

# Gender representation and double candidacies law constitutional administrative es...

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CHAPTER FOUR  
The intended Reform: A compensatory formula  
The 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 to the 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 lodge with the Electoral Commissioner a list of not more than 30 persons which will be called the " party list". The Sachs Commission refers to this system as Model C -, The third proposal, which we refer to as PR Model C, would allow for a greater degree of fairness whilst still heavily favouring stability. This model would lean in favour of stability by ensuring that the number of PR seats was limited to a figure not exceeding 30. Whether or not the BLS is retained, the fact that there will be sixty-two members elected on a constituency basis and only a maximum of thirty

elected according to the compensatory PR system, will load the House heavily on the side of the constituency form of representation. The exaggerated strength of the leading party produced by the FPTP will further emphasise the relative strength in the House of such party. Thus, any party or alliance which gets close to 50% or more of the votes will be assured of such a substantial number of constituency seats that its right to form a government could not be threatened by the introduction of thirty PR seats. In the elections of 2000, the MSM/MMM alliance got 58 out of 70 seats. If, the PR Model C had been applied and the additional number of PR seats was 20, the alliance would have ended up with a majority that could still have been more than 70%. If 30 PR seats had been added, it would have ended up with a majority of nearly 60%. Thus, while strongly geared towards protecting the right to form a government of the leader of a party that on its own gets close to 50% of the national vote, or a pre-election alliance that leads with even a low percentage, it would introduce a relatively significant correction to the present gross under-representation of the opposition party or parties. It should be noted, however, that even if PR Model C would not put at risk a party or alliance that received nearly half the votes cast, it could make a difference if no single party or alliance received close to 50% or more of the votes. In such narrow circumstances, it could, if three parties each got more than 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 House and thereby choose the Prime Minister. At this stage, one can only speculate on how any system of PR would affect electoral and party behaviour. The practical effect of PR Model C might well be to encourage the creation of

post-election coalitions rather than pre-election alliances. At the moment, the electoral system gives enormous, and many say, disproportionate, incentives to form pre-election alliances. Some voters might see this as having the advantage of establishing a balanced ticket known to the electorate in advance. The parties and the electorate generally, however, might prefer the extra degree of fluidity and voter-choice which PR Model C would introduce. 17The introduction of this system will call for a party list and the application of a compensatory formula to compensate underrepresentation.

## **Section I - The Party List**

Each party will have to appoint the candidates in order to appear on the party list in agreement with such instructions and guidelines as the party may have agreed for. Two distinguished exclusions will be pictured.

### **A. Gender representation and double candidacies**

#### **(i) Gender representation**

Our country is by this time the question of important and ardent reproach for the concern given and demonstration of low level of female in Parliament.

The actual electoral system will certainly not do justice to the real importance of women in society and will never promote and encourage the empowerment of women. Gender equality must be maintained at symbolic level. We must therefore admit that party establishments are mostly male-dominated and male-orientated. The flagrant absence of indifference of all party establishments regarding half of the population cannot be an issue of self-importance and any system which does not try to remedy this is not

credible of any reflection. A party-list system only can do righteousness to women and the function and position of women in society. Therefore we can counsel that the first twelve persons on the list will consist of at six persons of the female sex and a minimum of six persons of the male sex, in so on order the party agrees. It will guarantee that for a few years, political perceptions will be different to such a point that women will be effectively acted for and be a symbol in Parliament. 17 para. 3918 Sachs, para. 22 et seq. 27We emphasize that it is not a quota system. What we would recommend under this system is that, female contestants will stand for election on a list and will be elected on their self-value. The only difference is that rather than being elected on a constituency foundation, they will be elected on a national party list with the same commitments and responsibilities. We are not agreeing on implementing a system such as exists in Uganda where a distinct electoral college appoints a certain number of women to Parliament on the fact of their gender only.

## **(ii) Double candidacy**

The problem here is either an individual who may stand as a candidate in the constituency election or also is a candidate on his party list. It would mean and imply that half of the candidates in the constituency polls could also be on the party list. Examples of double candidacies exist in Germany, New Zealand, Scotland, Wales, Japan and other developed countries and it is fit for parties to agree on the number of such double candidacies. We do not agree that this is reasonable in three-member constituencies such as we have in Mauritius. A common approval of double candidacy would defeat the complete resolve of having a party list while at the same time generating an

inherent risk of infighting during the electoral campaign, with clever campaigns being conducted against those who do not appear on the party list. However, after cautious reflection, we recommend one exception for party leaders. The leader of a party will be able to appear both on the party list and on a constituency list. The existing prohibition against being a candidate in multiple constituencies will remain. This will ensure that the leader of a party securing more than 10% of the votes will stand a reasonable chance of being allocated a seat even where he loses his constituency seat, especially if he is on top of his party's list (his ranking in the list being a matter for his party).

## **B. Registration of party lists**

95. On the day following the date of withdrawal of candidatures, all political parties having registered themselves under paragraph 2 of the First Schedule, may register, with the Electoral Supervisory Commission, a list of not more than 30 persons. The list shall indicate the order of precedence of each of the candidates appearing thereon. 96. A number of conditions will need to be satisfied with regard to the list, viz.-(a) The list shall be signed by the President and the Secretary of the executive committee of the party filing the list and shall be accompanied by a resolution of the executive committee of the party approving that list ;(b) The candidates appearing on the list must be qualified to be candidates at an election to the National Assembly.(c) The list shall be in such form as may be prescribed by the Electoral Supervisory Commission and shall contain (i) the name, address and profession of that person and (ii) the community to which that person belongs ;(d) Each candidate whose name appears on the party list shall

subscribe to a declaration to the effect that he agrees to his name appearing on the party list and his signature shall also appear against his name on the party list ;(e) No political party or party alliance, even where registered under paragraph 2 of the First Schedule shall be entitled to register a list unless it has, at constituency level, fielded at least twelve candidates<sup>29</sup>who belong to such party or party alliance and who are candidates for elections. (f) Within two days following the registration of party lists, the Electoral Supervisory Commission shall publish, in the Gazette and in such number of newspapers as may be prescribed, all the party lists registered with the Commission. The lists shall also be posted in all polling stations.(g) The publication shall contain –(i) the name and symbol of the political party ;(ii) such particulars of the persons appearing on the list as the Electoral Supervisory Commission may prescribe ; and(iii) a statement by the Chairman of the Electoral Supervisory Commission certifying that the list has been registered with the Commission within the prescribed delay and that, for the purpose of the election, the persons appearing on the list shall be allocated seats under the relevant provision of the First Schedule of the Constitution.

## **Section II – The compensation for underrepresentation**

### **A. The voting process**

#### **(i) The poll**

97. On the day of the poll, an elector shall be provided with two ballot papers. The first ballot paper will contain the list of candidates for election in the constituency. The second ballot paper will contain a list of parties who have registered their party lists. They need not contain the lists themselves.  
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The 30 ballot papers shall be in such form as the Electoral Supervisory Commission may prescribe. 98. On the first ballot paper, the elector shall insert a mark to indicate the three candidates 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 a mark to indicate the party for which he votes. For instance, an elector may, in the first ballot paper, have voted for two candidates of Party A and one candidate of Party B. But on the second ballot paper, he will indicate the party of his choice, which may be Party A or Party B or any other party appearing on the list. By voting for a particular party list, he actually votes for the party which 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 of precedence. If his party passes the threshold of 10%, this elector may be represented in Parliament even if his chosen candidates have not been elected. 100. The elector shall place his ballot papers in two separate ballot boxes.

## **(ii) The Count**

101. On "counting day", constituency and party-list ballot papers will be counted separately. In respect of each constituency, the first three candidates will be returned to Parliament. 102. With regard to party ballot papers, a count shall be effected at the level of each constituency so as to determine the number of electors who have voted for each party appearing on the list. 103. The results shall then be returned to the Electoral Supervisory Commission which will determine to which candidates appearing on the party list the 30 additional seats should be allocated. 31



## **B. Allocation of additional seats**

104. The system is not a complicated system except if one stubbornly refuses to understand it. The Electoral Supervisory Commission shall –(a) on the basis of returns effected by each Returning Officer, count the total number of votes which have been cast for each party in the " second ballot"; (b) discard from consideration all parties who have polled less than 10% of the total votes cast ;(c) divide the total number of votes polled by each party having polled 10% or more of the votes [a] by the aggregate of one (1) and the number of candidates of that party who have been returned at the level of the 21 constituencies (1+ b); The formula to be applied will therefore be  $[ a / (1+b)]$ . In other words, where a party has, say, 20 returned candidates at constituency level, the number of votes polled by that party in respect of its party list is divided by 21. The result is the " PR figure".(d) The PR Figure of each party indicates whether that party is underrepresented. Where a party has a high PR figure, this means that it is underrepresented and, as a result, the first additional seat shall be allocated to the party with the highest PR figure ;(e) Since the allocation of that first additional seat may have upset the representation of parties, another PR figure needs to be recalculated by dividing the total number of votes polled by that party (a) by the aggregate of one (1) and the number of seats held by that party as a result of the previous exercise.(f) this process shall carry on until all 30 additional seats have been allocated. 32105. The following illustration, taken from the 1976 results<sup>19</sup> will reveal that 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. 106. One can immediately see that the PMSD was grossly underrepresented. This under representation may have contributed to the ensuing political instability of the late 1970's. 107. The following tables indicate how the compensatory system would have worked<sup>20</sup> -

### **Total votes per party IP**

**IP**

**MMM**

**MMM**

**PMSD**

**PMSD**

VotesSeatsVotesSeatsVotesSeats456177

**25**

469420

**30**

200559

**7**