A compensatory formula law constitutional administrative essay

CHAPTER FOURThe Reform : A compensatory formulaThe implementation of the Sachs recommendations requires the insertion, in our electoral system, of a dose of proportional representation based on a party-list vote. This means that, in addition to voting for the three candidates of his choice to represent him in Parliament, the elector shall also vote for a party of his choice. And in voting for that party, he will be voting for members of that party whose name appear on the party-list. It is crucial to understand that the elector does cast a vote for the members appearing on the party list. Unlike the present best loser system, the seats are allocated to winners and not to losers. Electors will continue to vote for the three MPs of their choice. As a result of the count, 62 members are returned tothe National Assembly. And 30 other members will be elected in accordance with the number of votes which their party has polled. And, after all this, the BLS will continue to guarantee that unreturned candidates at the constituency level will, if they belong to the " appropriate community", be guaranteed a seat On a specified day following the day fixed for the withdrawal of candidatures, each registered party or party alliance having at least 12 candidates shall lodgewith the Electoral Commissioner a list of not more than 30 persons which willbe called the " party list". The Sachs Commission named and called this system as the Model C –, The third suggestion, known as PR Model C, would tolerate for a higher degree of fairness whilst still heavily choosing stability. This ideal would tend in approval of stability by safeguarding that the number of PR seats was restricted to a number not exceeding 30. Whether or not the BLS is approved, the fact that there will be sixty-two members elected on a constituency basis and leading to only a maximum of

thirty elected according to the compensary PR system , will burden the House severely on the aspect of the constituency form of representation. The overstated asset of the principal party created by theFPTP will moreover highlight the comparative strength in the House of such party. Thus, any party or coalition which gets near to 50% or more of the votes will be certain of such a sizable number of constituency seats that it is suited to form a government could not be endangered by the starter of thirty PR seats. In the elections of 2000, the MSM/MMM alliance obtained 58 out of 70 seats. If, the PR Model C had been validated and the extra number of PR seats was 20, the alliance would have concluded with a majority that could yet have been more than 70%. If 30 PR seats had been enhanced, it would have ended up with a majority of nearly 60%. Thus, while strongly focused towards protectingthe right to form a government of the leader of a party that on its own gets near to 50% of the national vote, or a pre-election alliance that leads witheven a low percentage, it would introduce a relatively significant correction tothe present gross under-representation of the opposition party or parties. Itshould be noted, however, that even if PR Model C would not put at risk aparty or alliance that received nearly half the votes cast, it could make adifference if no single party or alliance received close to 50% or more of thevotes. In such narrow circumstances, it could, if three parties each got morethan 10% of the vote, place the third party in a position to form a post-electoral alliance with a second party so as to form a majority in the Houseand thereby choose the Prime Minister. At this stage, one can only speculateon how any system of PR would affect electoral and party behaviour. Thepractical effect of PR Model C might well be to encourage the

creation of post-election coalitions rather than pre-election alliances. At the moment, theelectoral system gives enormous, and many say, disproportionate, incentives toform pre-election alliances. advantage of establishing a balanced ticket known to the electorate inSome voters might see this as having theadvance. The parties and the electorate generally, however, might prefer theextra degree of fluidity and voter-choice which PR Model C would introduce. 1785. The introduction of this system will call for a party list and the application of acompensatory formula to compensate underrepresentation. Section I - The Party List86. Each party will select the candidates to appear on the party list in accordancewith such rules as the party may determine. 87. There will be two notable exceptions. A. Gender representation and double candidacies(i) Gender representation88. Mauritius is already the subject of serious and ardent criticism for the lowlevel of female representation in Parliament. The present electoral system willnever do justice to the true role of women in society and will never enhancethe empowerment of women. Gender parity must be preserved at89. We must acknowledge that party establishments are largely male-dominatedand male-orientated. The glaring lack of sensitivity of all party establishmentstowards half of the population cannot be a subject of pride and any systemwhich does not attempt to cure this is not worthy of any consideration18. Onlya party-list system can do justice to women and the role of women in society. 90. We therefore recommend that the first twelve persons on the list shall includeat six persons of the female sex and at least six persons of the male sex, inwhatever order the party decides. This will ensure that within a few years, political mentalities will have changed to

such an extent that women will beadequately represented in Parliament. 91. We stress that this is not a quota system. Under the system which werecommend, female candidates will stand for election on a list and will beelected on their own merit. The only difference being that instead of beingelected on a constituency basis, they will be elected on a national party listwith the same duties and obligations. We are not adopting a system such asexists in Uganda where a separate electoral college elects a specific number ofwomen to Parliament on account only of their gender.(ii) Double candidacy92. The issue here is whether a person may stand as candidate in the constituencypoll and be also a candidate on his party list. This would mean that half of thecandidates in the constituency elections could also be on the party list. Doublecandidacies exist in Germany, New Zealand, Scotland, Wales, Japan and otherdeveloped countries and it is up to parties to decide on the number of such93. Your Committee do not agree that this is feasible in three-memberconstituencies such as we have in Mauritius. A general acceptance of doublecandidacy would defeat the whole purpose of having a party list while at thesame time creating an inherent risk of infighting during the electoralcampaign, with sly campaigns being conducted against those who do notappear on the party list. 94. However, after careful consideration, Your Committee recommends oneexception for party leaders. The leader of a party will be able to appear bothon the party list and on a constituency list. The existing prohibition againstbeing a candidate in multiple constituencies will remain. This will ensure thatthe leader of a party securing more than 10% of the votes will stand areasonable chance of being allocated a seat even where he loses hisconstituency seat, especially if he is

on top of his party's list (his ranking inthe list being a matter for his party). B. Registration of party lists95. On the day following the date of withdrawal of candidatures, all politicalparties having registered themselves under paragraph 2 of the First Schedule, may register, with the Electoral Supervisory Commission, a list of not morethan 30 persons. The list shall indicate the order of precedence of each of thecandidates appearing thereon. 96. A number of conditions will need to be satisfied with regard to the list, viz.-The list shall be signed by the President and the Secretary of theexecutive committee of the party filing the list and shall beaccompanied by a resolution of the executive committee of the partyapproving that list ; The candidates appearing on the list must be qualified to becandidates at an election to the National Assembly. The list shall be in such form as may be prescribed by the ElectoralSupervisory Commission and shall contain (i) the name, address andprofession of that person and (ii) the community to which thatperson belongs ; Each candidate whose name appears on the party list shall subscribeto a declaration to the effect that he agrees to his name appearing onthe party list and his signature shall also appear against his name onthe party list ; No political party or party alliance, even where registered underparagraph 2 of the First Schedule shall be entitled to register a listunless it has, at constituency level, fielded at least twelve candidateswho belong to such party or party alliance and who are candidatesfor elections. Within two days following the registration of party lists, theElectoral Supervisory Commission shall publish, in the Gazette andin such number of newspapers as may be prescribed, all the partylists registered with the Commission. The lists shall also be postedin all polling

stations. The publication shall contain –the name and symbol of the political party ; such particulars of the persons appearing on the list as theElectoral Supervisory Commission may prescribe ; and(iii) a statement by the Chairman of the Electoral SupervisoryCommission certifying that the list has been registered withthe Commission within the prescribed delay and that, for thepurpose of the election, the persons appearing on the list shallbe allocated seats under the relevant provision of the FirstSchedule of the Constitution. Section II – The compensation for underrepresentationA. The voting process(i) The poll97. On the day of the poll, an elector shall be provided with two ballot papers. Thefirst ballot paper will contain the list of candidates for election in theconstituency. The second ballot paper will contain a list of parties who haveregistered their party lists. They need not contain the lists themselves. Theballot papers shall be in such form as the Electoral Supervisory Commission98. On the first ballot paper, the elector shall insert a mark to indicate the threecandidates of his choice in the same manner as it is done now. 99. On the second ballot paper (the" party ballot paper"), the elector shall insert amark to indicate the party for which he votes. For instance, an elector may, inthe first ballot paper, have voted for two candidates of Party A and onecandidate of Party B. But on the second ballot paper, he will indicate the partyof his choice, which may be Party A or Party B or any other party appearingon the list. By voting for a particular party list, he actually votes for the partywhich he would like to represent him in Parliament and, at the same time, votes for those persons whose names appear on the party list in order ofprecedence. If his party passes the threshold of 10%, this elector may berepresented in Parliament even if his

chosen candidates have not been elected. The elector shall place his ballot papers in two separate ballot boxes.(ii) The CountOn " counting day", constituency and party-list ballot papers will becounted separately. In respect of each constituency, the first three candidateswill be returned to Parliament. With regard to party ballot papers, a count shall be effected at the levelof each constituency so as to determine the number of electors who have votedfor each party appearing on the list. The results shall then be returned to the Electoral SupervisoryCommission which will determine to which candidates appearing on the partylist the 30 additional seats should be allocated. B. Allocation of additional seatsThe system is not a complicated system except if one stubbornlyrefuses to understand it. The Electoral Supervisory Commission shall –on the basis of returns effected by each Returning Officer, count thetotal number of votes which have been cast for each party in the" second ballot"; discard from consideration all parties who have polled less than10% of the total votes cast ; divide the total number of votes polled by each party having polled10% or more of the votes [a] by the aggregate of one (1) and thenumber of candidates of that party who have been returned at thelevel of the 21 constituencies (1+ b); The formula to be applied willtherefore be [a / (1+b)]. In other words, where a party has, say, 20returned candidates at constituency level, the number of votes polledby that party in respect of its party list is divided by 21. The result isthe " PR figure". The PR Figure of each party indicates whether that party isunderrepresented. Where a party has a high PR figure, this meansthat it is underrepresented and, as a result, the first additional seatshall be allocated to the party with the highest PR figure ; Since the allocation of that first

additional seat may have upset therepresentation of parties, another PR figure needs to be recalculatedby dividing the total number of votes polled by that party (a) by theaggregate of one (1) and the number of seats held by that party as aresult of the previous exercise. this process shall carry on until all 30 additional seats have beenThe following illustration, taken from the 1976 results19 will revealthat the exercise is not as complicated as it reads – Independence Party obtained 456 177 votes and secured 25 seats. MMM obtained 469 420 and secured 30 seats. PMSD, obtained 200 559 votes (more than 10%) and secured 7 seats. One can immediately see that the PMSD was grossly underrepresented. This under representation may have contributed to the ensuing politicalinstability of the late 1970's. The following tables indicate how the compensatory system wouldTotal votes per partyIPSeats25To compensate for this underrepresentation, a PR figure would beworked out for each of these three parties as follows –IPPR Figure456177/ (1+25)17, 545. 27MMMPR Figure469420/ (1+30)15, 142. 58This operation indicates that the first additional seat would be allocatedto the PMSD which would, at that stage, have 8 seats. The allocation of this additional seat to the PMSD lowers its PR figure. The dividing figure remains the same for IP and MMM but is (1 + 8) forThe figures are provided by the Electoral Commissioner's Office. It is assumed, for the presentpurposes, that electors voted on a strict party line. This is not a correct assumption as it was as from1982 that electors started voting " bloc". 20Still on the assumption that votes were cast on party lines. PMSD. The PR figure will therefore remain the same for IP and MMM butwill decrease for PMSD which will, however, still have a higher PR figure. IPPR Figure456, 177/ (1+25)17,

545. 27MMMPR Figure469, 420/ (1+30)15, 142. 58The second additional seat is therefore allocated to the PMSD. For the third additional seat, the dividing figure still remains the samefor IP and MMM but is (1 + 9) for PMSD. The PR figure will, once again, decrease for PMSD. The process goes on as in the following table –

IPSeats25252525252627272829293030313131323233333434343535363 6363737MMMVotes469, 420. 0015, 142. 58488. 4715, 142. 58The above table indicates how the compensatory PR formula allowsfor fairness while striking a balance with the requirement of stability. Indeed, the IP/PMSD coalition would have had a clearer majority in the Assembly andwould have probably avoided the instability of the late 70's. The initial resultsmeant that the MMM was overrepresented in Parliament. This would havebeen corrected by providing 9 additional seats to the PMSD and 12 to theIndependence Party. One can also insert an additional guarantee to provide that the partyhaving won the most seats at constituency level is guaranteed to have at least50% + 1 of the seats in the Assembly even where its PR figure is the lowest.