

Report of the Civil Society Committee to Review Provincial Council Election System

July 25th, 2018

The “Mixed-Member Proportional Representation” system used for the first time in the Local Authorities Elections of February 2018 addressed three major problems of the previous “Open List Proportional Representation” method. The new method

1. Did away with the “Manapa Pore” (i.e. reduced intraparty competition during campaigning),
2. Returned a councilor accountable to a Constituency, and
3. Reduced the burden of campaigning for candidates.

Furthermore, this new system reduced serious incidents of election violence, resulted in fewer spoiled votes¹, promoted the interest of the political parties as opposed to individual candidates² and the tedious exercise of counting votes was minimized and simplified.

After the February 2018 Local Authorities Election there emerged several criticisms of this new election system. Some of these critiques were based on misunderstandings of the system, others were based on deeper structural issues in Sri Lanka’s political culture and the present political environment and yet others based on flaws in the election system, which need to be corrected.

As a civil society group committed to supporting our elected representatives to do the right thing, we respectfully submit **that the Parliament should act to:**

- ***immediately clear misunderstandings about the Mixed Member Proportional Representation Method,***
- ***address the real issues concerning the method through suitable legislation, and***
- ***conduct elections without delay for all relevant Provincial Councils whose terms have ended.***

Our recommendations to address issues in the new Provincial Councils Election system³ are summarized in Table 1. The composition of the Civil Society Committee and the consultation and review process is summarized in APPENDIX 1. The rationale for the recommendations is summarized in APPENDIX 2. A list of FAQs is provided in APPENDIX 3 to clear misunderstandings.

¹In the Local Authorities Elections held in 2011, 4.52% of the total votes were rejected. In the Local Authorities Elections held in 2018 this was only 1.67%. This significant reduction of rejected votes is a likely result of introducing a simple ballot paper in 2018.

²The system incentivized candidates to campaign collectively as opposed to the Open List Proportional Representation” method, which incentivized competition within political parties.

³ As introduced by the Provincial Councils Elections (Amendment) Act No. 17 of 2017

TABLE 1

ISSUE	RECOMMENDATION
1. Misunderstandings about the new election system	<ul style="list-style-type: none"> • Share the FAQ among the MPs, MPCs, Local Government Councilors and the general public through media.
2. Disagreements about the delimitation boundaries	<ul style="list-style-type: none"> • Section 3A of the Provincial Councils Election Act (as amended) provides the delimitation process which the government and Members of Parliament should follow.
3. The inability of Political Parties to form working majorities in Councils.	<ul style="list-style-type: none"> • Give a Bonus of four seats to the Party receiving the highest number of votes in the case of Provincial Councils with less than 100 members. • Give a Bonus of five seats to the Party receiving the highest number of votes in the case of Provincial Councils with 100 or more members.⁴
4. Approximately 50% of the Members of the Council are returned from District Lists and those who do not win constituency seats by small margins are disgruntled.	<ul style="list-style-type: none"> • Make selection method for Party Lists more democratic and make the process public. • Pre-rank the District List, but give Political Parties the flexibility to appoint the first 1/3rd of their District Member entitlement from among the candidates who did not win in FPP electorates.
5. Winning Party often does not get any District List seats, frustrating those who worked hard expecting to be returned from the List.	<ul style="list-style-type: none"> • Give the Secretary of the Party the flexibility to nominate persons for the bonus seats referred to in 3 above from the District List or from among those not elected in the FPP electorates.
6. Women's Representation	<ul style="list-style-type: none"> • Increase the mandatory nomination for women in the FPP electorate list from one sixth to one fifth so that more women get a chance to contest. • Zip the Pre-ranked District List by alternating the names of women and men. The list should start with the name of a woman. • <i>If Parliament decides to revert to the preferential vote system of the past it is crucial to bring in a mandatory provision of twenty five percent nominations of women.</i>⁵

⁴ See part 3 of Appendix 2

⁵ This recommendation is made in the interest of addressing the underrepresentation of women in Provincial Councils which is at less than 4% at present.

APPENDIX 1

COMPOSITION OF THE COMMITTEE AND THE CONSULTATIVE PROCESS

The intense public discourse on local Government Election System became more heated as the same electoral system was scheduled to be used for Provincial Councils Elections as well. Some of the main political parties, the Election Commission, and the Ministry of Provincial Councils and Local Government requested the Election Monitoring Organizations (PAFFREL and CMEV) to convene a policy dialogue among the stakeholders to create awareness about the new electoral system (Provincial Councils Elections (Amendment) Act No.17 of 2017) Therefore PAFFREL and CMEV with support from USAID, jointly organized a Stakeholder Consultation on the Provincial Councils Elections (Amendment) Act on the 25th of April 2018.

Following initial meetings with the Minister of Local Government and Provincial Councils, Mr.FaiszerMusthapha and Officials of the Election Commission, PAFFREL and CMEV were requested to consult stakeholders to obtain views on the “Mixed Member Proportional Representation System”.

It was decided at this Stakeholder Consultation to appoint a committee of academics, election professionals, and observers, and civil society activists to further study and review the new electoral system and compile a comprehensive report including its recommendations. Civil Society Committee to Review Provincial Council Election System is therefore, an outcome of this Stakeholder Consultation.

The Minister of Local Government and Provincial Councils gave an undertaking that he would submit the recommendations of the committee to the leaders of political parties represented in Parliament and the Cabinet of Ministers to consider same when formulating necessary amendments.

The members of this Committee include:

1. Professor Sudantha Liyanage, Dean, Faculty of Applied Sciences, University of Sri Jayewardenepura
2. Dr.Sujata Gamage, Senior Research Fellow, LIRNEasia
3. Mr.Rohana Hettiarachchie, Executive Director, PAFFREL
4. Mrs.Kumudini Samuel, Researcher and Social Activist, Women and Media Collective
5. Mr.Luwie Ganeshathasan, Attorney at Law, Researcher, Centre for Policy Alternatives
6. Mr.Manjula Gajanayake, National Coordinator, Centre for Monitoring Election Violence
7. Mr. S. Medawewa, President, Election Professionals Association and a retired Civil Servant
8. Mr. P. M. Siriwardhane, former Additional Commissioner of Elections
9. Mr. Amar Gunatilleke, Chief Executive Officer, Marga Institute

The Committee met on the 14th, 21st and 30th of May, 6th, 14th, 15th June, 10th, 18th and 23rd July to review and discuss the current Provincial Councils Elections (Amendment) Act No.17 of 2017 and identified issues and came up with several proposals. In addition to the changes to the Provincial Councils election system, the committee considered several other issues as being important to protect representative democracy in Sri Lanka. The other issues that were identified were:

- a) Campaign financing
- b) Internal party democracy
- c) Candidate selection
- d) Preventing crossovers

The Committee was cognisant of the fact that proposed amendments should not take time to implement and give reason for relevant stakeholders to further delay the Provincial Council Elections. Therefore, the Committee only focussed on amendments that could be practically implemented within a short time frame of 8 to 12 weeks. The entire process of amending the act could take as long as three months as proposed amendments have to be legally drafted, checked by the Attorney General's Office for compliance with the Constitution of Sri Lanka and enacted by Parliament. This process will have to be followed even if stakeholders proposed to revert to the previous Act of Parliament.

The Committee also decided to refrain from addressing the subject of delimitation as it adheres to the implementation of the electoral process rather than the Act itself.

Therefore, it was the agreement of the Committee that the current system, which has been already passed by a 2/3rd majority in parliament, be retained with few amendments.

Following several committee based discussion, the Committee endeavoured to obtain the agreement of the proposed amendments from all stakeholders –ie; Political Parties, Election Commission, Key Politicians, Provincial Council Members, Civil Society, Academics (From the Political Science Faculties of Universities) and Women and Youth Groups, etc.

The Committee sent out letters to all Political Parties represented in the Parliament requesting appointments to discuss each party's viewpoint on the **Provincial Councils Election (Amendment) Act No 17 of 2017** and discuss the proposals of the Committee. The Committee regrets to note that the response received from political parties, at the time of writing this report was poor.

Following consultations were held between June and July following the policy dialogue:

June 6	Discussion with Mr. Mahinda Deshapriya, Chairman, Elections Commission
June 18 <i>Morning session</i>	Consultation with outstation Provincial Council Members, Women's Groups, Civil Society Activists and Academics
June 18 <i>Afternoon session</i>	Consultation with Western Province Provincial Council Members, Civil Society activists, Women's' Groups and Academics
July 4	Consultation with Provincial Council Members, Civil Society Activists, Women's Groups and Academics of Northern and Eastern Provinces
July 5	Discussion with Mr. Faiszer Musthapha, Minister Provincial Councils and Local Government
July 10	Discussion with members of Democratic Left Front
July 12	Discussion with Mr. Mylvaganam Thilakarajah M.P. – Up Country People's Party
July 18	Discussion with M.P.s Mr. Dullas Alahapperuma, Mr. Ranjith de Zoysa, Mr. Janaka Wakkumbura - Joint Opposition.
July 26	Discussion with Mr. Champika Ranawaka M.P. and Minister of Megapolis and Western Development – Jathika Hela Urumaya

APPENDIX 2

RATIONALE FOR RECOMMENDATIONS OF THE COMMITTEE

1. DISTRICT LIST and DISTRICT MEMBERS

According to the Provincial Councils Elections (Amendment) Act No. 17 of 2017, Fifty percent of the Council seats are to be allocated to First-past-the-post (FPP) electorates⁶ and fifty percent to District Members. Based on the experience of the recent elections to the local authorities, there are several concerns regarding the method by which the District Members are elected. Some of them are as follows:

- a. Party Secretaries have unrestricted power to decide who among the nominated candidates will be appointed as District members.⁷ This would mean that as regards the 50% of Council seats allocated to District Members, the voters do not have a say in which individuals are returned to the Council.
- b. There is no method to ensure that candidates on the District List pull their weight in the campaign.
- c. Further, those who lose FPP seats by small margins may feel frustrated. The system creates an incentive for individuals to be appointed through the District List as opposed to contesting in difficult or marginal constituencies.
- d. The Winning Party may not get any District List seats making it difficult to return minorities, women or prominent members who were counted on being returned as District Members from the winning Party.

The solution is based on 2 parts:

Firstly, ranked and closed lists will be used to return members. This will ensure the voters know before they cast their vote who will be elected if Party “A” wins “3” list seats. Therefore, when people vote they are voting for both the individual candidate in the constituency and the ranked party list in the district.

Secondly, in order to incentivise FPP electorate candidates who do not win, allow political parties to appoint up to 1/3 of their District Member entitlement, from among losing constituency candidates.

The rationale being to provide flexibility to Political Parties to appoint candidates that contested but lost FPP electorates but whom the Political party considers necessary to be included in the council in the interest of the Party.

The remainder of the District Member entitlement of each political party will be filled according to the ranked closed list (See also section 4 on Women’s representation).

2. OVERHANGS

An Overhang results when a Party wins more First-past-the-post (FPP) seats than its share of PR seats or seats share proportional to the votes received. For example, in the 2018 local election for the Sri Jayewardenpura-Kotte Municipal Council, SLPP received 41.4% of the votes and hence should have received 15 out of total 32 seats. However, that Party won 18 out of the 21 FPP seats leading to an

⁶ The Provincial Councils Elections (Amendment) Act No. 17 of 2017 refers to these as “electorates”.

⁷ See section 58A(4)(b) and 58A(6) of Provincial Councils Elections Act

overhang of three seats. This overhang was accommodated by increasing the number of seats in the council to 38.

Overhangs can be accommodated while keeping the total number of members of each Provincial Council constant. Here you allow the Party with the Overhang to keep them, but subtract the Overhang from the total number of seats and distribute the remainder proportionately among all the Parties. In fact, in Provincial Council Elections this procedure has to be adopted because the number of total seats in Provincial Councils cannot be increased by the Election Commission on the basis of the results of the election.

In Sri Lanka, we use the Largest Remainder Method which is the simplest form to calculate the PR allocation of seats among the Parties. There are two other methods that are used in other countries. They are called the D'Hondt method and the Sainte-Laguë method, respectively. In Overhang situations, the Sainte-Laguë method can give a fairer result to the small Parties who are at a disadvantage when the total number of seats available for proportional distribution is reduced. The d'Hondt method gives a small advantage to the large Parties. The effect will vary from country to country and the method best for each country has to be determined taking into account the past performance of political Parties in the country. Present Committee will be happy to assist the authorities to select a suitable method for Sri Lanka.

In both D'Hondt and Sainte-Laguë methods, the seats are allocated one at a time in sequential steps. In each step, the total number of votes received by each Party is divided by the number of seats each already has plus one. The Party with the highest quotient gets a seat. In step one, no Party has any seats, hence the divisor is one, and the Party with the highest votes, Party A say, get the first seat. In step 2, Party A's new quotient is its total votes divided by 2 because it now has one seat. The quotient for other Parties remains the same, and the Party with the highest quotient in step two gets the second seat. This process is repeated until all the seats are allocated.

(See <https://www.youtube.com/watch?v=6CU3F3Tollg> for a demonstration). In the Sainte-Laguë method, the total number of votes is divided by the twice the number of seats plus one.

A Comparison of PR allocation methods using 2018 election results for the Sri Jayewardenpura-Kotte Municipal Council.

TABLE 3

PARTY	Votes	Percent Votes	D'Hondt Method	Current Method	Sainte-Lague Method
Sri Lanka PodujanaPeramuna [SLPP]	22,068	41.4%	17	16	16
United National Party [UNP]	17,990	33.8%	11	11	11
United People's Freedom Alliance [UPFA]	7,676	14.4%	4	5	5
People's Liberation Front [JVP]	4,885	9.2%	3	3	3
United National Freedom Front [UNFF]	522	1.0%	-	-	-
Independent Group [IG]	113	0.0%	-	-	-
Our National Front [ONF]	35	0.0%	-	-	-
Grand Total	53,289	100%	35	35	35

3. GOVERNABILITY

The Local Authorities Elections of 2018 saw a fragmentation of the Local Authorities, with a large number of parties with few seats/ parties being able to win seats with very few votes. This was due to 2 main reasons:

- the size of all local authorities was increased (almost double). This increase was not due to the election system but because of a decision made by the Members of Parliament.
- the Local Authorities Elections Act did not specify a cut-off point; this would have prevented very small political parties from winning seats and contributing to the fragmentation of the Local Authorities.

Whilst it is important for an election system to ensure that the political diversity within an election area is represented, governability and stability of the elected body are also important considerations. These considerations cannot be achieved at the same time and it is required to compromise on one in order to achieve the other.

Based on broad consultation, the committee suggests the following as a possible compromise:

- Increase the number of bonus seats awarded to the winning party in a Provincial Council from 2 up to 4/5. The bonus seats should be given to the party that gets the **most votes in the province**, giving bonus seats at the district level will dilute the effect of bonus seats where two or more parties win the different districts in a province.
- This solution would require the President to issue a proclamation in terms of Article 154A of the Constitution and Section 2 of the Provincial Councils Act (as amended), amending the previous proclamation by adding **two extra** members to **each** Provincial Council **other than** the Western Provincial Council and adding **three extra** members to the Western Provincial Council.⁸

A corresponding amendment could be made to Section 61A (2) to increase the number of bonus seats given.

4. WOMEN'S REPRESENTATION

The committee focused on two critical points which emerged post the Local Authorities Election which it felt needed to be addressed. One concerned the guaranteeing of 25% women's representation and the difficulty experienced by the Elections Commission in ensuring this for some of the Local Authorities. The other was the manner in which nominations were given to women and seats allocated to them which appeared to be ad hoc and disorganized. Both these factors could create a challenge in the context of the new Provincial Council Election system. The Committee's serious attention was paid to identifying alternative approaches by which these concerns could be redressed. Thus, the Committee proposes the following strategy:

- Increase the mandatory nomination for women in the FPP electorate list from one sixth to one fifth so that more women get a chance to contest.

⁸ Section 2 of the Provincial Councils Act provides that "Where a Provincial Council is established for a Province by virtue of Article 154A of the Constitution, the President shall, by Order published in the Gazette, assign a name to such Council and specify the number of members such Provincial Council shall consist of In specifying such number, the President shall have regard to the area and population of the Province for which that Provincial Council is constituted."

- Zip the pre-ranked District List by alternating the names of women and men. The list should start with the name of a woman.
- *If Parliament decides to revert to the preferential vote system of the past it is crucial to bring in a mandatory provision of twenty five percent nominations of women.*⁹

5. MAKE THE PR CALCULATION AT THE ELECTORAL DISTRICT LEVEL AS OPPOSED TO THE ADMINISTRATIVE DISTRICT LEVEL

The number of members determined by the delimitation commission to be elected for each administrative district from electorates and from district lists is as follows

TABLE 4

Province	Administrative District	Number of Members to be elected from electorates	Number of Members to be elected as District Members (PR list)	Total Number of Members to be elected from the administrative district. ¹⁰
Western	Colombo	20	20	40
	Gampaha	20	20	40
	Kalutara	11	11	22
Central	Kandy	15	14	29
	Matale	06	05	11
	NuwaraEliya	08	08	16
Southern	Galle	11	11	22
	Matara	09	08	17
	Hambantota	07	07	14
Northern	Jaffna	08	08	16
	Kilinochchi	02	02	04
	Mannar	03	02	05
	Vavuniya	03	03	06
	Mullaitivu	03	02	05
Eastern	Batticaloa	06	05	11
	Ampara	07	07	14
	Trincomalee	05	05	10
North Western	Kurunegala	17	17	34
	Puttalam	08	08	16
North Central	Anuradhapura	11	10	21

⁹ This recommendation is made in the interest of addressing the underrepresentation of women in Provincial Councils which is at less than 5% at present.

¹⁰ Does not include the already existing 2 Bonus Seats which is given to political party polling the highest number of votes in the **Province** [See S. 61A]

	Polonnaruwa	05	05	10
Uva	Badulla	09	09	18
	Moneragala	07	07	14
Sabaragamuwa	Ratnapura	12	12	24
	Kegalle	09	09	18

As is seen with the above table the number of members to be returned from the administrative districts in the Northern Province is extremely small. This is mainly due to the low population and a large amount of administrative districts. More importantly, this could result in greater disproportionality in the final result of the Northern Provincial Council, as there are not enough PR compensatory seats.

This can be remedied by performing the PR calculation at the “Electoral District” level (i.e. combine the Jaffna and Kilinochchi districts to form the Jaffna Electoral district and combining the Mannar, Vavuniya and Mullaitivu districts to form the Wannu Electoral District)

This would NOT require a new delimitation as the FPP constituency boundaries can be left as they are. After the adjustment the seats in the Northern Provincial Council would be as follows;

TABLE 5

Province	Electoral District	Number of Members to be elected from electorates	Number of Members to be elected as District Members (PR list)	Total Number of Members to be elected from administrative district.¹¹
Northern	Jaffna	10	10	20
	Wanni	9	7	16

¹¹ Does not include the 2 Bonus Seats which is given to political party polling the highest number of votes in the **Province** [See S. 61A]

APPENDIX 3

FREQUENTLY ASKED QUESTIONS

Q1. Does the New election system always lead to larger Councils?

No, the number of members in Provincial Councils will not increase as a result of the new method. The election system only changes the method of election members to Provincial Councils, part of members elected from constituencies and the other part from the district list. Even for Local Authorities, the process should be improved to make Council sizes smaller. The size of Local Authorities was dependent on the number of Wards or electorates created during the delimitation, the percentage of First Past the Post (FPP) seats used in the method, and the occurrence of and/or Overhangs. In Provincial Councils, the number of electorates for each district is fixed at 50% of the total number of the Members of the Provincial Councils (MPCs). The number of members of Provincial Councils cannot be increased arbitrarily. Overhangs can be accommodated by subtracting the Overhang from the total number of seats and recalculating PR Allocation.

Q2. Isn't it better to go back to the old Preferential voting system so that we can have more stable Councils?

No, the old system and the new system are both fully proportionate systems. So a political party getting "x" amount of votes under the old system and a political party getting "x" amount of votes under the new system will have the same amount of seats. The seats are divided between political parties according to the proportion of votes polled.

The only difference between the two election systems is the way in which members are elected to fill the seats won by each political party. Under the old system, the members would be elected based on the number of preferential votes they receive. In terms of the new system, it will be a mix between winners in FPP constituencies and District Members.

Q3. Why doesn't the Party winning a majority of FPP seats get to elect the Chief Minister?

In terms of the Constitution¹² where more than one-half of the total members elected to a Provincial Council are members of one political party, the Governor has to appoint the leader of that political party in the Council, as Chief Minister.

Where no single political party has more than half of the total members elected to a Provincial Council, the Governor has to appoint as Chief Minister, the member of the Provincial Council who, in his opinion, is best able to command the support of a majority of the members of that Council.

In both these situations, the important consideration is the total number of members of the provincial councils and NOT only the FPP seats. FPP seats only amount to fifty percent of the seats in the Council.

Q4. Why does the Party getting fewer FPP seats get 'bonus' seats?

This idea is based on a misunderstanding of how the new electoral system works. The District List Members are not bonus seats. They are compensatory seats provided to "top-up" the FPP seats won by a political party so as to give them their "fair share" of the seats based on the votes they received.

¹² See Article 154(F)(4) of the Constitution

The manner in which an MMP system works can be simplified as follows;

Assume for an example that District “Y” has 10 FPP Seats and 10 PR Seats, which would give it a total of 20 seats. At the election the 100,000 people voted for Party “A”, “B” and “C” in the following manner.

Party A – 50,000 votes and Won 7 FPP constituencies
 Party B – 30, 000 votes and Won 3 FPP constituencies
 Party C – 20, 000 votes and Won No FPP constituencies
 Total - 100, 000

Under a MMP system the result of that district will be as follows

TABLE 6

		A	B	C	D
Political Party	Total Votes	% of Votes	FPP seats	All Seats [Total Seats x Column “A”]	PR Compensation [Column “C” – Column “B”]
A	50,000	50%	7	10	3
B	30,000	30%	3	6	3
C	20,000	20%	0	4	4
Total	100,000	100%	10	20	10

Q5. Why do we get multiple representatives for the same Constituency?

Any person who is not disqualified to be a voter is eligible to be a candidate for Provincial Councils elections. Candidates in the district list can be residents anywhere in the particular district. As such it may so happen that there can be instances where both constituency candidates and district list candidates are from the same constituency. This situation is inevitable.