

# **Dinesh Gunawardena Committee Report on Electoral Reform**

## **Interim Report of Select Committee on electoral reforms**

The Interim Report of the Select Committee on Electoral Reforms was presented in Parliament last Friday. Chairman of the Select Committee Dinesh Gunawardena presented this report which proposes a Mixed Electoral System combining Proportional Representation and first-past-the-post system.

### **Following is the full report:**

On a motion moved by the Leader of the House of Parliament on 20th August, 2003 Parliament agreed to the appointment of a Select Committee to:

"Consider reforms to the current system of Parliamentary and Local Authority Elections and other matters connected therewith and to make recommendations in respect of changes considered necessary to the Constitution of the Democratic Socialist Republic of Sri Lanka and the existing election laws and to report together with their observations and recommendations on the amendments necessary to the said laws."

Thereafter this Committee consisting of 19 members, representing all parties in Parliament was appointed on 22nd August, 2003 under the Chairman of Dinesh Gunawardena. The Committee commenced its sittings on 1st September, 2003 and has held 27 meetings up-to-date of this Interim Report (the names of the members of the Committee appear in Appendix I).

On a subsequent motion moved by the Leader of the House of Parliament on 25th September, 2003 parliament agreed to amend the previous motion of 20th August, 2003 by bringing within the Terms of Reference the system of elections of Provincial Councils and by requiring a report to be submitted on or before 31st January, 2004 or to seek leave of Parliament.

Your Committee commenced its proceedings by publishing a notice in three languages in all national newspapers calling for representations from members of the public. The secretaries of recognised political parties were requested by letter to submit their representations. Only 17 out of 51 recognised political parties responded to this request. As total of 320 Memoranda have been received from civil organisations and individuals.

Where clarifications and elaborations were found to be necessary in the submissions, the Committee examined representatives of civil organisations and individuals.

The following recognised political parties appeared on invitation, and gave oral evidence before Your Committee:

New Left Front, Sihala Urumaya, Sinhale Maha Sammatha Bhumiputra Party, Eksath Sinhale Party, All Ceylon Muslim League, Desha Vimukthi Janatha Party, Democratic United National Front, The Communist Party of Sri Lanka, Sri Lanka Freedom Party, Mahajana Eksath Peramuna, Lanka Sama Samaja Party, Sri Lanka Muslim Congress, United National Party, Up Country People's Front, Janatha Vimukthi Peramuna and Ceylon Workers Congress.

The Liberal Party which had submitted Memoranda did not respond to the invitation extended to them to appear before the Committee and give oral evidence.

The Committee was assisted in its deliberations by the Attorney-General, Commissioner of Elections, Commissioner of Registration of Persons, Registrar General, Director Census and Statistics and the Controller, Emigration and Immigration.

Considering the complexities of the issues raised and the volume of Memoranda received, Your Committee requested the assistance of the United Nations Development Program, pursuant to which the services of a qualified Legal Assistant was made available.

From the submissions, proposals and evidence, the following matters emerged for consideration:

(a) Reforms to the present electoral system pertaining to Parliament, Provincial Councils and Local Authorities.

(b) Number of Members in Parliament;

(c) Introduction of National Identity Card to the electoral process;

(d) Recognition of Political Parties;

(e) Introduction of Electronic Voting Machines;

(f) Establishment of a Standing Committee on Franchise and Elections;

(g) Postal Voting;

(h) Period of Nominations for different elections;

(i) Declaration of Assets and Liabilities by candidates;

(j) Fixing of the date of Election;

(k) Introduction of a Code of Ethics for Party Leaders, Candidates and Members of Political Parties;

(l) Annulment of Poll due to disturbances at polling stations;

(m) Computerisation of Electoral Registers;

(n) Representation of women;

(o) Procedure in relation to Election Petitions.

Your Committee having considered the matters enumerated above wishes to make the following recommendations in its Interim Report:-

### **System of elections**

The system of elections is the principal focus of all representations received. These representations deal with the Sri Lankan experience in relation to the First-past-the-post system of elections which was in force at the beginning and the Proportional Representation with

Preferential Voting System introduced later. The strengths and weaknesses of both systems have been considered from several perspectives.

### **Parliamentary elections**

The majority view favours reforms to the present system leading towards a Mixed System of a combination of First-past-the-post and Proportional Representation Systems. Concerns were raised in respect of a proposed change of the present system by minority parties and communities of interests who urged the committee to ensure equitable representation in the system that is finally proposed.

Your Committee is of the view that a mixed system be adopted which includes elements of First-past-the-post and Proportional Representation systems. The modalities and particulars of the system to be adopted would be further considered by the Committee at its future sittings and would be presented to Parliament in due course.

### **Local authority elections**

Having considered the representations received and the recommendations of the member of the Presidential Commission on Local Government Reforms and of the Commissioner of Elections, Your Committee is of the view that the present system based on the Proportional Representation and Preference Voting should be replaced by a combined system of wards and Proportional Representation.

### **Number of members in parliament**

The Committee is in agreement that the present number of Members of Parliament should not be increased.

Introduction of the National Identity Card to the Electoral process

At the hearings before Your Committee, it transpired that it is vital to introduce the National Identity Card to the electoral process in order to:

- (a) eliminate persons being registered as electors on more than one instance and;
- (b) prevent organised impersonation during elections.

This was highlighted in the issues raised by several political parties, civil organizations, election observer organizations and individuals. Concerns were raised by few political parties and organizations on behalf of persons of Indian origin who do not possess sufficient documentation to obtain National Identity Cards, in the belief that such a process would deprive them of their voting rights.

Having considered the above, Your Committee, recommended that necessary steps be taken to implement to program of action by the Commissioner of Registration of Persons to issue the National Identity Card to all those who are not issues with same within a period of six months.

The Commissioner of Elections further recommended that the introduction of the National Identity Card to the electoral process be implemented in the following stages in order to ensure

that every registered elector is given an opportunity to cast his vote without any hindrance and for this purpose to require by law:

(i) that electors be enumerated only upon the tendering of the number, date of issue of the National Identity Card at the revision of electoral registers and to incorporate the number of the National Identity Card against the name of each elector in the electoral register, commencing from a date in the year 2005, after all eligible persons have been issued with National Identity Cards;

(ii) that ballot papers be issued to electors including postal voters only on the production of the National Identity Card or any such photo Identity Card carrying the National Identity Card number, commencing from a date on which the process of Registration enumerated above has been completed and the duplicates or copies of all such registers are issued or collected by the Commissioner of Elections.

It is suggested that the Draft Bill which was prepared consequent to the decision of the Cabinet of Ministers in 1995 be adopted for this purpose with suitable amendments (vide Appendix II) and the Election Commission be empowered to resolve all practical problems that may arise.

The Commissioner also recommends that the present practice of issuing Official Poll Cards to all registered electors be discontinued with necessary safeguards and that official lists of registered electors be displayed in prominent places such as the offices of the Grama Seva Niladhari and Post Offices specifying the place, date and hour of poll. This measure should be linked to the introduction of the National Identity Card to the electoral process in the manner recommended above. However, in respect of identification of voters at polling booths, the Committee observed that a practical and efficient mechanism needs to be evolved by the Commissioner of Elections.

The Commissioner of Elections suggests that this requires amendments to the following: Articles 89 and 101 of the Constitution, Sections 12 A (i) of the Registration of Electors Act No. 44 of 1980, Sections 37 (i) and 27 of the Parliamentary Elections Act No. 01 of 1981, Sections 35 and 25 of the Provincial Councils Elections Act No. 02 of 1988, Sections 32 and 39 A of the Local Authorities Elections Ordinance.

### **Recognition of political parties**

The Committee considered the recommendations of the Commissioner of Elections regarding changes to the present legal regime in relation to recognition of political parties. The Commissioner notes that presently, the recognition of political parties is effected more on the basis of satisfaction of legal criteria and of national compliance rather than on the basis of actual recognition by voters. In the result, the vast majority of the 51 recognized political parties do not even directly feature in any of the elections.

Having considered the views of the Commissioner of Elections, Your Committee recommends that legal provision should be made for a two stage procedure. Firstly, a party is registered, assigned a symbol and permitted to nominate candidates. Thereafter, recognition will be granted only on the basis of voter acceptance.

It is also recommended that legal provision be made for the Commissioner of Elections to rescind registration and recognition of political parties as the case may be, on the basis of specified criteria that pertain to the overall concept of voter acceptance.

### **Introduction of electronic voting machines**

Your Committee also considered the possibility of introducing Electronic Voting Machines to the electoral process in order to eliminate instances of poll rigging, errors in counting and computation of results. A demonstration of Electronic Voting Machines used successfully in India were staged for the benefit of the members of this Committee by two companies, the Electronic Corporation of India and Bharat Electronics Limited.

Your Committee recommends that a suitable Electronic Voting Machine be introduced upon proper technical evaluation to suit the electoral system that will be finally adopted and that appropriate measures be taken to familiarize the voters with regard to the use of such machines prior to their introduction.

### **Standing committee on franchise and elections**

Your Committee recommends the establishment of a Standing Committee of Parliament on Franchise and Elections which would keep the implementation of the relevant laws under constant review and propose necessary reforms in the light of the conduct of different elections.

### **Postal voting**

Your Committee having considered the proposals submitted by the Commissioner of Elections in respect of postal voting, unanimously recommends that the present system of postal voting be replaced by a system of "Advanced Voting" to be conducted by the Commissioner of Elections at centrally located polling stations to be installed at number of places in each district under the supervision of Returning Officers with sufficient security cover by the police.

### **Provincial councils elections**

Your Committee, addressed as a matter of urgency the following in relation to Provincial Councils Elections.

According to Section 3 (3) of the Provincial Councils Elections Act No. 2 of 1988, the number of members to be elected from each administrative district of a Province to the Provincial Council established for that Province shall be determined by the Commissioner on the following basis:

(a) one member for every 40,000 residents in that administrative district. For the purpose of making a determination under this paragraph, the total number of persons who, according to the last General Census, were for the time being resident in that administrative district shall be ascertained to the nearest 40,000; and

(b) one member for every 1,000 square kilometers of area in that administrative district. For the purpose of making a determination under this paragraph, the area of that administrative district shall be calculated to the nearest 1,000 square kilo meters.

The Commissioner of Elections on being consulted on this matter noted that the original membership of each Provincial Council established under and in terms of Article 154A of the Constitution was calculated on the basis of 1981 General Census. The details were gazetted vide, Gazette Extraordinary No. 493/9 dated 17th February, 1988.

The islandwide decadal census could not be taken in 1991 due to the then prevailing security situation in the country. In the year 2001, an islandwide comprehensive General Census was taken except for some areas in the North and the East. A fresh determination was made under Section 3 (3) of the Provincial Councils Election Act No. 2 of 1988 on the basis of the 2001 General Census.

The details were gazetted vide, Gazette Extraordinary No. 1319/4 dated 16th December, 2003. It indicates a marked increase of the membership in each Provincial Council. As the Census figures released for North and the East are provisional, no determination was made in relation to the North and East Provincial Council. Your Committee unanimously agreed that there should be no increase in the membership of each Provincial Council and the number of members should be frozen as at present.

The Committee was also in agreement that it is appropriate to hold elections to all Provincial Councils on a single day being a Saturday.

The Commissioner of Elections on inquiries made by the Select Committee stated that in order to freeze the present membership of the Provincial Councils and to hold elections for all Provincial Councils on a single day, amendments to the existing laws have to be brought in urgently before 8th February, 2004.

Therefore, Your Committee consider it necessary that Sections 3 and 22 of the Provincial Councils Elections Act No. 2 of 1988 be amended to provide for the freezing of the membership of Provincial Councils on the basis of the order of the President made in terms of Section 2 of the Provincial Councils Act No. 42 of 1987 and to hold Provincial Councils elections on a single day being a Saturday.

A detailed Report containing the recommendations in respect of the other matters identified in this Report and any other matter referred to it as mentioned in the Terms of Reference would be submitted to Parliament in due course.

We, the members of the Select Committee of Parliament on Electoral Reforms endorse this report. Signed: Dinesh Gunawardena (Chairman), P. Chandrasekaran, Karu Jayasuriya, Mrs. Amara Piyaseeli Ratnayake, Mahinda Samarasinghe, Rauff Hakeem, J. M. Ananda Kumarasiri, M. H. Cegu Isadeen, W. B. Ekanayake, Gayantha Karunathilleka, Raja Collure, Nandana Gunathilake, Nimal Siripala de Silva, Douglas Devananda, A. D. Susil Premajayantha, R. Yogarajan, Ravindra Randeniya, S. Sathasivam, Rajvarothiam Sampanthan.

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