

4. Part III – Proposed New Laws

4.1 Misuse of Public Resources

Since the commencement of the Program for the Protection of Public Resources (PPPR) in 2001, TISL has monitored all the national elections and a few sub-national level elections until today. Unlike other Election Monitoring Bodies (EMBs) in Sri Lanka the PPPR focuses on the misuse of public resources during the election period. This complements the overall vision of the organization which is a nation that upholds integrity.

Throughout the period TISL has revealed and prevented hundreds of incidents of misuse of public resources. Among such incidents TISL has most commonly seen the following types of misuses during the election:

1. Misuse of state-owned vehicles including rented vehicles
2. Misuse of state buildings, premises
3. Appointments, transfers and promotions
4. Misuse of state sponsored development activities
5. Government officers acting in favor of political parties and candidates
6. Giving incentives/equipment with political objectives
7. Use of state officials and security resources for election campaigns
8. Use of social media by government officers to promote or prejudice any party, group or candidate
9. Manipulation of state sponsored livelihood grants & allowances for election purposes
10. Using equipment and facilities of state institutions without paying

This not only gives a certain political party or candidate an undue advantage but also it is an act of stealing tax payers' money. Therefore, as TISL strongly believes that a new legal framework and law should be created to protect public property against abuse.

The current framework for the control of state resource abuse is by way of guidelines issues by the ECSL pursuant to its powers under Article 104B (4) (a) of the Constitution. TISL is of the opinion that this remains an ad hoc arrangement, and does not provide enough stability and predictability to the system, and proposes that a law should be enacted to prevent and apprehend the abuse of public resources.

In this regard we request the commission to consider the following framework in drafting a new law¹.

A. Principles	1. Rule of Law	<p>1.1. The legal framework should provide for a general prohibition of the misuse of public resources during electoral processes. The prohibition has to be established in a clear and predictable manner. Sanctions for misuse of public resources have to be provided for and implemented. Such sanctions need to be enforceable, proportionate and dissuasive.</p> <p>1.2. Stability of the law is a crucial element for the credibility of electoral processes. It is therefore important that stability of electoral law be ensured in order to protect it against political manipulation. This applies in particular to the rules on the use of public resources.</p> <p>1.3. It is important that rules – including laws, agreements and commitments that regulate or relate to the use of public resources during electoral processes, as well as judicial decisions interpreting them – are clear and accessible to all stakeholders, including public authorities, civil servants, voters, candidates, political parties, and that sanctions and consequences for not abiding with these rules are foreseeable.</p> <p>1.4. The possibility to bring complaints about the misuse of public resources to an independent and impartial tribunal – or equivalent judicial body – or to apply to an authorised law-enforcement body should be central in ensuring the appropriate use and to prevent the misuse of public resources during electoral processes.</p>
	2. Political Freedoms	2.1. Freedoms to form an opinion, together with freedoms of association and expression, form the bedrock of any democratic system, including during electoral processes. Opinions and information should freely circulate during

¹ This section relies upon and cites from the framework proposed by the Venice Commission dated 14 March 2016, and has adapted it to Sri Lanka's local context and needs based on TISL's experience.

		pre-electoral periods, especially during electoral campaigns. It may be necessary to place certain restrictions on freedom of expression in order to secure public resources/prevent misuse.
	3. Impartiality	3.1. The legal framework should provide explicit requirements for civil servants to act impartially during the whole electoral process while performing their official duties. Such regulations should establish the impartiality and professionalism of the civil service.
	4. Neutrality	<p>4.1. The legal framework should ensure the neutrality of the civil service by prohibiting civil servants from campaign activities in their official capacity, either by being themselves candidates or when supporting candidates. This applies as well to public and semi-public entities. Here it is important to ensure the neutrality in use of social media by civil servants.</p> <p>4.2. In order to ensure neutrality of the civil service during electoral processes and consequently to avoid any risk of conflict of interest, the legal framework should provide for a clear separation between the exercise of politically sensitive public positions, in particular senior management positions, and candidacy. In this respect, the legal framework should provide for a range of adequate and proportionate rules. Such rules may include a clear instruction on how and when campaigning in a personal capacity may be conducted, suspension from office or resignation of certain public authorities running for elections.</p> <p>4.3. The non-involvement of judges, prosecutors, police, military and auditors of political competitors in their official capacity in electoral campaigning is of essential importance. Concrete measures should ensure such official neutrality throughout the entire electoral processes.</p> <p>4.4. The legal framework should ensure the objective, impartial, and balanced coverage of election-related events by publicly-owned media. Law and</p>

		practice should both ensure that publicly-owned media are not involved in “hidden” campaigning for or against particular political competitors.
	5. Transparency	<p>5.1. The legal framework should provide for transparency and accountability of the use of public goods and services by political parties and candidates during electoral processes.</p> <p>5.2. A clear distinction between the operation of government, activities of the civil service and the conduct of the electoral campaign should be made.</p>
	6. Equality of opportunity	<p>6.1. The legal framework should provide for an equal right to stand for elections and for equality of opportunity to all candidates, including civil servants, and political parties during electoral processes.</p> <p>6.2. The legal framework should provide for equitable access for all political parties and candidates to public resources including publicly-owned media during electoral processes. This also applies to public buildings and facilities used for campaigning.</p>
	7. Disclosure of Information	7.1. The legal framework should provide for the availability of trustworthy, diverse and objective information to voters and political competitors on the use of public resources during electoral processes operated by public authorities as well as entities owned or controlled by public authorities.
B. Prevention of misuse of public property	1. Basic legal framework	<p>1.1. Clear restrictions should be provided on use of state funds and physical assets during the election period. This should include, but are not limited to, use of state owned and hired vehicles, buildings and premises, equipment, state sponsored development activities and state sponsored livelihood grants and allowances.</p> <p>1.2. If the use of public buildings, facilities or any other resources is permitted for campaign purposes, the legal framework should provide for equal opportunity</p>

		<p>and a clear procedure for equitably allocating such resources among parties and candidates.</p> <p>1.3. The legal framework should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaigning purposes, including charitable events, or events that favour or disfavour any political party or candidate. More precisely, reference is made to events which imply the use of specific funds (state or local budget) as well as institutional resources (staff, vehicles, infrastructure, phones, computers, etc.). This does not preclude incumbent candidates from running for election and campaigning outside of office hours and without the use of public resources.</p> <p>1.4. The ordinary work of government must continue during an election period. However, in order to prevent the misuse of public resources to imbalance the level playing field during electoral competitions, the legal framework should state that no major announcements linked to or aimed at creating a favourable perception towards a given party or candidate should occur during campaigns. This does not include announcements that are necessary due to unforeseen circumstances, such as economic and/or political developments in the country or in the region, e.g. following a natural disaster or emergencies of any kind that demand immediate and urgent action that cannot be delayed.</p> <p>1.5. The legal framework should stipulate that there should be no non-essential appointments to public bodies during the electoral campaign.</p> <p>1.6. The legal framework should provide for a clear distinction between ‘campaign activity’ and ‘information activity’ of public media in order to ensure equity among political competitors in the media as well as a conscious and free choice for voters.</p>
	2. Audit	2.1. An institution functionally independent from other authorities (such as the ECSL) should be responsible for auditing political parties and candidates in their use of public resources during electoral processes. In this respect, such a

		<p>body, regardless of its institutional form, should act impartially and effectively. The mere provision of audited financial records to the ECSL does not suffice.</p> <p>2.2. That institution should be sufficiently empowered and resourced to supervise all public expenditure and use of public resources. Moreover, this authority should be required to report misuse during electoral processes in a timely, clear and comprehensive manner.</p> <p>2.3. Political parties and candidates should be required to report on the origin and purpose of all their campaign finance transactions (see section 3.1 above) in order to facilitate transparency and the detection of potential misuse of public resources. Any permissible use of public resources for parties or candidates should be treated as a campaign finance contribution and be reported accordingly.</p> <p>2.4. Communication between audit authorities and other bodies should be regulated in a way that facilitates efficient flows of information and effective implementation of transparent decisions</p>
	3. Whistleblower protection	3.1. Civil servants as well as their relatives should be protected against (hidden) sanctions, pressure or intimidation when they disclose an alleged fraud or misuse of public resources.
	4. Information and awareness raising	4.1. Authorities should create wide reaching information activities, in which citizens and civil servants, candidates and political party leaders, are aware of their rights and responsibilities during electoral processes. Clear criteria should be established to distinguish electoral campaign activities from information activities. Such information should be distributed consistently.
C. Remedies and Sanctions	1. Complaints and appeals	1.1. The legal framework should provide for an effective system of appeals before a competent, independent and impartial court, or an equivalent judicial body.