

ELECTORAL REFORMS: FUTURE PROSPECTS

One Text Initiative

No 28, Anderson Road, Colombo 05, Sri Lanka
Tel: +94 11 5343836, 5343832 Fax: +94 11 2589022
Web: www.onetext.org, www.onetext.lk

Abstract

The issue of electoral reform has been a point of serious debate and discussion over the past few years in Sri Lanka. In this discussion document we explore the history of the electoral reform debate in Sri Lanka and then mark the current status of the deliberations on electoral reform which favors a mixed election system in Sri Lanka. These deliberations crystallized in October of 2010 when the Government tabled the Local Authorities Elections (Amendment) Bill in Parliament. We then explore the Bill as a case study of the possible implications that could arise as a result of the implementation of this electoral system for all elections in Sri Lanka. Finally we explore the tension between democracy and development that appears to underpin the debate on electoral reform before exploring a few concerns that should be taken into consideration in future discussions on electoral reform.

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Introduction

Over the past few years the debate on electoral reform in Sri Lanka has been an issue of key concern for law makers, political parties and political analysts across the country. There have been significant developments in the debate on electoral reform in Sri Lanka and as a result of these discussions significant changes to the Sri Lankan electoral system have been proposed. In October last year, the Government of Sri Lanka tabled the the Local Authorities Elections (Amendment) Bill in Parliament which gave form to many of the changes proposed by various groups over the course of the debate over electoral reform. The Bill has been a issue of contention in a number of different circles and faced multiple challenges in the Supreme Court. Although the Supreme Court has held that the Bill is in line with the Constitution in November last year,¹ the Bill is yet to be passed into law by Parliament. Although there have been many analyses of the bill that have been released in the public domain,² there has been very little commentary on the impact that this electoral this electoral system [keeping in mind that this will have to be replicated at the Provincial and General Elections as well] will have on representation and the exercise of the franchise through its implementation in the future.

What is an electoral system?

At its most basic level, the electoral system is concerned with the translation of votes to representation in the form of seats in the legislature. There are many systems through which this translation happens. They can broadly be divided into 4 approaches³

1. First Past the Post
2. Semi-Proportional
3. Proportional Representation
4. Mixed system

¹ <http://www.dailymirror.lk/index.php/news/7794-lg-bill-constitutional.html>

² Arulanantham, J., & Schubert, A. (2011). A critique of the Local Authorities Elections (Amendment) Bill. Sri Lanka: The Young Researchers' Collective, Sri Lanka. Fonseka, B., & Raheem, M. (2011). Proposals to Amend the Local Authorities Elections (Amendment) Bill. Colombo: unpublished. Fonseka, B., Raheem, M., & Jayawardana, S. (2010). A Brief Commentary and Table on the Local Authorities Elections (Amendment) Bill. Colombo : unpublished.

³ Norris, P (1997, July). Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems. *International Political Science Review*, pp297-312

While the features of these systems have been discussed at length, at this point I wish to highlight the implications of the First Past the Post and the Proportional Voting systems. There has been much concern over the implications of adopting either of these two systems especially with regards to the implications for representative democracy in a country.

The First Past the Post system seeks to emphasize the majority votes received by a political party in order to ensure strong and responsive Government – the special concern under this system is to emphasize the majority of a single party rather than a coalition. This emphasized majority enables the party in power to implement its policies without concerning themselves with consultation of coalition partners and so are better equipped to implement their manifesto. Furthermore the system also emphasizes responsive government; since a little swing away from a particular government will bring another party into power. This ensures that Governments work towards being responsive to the needs of the voters and in the event that a Government is not responsive, it can be changed during an election and a new more responsive Government established in its stead.⁴ It also encourages the development of a two party legislature by ensuring the representation of the strongest political parties with the most number of votes.

First Past the Post deliberately eschews representation of minority views and voices in the interests of stabilizing the Government. On the other hand the Proportional Representation system emphasizes the representation of different social groups and minority voices by ensuring the representation of different shades of opinion in proportion to its popularity with the electorate. This also constrains single party governments from pursuing policies in the interests of its electorate or support base and encourages the building of coalitions and alliances for government. It also favours the development of multiparty systems in government and as a result is expected to encourage voter participation in elections by providing the voter with more choices.

⁴ *ibid*

A Brief History of Electoral Reform Debate in SL

Sri Lanka has experimented with both the first past the post and the proportional representation system in conducting its elections. The *Franchise* was granted (rather reluctantly) to Sri Lanka in 1910, but it was restricted to educated Ceylonese and more specifically English- educated Ceylonese.⁵ In 1931 and in spite of the resistance from the Ceylon National Congress, the Donoughmore Commission granted Sri Lanka universal franchise, thus making it the first colony in Asia to receive universal franchise.⁶ After achieving independence in 1948 the country settled down to govern its own affairs. Elections were held for all elections under the First-Past-the-Post system. In 1978, the current Constitution was adopted and the electoral system was changed from a First-Past-the-Post to a Proportional Representation system.

Current status of Discourse

In June 2007, the Interim Report of the Parliamentary Select Committee on Electoral Reforms presented its interim report to Parliament and marked an important turn in the debates on Electoral reform in Sri Lanka by calling for a serious reform of the electoral system in Sri Lanka through the implementation of a “mixed-system, a hybrid of the first past the post and the proportional representation system” and held that this was “the most suitable electoral system for Parliamentary elections in this country.”⁷ The All Party Representatives Committee (APRC) also called for the establishment of a “mixed electoral system which combines the First Past the Post [system] on an electorate basis and Proportional Representation on a party basis, *in which preferably the system of Proportional Representation prevails*” (emphasis added).⁸ The APRC proposals suggest that each elector use two ballot papers, “one to choose the electorate and the other to chose the party of his choice on a district (or national) proportional representation basis.”⁹

⁵ De Silva, K. M. (2005). *A History of Sri Lanka*. Colombo: Vijitha Yapa .p. 473

⁶ Ibid – pp. 516-530

⁷ Page 4

⁸ (2010). *The Electoral System in Proposals Made by the All Party Representatives Committee to form the Basis of a New Constitution*. Eds, Yogarajan, R. and Kariapper, N. p. 9

⁹ ibid

Many analysts have argued for the implementation of a model based on the German electoral system as being a useful model to follow.¹⁰

(De Silva, 2005)

The German Electoral System

Under the German Federal Election Law, electors have two votes. One half of the members of the Bundestag, the German federal legislature are elected by direct vote in 328 constituencies under the First Past the Post system. The remaining 328 members are proportionally allocated according to provincial lists of candidates put up by parties.

Of the two votes, the first is for a constituency representative and the second, for a political party. It is open to a voter to vote for two different political parties in the constituency and the list. The entitlement of seats on a national basis among political parties is decided by reference to the number of votes parties have received. (i.e the votes cast for each party's list). The calculation is according to a complex mathematical formula known as the Niemeyer method, which ensures that the distribution of seats is in exact proportion to the percentage of votes obtained by each political party... when this is decided, and the number of seats already won by a party is deducted from that figure, the remaining number of seats is filled by reference to the party list.

Sometimes, the number of constituency seats won by a party may be greater than the party's entitlement of seats calculated on the votes obtained by the party. In such a situation the number of members of the national legislature is increased to accommodate the extra representatives to the extent that enables proportionate representation of all parties entitled to seats and not merely the parties exceeding their entitlement.

*Excerpts from Welikala, A. (2008). Representative Democracy , Proportional Representation and Plural Society in Sri Lanka in *The Electoral Reform Debate in Sri Lanka*. Eds. Edirisinha, R and Welikala, A. Colombo: Centre for Policy Alternatives.*

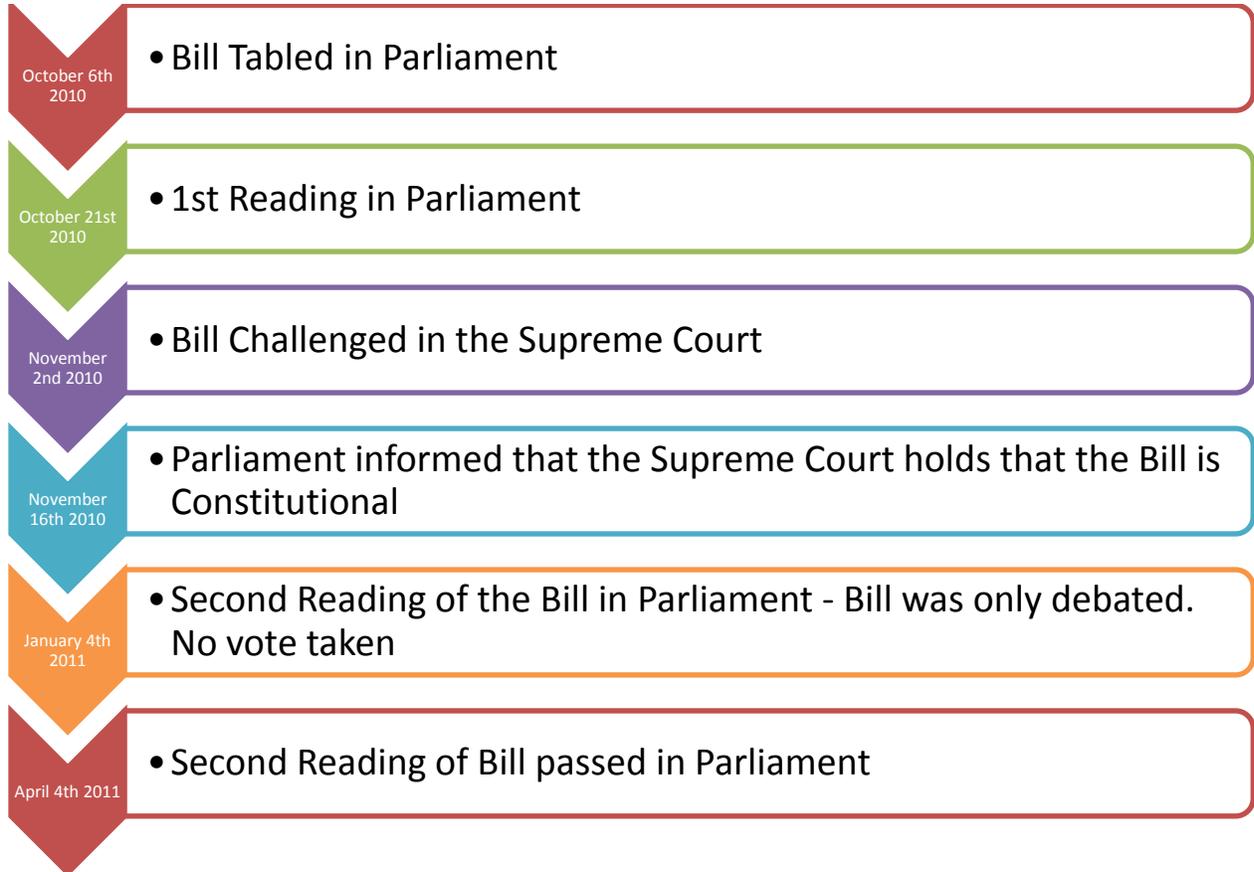
¹⁰ See - Wijesinha, R. (2010, July 11). Adjusting the Sri Lankan system to current requirements. Retrieved June 22, 2011, from Rajiva Wijesinha's Blog: <http://rajivawijesinha.wordpress.com/2010/05/10/adjusting-the-sri-lankan-system/> and Welikala, A. (2008). Representative Democracy , Proportional Representation and Plural Society in Sri Lanka in *The Electoral Reform Debate in Sri Lanka*. Eds. Edirisinha, R and Welikala, A. Colombo: Centre for Policy Alternatives.

In fact concrete proposals to change the Sri Lankan electoral system were presented by Dr. Sudantha Liyanage in 2006 which would amalgamate the two systems and implement a mixed system in Sri Lanka with 150 members of Parliament elected under the First Past the Post System and 75 seats elected under the Proportional Representation system. However in spite of this vast body of work the culmination of these debates and discussions was quite different. The Local Government Authorities Elections (Amendment) Bill was the fruition of these discussions.

Due to this we examine below the implications of the Local Government Authorities (Elections) Amendment Bill in detail as a case study of the issues that could arise if this system is implemented for all elections in Sri Lanka.

Case Study: Local Authorities Elections Bill

Timeline



In October 2010, the Government tabled the Local Authorities Elections (Amendment) Bill in Parliament. The Bill is the first real attempt to crystallize the deliberations around the Sri Lankan electoral system into a concrete system for conducting elections in Sri Lanka.

The Bill proposes to implement a mixed electoral system in Sri Lanka. Some highlights of the Bill are given below.

- A return to a pre-dominantly First-Past-the-Post electoral system
- 30% of the total number of seats in a local authority area is to be set aside for councilors selected on a Proportional Representation basis from a closed list. (this number will never

exceed 30% and if the required percentage of seats works out to be more than 30% it will be adjusted down)

- PR seat allocation is to be based on proportion of votes garnered by parties of losing candidates who have polled more than 5% of the votes in a ward.
- Local Government Authority electorates to be delimited into smaller wards
- Minister of Local Government to have far reaching powers over appointment of delimitation commission and committees
- 25% quota for women *and* youth

As progressive as it is towards implementing a mixed electoral system in Sri Lanka there are a number of issues with the bill that have been highlighted by other writers.¹¹ In terms of the discussion it is pertinent to highlight a few major areas that will have a significant impact on electoral reforms at the Provincial and General Election levels.

Delimitation

Although the Bill makes provisions for a significant re-structuring of the electoral landscape, the delimitation process itself is quite problematic. The Bill gives the Minister¹² the power to appoint a national committee on delimitation and if required district level delimitation committees. There is no clarity as to the relationship between these Committees and the existing National Delimitation Commission and the Minister has a great deal of discretion in appointing delegates to these committees. There is no explication on the qualifications or competencies that these individuals should hold. There are four main areas that will be considered

- a) the ratio of the ethnic composition of the local authority concerned, and the need to ensure equal representation for each ethnic group in that local authority area ;
- b) the geographical area of the local authority and its physical features;
- c) the population of the local authority area and the density of such population; and

¹¹ Arulanantham, J., & Schubert, A. (2011). A critique of the Local Authorities Elections (Amendment) Bill. Sri Lanka: The Young Researchers' Collective, Sri Lanka. Fonseka, B., & Raheem, M. (2011). Proposals to Amend the Local Authorities Elections (Amendment) Bill. Colombo: unpublished. Fonseka, B., Raheem, M., & Jayawardana, S. (2010). A Brief Commentary and Table on the Local Authorities Elections (Amendment) Bill. Colombo : unpublished.

¹² There is no specification as to which minister this is exactly.

d) the level of economic development of the local authority.¹³

There are also no provisions for the public to participate in the delimitation process. The issue of delimitation will be crucial especially for minority parties and independent groups as the demarcation of wards can be done in such a way as to ensure that a minority group/party does not get a significant enough majority in each ward. This is exacerbated by the fact that the bill seeks to establish a 5% cut off mark for *each ward* (rather than each local authority area) – the votes of any party that does not poll more than 5% of the vote in a ward will be eliminated and will not be counted in the final calculation of seats under the PR system. As a result the delimitation process itself could prove vital to the representation of smaller parties and minority groups especially groups that are not spatially concentrated. Furthermore, the demarcations made through this Bill will form the basis for future electoral districts for the Provincial and General Elections and is therefore an issue that requires urgent attention.

Representation of Smaller Parties and Marginalized Groups

The issue of minority representation especially in a multi-ethnic and plural society like Sri Lanka is an important consideration in any attempt at electoral reform. However the provisions in the Local Authorities Elections (Amendment) Bill appear to discourage the representation of smaller parties and independent groups. The Bill in its current form does not allow any political party or group to contest in selected wards but mandates that every party has to nominate a candidate for each ward. This provision in itself may not be of much help especially to independent candidates as it would force them to expend resources in all wards rather than focusing on a smaller number of wards and thereby increasing the likelihood of being elected. This situation has been further complicated by the fact that independent groups are expected to deposit a sum of Rs. 20,000 for each candidate contesting a ward, as opposed to Rs. 5,000 deposit for candidates from political parties. Together these provisions would require independent groups to expend vast amounts of finances and resources in contesting local authority area elections and thereby effectively discouraging almost all independent groups from participating in Local Authority elections and by extension in Local Authorities.

¹³ Section 3B (2) of the Local Authorities Elections (Amendment) Bill

Provisions have also been made to replace the existing provision for a mandatory 40% youth quota with a non-mandatory youth *and* women quota. While the recognition afforded to women's representation is welcomed there is a great deal of confusion with regards to the lumping together of both youth and women in this quota.

Role of party secretary and independent group leader

Although the system proposed in the Bill is heavily weighted in favor of the First Past the Post system, if a vacancy arises, the decision on the filling of vacancies is done by the Party Secretary or the Independent group leader. In most countries that hold elections under the first past the post system vacancies are filled through conducting a by-election. The by-election is an important check and balance and a means of ensuring the responsiveness of Government. Furthermore it serves as a mechanism to test the will of the people. This promotes a culture of anti-incumbency as it ensures that representatives can be changed if they are not responsive to the needs of their electorate. However under the present system there is no way for voters to correct their choice as the vacancy will be filled by the Party Secretary of Independent Group leader.

First Past the Post and Proportional Representation

The Bill seeks to replace the existing PR system with a largely First Past the Post electoral system. A maximum of 30% of the total number of seats in a ward and the allocation of seats in a local authority area will be allocated by calculating the votes garnered by losing candidates of each party in the Local Authority area. The Bill also imposes a 5% cut off point in each ward (as I have pointed out before) and votes for candidates who receive less than 5% of the vote will be eliminated. This is particularly problematic for the allocation under the PR system as it will distort the number of votes each party has. For example if a party's candidate gets 7% of the vote in one ward but only 3% of the vote, this 3% will not count towards the Proportional Representation allocation of this party. By choosing to implement a 5% cut off mark at the ward level rather than at the Local Authority area level, this provision will severely hamper the participation of smaller parties in local government.

There are also concerns that this system will in fact develop a strong two party system rather than promote the representation of diverse views. Since the First Past the Post system will emphasize the majority of votes received by any party and it is unlikely that any single party will

win all the seats in an electorate, it is not difficult to presume that even among the losing party, the bigger parties would have garnered a large proportion of the votes. Furthermore, it is also reasonable to presume that despite not having won all seats under the First Past the Post system, by virtue of the proportion of votes it received in the wards it did not win, the party that wins a Local Authority area under the First past the Post system will also receive a number of seats from the Proportional Representation allocation as well. This will ensure an even more exaggerated majority for the larger parties at the expense of the smaller parties in the Local Authority area. It will also impact on the representation of smaller parties and minority communities in local government, especially in areas where minority communities are not spatially concentrated.

Furthermore in reality the allocation of seats under the Proportional Representation system will be less than 30%. This is because the number of PR seats is calculated based on the total number of seats and then added on rather than as a percentage of the total number of seats. For example if a local authority area returns 10 members, there will be 3 seats allocated under the PR system and this will be added to the total number of seats. This will mean that the number of seats will be 3 out of 13 rather than 3 out of 10. As a result *the actual Proportional Representation allocation will work out to about 21-23% of the total number of seats* and further reducing the effectiveness of the Proportional Representation system in ensuring the representation of different voices and concerns in local government.

Another major issue in this regard is the fact that the lists for seats allocated under the Proportional Representation system are closed lists. As a result there is no engagement between the voter and the representative which in turn problematizes the notion of responsive representation. Furthermore, there is little clarity on as to whether party's can change their list for Proportional Representation subsequent to the election further diluting the use of the Proportional Representation as a means of ensuring the representation of marginalized and minority groups in local government.

Development vs Democracy?

However these issues with the Bill notwithstanding, there are a number of other debates that are also important in the context of electoral reform. The Government of Sri Lanka has begun discussions and is possibly drafting two bills that will have a significant impact on local governance in Sri Lanka. The proposal to implement Jana Sabhas in Sri Lanka will see the Jana Sabha taking over the implementation of development projects from the Local Government Authority's purview and bringing it into one centralized structure. The proposal to establish a Corporation to run the Colombo Municipal Council is also a further indication as to the emergence of the debate between development and democracy. The question being posed is as to whether Local Government should be accountable to the voter or to the rate payer? It also raises the question as to what is more important - Representation at the local level or ensuring that the development work in the area is completed? This debate should be understood in terms of the Government's avowal to pursue development and the need for a stable government in order to pursue this properly.

Future Problems

The tabling and subsequent discussions on the Local Government Authorities Elections (Amendment) Bill have also raised interesting questions about the possible issues that may arise through the implementation of this electoral system in the future.

The emphasis on amplifying the majority (in practice) will ensure the development of a two party system and as a result, minority parties and independent groups that are not spatially concentrated will have a lot of difficulty in securing representation at the local level. This issue will only be exacerbated as the system is implemented at the Provincial Council and Parliamentary level. As a commentator pointed out "what is more important – a stable government or a stable country? We cannot have both."¹⁴ Others believe it will drive the minorities away to the margins especially because of the proposed 5% cut off mark at ward level which would make it even more difficult for smaller groups to secure representation under the Proportional Representation system. Furthermore, the Proportional Representation system has

¹⁴Comment made at the OTI Roundtable on Electoral Reform, 3rd June, 2011 at the One Text Initiative.

proved to be crucial for smaller minority groups as it has played a significant role developing an alternate space for disillusioned youth and segments of society that are not generally represented. In fact some observers believe that in the absence of this kind of representation, there was a strong possibility of violence erupting in other segments of society as well. The move away from Proportional Representation especially in the context of a post-war country may in fact further polarize communities and lead to more violence in the future.

Another important consideration to be made is the ease with which this electoral system can be replicated for Provincial Council and General Elections. There are many areas of the bill that are ambiguous and have caused serious debate and confusion. For example the implementation of the 30% Proportional Representation seat allocation has caused a great deal of confusion and has obfuscated the real impact on the representation of minority parties and marginalized groups in a deliberative democracy. It is also a significant divergence from the position espoused in the Interim Report of the Parliamentary Select Committee on Electoral Reform which called for an electoral system that is “easy to comprehend and relatively easy to administer.”¹⁵ Furthermore it does not make sense to have a significantly different voting system at the Parliamentary and Provincial Council levels and as in any country the consistency of an electoral system is the bedrock for its success or failure in meeting the aspirations of various groups in a deliberative democracy.

Finally, there is also a need to balance a stable government with the promotion of marginalized groups and communities in a democracy. Women’s groups have actively sought representation in the political sphere over a long period of time.¹⁶ Recognition of the need for youth representation has been recognized in the Presidential Commission on Youth.¹⁷ However affirmative action such as these must be supported by the development of groups who are functioning in environments that are unsuitable or do not ensure consideration of their perspectives in law and decision making. With this in mind there is a need to support any kind of affirmative action with the concurrent establishment of programmes to nurture and develop leadership among marginalized groups. However the proposals made in the current Bill make it difficult to

¹⁵ Page 5

¹⁶ See Kodikara, C. (2009). *The Struggle for Equal Political Representation for Women in Sri Lanka*. Colombo: Ministry of Child Development and Women’s Empowerment & United Nations Development Programme

¹⁷ (1990). *Report of the Presidential Commission on Youth*. Colombo : Government Publications Bureau

implement any kind of affirmative action due to the fact that the lists submitted for proportional representation is closed and there is no nexus between the votes for losing candidates and candidates securing seats from the allocation for Proportional Representation.

Therefore in conclusion it is clear that the changes to Sri Lanka's electoral system need further thinking and planning. It is imperative that different stakeholders come together to draw up an electoral system that will not only ensure the stability of government but also provide spaces for minority representation and expression of marginalized voices in policy and decision-making processes.

Conclusion

In conclusion it is possible to say that while the discussion electoral reform is significant, the implementation of these discussions has many ambiguities and loopholes that should be addressed when further changes to the bill are promulgated. The design of the electoral system can have long and mostly unforeseen consequences for different groups and individuals. In this context there is an urgent need for understanding of these implications especially in a post-war country like Sri Lanka.