

# **A Brief Commentary and Table on the Local Authorities Elections (Amendment) Bill 2010**

**by**

**Bhavani Fonseka, Supipi Jayawardena and Mirak Raheem**

**October 2010**

The Local Authorities Elections (Amendment) Bill 2010 (Bill) proposes a series of changes to the laws relating to the election of local authorities (LA) that include Municipal Councils, Urban Councils and Pradeshiya Sabhas.

A principal change proposed in the Bill is the introduction of a mixed system of First Past the Post (FPP) and Proportional Representation (PR). The Bill reintroduces the ward system, whereby a LA is divided into a number of electoral units. Each ward elects one member, unless in the case of a multi-member ward. The number elected under the PR system is not fixed. A maximum of 30% of the number of members elected under FPP of a LA will be appointed under PR.

The Bill has several salient features including strengthening the processes for counting and polling in order to ensure the integrity of an election. Although positive measures are noted, there are serious concerns with several provisions introduced in the Bill including the following:

- While laying out specific procedures in terms of vacancies of seats and of candidates, it provides significant powers to the secretaries of political parties and the leaders of independent groups to make the appointments to fill vacancies, instead of the voters making a choice through a by-election.
- The Bill delineates a delimitation process for the purpose of demarcating wards in local authorities with far-reaching powers granted to the Minister over the process.
- In the event of a vacancy created by the resignation of a Mayor and if the latter occurs on consecutive occasions, the LA will be dissolved and replaced by a Commissioner appointed by the Minister.

The Bill has significant repercussions for representative democracy, including the increase in challenges for minor parties and independent groups to secure seats, thereby reinforcing the two-party system. There are no specific guarantees for minority representation, either through the electoral process or through delimitation mechanisms. In addition, there are no guarantees for female and youth in the nomination process. Given that LAs are the unit of government closest to the people, there is a need to ensure that elected officials are representative and accountable to their constituencies. Although the Bill introduces new measures for LAs, it broadens the powers of the Central Government rather than empowering LAs and ultimately falls short of strengthening representative democracy.

# Local Government Authorities Elections (Amendment) Bill 2010

Topics	Provisions	Implications
<b>DELIMITATION</b> <b>Section 2 of the Bill</b> <b>(Section 3 of the Principle Enactment)</b>		
<b><i>Delimitation (in General)</i></b>	Delimitation will involve the division of a Local Authority (LA) into wards (Section 2).	Given the existence of the Delimitation Commission as established by the Constitution (Article 95) that is meant to demarcate electoral boundaries, there is no reference as to how the Committee will work with the Commission.
<b><i>National Delimitation Committee</i></b>	Recommendations for delimitation of wards to be made by 5-member National Delimitation Committee appointed by the responsible Minister (Section 2).	Lack of independence in the composition of the Committees and the overall process, leaves room for overt politicisation.
<b><i>District level committees</i></b>	The Minister <u>may</u> also appoint district level committees that act under the direction and supervision of the National Level Committee. (Section 2).  The Bill outlines the composition of only the District Level Committee, which should consist of representatives from the Department of Elections, Provincial Ministry of Local Government, Survey-General's Department, Department of Census and Statistics and a public officer selected by the Minister (Section 2).	No inclusion of representatives from the wider civil society in the delimitation process, especially at the district level.  No provisions for ethnic representation in the Committees.  Open to abuse given that there are no provisions on how many times the boundary can be changed or the rationale for further boundary alterations.
<b><i>Other Committees</i></b>	The Minister may appoint a 5 member committee that would put forward alterations to ward boundaries suggested by the National Committee (Section 2).	
<b><i>Principles for division for National Committee</i></b>	Four principles laid out for the division of wards (Section 2) (a) ratio of ethnic composition and need to ensure <u>equal</u> representation for each ethnic group (b) geographical area and features of LA	Although principles for delimitation provided in the Bill are useful, the principle of ensuring equal ethnic representation may not reflect ground

	(c) population and population density of LA (d) level of economic development of LA.	realities.  Instead of <u>equal</u> representation, representation <u>in proportion to ethnic composition</u> may be more suitable.  Given the lack of census in the North and parts of the East since 1981, a process of delimitation in these areas in the current context may not represent the ground realities.
<b>Role of Minister</b>	In addition to being responsible for appointments to the National Committee, District Committee and the other 5 member Committee, the Minister has the authority to make changes to the boundaries of wards (Section 2).	Significant powers are provided to the Minister with no checks and balances. There is no appeal process to challenge a decision made by the Minister.
<b>ADMINISTRATION OF ELECTIONS</b> <b>Section 8 of the Bill</b> <b>(Amending Section 12 of the Principle Enactment)</b>		
<b>Administration of Elections</b>	Each ward of a LA is deemed to be a polling area. A polling area may be divided into polling districts by the district returning officer. Each polling district will have a polling station. Each polling district shall consist of no more than 1,500 voters (Section 8).	
<b>NOMINATIONS</b> <b>Section 20,22,23,24,25,26,27,29 &amp; 60 of the Bill</b> <b>(Section 26,28,29,30,31,35,36,38 &amp; 81b of the Principle Enactment)</b>		
<b>Submission of Nominations</b>	Every voter in the local authority area is entitled to be a candidate (Section 22(1)).	Lack of clarity as to whether a person who is not a voter of that LA can contest in a LA, which is the present system.
<b>Nomination Paper</b>	Any contesting party or groups of persons have to submit one nomination list for all wards (Section 22 (3)). Nomination paper consists of two sections. <ul style="list-style-type: none"> <li>• Group I is the list of candidates – one per ward unless there are multi-member wards.</li> <li>• Group II is the list of additional persons</li> </ul>	No political party or independent group can contest in only one ward in the entire LA, but instead will have to contest in all wards in the LA.

	<p>including both replacements for Group I and PR list (Section 22 (3)).</p> <p>A candidate can be nominated for only one ward (Section 22 (1)).</p>	
<b><i>Nominations for candidates to be appointed under the PR system</i></b>	The number of nominations in the PR list will be 30% of the seats available under the ward system (eg. in a 10 ward LA with no multi member wards, 3 seats under P.R.). In the case the sum arrived at is an integer and a fraction, it will be the integer (eg. 3.8 will be 3) (Section 22 (3)).	
<b><i>Nomination of women and youth</i></b>	25% of the nominees <u>may be</u> women and youth (Section 22 (4)).	<p>Political parties or independent groups are not compelled to include 25% women and youth nominees.</p> <p>Women and youth are grouped together, rather than including them as separate entities.</p> <p>The 40% youth quota and the rejection of a nomination list for non-compliance have been repealed.</p>
<b><i>Payment for Nomination</i></b>	<p>Nomination payment required for both recognised political parties and independent groups.</p> <ul style="list-style-type: none"> <li>• Parties will be required to make payment of Rs. 5,000 per name on the nomination form</li> <li>• Independent groups Rs. 20,000 per name (Section 23 (1))</li> </ul>	Payment for nominations has significantly increased for independent candidates who previously paid Rs. 250 per name and will now be required to pay Rs. 20,000 per name.
<b><i>Disqualification of Candidates</i></b>	If a candidate is disqualified for either being underage or not having endorsed the nomination paper, the candidate will be rejected (Section 25 (3 (a) & (b))).	Rejection of a candidate will not result in the rejection of the entire list of candidates but only of that individual candidate.
<b><i>Rejection of Nomination Papers</i></b>	<p>If all the nomination papers are rejected by the election officer or if he does not receive any during the allotted time period a further nomination period will be announced (Section 26).</p> <p>If all but one of the nomination papers are rejected, no elections will be held. The Election</p>	In the case of all but one nomination paper being rejected in a LA, the Bill permits the remaining political party or independent group, rather than the voter, to decide the composition of the LA.

	Commissioner will call upon the political party or independent group leader to specify which candidate in the provided list will be appointed as Mayor and Deputy Mayor (Section 27).	
<b><i>Nomination Period</i></b>	Nomination period limited to one and half days (Section 20).	Nomination period dramatically reduced from 21 days to 1½days, which is a challenge for competing groups.  The reduction could possibly minimize negative economic impact of a long campaign period.
<b><i>Election Date</i></b>	Election date to be no less than five weeks and not more than six weeks from date of publication of notice. Recommended that date be a Saturday, other than if it is a public holiday (Section 29).	Recommendation to hold elections on a Saturday rather than a working day. This would possibly reduce negative economic impact of holding elections.
<b><i>Declaration of Assets of Candidates</i></b>	Candidates will be required to declare assets within three months of submission (Section 22 (7)).	Positive feature of obligation to declare assets but the declaration should be made <u>prior</u> to the election, which would improve accountability and transparency of candidates.
<b><i>No appointments of public officers during nomination period</i></b>	During the nomination period no “ad hoc appointments” in Government or public positions can be made (Section 60 (1)).	Prevention of appointments of political officers during nomination period also minimises corruption and the influence of voters.
<b>DECLARATION OF RESULTS</b> <b>Section 44 &amp;45 of the Bill</b> <b>(Section 65 &amp; 65(A) of the Principal Enactment)</b>		
<b><i>General Wards</i></b>	Shall declare elected as member of the ward the name of the candidate of the party that obtained the highest number of votes in the ward.  Shall also declare the number of votes received by all the other parties in the ward (Section 44).	
<b><i>Multi-Member Wards</i></b>	The name of the candidate of the party that obtained the next highest number of votes shall be declared as the 2nd member and so on. (Section 45(1)).	Every voter is entitled to cast one vote for a party. Hence, it is unclear if a voter can mark their preference for a candidate in a multi-member seat. In the event a voter does not have the choice, the party leader or

		independent group would have that power of appointment. This has implications for voter rights and intra-party democracy.
<b>Single party or group contesting in a multi member ward</b>	If for “any reasons whatsoever” only one party or group has contested in a multi-member ward, the party secretary can nominate a person from the category of additional persons in the nomination paper (Section 45 (2)).	Challenges intra-party democracy and the principles of representative democracy.

**ELECTION OF MEMBERS ON PR SYSTEM**  
**Section 46 of the Bill**  
**(Inclusion of Section 65(B) to the Principal Enactment)**

<b>Formula for deciding if the % of PR seats will be 30% or lower</b>	<p>The Bill provides a 5% cut off point for votes received by candidates in a ward.</p> <p>The total votes polled by losing candidates who polled more than 5% (balance candidates) say B</p> <p>Total votes polled by winning candidates say A</p> $\frac{B}{A + B} \times 100 = \text{percentage of PR seats: D}$ <p>If the above percentage (D) exceeds 30 then the number of PR members shall be 30 % of the total number of members to be elected to all wards of that local authority area.</p> <p>If it is less than 30 % then the number of PR seats shall be D% of the total number of members to be elected to all wards of the local authority area.</p> <p>It shall be rounded down to the nearest integer say X (Section 46).</p>	<p>The Bill strengthens the two party system and limits minor parties and independent groups parties being able to secure seats through PR.</p> <p>The percentage of seats available through PR shifts only if the Deciding Percentage is under 30% - not if it is more than 30%.</p> <p>For minor parties who cannot win in any of the wards in a LA, the task of securing seats through PR will be challenging:</p> <ol style="list-style-type: none"> <li>a) They need to convince voters of the merits of voting for a party that may not win in their ward but could potentially win through PR.</li> <li>b) These groups may secure 5% of total votes at the LA but may not be able to secure 5% in every ward and therefore, would lose votes in the count.</li> </ol> <p>The formulas focus on candidates, rather than the party or independent group. This effectively results in parties that win at ward-level being more likely to secure the seats at the PR level, rather than the smaller</p>
<b>Formula for PR seat allocation</b>	<p>X is the number of seats calculated above.</p> <p>Qualifying No: Q = <math>\frac{B}{X}</math></p>	

	The votes received by the balance candidates of each party are divided by Q and each party's entitlement to seats is arrived at on the highest balance principle (Section 46).	parties.
<b><i>Selection of winners on PR system</i></b>	Once the entitlement is known for each party or group, the respective secretary or leader nominates the members from the list of additional persons.	
<b>POLLING AND COUNTING</b> <b>Section 39, 40, 41 and 42 of the Bill</b> <b>(Section 59A, 60, 61 and 63 of the Principle Enactment)</b>		
<b><i>Counting and Polling centres and officers</i></b>	<p>Polling and counting of votes will take place at the same location (Section 39).</p> <p>The presiding officer of each polling station will act as the counting officer (Section 39 (2)).</p>	<p>Using the polling station also as a counting station alters the existing practice of having a separate counting centre. To better ensure the integrity of the poll counting of all polling stations within a ward could be held in one location.</p> <p>Having the same officials oversee all aspects of voting and counting may leave space for abuse and intimidation given the context of election related violence and intimidation. In the event of having one official overseeing polling and counting, a senior presiding officer from outside the area should be appointed to ensure independence and the reduction of any intimidation.</p> <p>There is no provision for the presence of independent election monitors to observe both polling and counting.</p>
<b><i>Disturbances and change of venue for counting.</i></b>	In the event of a presiding officer informing an assistant returning officer (ARO) of an incident or a disturbance at the polling station during the poll or after, the ARO can decide on a new venue for the counting of votes. The ARO needs to give ' <u>adequate notice</u> ' of a new venue	There is no information provided as to what an incident or disturbance entails and the meaning of ' <u>adequate notice</u> '. Such vague provisions provide broad powers to a single official to make key decisions.

	for counting (Section 40 (1)).	
<b><i>Appointing Counting Agents</i></b>	A recognised political party or independent group can appoint two counting agents for each polling station. Only those who are counting agents can remain during the counting of votes (Section 41).	Having two counting agents is an improvement from the existing legislation of one.
<b><i>Application for recount</i></b>	Two recounts can be requested on an application made by an individual agent who is present during the counting or by the relevant candidate (Section 42 (2)).	Having two opportunities per candidate to request a recount ensures greater transparency and confidence in the process.
<b><i>Result sheet</i></b>	The result sheet should be certified by the counting officer, witnessed by one of his clerks and counting agents who desire to sign (Section 42 (3)).	
<b>FILLING OF VACANCIES</b> <b>Section 48 of the Bill</b> <b>(Inclusion of Section 65 A and 66 A to the Principal Enactment)</b>		
<b><i>Filling in of an office of a member</i></b>	<p>Vacancies of members elected from wards shall be filled by the secretary of the party who can appoint anyone qualified to be an elector (Section 48).</p> <p>Vacancies of members elected through PR shall be filled by the secretary of the party from which he was elected from the remaining names in the list (Section 48).</p>	<p>There is no provision for by-elections and this undermines the right of voters to choose his/her representative. An alternative would be to appoint an individual from the list of additional persons (Group II of the nomination paper).</p> <p>This provision provides wide powers to the secretary of a political party or the leader of an independent group to fill vacancies. This has a negative implication on intra-party democracy.</p>
<b><i>Vacancies created by Resignation</i></b>	<p>In the first instance the vacancy will be filled by the secretary of the party or the leader of the independent group concerned.</p> <p>In the event the person that is appointed vacates office in a similar manner, the LA shall</p>	This process results in the appointment of an official by the Minister rather than having elected representatives in the LA.



	<p>be deemed to be dissolved.</p> <p>The Minister shall appoint a Commissioner who will hold office for the remaining period of the term of office (Section 48).</p>	
<p><b>SELECTION OF MAYOR OR CHAIRMAN</b>  <b>Section 48 of the Bill</b>  <b>(Inclusion of Section 66B, 66C, 66D &amp; 66G to the Principal Enactment)</b></p>		
<p><b><i>Appointment of Mayor by the party with more than 50% of the seats in LA</i></b></p>	<p>Where a party obtains more than 50% of the seats in the Local Authority, the secretary of the party or leader of the independent group nominates two members as Mayor and Deputy Mayor or Chairman and Vice Chairman.</p> <p>In case of a vacancy in the above posts, the secretary of the party or leader of the independent group nominates the successor.</p>	<p>This provision provides wide powers to the secretary of a political party or the leader of an independent group to select the Mayor or Chairman for the LA. This has a negative implication for intra-party democracy.</p>