

PARLIAMENT WATCH – SRI LANKA*

3rd QUARTERLY REPORT (OCTOBER-DECEMBER 2010)



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In the last few months of 2010 the Sri Lankan parliament passed several important legislations that would have an immediate and direct impact on the lives of Sri Lankans. September saw the passing of the 18th amendment in great secrecy while the Local Government Authorities Elections (Amendment) Bill was passed in October with little discussion in both parliament and outside.

This legislative lethargy became more evident in November when several incidents of violence against political and civil society actors who were fighting for the rights of Tamils and the detained LTTE cadres in Jaffna and in December when much publicized illegal financial transactions which tarnished the image of many legislators went virtually unspoken during parliamentary sessions.

Background and Objectives

This report focuses on parliamentary activity from October 2010 to December 2010.

The objectives of SAHR and TISL's Parliament Watch are to examine the legislations enacted for the implications for human rights of citizens, transparency and accountability of government, the parliamentary system and responsibilities of the executive in ensuring the rule of law and human rights

Highlights

The highlight of the last quarter of 2010 was the introduction of the Local Government Authorities Elections (Amendment) Bill which was initially criticized by minority parties since it has no specific guarantees for minority representation either through the electoral process or through delimitation mechanisms, de-motivation of interested citizens to compete since one cannot contest in only one ward in the entire local authority but instead will have to contest in all wards in the local authority and for broadening the powers of the central government, the antithesis of why the local government bodies were created.

However except for a few seminars and several days of parliamentary discussion the general public is still unaware of the change in the electoral system and the implications it will have on the exercise of franchise, changes to the youth quota from a mandatory 40% youth quota in nomination lists to a 25% youth and women and the wide powers given to party secretaries and leaders of independent groups in the filling of vacancies. Also it is to be noted that the Northern Provincial Council has not been consulted about the formulation of this Bill although it is required to consult all Provincial Councils.

Legislative process

I. Local Government Authorities Elections (Amendment) Bill

Given below are several salient features of the bill¹

1. The bill provides significant powers to the secretaries of political parties and leaders of independent groups to make appointments to fill vacancies, instead of voters making the choice through a by-election.
2. The bill gives far-reaching powers to the minister over the process of demarcating wards in local authorities.
3. There are no specific guarantees for minority representation, either through the electoral process or through delimitation mechanisms.
4. Although the bill introduces new measures for local authorities, it broadens the powers of the central government rather than empowering local authorities.
5. No political party or independent group can contest in only one ward in the entire local authority but instead will have to contest in all wards in the local authority. Also, payment for nominations has significantly increased for independent candidates — they previously paid Rs. 250 per name but would now have to fork out Rs. 20,000 per name.
6. Political parties or independent groups are not compelled to include 25% women and youth nominees. Women and youth are grouped together rather than including them as separate entities. The 40% youth quota and the rejection of a nomination list for non-compliance have been repealed.

Initially the bill faced heavy criticism from all opposition political parties. Speaking at a seminar just a day before the bill was passed United National Party (UNP) MP R Yogaraja said that it strengthens the two-party system and limits minor parties and independent groups being able to secure seats through PR. He added that the bill will effectively further the elected representative from the people by centralizing all power with the party leadership and prevent minor parties/independent groups and concerned individuals from successfully contesting local council elections.²

Opposition leader Ranil Wickremesinghe pointed out that this bill has taken away certain powers enjoyed by the local authorities and transferred those powers to the centre. The minister of Local Government and Provincial Councils has been given many unchecked powers, from appointment of a Special Commissioner if the chairman of a Local Authority cannot pass the budget to the appointment of delimitation committees.³

¹ Local Authorities Elections (Amendment) Bill: Progress or Regress? <http://groundviews.org/2010/11/15/local-authorities-elections-amendment-progress-or-regress/>

² Taking with left hand what's given with the right hand by Namini Wijedasa, Lakkimnews, October, 24, 2010.

³ Hansard October, 5, 2010, Volume 194-No1, page 49

However in subsequent months all political parties represented in Parliament, except the Democratic National Alliance (DNA) agreed to support the bill, mostly due to short term political gains.

There has been a growing consensus among politicians and the general public that the existing Proportional Representation (PR) system is essentially a flawed system which distances the elected representative from his constituency. Several committees appointed to look at electoral reforms had earlier prescribed a return to the First Past the Post (FPP) system and in recent times preferential voting has been pointed at as the root for all election law violations and violence in the recent elections.

The new bill plans to introduce a mixed system of First Past the Post (FPP) and Proportional Representation but the number elected under the Proportional Representation system is not fixed. It is said that a maximum of 30% of the number of members elected under the First Past the Post system will be elected under the Proportional Representation system.

As Janatha Vimukthi Peramuna's Anura Kumara Dissanayake M.P. claimed, doesn't the breakdown of rule of law, culture of impunity and police biasness play a bigger role for increased violence than the preferential voting system?

As objectors to the bill pointed out the FPP routs the Constitutional objective of a "Representative" Democracy since it is not a system based on representation of all political opinions diminishing the exercise of their fundamental rights and franchise by marginalizing a section of our population and run the risk of their views not been heard.

2. Human rights

2.1 Attacks on minority rights activists

Four days before the beginning of President Rajapaksa's second term in office (November 18th) Janatha Vimukthi Peramuna (JVP) MP Sunil Handunnetti and three others were assaulted in Jaffna. On the same day during the Lessons Learnt and Reconciliation Commission (LLRC) sessions in Jaffna, Yaal Thinakural Journalist, P Winslow was threatened with death allegedly by EPDP members. These incidents which occurred in areas which have a strong military presence, have raised many questions about 'freedom' in the North. And the fact that no one still has been apprehended can easily encourage such incidents and create a culture of impunity.⁴

These attacks on two individuals who have tried to talk about the rights/issues of the Tamil people in Jaffna, the downplaying of the seriousness of the attack and justifying the attack indirectly by claiming that the JVP is trying to destabilize Jaffna and hinder development. This raises the issue whether Sri Lankans will be called upon to make an undesirable choice between development of the country or their democratic freedoms.

⁴ CaFFE and CHR Sri Lanka condemns the systematic intimidation during LLRC sessions at Kaytes Island.http://www.chrsrilanka.com/CaFFE_and_CHR_Sri_Lanka_condemns_the_systematic_intimidation_during_LLRC_sessions_at_Kaytes_Island-5-4.html

However this attack on one of their colleagues received little attention in Parliament. Only the JVP MPs spoke about the attack, political and human rights of Northern Tamils and the detainees in security camps. This lukewarm attitude towards human rights and political freedom, by members of the highest legislative authority in the country, raises concerns about the future of Sri Lankan democracy and human rights.

Speaking in parliament on November, 16, JVP MP Sunil Handunnetti stated that for the people in the country need to feel and enjoy the benefits of development they need to live in a free and democratic environment where their rights are protected.⁵

The importance of addressing human rights concerns of the Northern Tamils was evident during the LLRC sessions held in Jaffna in November. The majority of submissions were regarding missing persons, abductions and detainees. There were many allegations about the lukewarm attitude of the government about their grievances and allegations of extortion by various armed groups affiliated to the government.

Another main complaint was resettlement and ownership of land. This has been one of the much discussed topics of the LLRC and an issue of contention between all three main communities. While Muslim and Sinhala communities who were expelled by the LTTE want to return, Tamil community leaders complain that priority should always be given to the Tamils. At this critical juncture the role of the government should be to address these pressing issues. However nothing has been done to address these issues after 18 months of peace, the opposition MPs pointed out. 18 months after the war the government still has not released the names of those kept in detention camps. There are thousands of parents, wives and husbands who are going from camp to camp even today looking for their sons, daughters or husbands, and the LLRC has regularly stated that solving the detainee issue is a must.

However the fact that except the JVP MPs no other opposition MPs paid attention to this assault on one of their colleagues and the fact that the JVP is the only party addressing the issue of human rights of Northern Tamils, an issue not tackled by the UNP and TNA, the two organizations which traditionally represent minority rights, does not bode well for the democracy of the country and minority rights.

2.2 Assaulting MP Jayalath Jayawardane and freedom of expression

Parliamentarians have special privileges to enable them to voice their concerns about the issues facing the country and point the legislature to take remedial action.

After the cancellation of the President's planned addressing of the Oxford Union due to demonstrations by the Tamil diaspora, the government was quick to point fingers at the pro LTTE elements of the diaspora and even at some opposition politicians during the parliamentary sessions which followed the cancellation of the speech. The opposition political parties countered that this was the result of Sri Lanka's disastrous foreign policy and its reluctance to ensure basic human freedoms to its citizens.

⁵ Hansard, November, 16, 2010, pages 1428 – 29

Addressing the parliament on December 2nd, 2010 Chief Government Whip Minister Dinesh Gunawardena accused United National Party (UNP) Jayalath Jayawardane of collaborating with the Tamil diaspora. Jayawardane was also accused of breaching the sixth amendment to the constitution.⁶ However despite the fact that Speaker Chamal Rajapaksa promised to hold an investigation into the matter to determine whether Jayawardane was indeed guilty of the charges, the UNP MP was assaulted by several government ministers later that day in front of the UNP office in the parliamentary premises raising concerns over the government's respect for human rights. The attack on a MP when the Speaker has promised an investigation would be counterproductive for a government that is plagued by allegations of disregarding human rights. A little over a week after the assault on Jayawardane the Sunday Times reported that the government plans to use the Sinhala version of the national anthem in all government functions. The Tamil version of the anthem, which can also be found in the Tamil print of the constitution, was hitherto used in the North and East.

The Sinhala National Anthem issue and the assassination of Manikkam Sivalingam, Assistant Director of Education Urumpirai, Jaffna, sparked heated discussions but the government officially did not make a statement regarding the issue. But it was rumoured that he was assassinated because he refused to adhere to the Sinhala anthem only policy. Meanwhile the Tamil National Alliance (TNA) listed 18 incidents in Jaffna carried out by unidentified gunmen casting doubt whether Jaffna has fully returned to normalcy.⁷

TNA MP MA Sumanthiran told media that the real issue is not the reason why people are assassinated but why is no one being arrested. Pointing out that there are nearly 50 000 military personnel in Jaffna he added that it's natural for the people to suspect the government in the absence of a proper investigation.

“The issue is this, when JVP MP Sunil Handunnetti was assaulted in November the JVP alleged that the army intelligence was behind the attack. They even published the photos but no one was arrested. When an investigation is not conducted naturally the suspicion falls on the government.”

The media reports of unsolved incidents, carried out by ‘unidentified gunmen in white vans’, and their impact on the lives of Northern Tamils, forcing Minister Douglas Devananda, during the inaugural session of 2011, to acknowledge that there is a fear psychosis in Jaffna. However the fact that no one has been apprehended and claims that a local political group affiliated to the government is widely being accused for these actions, by the Tamil diaspora and human rights groups, to point that Sri Lanka has not been able to ensure the basic rights of all its citizens.

⁶ Dinesh Gunawardana blames Dr. Jayalath Jayawardana. Access the video at Law blog, posted on December, 2, 2010. <http://lawyers-law.com/dinesh-gunawardana-blames-dr-jayalath-jayawardana/>

⁷ [He who says one version of national anthem is superior, violates constitution](http://www.lakbimanews.lk/index.php?option=com_content&view=article&id=120%3Ahe-who-says-one-version-of-national-anthem-is-superior-violates-constitution&Itemid=56), LAKBIMAnEWS, January, 8, 2010. http://www.lakbimanews.lk/index.php?option=com_content&view=article&id=120%3Ahe-who-says-one-version-of-national-anthem-is-superior-violates-constitution&Itemid=56

3. Transparency and corruption

MPs selling vehicle permits to the highest bidder is not a new phenomenon in Sri Lanka. (11.) However the revelation that, over 60 vehicle permits given to MPs have been sold by MPs of almost all political parties, less than six months after they were elected to parliament showed, perhaps for the first time how widespread the practice is.

However instead of pointing fingers at 'corrupt' MPs a better preventive measure would be to address the lack of transparency of the process and the impossibility for the public to know what their elected representative has done with the permit. This lack of accountability, where the Minister of Parliamentary Affairs does not investigate whether the MP has properly used the vehicle permit, the Minister's claim that she has not received any complaints, and the government's decision to provide an extra luxury vehicle to UPFA MPs in addition to the permit have increased the tendency to sell permits.

Once again there was silence from MPs about the issue and only JVP's Sunil Handunnetti spoke to the media openly about the illegal transactions. Sri Lankan parliament never had a mechanism to keep track of how MPs use their privileges and in recent months the government has weakened the existing anti corruption mechanisms.

The end of the 17th amendment effectively ended the bribery commission and despite appeals by the opposition political parties and civil society organizations to exclude Ministers and Deputy Ministers from the Parliamentary Committee on Public Enterprise (COPE) and Public Account Committee (PAC) and to hand over the chairmanship to a member of the opposition the government appointed Deputy Minister of Finance and Planning Dr. Sarath Amunugama as the chairman of the PAC while Minister of Rehabilitation and Prison Reforms D.E.W. Gunasekera was appointed the chairman of COPE on June, 8, 2010

Appointing ministers as chairmen of the two committees and the fact that the committees contain a majority of UPFA members further diminish the authority the [Parliament](#) has on financial affairs of the [country](#). Stuffing the two committees with government MPs has already had an adverse impact on the objectives of its activities dealing a major blow to good governance and reinforcing international community/investors views that Sri Lanka is a country rampant with corruption.

Conclusion

After pushing to remove all the obstacles for the Local Government Authorities Elections (Amendment) Bill the government decided to hold the March elections under the existing PR system. This shows that the government introduced this bill not out of the conviction that the FPP was a better practice but with the belief that it would have benefitted them.

This Bill was presented to parliament but was not passed and is now being held back to be used at a convenient time. However as mentioned above the bill was formulated with the utmost

secrecy, like the 18th amendment, and still the general public is not aware even of its main features and its impact on their fundamental rights.

The new bill has introduced a system that will marginalize a significant portion of citizens who do not endorse the opinions of the two main parties. A look at Sri Lankan history provides ample examples of disastrous effects of such marginalization. This coupled with the legislative lethargy which was noted above raises great suspicion whether parliament would protect democracy, fundamental rights and attempt to maintain financial responsibility in the coming election year.

Recommendations

1. A more in-depth discussion on issues/bills that would have immediate impact on the citizens rights and make them accessible to the general public
2. A more proactive approach to force the authorities to investigate the assaults on MPs and ensure their parliamentary privileges
3. Make the revelations of parliamentary committees available to the public
4. Enable more severe action to be taken against MPs who violate the code of conduct and ethics
5. Discuss matters which are broadly discussed in society, i.e National anthem issue/ MPs selling permits
6. Strengthen parliamentary committees.
7. Introduce new mechanisms that would keep an eye of financial activities of legislators.

List of relevant bills/oral answers and adjournment motions

October, 5, 2010

Provincial Councils (Amendment) Bill: Read a Second and the Third time, and passed: presented A.L.M. Athaulla - Minister of Local Government and Provincial Councils

October, 6, 2010

Marriages of Displaced Persons: Financial Aid : question for oral answer by MP Noordeen Mashoor

Houses Built For Internally Displaced Persons In Puttalam District: Detail: question for oral answer by Noordeen Mashoor

Select Committee To Inquire And Report on Strengthening the Independent Character of the Parliamentary Service: moved by Alhaj A.H.M. Azwer

October, 7, 2010

No-Confidence In Hon. (Prof.) G.L. Peiris, Minister of External Affairs:
Motion Negatived: : Moved by UNP MP John Amaratunga

October, 8, 2010

Private Members' Motions: Inappropriateness of holding Cabinet Portfolios by President and Prime Minister: by Ravi Karunanayake: Parliament counted, and a quorum not being present, the Division Bells were ordered to be rung.

Resettlement of IDPs : Details: question for oral answer: by Ravi Karunanayake

October, 10 2010

Announcements: Reports on Recommendations of Human Rights Commission

October, 21, 2010

Announcements: Nomination to Select Committee to Inquire and Report on Strengthening the Independent Character of the Parliamentary Service: Speaker appoints John Amarathunge, Ajith P Perera, Lakshman Wasantha Perera and Udith Lokubandara and headed by Minister Lakshman Yapa

Local Authorities (Special Provisions) Bill: Read the First Time: Presented by the Nimal Siripala de Silva on behalf of the A.L.M. Athaullah, Minister of Local Government and Provincial Councils.

Local Authorities Elections (Amendment) Bill: Read the First Time: Presented by the Nimal Siripala de Silva on behalf of the A.L.M. Athaullah, Minister of Local Government and Provincial Councils.

IIFA Film Festival: Total Cost: John Amaratunga on behalf of the Ravi Karunanayake

November, 09, 2010

Personal Explanation by. (Dr.) Jayalath Jayawardana

Offensive Weapons (Amendment) Bill: Read the First Time: Presented by the Athauda Seneviratne; to be read a Second time upon Monday, 22nd November, 2010 and to be printed.

Mediation Boards (Amendment) Bill: Read the First Time: Presented by the Athauda Seneviratne; to be read a Second time upon Monday, 22nd November, 2010 and to be printed

'International Crisis Group" Organization: Representatives: Prof. Rajiva Wijesinha

November, 16, 2010

ANNOUNCEMENTS: Appreciation Local Authorities (Special Provisions) Bill and Local Authorities Elections (Amendment) Bill: Determination of the Supreme Court

November, 25, 2010

Adjournment Motion: Elimination of Violence against Women: moved by UNP MP Chandrani Bandara Jayasinghe

Children Who Lost Their Parents In War In The North: Details: JVP MP Ajith Kumara on behalf of the Anura Dissanayake)

November, 27, 2010

Adjournment Motion: Election of Office Bearers to Sri Lanka Cricket Association: JVP MP Ajith P. Perera

Non-Execution Of Recommendations By Human Rights Commission: Sri Lanka Ports Authority: question for oral answer: JVP MP Ajith P. Perera

December, 2, 2010

Adjournment Motion: Creation of a Suitable University System

Government Contracts with India and China: Details: question for oral answer by UNP MP Ravi Karunanayake)

December, 7, 2010

"Sunday Island" Report Of 5th December, 2010: Statement By Minister Of Irrigation And Water Resources Management Nimal Siripala de Silva

December, 8, 2010

"The Island" Headline of 08th December 2010: Statement By Minister of Petroleum Industries A.D. Susil Premajyantha