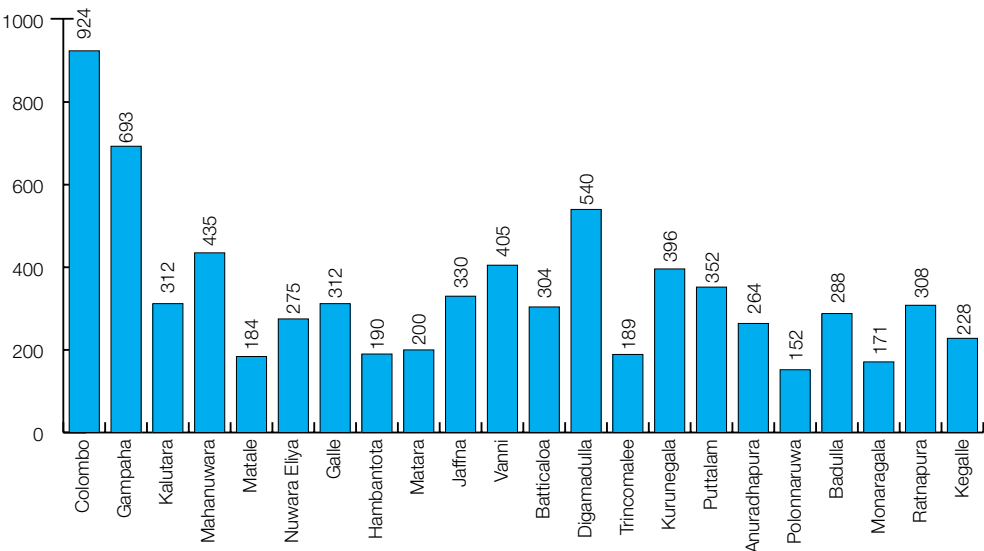
The 2020 Parliamentary Election unlike the previous Parliamentary Election, was held amidst a challenging environment due to the Covid-19 pandemic which significantly altered the process and timeline of the election. There were several concerns regarding the safety of voters such as holding an election amidst a potentially life-threatening climate. However, the election was conducted with special focus on adhering to health guidelines, after sufficient safety measures were implemented by the ECSL and further health guidelines were imposed to protect voters and election staff from contracting Covid-19. Prior to conducting the Election, a mock election was held on 12th June 2020 to test the newly issued safety guidelines and procedures. Moreover, several restrictions were placed by the ECSL both on conducting campaigns prior to the election and on the day of the election as well due to COVID-19. Particularly, unlike at previous elections, the ECSL included two days after the voting day for the counting process in order to adhere to the safety guidelines.

In addition to the election being conducted during a pandemic, this election saw a diverse division amongst the well-known political parties and the emergence of many new parties. The Sri Lanka Podujana Peramuna (SLPP) was contesting in the Parliamentary election for the first time. Although the SLPP, the Sri Lanka Freedom Party (SLFP) and nine other parties formed an alliance to contest jointly under the name 'Sri Lanka Nidahas Podujana Sandanaya', the SLFP continued to contest separately under its usual 'Hand' symbol in four electoral Districts, Nuwara Eliya, Kalutara, Jaffna and Vanni. Incumbent Prime Minister and former President, Mahinda Rajapaksa was the SLPP's Prime Ministerial Candidate. A new party led by Mr. Sajith Premadasa, 'Samagi Jana Balavegaya' (SJB) was a breakaway party from the United National Party (UNP). The UNP was led by former Prime Minister Ranil Wickremesinghe. The UNP and SJB were contesting separately under different symbols and both the former President, and Prime Minister were contesting in this election.

In contrast to the previous 2015 parliamentary election, this year showed a higher number of contesting female candidates. It should also be noted that this year's election had many young candidates who were below the age of 35 and there were also a higher number of candidates than in the previous Parliamentary election.

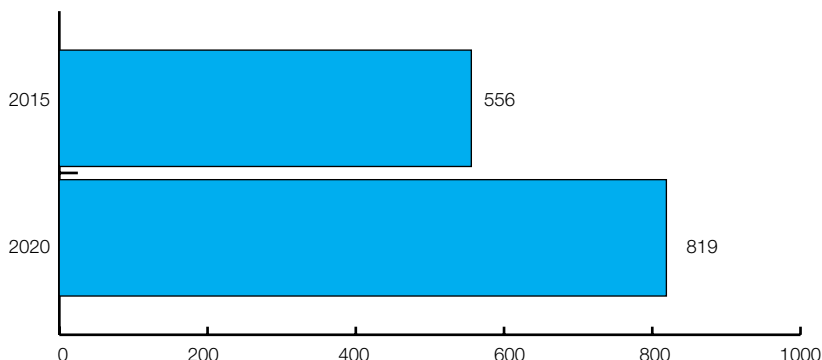
CANDIDATE REPRESENTATION IN EACH DISTRICTS

Source: Election Commission Gazette release, 2020



FEMALE CANDIDATES: 2015 VS 2020 PARLIAMENTARY ELECTION

Source: Campaign for free and fair elections (CaFFE), 2020



2.3 Declaration of Assets and Liabilities and Campaign Financing

TISL has long been a fervent advocate on the requirement of candidates for elections to submit their Declarations of Assets and Liabilities. Although Public disclosure of Asset Declarations is a tool that could promote transparency and accountability, public access to these Asset Declarations is limited. Throughout the campaign period, through media campaigns and letters, TISL encouraged parties and candidates to disclose their Asset Declarations publicly. A handful of candidates obliged and sought to publicly disclose their Asset Declarations.

At the 2019 Presidential election, more than 1 Billion was estimated to have been spent by the two main parties for election campaigning. This Parliamentary election too, witnessed heavy expenditure incurred by candidates for campaign purposes. Currently, there are no regulations or legal framework that administers and governs campaign financing. Political Parties are not required by law to publicly disclose campaign expenditures nor are there any mechanisms to monitor the campaign spending by individual politicians. Moreover, there are no limits on contributions, spending and advertisements. The absence of strong campaign financing regulation creates an unequal playing field for some candidates.

3. LEGAL FRAMEWORK

Parliamentary Elections Act

The Parliamentary Elections Act No.1 of 1981 governs the Parliamentary elections. This particular act comes into practice from the day the election date has been gazetted. The Act stipulates the procedure of conducting the Parliamentary Election and part six of the Act states the offences relating to the election from the first day of nominations till the day of election. This section includes various acts such as bribery, intimidation, corrupt practices, impersonation, undue influence, false statements, and false newspaper reports which are deemed to be punishable election offences. Offenders are liable to pay a fine and/or imprisonment.

The Constitution of Sri Lanka

The legal framework is grounded on the Constitution of Sri Lanka, under which PPPR bases its justification for observation. The Constitution of Sri Lanka stipulates the role and powers of the Election Commission. Article 28(d) of the Constitution stipulates that it is the duty of each and every citizen to protect public resources and to ensure that it is free from abuse.²

Furthermore, according to the Constitution, sovereignty which includes the power of government, fundamental rights, and the franchise, is vested with the people of Sri Lanka, and the organs of government only have exercising power conferred on them by the people.³

Jurisprudence emerging from the Supreme Court has interpreted these articles to mean that power is held in trust for the people or on behalf of the people.⁴ Therefore, all public resources in the hands of elected representatives as well as public officials are held under their guardianship on behalf of its real owners – the general public.

Offences Against Public Property Act

The PPPR obtains its definition of public resources or public property from the Offences against Public Property Act where it is defined as “the property of the Government, any department, statutory board, public corporation, bank, co-operative society or co-operative-union”.⁵

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

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

3. Article 3 of the Constitution

4. See *Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others*, (2000)

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

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

In the *Hettiarachchi v. Mahaweli Authority*⁶ case, the Supreme Court of Sri Lanka has identified land, buildings, vehicle equipment, funds or other facilities or human resources owned by State or Corporations as public property. TISL and PPPR defines the term public resource as any movable or immovable property in every description that are vested in and maintained by the State and used for the purposes of the State.

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

Financial Regulations

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

Establishment Code

Public Officials employed by the State are also considered a public resource and are particularly prone to be misused during an election period. Chapter XXXII of the Establishment Code prevents Public Officials from participating in political meetings or taking part in political activities connected with a campaign by any candidate or party except in exercising the right to vote.⁸

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

6. (SLR, 2000, Vol.3, p 334)

7. Financial Regulations, 1992

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

Comparison between the 17th, 18th and 19th Amendments

With the introduction of Independent Commissions through the 17th Amendment, the Election Commission was empowered to prohibit the use of any movable or immovable property belonging to the State or any public corporation for election campaigning of candidates according to Article 104B (1) (a) of the Constitution.

Furthermore, Article 104B (4) (a) states:

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

- i. for the purposes of promotion or preventing the election of any candidate or any political party of independent group contesting at such election.
- ii. by any candidate or any political party or any independent group contesting at such election.
- iii. by direction in writing the Chairman of the Commission of the Commissioner General of Elections on the instruction of the Commission”.

However, the mandate of the Election Commission was limited by the 18th Amendment removing the power to prevent the use of public property for election campaigning for or by any candidate, political party, or independent group.

The Election Commission has the power to issue directions to prevent political parties from using state resources to advance their campaigns during elections and prevented the Commission from being connected to any matter related to the public service or any matter within the scope of the administration of the Public Service Commission or the Judicial Service Commission.⁹

Repealing the restrictive provisions of the 18th Amendment, the 19th Amendment to the Constitution restored the powers of the Election Commission empowering the Commission to issue directions to prohibit the use of public property for election campaigning.

Anyone who fails to comply with the directions issued by the ECSL can be punished using Article 104GG¹⁰ of the Constitution and jurisdiction to hear and determine any matter relating to this is given to the Provincial High Courts established under Article 154P of the Constitution.

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

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

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

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

Extra Ordinary Gazette No. 2178/29 of 6th June 2020

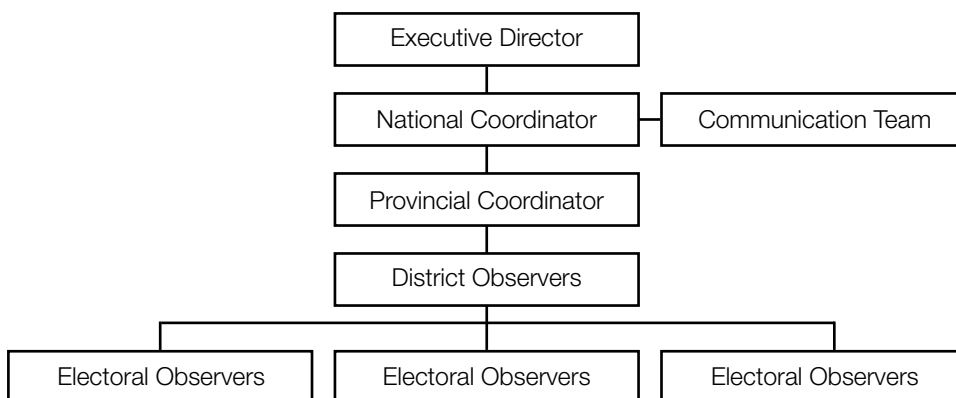
Once an election is declared, the ECSL issues various directives on the manner in which the election should be conducted. Using Article 104B (4) (a) of the Constitution, the Election Commission issued directions on the misuse of public resources on 6th June 2020 through the Extra Ordinary Gazette No. 2178/29 (Please refer annex no -02).

The Gazette identified the following moveable and immovable property as State resources that should be free from abuse:

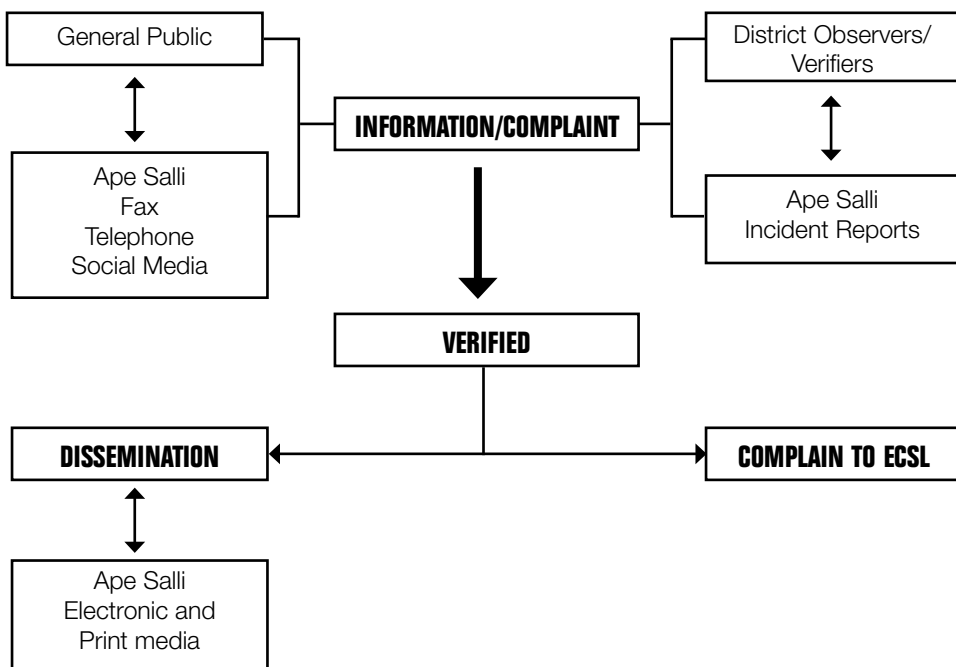
- Use of State Vehicles for Election Campaign Purposes
- Use of State Building & Premises for Election Campaign Purposes
- Appointments, Transfers & Promotions for State Officials targeting Election
- Misusing State sponsored Development Activities
- State Officers acting in favour of Political Parties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

4. METHODOLOGY

OPERATIONAL STRUCTURE CHART



INFORMATION PROCEDURE



4.1 Collection

Network of District and Electoral Observers/Verifiers

25 District Observers/Verifiers were appointed to cover all the administrative Districts within the country. 160 Electorate Observers/Verifiers were appointed to work under the District Observers/Verifiers. All of the Observers/ Verifiers were instructed to report back any instances where misuse of a public resource had already taken place or cases of ongoing or potential imminent abuse.

General Public

The general public was informed of ways to forward complaints to the PPPR through trilingual advertisements in newspapers and on social media. The advertisement publicized the new online complaint platform 'Ape Salli' which allows the public to lodge complaints anonymously and provides an interactive map of the incident locations. The PPPR's hotline numbers, email and fax numbers were also publicised. Two open hotline numbers were launched, and these lines were connected to WhatsApp, Viber, and Imo. The public could also send complaints through email to pppr@tisrilanka.org or fax the PPPR on 011-2 501 707.

Field Visits

In addition to receiving and filing complaints in Colombo, field visits and internal investigations were carried out by the PPPR to ascertain the accuracy of certain complaints, particularly those received from the general public. These included attending political rallies in the Districts to document the use of government vehicles, and the participation of Public Officials. Such interventions also led to a reduction in the number of cases of misuse of public property. It should also be noted that these interventions came with a considerable element of risk which the PPPR team bore, keeping in mind their mandate and their duties.

4.2 Verification

The verification process mainly involved the network of observers who verified the accuracy of the incidents by obtaining relevant evidentiary material. In all cases, reports with verified information were submitted to the ECSL in the form of complaints for either remedial or preventative action.

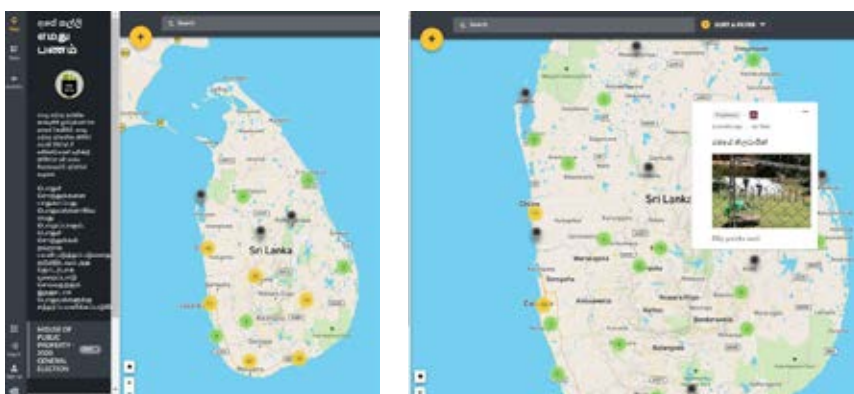
Another important tool employed by the PPPR to verify the information received through complaints was the Right to Information Act. The Right to Information Act No.16 of 2016 empowers citizens to access information held by public authorities. The PPPR filed a total of 25 Right to Information requests with various public authorities.

4.3 Dissemination

While considerable resources were allocated for gathering and verifying information, the PPPR also identified the importance of ensuring that the public was aware of the violations taking place in order for them to make informed decisions at the polls. Through engagement with the media and radio, we disseminated the information received to the public. The Ape Salli platform was also used to provide an overview of complaints received across the island through an interactive map that shows the location of each incident. Moreover, this also created awareness amongst the public on the nature of complaints received by PPPR.

4.4 Ape Salli Web platform

TISL for the first time, launched the Ape Salli online platform to lodge complaints and to facilitate public engagement. Ape Salli is based on the open source Ushahidi platform. It is an online platform which uses crowdsourcing for social activism and public accountability. This platform allows the public to map incidents and events through geospatial information. Ape Salli provides a visual analysis through visual data and infographics which enables the public to have a better understanding of instances of misuse of public property. The platform also enables the public to view the actions taken by TISL in response to the complaints.



4.5 Key interventions

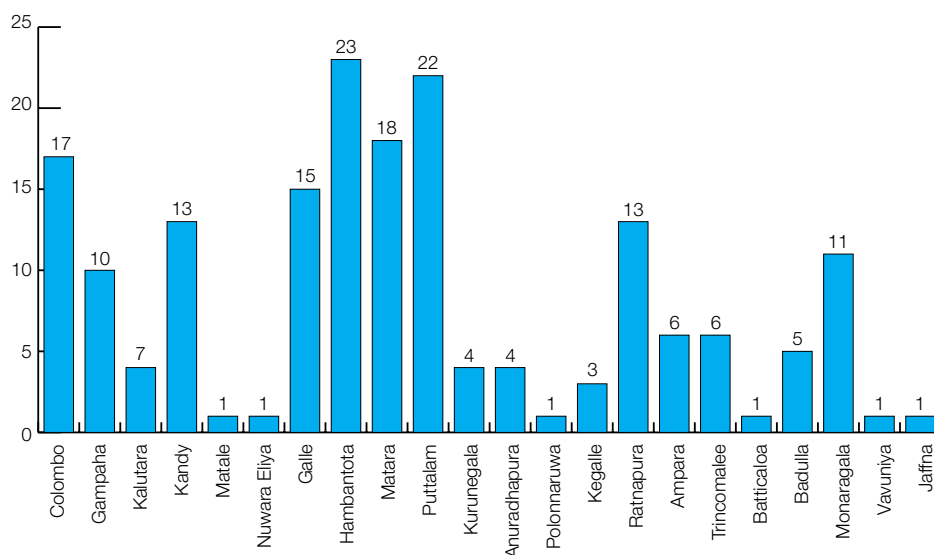
In addition to the above, the following key interventions were made:

- A series of trilingual print and social media advertisements were published, inviting the general public to act against the use of public resources for election campaigning.
- The Ape Salli platform was launched through a press conference attended by many media stations.
- Two press conferences were held to keep the public informed of ongoing election violations and to update the media on the PPPR's ongoing activities.
- Two press statements were released to the media to keep the public informed.
- The PPPR team maintained a continuous dialogue with local observer groups.
- The PPPR team went on field visits to several Districts to gather first-hand information on election violations.

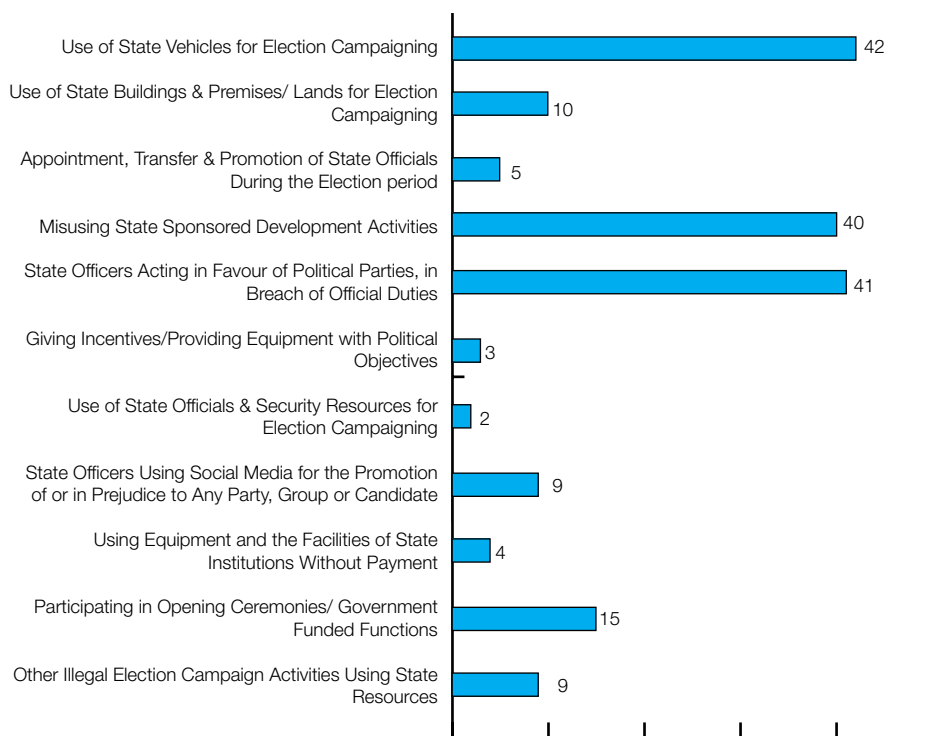
5. MISUSE OF PUBLIC PROPERTY: KEY OBSERVATIONS

Throughout the campaigning period, the PPPR witnessed and recorded various forms of election violations including the misuse of public resources which were taking place across the country. As the PPPR's mandate is limited to the monitoring the misuse of public resources, other violations were shared with the ECSL and the relevant district election office. The PPPR recorded a total of 180 complaints on the misuse of public property and 161 of these were verified with corresponding evidence.

NO OF COMPLAINTS - DISTRICT



NO OF COMPLAINTS - CATEGORIES



5.1 Misuse of Government Vehicles

The PPPR received the highest number of complaints, a total of 42 with regard to the misuse of state owned or rented vehicles for election purposes.

Similar to the procedure followed at the 2015 election, a Cabinet decision was taken on the 18th of March 2020, concerning the usage of official vehicles during campaigning by the Prime Minister and other Ministers. It was decided that a monthly payment of LKR 100,000/- should be paid if official vehicles are used for the promotion of a party or candidature. The Party or candidate should personally bear all expenditure if he/she uses helicopters for promotional purposes. However, the cabinet paper was not implemented.

In most cases, government vehicles were used to transport politicians to rallies and political meetings. Several other instances were recorded where state vehicles were used to transport supporters. A few noteworthy incidents that were encountered by the PPPR's observation teams in relation to the misuse of government vehicles has been mentioned below.

Using an Airforce Helicopter

As per Direction No.5(iii) of the Extra Ordinary Gazette No. 2178/29 of 6th June 2020, Secretaries of Ministries and Heads of Departments were requested to ensure that public funds are not used to arrange helicopter rides for campaigning purposes.

The PPPR received a complaint on the 12th of July, that President Gotabhaya Rajapaksa utilized an Air Force helicopter to attend a political meeting of the Sri Lanka Podujana Peramuna party held in Nawalapitiya, Kandy. During the 2019 Presidential election, the Prime Minister used helicopters on several occasions to attend political rallies and both President Gotabaya Rajapaksa and the Prime Minister utilized helicopters for their own promotional campaigns. The PPPR informed the ECSL both verbally and in writing to ensure that State funds are not utilized to pay for the use of Helicopters for election campaigning purposes.

Misuse of vehicles belonging to Local Government Authorities

Apart from the use of Helicopters, the PPPR recorded 41 complaints on the misuse of land-based State vehicles. Most of these vehicles belonged to Local Government Authorities.

The PPPR also observed that officers attached to local government entities utilized their official vehicles during the election period. One incident was when the Chairman of the Kegalle Pradeshiya Sabha, Mr. Jagath Shavendra Jayasinghe used his official vehicle bearing license plate number WP PF-7443 to attend a political meeting of candidate Tharaka Balasuriya on the 19th of July 2020. Similarly, on the 22nd of July, the Chairman of the Ja-Ela Pradeshiya Sabha used his official vehicle bearing license plate WP PE-6893 to attend a SLPP meeting taking place opposite the Ragama Railway Station.

The following incidents were reported during field visits by PPPR staff. During a SLPP meeting that was organized by Mr. Ananda Aluthgamage at the Sunil Abeysundara Playground in Kadugannawa, two vehicles bearing license plate numbers WP PF-7471 and CP LD-8030 belonging to the Kadugannawa Municipal Council were used in organizing the meeting and were used from the beginning of the meeting and until adjournment. However, no action was taken by the Kandy District Election Office despite the complaint that was lodged. At the same meeting, a vehicle belonging to the Electricity Board was also present, and workers provided electricity to the meeting premises from a general electricity line. However, no action was taken.



Another incident was reported on the 23rd of July at the D. D. Samaraweera Ground, Karadeniya, where a vehicle bearing license plate number WP LL-6957 belonging to the Karadeniya Pradeshiya Sabha was used to transport and lay chip stones on the ground as it had become muddy due to the rain. Similarly, vehicles bearing registration numbers PF-252-6515, PF-7406 and PF-68-1703 which belong to the Elpitiya Pradeshiya Sabha was used in organizing a political meeting at the Pradeshiya Sabha grounds on 1st August 2020. Moreover, vehicles (PH-3038/LI-8940/JZ-1641/LK-0419/KD-7175) belonging to the Road Development Authority were used in organizing a political rally for candidate Mahinda Yapa Abeywardane at Beach Park in Weligama where the President would be participating.



Other instances of misuse of Government Vehicles

An incident was reported in Hambantota on 12th July 2020 where a candidate contesting from the Sri Lanka Podujana Peramuna party, Mr. Mahinda Amaraweera utilized a double cab bearing licence plate number WP PF 3729 which belonged to the Ministry of Transport Services Management to carry out election propaganda. The incident had occurred on 6th July 2020 when the vehicle was used to attend a meeting held at 9 a.m. at the Kiyula Sri Bhodhiramaraja Temple. The PPPR filed a RTI application with the Ministry of Transport Services Management requesting a list of all vehicles issued to Ministers and State Ministers. The information obtained through the RTI showed that the vehicle had been assigned to a State Minister, who had handed the vehicle over to the Ministry due to the elections.



The PPPR observed through Social media that Candidate Janaka Wakkumbura utilized a vehicle bearing license plate number WP KE-4249 on 6th June 2020 to conduct political propaganda in Ratnapura. Through an RTI application filed by the PPPR, it was revealed that the vehicle belonged to the Ministry of Export Agriculture.

5.2 Misuse of State Officials

As per Direction No.2(i) of the Extra Ordinary Gazette No. 2178/29, the skills, knowledge of public officers and their time are deemed to be State property. Therefore, the use of public officials for election campaigning is a serious violation of election laws and other laws governing the public service. However, certain public officials, such as clerical staff, can engage in election related activities whilst not on official duty. Others such as those who hold executive positions (e.g. Secretaries to Ministries) are strictly prohibited from engaging in election campaigning even while off-duty.

The PPPR received a total of 41 complaints in relation to State Officers acting in favour of Political Parties in breach of their official duties. The public officials had engaged in various activities such as promoting candidates during campaigns, promoting candidates on social media, and actively participating in rallies and political meetings as supporters.

Executive Public officials

As per Direction 2(6) of the Gazette, executive officials such as school principals, secretaries, and chairmen fall under the category of public officials who lack political rights. An officer holding such positions cannot engage in any political activity at any time even after obtaining leave.

The PPPR reported an incident on the 9th of July at 8.00 p.m., where the Principal of Dunkannwa Government school had attended a political propaganda meeting and promoted a parliamentary candidate Ashok Priyantha in a meeting held at Dunkannwa, Puttalam. Similarly, principals of Galaha (Upper) Tamil School, Shanmugan Primary School and Hewa heta, Mul oya Vidyalaya had participated in a political meeting on 27th June 2020 which was organized by Candidate Keheliya Rambukwella from the Sri Lanka Podujana Peramuna party. In the same manner, Principals of Kirinda Puhulwella Central

College, Hettiyawala East Vidyalaya and Kirinda Junior Model School in Kirinda had participated in a political meeting organized by the Chairman of the Puhulvella Pradeshiya Sabha on 2nd of August 2020 at 11a.m.

Apart from being present at meetings, many of these officials utilized social media platforms to promote candidates. Even though strict directions were issued by the Election Commission to prevent public officials from engaging in illegal social media campaigns, many officials did engage in these activities. One such incident that the PPPR came across was where the Principal of Highland School had promoted a candidate in a promotional video created by Dr. V. Radhakrishnan's political campaign which was posted on Dr. V. Radhakrishnan's official Facebook Page. In another observed incident, the Media Secretary of the Industries and Supply Chain Management Ministry, Mr. Anuruddha Ranawarana promoted a political party and candidate through his Facebook profile. Similarly, Mr. Nishantha Sandabarana, who is the Chairman of Lanka Salt Limited, which is a government owned entity, promoted a candidate of the SLPP through his Facebook profile. These social media posts included not only the promotion of some candidates but also false and/or prejudicial information on certain candidates.

Minor/Clerical Public Officials

Unlike executive officers, minor public staff can engage in political activities at all other times except during agreed working hours. If such activity is carried out within working hours then it amounts to a violation of election guidelines and qualifies as the misuse of state property.

One such incident that was reported to the PPPR was that Samurdhi Development Officers in Ratnapura were forced to participate in meetings and propaganda activities whilst on duty by higher ranked officials for a SLPP Candidate on 14th July. This particular incident was reported by a Samurdhi Development Officer, which is quite commendable. Additionally, many public officers came forward to report several instances of misuse of public property.

A Samurdhi officer in Vavuniya had invited Samurdhi beneficiaries in the area to the Samurdhi office. In proximity to the office, he gathered people and conducted a political meeting promoting candidate Rishad Bathiudeen on 30th July 2020 at 9.30a.m. The mentioned reports of misuse took place during working hours and therefore is a clear violation of the directions issued in the Gazette. It was also reported to the PPPR that police officers at the Wellawaya Police station and Civil Security Force officers were engaged in organizing a political meeting at the Wellawaya bus stand on the 30th of July 2020. Overall, the PPPR noted during field visits that in every meeting the President attended, his security also played a role in organizing activities.

5.3 Government Appointments and Transfers

The PPPR noted a number of instances where government appointments were given to new recruits in various parts of the country which is a clear violation of election law. The PPPR recorded 5 cases in relation to government appointments. According to Direction No. 2(iii) of the Extraordinary Gazette, officers must refrain from making any recruitment, appointments, promotions and/or transfers of any nature in public institutions without the approval of the Election Commission other than those which are formally executed under the powers vested in the Commissions appointed by the Constitutional Council.

However, it was reported on 11th July that the Divisional Secretary of Minipe had transferred 5 Grama Niladhari officers without the approval of the Election Commission. The PPPR submitted a written complaint to the Kandy EDR requesting them to look into the matter. Moreover, another noteworthy incident that the PPPR encountered was that the Chairperson of the Road Passenger Transport Authority (RPTA) awarded appointments to Timekeepers to make them permanent employees. After a complaint was filed to the EC SL, the appointments were cancelled.

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5.4 Misuse of State Sponsored Development Activities

Direction No.4(i) (ii) and (iii) of the Extra Ordinary Gazette No. 2178/29 stipulates that Action should be taken to ensure that no promotion of or causing of prejudice to any party/group or candidate takes place through special projects or continuous programmes after an election is declared and that the Election Commission will monitor whether such activities are taking place. The PPPR encountered a total of 40 incidents where candidates engaged in state funded development activities with an ulterior motive of promoting their candidacy.

On one occasion, on the basis of directions given by candidate Pavithra Wanniarachchi, application forms were distributed to register for a special development project to build 11,137 toilets for Samurdhi beneficiaries. These funds were allocated by the Samurdhi Social Security Fund and each beneficiary was entitled to receive Rs. 40,000/- . Beneficiaries were selected based on a letter issued by the Director General of the Department of Samurdhi Development, Mr. R. T. B. Tilakasiri. The letter stated that in order to be selected as a beneficiary, a recommendation should be provided by a politician. This is a blatant violation of the gazette and in response, the PPPR promptly informed the Rathnapura District election officer requesting the suspension of the aforementioned project.

Misuse of Road Development Projects

Road development projects are a part of Infrastructural development schemes in Sri Lanka that are funded by the state. However, during the campaign period, many candidates exploited State funded road development projects to promote their candidacy. These ranged from perpetuating propaganda to bestowing incentives with the aim of vote buying.

The PPPR observed candidates actively promoting themselves using road development projects. The PPPR came across complaints regarding the misuse of the project “Grameeya Marga Lakshayak” which is under “Saubagyaye Dakma” Policy, by various candidates in various districts to promote themselves. Batawala Pathegama road, Kananke Kuhulahenna temple road, Batawala Royal Garden Road and Walana Gola deniya road in Weligama were all developed under this scheme which was initiated by Matara District candidate Mr. Mahinda Yapa Abeywardana. In some instances, it was reported that his brother, Mr. Sarath Yapa Abeywardana had participated in the opening ceremony of the roads and promoted Mr. Mahinda Yapa Abeywardana.

In one reported instance, Mr. Sanath Nishantha, candidate of the Sri Lanka Podujana Peramuna party began a series of road development projects with the Road Development Authority in Arachchikattuwa and Kalpitiya on 29th and 30th of July 2020.

The following by-roads commenced development on the above mentioned dates:

1. Arachchikattuwa, Bandarawatta by-road
2. Arachchikattuwa, Waiyrankattuwa road
3. Arachchikattuwa, Wilpatta road
4. Arachchikattuwa, RajaKandaluwa Benedictawatta road
5. Arachchikattuwa, Kurukuliya Temple road
6. Arachchikattuwa, Raja- Kandluwa Swarnajeyanthi road
7. Arachchikattuwa, Weerakumandaruwa road
8. By-road in front of the Nawakaduwa Church, Kalpitiya



Moreover, the PPPR observed that a candidate used the “Grameeya Marga Lakshayak” programme throughout the election period to promote his candidacy.

On 28th June, the PPPR wrote to the Chairman of the ECSL, Mr. Mahinda Deshapriya pointing out that the above mentioned project has been used by the candidates to promote themselves violating the directions issued by the ECSL. The PPPR also stated that this could happen in the future and suggested that immediate action be taken to temporarily stop the project. Unfortunately, the Election commission did not any take action to halt the project.

5.5 Misuse of State Buildings and Premises

As per Direction No.6(i) of the Extra Ordinary Gazette No. 2178/29, “Government offices, buildings, schools, other buildings and circuit bungalows which belong to the State are deemed to be State property.” Therefore, such buildings should not be used to conduct political meetings, discussions, etc. Moreover, these directions prevent the use of halls and buildings for free which should normally need to be reserved on payment of a specified fee. However, this year, the PPPR team encountered around 10 instances where state buildings/ premises were used with political motives.

Displaying banners in a public place is a common occurrence during an election period. It was reported that a banner of Candidate Prime Minister Mahinda Rajapaksa was displayed in the Bibila Divisional Secretariat Building and the Bibila Sathosa Building.

Moreover, as per Direction No.4(iii) of the Extra Ordinary Gazette No. 2178/29, a candidate is not permitted to distribute state lands or transfer ownership of houses and reliefs. However, the PPPR reported that Candidate Mr. Johnston Fernando had temporarily assigned the Land plot of “Mahara-Galwala” a 19 Acre Land in Heligala which belongs to the Sri Lanka Port authority, to the Ragama East Sports Club as a Playground during the election period.

5.6 Incentives Given to Secure Votes

Directive 4(i) of the Extra Ordinary Gazette No. 2178/29 stipulates that the provision of facilities to the public or for the development of the country should be suspended during the election period as these are acts of self-promotion. However, the PPPR reported 3 incidents where incentives were implemented with political motives. In a reported incident on the 10th of July, Candidates Sanath Nishantha and Palitha Rohana stated that they will grant Loans to people in the Area through the National Savings Bank. TISL possesses the recording of Mr. Sanath Nishantha's speech where he promises to implement the loan scheme.

In an earlier instance, the spouse of Parliamentary candidate Sanath Nishantha who is the Manager of National Savings Bank, Anamaduwa branch had given out forms to apply for loans to women in the area and promoted Sanath Nishantha through the Loan scheme. These were carried out with the ulterior motive of promoting the candidates.



6. ACTION TAKEN AND DIRECT INTERVENTIONS

The PPPR's mandate is to prevent the misuse of State property. During the campaign period, the PPPR team received several complaints, some of which were reported at the time an incident was taking place. The procedure followed by the PPPR is to first verify the incident through the District observer/verifier appointed to the respective District. The next step is to call the District Election Office of the relevant district or the police if necessary. By following this verification process, the PPPR effectively prevented some incidents of misuse of public property. Here are some highlights of such interventions.

Preventing Misuse of Government Officers

a) Appointment for the position of Timekeepers

The PPPR received a complaint from one of its observers on the 7th of July that the Chairperson of the RPTA had appointed several individuals as Timekeepers to make them permanent employees. This Chairperson had been a firm supporter of election candidate, Rohitha Abeygoonawardene. Appointments of any kind is prohibited within the Election time period as it amounts to self-promotion which is a violation of the directives issued by the Gazette. The PPPR complained to the ECSL and the appointment letters were immediately cancelled, preventing misuse.

b) Principals participating in a political meeting

Principals are executive staff who lack the right to engage in any political activities during their period of service. However, on 26th July the PPPR was informed by an observer that the Principals of Pitawalgamuwa College and Pathramulla College were participating in a political meeting held in the Mulatiyana Pradeshiya Sabha Auditorium which was organized by candidate Dullas Alahapperuma and Sarath de Alwis. PPPR made a complaint immediately to the Matara EDR, and the meeting was stopped by the police.

c) Acting Judge of Trincomalee Magistrate Court participating in a political meeting

Another prevented case was where PPPR was informed on 2nd August that an Acting Judge in the Trincomalee Magistrate Court, Mr. Chitravel Subhashini was participating in a political meeting of the Tamil National Alliance in the Trincomalee Hindu Cultural Centre. PPPR immediately informed the Trincomalee District Election office. The Election commission officers visited the location of the meeting and prevented the public officer from participating in the meeting.

Preventing Misuse of Special Projects

a) Ceremony to publicize the new electricity project

On 2nd July, the PPPR team was notified by an observer that a ceremony was to take place in the coming days to publicize a new Electricity project in Bata Atha South by Candidate Mahinda Amaraweera. Any special projects during the election period is a violation of Gazetted directives. Therefore, the PPPR team made a verbal complaint and faxed the complaint to the Hambanthota EDR, following which prompt action was taken and the opening ceremony was cancelled the day before it was held.

b) Opening Ceremony of a House in Polonnaruwa and a Pre School in Matale

Due to the prompt action taken by the PPPR and Polonnaruwa District election officials, the PPPR was able to prevent a potential violation of direction issued by the ECSL. On 18th July 2020, Polonnaruwa district candidate Mr. Roshan Ranasinghe intended on attending the opening ceremony of a newly built house by the Housing Development Authority in Bendhi Wewa. Based on the complaint forwarded by the Polonnaruwa District Observer/verifier, the PPPR notified the relevant District Election Office. As a result, the opening ceremony was immediately cancelled. Similarly, the PPPR was able to stop an opening ceremony of a preschool on 30th July 2020 in Dambawa village, Matale which Matale District candidate Mr. Pramitha Bandara Tennakoon would be attending. Through the direct intervention of the PPPR upon notice, the ceremony was halted.

c) Opening ceremony of a Gramasevaka Office and Volleyball Playground

Throughout the entire election period, the Puttalam District was a hotspot for various election violations including the misuse of public resources. In June, candidate Mr. Sanath Nishantha attended an opening ceremony of a Gramasevaka Office and Volleyball Playground in Mudukatuwa, Puttalam. It was alleged that both the office and the playground were constructed on a land belonging to the Land Reform Commission. Since this act is a clear violation of Direction 3.1 of Extra Ordinary Gazette No. 2178/29, the PPPR made a complaint to the District Election Office in Puttalam. An inquiry was initiated and government officials including the Grama Sevaka had been questioned.



d) Foundation Stone Laying Ceremony to Construct a Bridge

The timely intervention of Election monitoring bodies prevented a foundation stone laying ceremony in Nikaweratiya, Kurunegala. This was organized on 27th June 2020 to commence the construction of a new bridge over Deduru Oya. Prime Minister Mahinda Rajapaksa and candidate Johnston Fernando were invited to this ceremony and entire areas were decorated with party banners. However, both the police and District election officers took action to remove all the banners and made sure that no politician participated in the event. The ceremony was carried out only with the participation of the government officers.



Misuse of the Media Unit of the Batticaloa District Secretariat

On 22nd July, one of the observers reported that the media unit of the Batticaloa District Secretariat had sent out an email addressed to journalists and the public inviting them to attend the opening of an election campaign office of Batticaloa candidate Manickam Uthayakumar. The PPPR team sent a complaint to the Batticaloa EDR along with a copy of the e-mail. The Election Commission Batticaloa responded agreeing that a violation was committed and called in the candidate for an inquiry.

7. ELECTION DAY ENGAGEMENT

The PPPR deployed 84 mobile observers to observe the polling stations island wide in all 25 Districts. The PPPR received complaints through a hotline number and through its observer network on the election day from the general public which effectively prevented several election violations from taking place.

Due to the health guidelines issued to ensure the safety of the public from Covid-19, election observers were only allowed to observe the election from outside the polling station. Keeping these regulations in mind, the PPPR deployed election observers to monitor the surrounding area around the polling station to check if there were any violations. Before the day of the election, the observer teams mapped out the polling station locations that needed to be covered within the district and priority was given to areas prone to election violation.

We received several complaints on common violations such as individuals/groups canvassing the area outside the polling station, scattered posters, and posters being displayed near the polling stations. However, there were a few notable instances which were witnessed by our observers. It is also important to note that this kind of work that was undertaken by our observers comes with the high risk of being identified by possible vindictive individuals.

In the Puttalam District, our observers noted that there were groups of bikers in front of polling stations supporting candidates by persuasively influencing the voters.

A Pradeshiya Sabha officer, the brother of a candidate in the Puttalam District, arrived at the polling station supported by the biker group with an entourage with the apparent intention to intimidate the observers. Moreover, PPPR observed that the failure of the government to support voters residing on islands in the Puttalam district was used to the advantage of the candidates who provided transportation to them. On arrival at the drop off point, each voter was given a pen which contained the candidate's number. In Kalutara, one of our observers noted that a political party had appointed a member of the cleaning staff to walk around the polling area wearing a t-shirt with the party symbol and candidate number. Another interesting observation was that in the Vavuniya District, candidates and supporters provided pens and masks to voters who were not equipped with either. Covid-19 was used to the advantage of many candidates.

Chits being littered outside polling stations, money and food packages being provided, posters being put up in close proximity to polling stations, providing pens with candidate details and transporting voters to polling stations were some of the instances prevalently observed in other Districts as well.

The PPPR appreciates the support given by the polling station staff and police officers who were working in collaboration with our observers. In some Districts, the police were very cooperative and even allowed the observer teams to carry out their observations inside the polling booths as well. In most areas, police officers themselves engaged in cleaning out any chits littered around the polling stations. Since the police in most areas were very vigilant, many offences were prevented and stopped. However, many violations took place within 500 meters outside the polling stations and were unnoticed by the police unless informed by observers.



8. PARTNERSHIPS & JOINT EFFORTS

TISL together with other Election Monitoring bodies such as People's Action for Free & Fair Elections (PAFFREL), the Centre for Monitoring Election Violence (CMEV), Campaign for Free & Fair Elections (CaFFE), National Polls Observation Centre (NPOC), Movement for Free and Fair Elections (MFFE), and Mothers and Daughters of Lanka (MDL) issued a joint statement on 12th April 2020. The joint statement raised concerns around the abuse of the 5000/- rupee relief distribution and called on all relevant government stakeholders to work in solidarity without causing a constitutional crisis in the middle of a pandemic.

The Election Commission together with Ministry of Health and government stakeholders took great pains to make sure the election was safe for both voters and officers. In supporting this effort, Election Monitoring bodies agreed to a COVID-19 code of conduct created for all Election Observers. Under this code of conduct, all the Monitoring bodies agreed to a set of guidelines which helped to create a safe environment for the Election.

9. CONCLUSION

The 9th Parliamentary election will always be remembered as an election that took place amidst a worldwide pandemic. The unexpected turn of events which severely shook the country disrupted all election schedules and ultimately led to an internal political crisis. Covid-19 brought about several challenges as it created a serious conflict between ensuring public safety and upholding constitutional democracy. Fortunately, despite these extraordinary circumstances, the parliamentary election was held successfully without compromising the health and safety of the citizens of Sri Lanka.

The PPPR to the best of its ability was vigilant in ensuring no public property was misused during the election as the context in which this election was held was unlike any other. However, as was done in the previous elections, this election too saw the misuse of public property for political motives and propaganda purposes. The PPPR received a considerably high number of complaints on various forms of election violence. Despite the difficulties faced, the PPPR was able to monitor the misuse of public property in all administrative districts through its District observers/verifiers. Most forms of misuse were from the usage of government vehicles, public officials and government funded development schemes.

The increased awareness of the public through PPPR's newspaper advertisements and the Ape Salli web platform contributed to the increased number of complaints during this election. The PPPR admires the efforts taken by the ECSL to hold the parliamentary election in an environment that required a high level of attention to ensure the safety of the public while ensuring a fair election.

The PPPR received the support of the ECSL when forwarding complaints that were received. The ECSL was able to take action in most instances against complaints lodged and through the establishment of Election Dispute Resolution (EDR) units in all Districts, enabled election violations to be halted promptly. Moreover, many public officers themselves identified and reported the misuse of public property.

The PPPR urges the ECSL to use the powers granted through Article 104 GG of the Constitution, to initiate legal action in all cases of misuse of public property that have been reported. We also appeal to the newly elected President H.E. Gotabaya Rajapaksa and the respective ministers to strengthen the legal framework by bringing electoral reforms, such as the disclosure of campaign financing, which will ensure electoral integrity and transparency in future elections.



10. RECOMMENDATIONS

1. A proper mechanism must be introduced by the Election Commission to monitor the progress of the complaints. This would provide the complainant an opportunity to inquire into the status of the investigations and action taken to address the issue.
2. Clear instructions must be issued by the Election Commission to public officials on their political rights during an election period and awareness should be raised to strengthen knowledge on the misuse of public resources with special focus on the election period.
3. Since political parties and individual candidates' campaign finance is unregulated, it is recommended to enact a comprehensive law on campaign finance and expenditure with the disclosure of funding sources as a bare minimum.
4. Adopt a new law on the Declaration of Assets and Liabilities including international best practices or amend the existing law on disclosure, removing any secrecy provisions, ensuring the ability for optimal public access.
5. The Election Commission of Sri Lanka should take necessary legal action against those who have violated election law using the powers vested in the Commission by Article 104GG of the Constitution. This would discourage individuals and political parties from violating election law and prevent such incidents from taking place during future elections.

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ANNEX 02

GAZETTE NOTIFICATION



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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 2178/29 - 2020 ජුනි මස 06 වැනි සෙනසුරාදා - 2020.06.06

No. 2178/29 - SATURDAY, JUNE 06, 2020

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

DIRECTIONS TO PREVENT THE MISUSE OF MOVABLE OR IMMOVABLE PROPERTIES BELONGING TO THE STATE, STATE CORPORATIONS OR STATUTORY BOARDS DURING THE PERIOD OF AN ELECTION FOR THE PROMOTION OF OR IN PREJUDICE TO ANY PARTY, GROUP OR CANDIDATE OR OBSTRUCTING THE CONDUCT OF THE ELECTION

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

MAHINDA DESHAPRIYA
Chairman
Election Commission

N. J. ABEYESEKERE
Member
Election Commission

S. RATNAJEEVAN H. HOOLE
Member
Election Commission

Election Commission,
Sarana Mawatha,
Rajagiriya,
On this 06th day of June 2020.



1A-PG 4995 — 267 (06/2020)

This Gazette Extraordinary can be downloaded from www.documents.gov.lk

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

02. Officials

- (i) The skills and knowledge of all public officers and their time are considered the property of the State. Even a public officer with political rights shall not engage in political promotions inside or outside the office premises within the prescribed office hours or after reporting to work or while on duty leave. Officers without political rights should not engage in political activities even after availing leave.
- (ii) No officer or employee is entitled to use State properties *viz.* vehicles, communication equipment, printers, telephone facilities, photocopy machines, media equipment, circuit bungalows and another public employee or anything else belonging to the State for political activities and doing so is an offence.
- (iii) Officers should refrain from making any recruitment, appointments and promotions and transfers of whatever nature in public institutions during this period without the approval of the Election Commission. Recruitments and transfers which are formally executed under the powers vested in the Commissions appointed by the Constitutional Council are exempted from this. However, when the Secretary to the relevant Ministry or the Head of the relevant Department opines that there is a need to implement without postponing an island-wide program or an internal arrangement for the recruitment / promotion of officers that has been commenced before the election is announced and when the relevant authorities can ascertain that any other island-wide recruitment / promotion in the public service or in the State institutions is made properly devoid of political interference, the concurrence of the Election Commission may be granted. In such cases, a request in that regard should be made to the Election Commission and the prior written approval of the Commission obtained.
- (iv) When recruitment is made in Public Service at divisional or provincial levels for the purpose of avoiding interruptions to sanitary, janitorial or maintenance services and of maintaining essential services, such recruitments should be made with the concurrence of the Election Commission and it is the responsibility of relevant authorities to carry out such recruitments in a transparent manner and free of political intervention.
- (v) General transfers of all public officers including teachers and principals of Government schools who would be deployed for election duties in the areas where election is to be held should be suspended for the period starting from the day on which the nominations are received and ending two weeks after the date of poll. Transfers of public officers or officers of State Corporations/ Statutory Boards who would not to be engaged in election duties should not be carried out on political grounds during the period of election and it is the responsibility of all relevant authorities to give effect to transfers without leaving room for complaints of political intervention. This is not applicable to transfers done on disciplinary orders and if any transfer is required to be made on exigency of service or under special circumstances, such requirement should be brought to the notice of the Election Commission and approval obtained.
- (vi) It shall be an offence for any public officer without political rights to engage in making any propaganda or statement using his/her private social media account or any other account to promote or demote any political party or candidate. Even public officers with political rights should not engage in such propagation using State resources and publication or causing the publication of hate speech, rumors and false information on their personal social media accounts shall be an offence.

- (vii) When the Election Commission determines that it is necessary to further investigate into information or complaints received by the Commission citing that one or more orders issued by the Election Commission to prevent the misuse of State properties in connection with the election is/are violated, the officials under whose charge the necessary documents, both print and electronic, minutes, registers, and reports on recruitment or appointments lie should pursue action to produce them to the Election Commission or to any other official authorized for the purpose by the Election Commission when demanded by the Election Commission to do so. Public officers concerned shall be and are bound to make detailed statements when required to make an oral or written statement by the Election Commission or any other official authorized for the purpose by the Election Commission for the purpose of a further investigation carried out into any violation of orders or any one of them issued by the Election Commission.
- (viii) Every public officer shall be and is bound to pursue action to be present at the Election Commission in person to make every necessary explanation and produce all necessary documents when summoned by the Election Commission to inquire into any violation of orders or any one of them issued by the Election Commission regarding the misuse of State properties.
- (ix) When public officers mark their postal ballots, it shall be an offence for them to take / display / cause to display, photographs of the ballot paper or the polling station.

03. Functions, Mobile Services and Trade Fairs

(i) Functions :

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

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

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

(ii) Mobile Services and Trade Fairs :

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

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

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

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

05. Vehicles

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

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

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

07. General

- (i) State property, State institutions, vehicles, equipment, buildings, lands and public officers in particular, should not be allowed to be used for the promotion or demotion of parties, groups or candidates in relation to the election. No officer should allow any misdeeds such as attaching public officers of State institutions and vehicles belonging to the State or State institutions or rented vehicles stationed outside the electoral area to offices or institutions situated within the electoral area on the pretext that such attachments are done to carry out urgent duties or special development project work in electoral areas but used to promote (or to prejudice) parties, groups or candidates to take place. Officers, vehicles, equipment, belonging to Media Units of any State institution including Provincial Councils, Local Authorities, State Corporations, Boards, State Banks, other Statutory institutions, and State Universities should not be used for the promotion of any party, group or candidate. If entertainment equipment such as podiums, stages, decorations and vehicles, airplanes and helicopters belonging to State institutions are usually hired under normal circumstances, such hiring during the period of an election should be done in a transparent manner offering equal opportunities for all parties/ groups to hire such items.
- (ii) “If a Mayor, Chairman or a Member of a Municipal Council, Urban Council or a Pradeshiya Sabha has signed the nomination paper of a recognized political party or an independent group for the election and has handed such nomination paper to the respective Returning Officer with the intention of contesting the election and if the respective Returning Officer has not informed that the nomination paper has been rejected, such Mayor, Chairman or the Member of the Municipal Council, Urban Council or the Pradeshiya Sabha mentioned in the nomination paper should discontinue attending to the duties of the office during and avail himself leave for the period from the date the election is announced until the results are released enabling the conduct of a free and fair election.
- (iii) No State Ministry, Department or Statutory Board shall broadcast/telecast/publish any advertisement through media such as radio, television or newspapers or display any hoarding at public places using public money for the celebration of anniversaries or commemoration or to carry out publicity programme promoting or demoting a recognized political party or a group or any candidate. Further, nothing should be done to appear promotion of any party/candidate by way of an advertisement or programme carried out regarding any development project being or has been implemented by the government.

- (iv) All private cable television channels, private electronic and print media institutions, websites, mobile and fixed telephone service providers should, act in such manner during the period of an election so as to not cause any breach of election laws and in compliance with the media guidelines, directions and instruction circulars issued by the Election Commission and it shall be the responsibility of the Secretary to the Ministry of Mass Media and the Chairman/Director General of the Telecommunication Regulatory Commission who are responsible for regulating of such institutions to ensure strict compliance thereto by the institutions aforesaid.
- (v) It shall be the responsibility of the Heads of State institutions/ provincial or Local Authorities and Mayors/ Chairmen/Urban Commissioners/Secretaries and heads of each Divisions under whose custody or control street lamp posts and telephone poles, public roads and pavements etc. fall, to prevent such properties situated within their respective areas of authority from being used for display of banners, posters, flags, billboards and other decorations and for advertising by way of painting or digital panels, with the intention of promoting or demoting parties / groups / candidates.
- (vi) The Heads of Ministries, Departments or State Institutions should take action to remove photographs, advertising boards, flags, billboards and decorations which have been erected before the commencement of the election period and are being displayed at public places for the promotion or demotion of parties / groups / candidates. The Heads of Local Bodies and the Commissioners and Secretaries of such Bodies should take action to remove advertising boards, flags, billboards and decorations erected at public places within their area of authority.
- (vii) The directions preventing the use of State properties for the promotion or demotion of election of any candidate at this election should be strictly adhered to without any favour. The Secretaries to Ministries should pursue action to give instructions in this regard to the Heads of Departments, State Corporations and other institutions coming under the purview of the respective Ministry. Also, the Secretaries of Ministries and Heads of institutions should ensure that all officers of their respective institutions comply with these directions and instructions.
- (viii) Public officers should essentially draw their attention to Article 104b (02) of the Constitution which reads as “It shall be the duty of the Commission to secure the enforcement of all laws relating to the holding of the election and it shall be the duty of all authorities of the State charged with the enforcement of such laws, to cooperate with the Commission to secure such enforcement”.
- (ix) Please note that the responsibility of bringing the contents of these directions to the notice of respective Ministers, State Ministers, Deputy Ministers and the staff of the Ministers lies with the Secretary to the respective Ministries while the responsibility of bringing such matters to the notice of Governors, Chief Ministers and other Ministers of the Provinces lies with the Chief Secretary and the Secretaries of the respective Provincial Ministries.
- (x) The Secretaries to Commissions should pursue action to bring these directions to the notice of the Chairpersons and Members of such Commissions, as applicable.
- (xi) In addition to the provisions of the Constitution, it is the duty of the Chief Accounting Officer or Accounting Officer of Ministries/ Departments/ institutions to prevent or to take action to prevent the misuse of State properties.
- (xii) Non-compliance with these directions is a punishable offence under Article 104(22) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

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

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

ANNEX 03 PRESS RELEASES



30/06/2020

No. 8/1, Elitank Road, Colombo 05, Sri Lanka
Tele : (94) 11 4369781, 11 4369782, 11 4369783
Fax : (94) 11 2 501 707
Email : ti@sri.lanka.org
Web: www.tisrilanka.org

TISL Launches Election Hotline; Calls for Prosecutions in Cases of Misuse of Public Property

Transparency International Sri Lanka's (TISL) election monitoring arm the Program for the Protection of Public Resources (PPPR), renewed its call today on law enforcement authorities to prosecute offences of misuse of public property during the 2020 Parliamentary election.

TISL's Executive Director Asoka Obeyesekere said, "We welcome the recent acknowledgement by the Chairman of the Election Commission of Article 104GG of the Constitution, which allows for the prosecution of public officials who fail to comply with directives issued by the Commission. We also call upon the Commission, the Attorney General's Department and the Sri Lanka Police to acknowledge the growing discontent amongst the public over the perceived absence of prosecutions and convictions for election law violations".

TISL, which is the only election monitor with a sole focus on the misuse of public property, has deployed a network of 160 observers at the electorate level and 25 observers at the district level to monitor and report on election law violations.

TISL has also opened two hotlines for the public to report incidents of misuse of public property during election campaigning. The public can report abuses by calling 076-322-344-2 or 076-322-366-2. TISL also encourages members of the public to share photographic evidence of alleged misuse of public property via WhatsApp to 076-322-344-2 or via e-mail to pppr@tisrilanka.org.

Obeyesekere added, "the misuse of public property is one of the most commonplace violations of election law. When such offences are left unprosecuted, it erodes public trust in the integrity of our elections. Whilst we commend the prompt preventative actions that have been taken by authorities, which often escape the attention of the public eye, we re-iterate the need for accountability for offences committed".

For any media enquiries regarding TISL's election monitoring activity please contact our National Election Co-ordinator, **Mr. Lakwijaya Bandara** on 076-322-366-2.

Reg No: 04/09

Chairman: T.E.T. Jayawardene
(Special Secretary - Election Commission)

Director: Anura Kumara Arachchige
(Minister - Justice)

Deputy Director: D. S. Senarathne

General Secretary: D. S. Senarathne

Secretary: K. S. Jayasinghe
(Public Relations)

Protection of Public Resources goes Digital; TISL launches ApeSalli.lk

Transparency International Sri Lanka (TISL) launched the online election monitoring platform ApeSalli.lk today. The web platform utilises open source technology, which enables citizen participation in combating state resource abuse.

ApeSalli.lk is a user-friendly tool through which the public can submit complaints on incidents of misuse of public property and see them visually mapped across Sri Lanka. TISL hopes that the platform will provide the public an opportunity not only to submit complaints but also to understand the extent of public property misuse throughout the country. Whilst any individual can submit a complaint on the platform, these will be independently verified by TISL before being published.

TISL's Executive Director Asoka Obeyesekere said, "Too often, we find that citizen understanding of such complaints are restricted to a number, we are hopeful that ApeSalli.lk will serve as a powerful tool for the public to understand the nature of the complaints being received. TISL remains committed to continue the deployment of the platform beyond the election".

TISL has received 103 complaints to date on the misuse of public property ahead of the 2020 parliamentary elections. Many of the complaints relate to the use of state funded development projects for campaign purposes and the improper conduct of public officials.

Obeyesekere added, "in the absence of accountability, such incidents of misuse of public property will only increase in frequency. Whilst we commend the Election Commission for the preventive action that has been taken based on complaints

Transparency International Sri Lanka
5/1
Elibank Road
Colombo 05
Sri Lanka

Phone: +94 0114369781
Fax: +94 011 2 501 707

tisl@tisrilanka.org
www.tisrilanka.org

facebook.com/tisrilanka
twitter.com/tisrilanka