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# ELECTORAL REFORM IN SRI LANKA: MIXED-MEMBER PROPORTIONAL SYSTEMS

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## Executive Summary

Presidential candidate Maithripala Sirisena's manifesto became the blueprint for the government's reform agenda after his election on January 08, 2015. Among the many promises included was a response to a long standing demand to reform Sri Lanka's electoral system.

The manifesto outlined moving to an electoral system based on Sri Lanka's electoral debate which had identified twin imperatives; a **re-introduction of smaller single member (and several multi member) electoral districts** similar to Sri Lanka's previous parliamentary electoral system and **preserving proportional representation (PR) in voting outcomes** introduced by the current electoral system. District level voting will shift to a plurality system of election, commonly referred to as First-Past-the-Post (FPTP).

As single member electoral districts are selected on a majoritarian basis – where a single winner is selected by the plurality of votes, achieving proportional representation at the same time requires deploying what is known in electoral systems theory as a Mixed-Member Proportional (MMP) electoral system. That is, a system that mixes in elements of majoritarian selection, while yet achieving proportional outcomes. A proportional outcome is where parties' final number of seats in parliament correspond to the share of total votes received.

This paper examines the key features and functions of an MMP system that need to be considered when engaging in electoral system reform. It is beyond the scope of this paper to examine the arguments for electoral reform that have been prevalent in Sri Lankan political debate.

On June 20, 2015, the proposed 20th Amendment to the constitution, published on June 20, 2015 was the government's primary attempt to introduce a new electoral system. However, the proposed system did not follow the electoral system design principles of an MMP. The failure to include a system of two ballots and an insufficient number of PR seats when compared to district (plurality voting) seats meant that the 20<sup>th</sup> amendment would have failed in its objective of preserving proportional representation. It also retained an aspect of the current PR system that deviates a little from a full PR outcome: the awarding of bonus seats to parties that obtain the most votes within an electoral district.

This paper will explain the key elements of how an MMP system needs to be structured to achieve proportional representation while re-introducing small electoral districts. It synthesizes findings from the vast body of research on electoral systems that exists internationally to demonstrate the key features of an MMP system and how they should be implemented. The paper does not explore context specific questions on the exact number of district seats that would be suitable for Sri Lanka's electorate or the process of delimitation.

As demonstrated in the following sections the key characteristics of MMP systems have been tested and proven effective through international examples: Germany, New Zealand,

Wales, Scotland, Bolivia and Lesotho. In order for the MMP principles to be realised effectively it can be necessary to adopt a two vote system with a 1:1 PR - FPTP ratio (or the closest permissible alternative). The use of two votes, or a dual ballot, is arguably the most important characteristic of MMP and is imperative to achieving proportional electoral outcomes. The dual ballot allows voters to cast their preference directly for both the outcome of their local election and the outcome of the national (or sub-national) proportional election that determines the overall composition of MPs in parliament. It thereby mitigates the impact of 'strategic voting' which occurs at the local level where voters often choose to vote for the candidates' with the greatest likelihood of winning rather than 'wasting' a vote on losing party candidate, even if that party is preferred. In allowing the declaration of two separate preference votes the impact on strategic voting is limited to local level plurality voting and does not impact the overall composition of parliament and reduces the barriers for small parties to obtain legislative representation that is proportionate to the popular support they enjoy. If these conditions are met, having adequate PR seats to act as 'compensatory' seats (for those who enjoy electoral support in districts, but not enough to win a plurality) can yield largely on even fully proportional outcomes in terms of the final composition of parliament.

Additionally, several current MMPs use electoral thresholds which require political parties to gain a specified percentage of the overall vote in order to attain seats. A higher threshold can exclude smaller parties. Therefore, many MMP countries either have no threshold or a low threshold (e.g. under 5% nationally) and also allow PR seats to be allocated to parties that win a small number of district seats but fail to meet the national vote percentage threshold.

The calculation of seat allocations can retain that which is used in Sri Lanka's current electoral system, the Hare quota or use the Sainte-Laguë method that is used in MMP countries such as Germany and New Zealand. Both methods of calculations are suited for ensuring better accurate proportional outcomes than the D'Hondt method which is also used in some MMP countries.

Further, all MMP countries utilize closed party lists for their PR vote. As suggested by its name a 'closed list' which political parties must submit prior to the election removes political party discretion once submitted to the elections commission prior to an election. Neither the individuals nor order of the names on the list can change once submitted. A closed list can also allow party list quotas to be used to give greater representation to women, minority groups and, if desired, defeated candidates. A closed list which incorporates such elements can rely on a clearly defined process or formula (e.g. a zipper quota) for selecting candidates eliminating the possibility of misuse by political parties. Greater representation of women can be attained through legislated party list quotas, which require the party to include women on their PR lists at defined intervals (e.g. every third name) or through reserved seats. A closed list also allows the voters to vote on the quality of members that a political party is putting up, without being subject to the bait and switch that has been seen in Sri Lanka: where reputable candidates are put on the list and then later switched after the election has taken place.

One concern expressed with MMP systems in Sri Lanka's electoral reform debate has been the issue of 'overhang' seats. The plurality component of selecting seats often leads to disproportionate outcomes requiring compensatory PR seats incorporated in MMP systems. On some occasions electoral results can be distorted beyond the availability of PR seats to compensate. This is a situation where there are overhang seats. Overhang seats occur when a political party acquires a higher number of seats through plurality voting than it qualifies for overall to an extent not adjustable by the standard number of PR seats allotted within the legislature. International examples use several methods for incorporating overhang seats. MMPs can decide to either award the extra seats won (resulting in some disproportionality), provide additional seats to the other parties to maintain proportionality, subtract the seats from the total governing body to preserve the body's size, or not give the seats.

### **Background: The President's Promise**

In January 2015, Presidential candidate Maithripala Sirisena published a manifesto calling for several major changes in Sri Lanka's governance structure including the abolition of the executive presidency and the reform of the electoral system.

On the subject of reforming the electoral systems the manifesto states:

*I guarantee the abolition of the preferential system and will ensure that every electorate will have a Member of Parliament of its own. The new electoral system will be a combination of the first-past-the post system and the proportional representation of defeated candidates.<sup>1</sup>*

The manifesto also promises that any change to the electoral system will be passed with support from all parties as the new system would be one that did not 'change the composition' of parliament. These promises therefore require an electoral system that will 1) re-introduce smaller single member and multi-member electoral districts<sup>2</sup> similar to a first-past-the-post (FPTP) system 2) remove 'preferential voting', Sri Lanka's current method of selecting candidates within a party 3) retain proportional representation (PR) and draw PR candidates from a pool of defeated candidates at constituency level voting.

### **Sri Lanka's existing electoral system**

Until the 1978 Constitution, Sri Lanka utilized a First-Past-The-Post (FPTP) System, which is when a candidate wins an electoral district seat by obtaining the highest number of votes in that area. Besides a small number of multi member districts most electoral districts had one member of parliament per electoral district.

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<sup>1</sup> New Democratic Front, (2015). *Maithri: A Stable Government*. [priu.gov.lk](http://www.priu.gov.lk). Retrieved 15 March 2016, from [http://www.priu.gov.lk/presidential\\_manifestos/Manifesto-EN.pdf](http://www.priu.gov.lk/presidential_manifestos/Manifesto-EN.pdf)

<sup>2</sup> The term *district* is used in this context in keeping with standard parlance in electoral systems discussions which refers to a direct electoral unit as an electoral district. The term *constituency* is also used in discussing single member electoral districts as described in this instance

In the past, Sri Lanka's FPTP system had led to hugely disproportionate outcomes. An extreme example was the 1970 parliamentary election which saw the Sri Lanka Freedom Party (SLFP) secure over 60% of the seats with just 36.9% of the total vote and the UNP which secured 37.9% of the vote gain just 12% of the total seats.

After 1978, Sri Lanka adopted a Proportional Representation (PR) System with larger electoral districts which proportionally elect members from a multitude of parties. Currently, the 22 electoral districts largely correspond to Sri Lanka administrative units, also termed 'districts'.<sup>3</sup> Accordingly, Sri Lanka currently utilizes a single ballot to elect its 225 Parliamentarians: 196 seats to 22 multi-member constituencies and 29 national seats. Each voter is allowed to select up to three candidates (without a rank ordering) from within their chosen party as their preferred representatives within their electoral district. This system referred to internationally as 'open list' voting is referred to in Sri Lanka as 'preferential voting'. This system has become unpopular, in part due to a public perception that large electoral districts make MPs less accessible to the public and less concerned about local issues. Other concerns regarding election violence and campaign financing too have (often erroneously) become associated with and seen as ills of the current electoral system.

### **Why does the MMP system fulfil President Sirisena's manifesto objectives?**

This paper provides recommendations that address Sirisena's campaign promises on electoral reform. The manifesto promises moving to a mixed system of which there are two global variants; mixed-member majoritarian and mixed-member proportional. Of these two only MMP is designed in a manner that adequately conforms with the two principal criteria of **retaining proportionality in voting outcomes and re-introducing smaller single member electoral districts** is the Mixed-Member Proportional System (MMP). Further, PR lists in MMP or any proportional system can be formulated to include defeated candidates in a systematic manner within a 'closed list' (see below for explanation) to fulfil the secondary promises outlined in the manifesto.

MMP therefore can fulfil all the key criteria of the president's promise. This paper will be limited to discussing the key features of an MMP system as a basis of a means of delivering on President Sirisena's electoral promise on changing the parliamentary electoral system and will not discuss the arguments for and against changing the electoral system or electoral systems at other levels of government. It will also not attempt to discuss issues such as campaign finance laws and election violence that are related to electoral reform but have often been conflated with the debate on electoral systems. The proposed re-introduction of smaller electoral districts as per the FPTP system while retaining proportionality in voting outcomes as mentioned in the manifesto pledge necessitates the introduction of a mixed system. The internationally practiced mixed system which can be designed to adequately provide for proportional electoral outcomes is the Mixed Member

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<sup>3</sup> This number differs from Sri Lanka's 25 administrative districts due to the amalgamation of Jaffna and Kilinochchi administrative districts into the 'Jaffna Electoral District' and the amalgamation of Mannar, Vayuniya and Mullaitivu administrative districts into the 'Wanni Electoral District'.

Proportional (MMP) electoral system. In the last two decades, several countries have transitioned to MMP electoral systems - hybrid systems that contain election through plurality voting and proportional representation Both the President's pledge and the current conversation on Sri Lanka's electoral reform lend themselves to the MMP system.

## How does the MMP work?

### *Features of MMP*

- Two types of seats: district seats and PR seats;
- Two votes - one for local candidate and one for national/sub-national party level representation;
- District seats are won either with a majority or plurality (first-past-the-post);
- PR seats are allocated for the purpose of compensating for disproportionality that is created by plurality voting used in allocating district seats;
- PR party lists are closed; the list is determined either by a party list of a fixed order and names submitted prior to an election or can utilize a formula for incorporating the most successful defeated candidates at district level voting;
- Typically, has two tiers of representation; district representation and national/sub-national proportional representation.<sup>4</sup>

### *Dual Ballot in a Two Tier System*

The most recent proposal for a new electoral system was loosely based on a MMP design. The draft 20<sup>th</sup> amendment proposed during the tenure of the previous parliament, calls for voters to use a single ballot.<sup>5</sup> This ballot would be cast in favour of one of the local district candidates nominated by political parties or independent groups. Then, the aggregate result of local voting would also be used to decide sub-national and national level party PR seat allocations.<sup>6</sup>

This is atypical of MMP systems. MMP countries typically use a two ballot system. The two ballots are a critical part of the MMP electoral system design for two key reasons. First, a dual ballot allows voters enhanced choice in declaring their preferences. While a single ballot curtails voter choice to declare the same preference at both local and national level, two ballots allow voters to 'split' their ballot. In New Zealand, 37% of voters split their ballots in the first election after the change to a MMP dual voting system. Germany sees more than 20% of voters split their ticket.

Second, two ballots reduce the effects of strategic voting on electoral outcomes. Duverger's law, a well-studied phenomenon in electoral systems, demonstrates that plurality systems undermine the performance of smaller parties. This is because large parties tend to have an advantage in winning FPTP competitions and votes for smaller parties become regarded as 'wasted votes'. MMPs solve this problem through having two tiers of seats linked to two

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<sup>4</sup> *Advantages and Disadvantages of MMP*. (2016). *Ace Project: The Electoral Knowledge Framework*. Retrieved 14 March 2016, from <http://aceproject.org/ace-en/topics/es/esd/esd03/esd03a/esd03a01>

<sup>5</sup> See also, the section on the 20<sup>th</sup> amendment below

<sup>6</sup> *Electoral reforms in a vacuum | The Sunday Times Sri Lanka*. (2016). *Sundaytimes.lk*. Retrieved 28 March 2016, from <http://www.sundaytimes.lk/150322/sunday-times-2/electoral-reforms-in-a-vacuum-140881.html>



distinct ballots. Should voters be allowed only one vote they can face a dilemma regarding which seat category they prefer to influence. For example, if a voter's preferred party is party A but only party B and C have sufficient support to win in that district the voter may choose to vote strategically for either party B or C. In a two ballot MMP system, this tendency towards strategic voting has little or no bearing on the total seats in parliament; the extent of which depends on the district/PR seat ratio (discussed below). This is because voters can declare their preferences for their local MP and the national composition of parliament independently of each other. This also serves to protect small parties' from underperforming due to voter perceptions of 'wasted votes' in plurality voting. All MMP countries with the exception of Djibouti use a two vote system.

### *Ratio of District Seats to PR Seats*

The ratio of district seats to PR seats also affects electoral outcomes.

Empirical research into electoral systems has led to many experts arguing for a 1:1 ratio between district and PR seats as producing the most proportionate system in a linked two tier system because it provides enough seats to properly compensate parties with PR seats.<sup>7</sup> A 1:1 ratio largely ensures all parties receiving too few seats in the district elections can still attain their proportional share. For example, hypothetical Country A's MMP system uses an allocation of 80 district seats to 80 PR seats. Party A receives 16 district seats (10% of the total 160 seats), but according to the PR vote should hold 40% of the total seats (i.e. 64 out of the 160 seats). Party A still needs 48 more seats, or 30% of the total seats, to possess their proportional share.<sup>8</sup>

80 District Seats: 80 PR Seats					
Party	District Seats	District Seats: % of Total Seats	Total Seats According to PR vote	Compensatory PR Seats	PR Seats: % of Total Seats
A	16	10%	40%	48	30%
B	32	20%	30%	16	10%
C	32	20%	30%	16	10%
Total	80	50%	100%	80	50%

<sup>7</sup> Siaroff, A. (2013). *Comparing Political Regimes: A Thematic Introduction to Comparative Politics* (3rd ed., pp. 109-191). University of Toronto Press.

<sup>8</sup> Large disparities in district voting can make even 1;1 ratio insufficient for maintaining proportionality should a party win a much higher number of district seats than their vote share. This issue is discussed in the *Overhang* section below.

As seen below, Germany has the most proportional seat distribution of all current MMPs and Djibouti has the least proportional. In 2013, Djibouti allocated only 20% (13 out of a total 65 seats) of their parliamentary seats through proportional representation. In theory, voters have good incentives to decide to give their vote to a small party even if its support base is too geographically dispersed to win plurality seats.

However, in countries such as Djibouti as 80% of the seats are allocated to constituencies, a PR vote for a smaller party could fail to impact the seat allocation, as there are only a few PR seats available to compensate for the disproportionality created by the constituency voting.<sup>9</sup> Thus, not only is it important for MMPs to utilize a dual ballot, but also to allocated adequate seats for the PR vote. A distribution of 50:50 between constituency and PR seats is, in practice, quite adequate to ensure proportionality.

MMPs' SMD:PR Ratio (Potential Overhang Seats Excluded)					
Germany	New Zealand	Scotland	Wales	Bolivia	Lesotho
299:299	70:50	73:56	40:20	68:62	80:40

### *Closed List*

A closed list is generally used in the election of candidates for the PR portion of the ballot. It informs voters on which candidates will be allotted seats and in what order prior to the election. For example, if Mr. A was the first candidate on Party X's list and the party secured 1 PR seat, only Mr. A would be eligible to fill that seat. This helps inform voters on the probability of each of the candidates on the list being elected; candidates at the top of the list are likely to get elected, while candidates at the bottom of the list will probably not enter parliament. The party does not have the discretion to substitute a candidate name with others lower down the order once the list is submitted; neither can it bring in candidates that are not on the original list. Both the names on the list and rank order are binding. An open list (referred to as preferential voting in Sri Lanka) can be included in an MMP system but will not be discussed as it is outside the scope of the Presidential manifesto promises.

Currently, Sri Lanka allows political parties to have significant discretion in changing both the rank order and candidates on its national list. There is no binding rank order and even candidates outside the list who contested elections for district level seats but failed to get

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<sup>9</sup> Djibouti opposition ends election boycott - BBC News. (2013). BBC News. Retrieved 14 March 2016, from <http://www.bbc.com/news/world-africa-21554465>

elected can be appointed. The selection process in which candidates who contested district level elections are appointed via the 'national list' is entirely at the parties' discretion. This practice is not in keeping with international standards and creates opacity as to which candidates on the national list will eventually be appointed. An MMP system should not maintain discretionary appointments and instead adhere to the internationally practiced principle of a closed list.

Accommodating defeated candidates can also be done through a formula for selecting a quota of 'best losers' eliminating the need for discretion i.e. every fourth seat is held for a defeated candidate. Closed lists are also beneficial to minority groups and women, as quotas can be placed upon the party lists, ensuring greater representation.<sup>10</sup> With the exception of a few constituencies in the German legislature; all MMPs use closed lists in order to establish quotas for minority groups, such as New Zealand's indigenous Māori population.<sup>11</sup>

### *Methods of Calculating Party List Proportional Representation*

Currently, Sri Lanka utilizes the largest remainder method, also known as the Hare quota. It is considered one of the more proportional methods as smaller parties often gain slightly greater seat portions than they are owed and larger parties relatively fewer seats. Lesotho is the only MMP system utilizing the Hare quota.<sup>12</sup> The other types of seat allocation used are the D'Hondt and Sainte-Laguë Methods.

The Hare quota produces especially proportional results and would be a good method to continue using with MMP in Sri Lanka. However, if parliament decides to change the current method, the Sainte-Laguë method also produces equally proportional results. Germany and New Zealand currently use this system after utilizing other less proportional methods earlier.<sup>13</sup> Currently, Scotland, Wales and Bolivia utilize the D'Hondt Method.<sup>14</sup>

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<sup>10</sup> *Open, Closed and Free Lists*. (2016). *Ace Project: The Electoral Knowledge Network*. Retrieved 7 March 2016, from <http://aceproject.org/ace-en/topics/es/esd/esd02/esd02e/esd02e03>

<sup>11</sup> *Māori Representation*. (2014). *Electoral Commission*. Retrieved 8 March 2016, from <http://www.elections.org.nz/voting-system/maori-representation>

<sup>12</sup> *IFES Election Guide | Elections: Djibouti Parliamentary 2013*. (2016). *Electionguide.org*. Retrieved 16 March 2016, from <http://www.electionguide.org/elections/id/1654/>

<sup>13</sup> *Sainte-Laguë Allocation Formula*. (2016). *Elections: Electoral Commission*. Retrieved 14 March 2016, from <http://www.elections.org.nz/voting-system/mmp-voting-system/sainte-lagu%C3%AB-allocation-formula>

<sup>14</sup> *Bolivia: Electoral Reform in Latin America*. (2016). *Ace Project: The Electoral Knowledge Network*. Retrieved 9 March 2016, from [http://aceproject.org/main/english/es/esy\\_bo.htm](http://aceproject.org/main/english/es/esy_bo.htm)

### *Electoral Thresholds*

Electoral thresholds impact party representation, which is the minimum amount of support a party needs to gain representation.<sup>15</sup> Sri Lanka currently requires each party to attain 5% of the total votes in each electoral district.<sup>16</sup>

Most MMPs stipulate thresholds according to percentage acquired of the total PR vote or number of district seats won. New Zealand parties must attain either one district seat (approximately 0.83% of seats) or 5% of the votes<sup>17</sup> and German parties must acquire either 3 district seats (approximately 0.50% of seats) or 5% of the votes.<sup>18</sup> Additionally, countries like Djibouti, who use a 10% threshold, sharply reduce the small party representation.<sup>19</sup> Higher electoral thresholds lead to greater disproportionality. Ensuring that thresholds are not too high can help Sri Lanka to enhance multi-party representation.

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<sup>15</sup> Lijphart, A., & Aitkin, D. (1994). *Electoral systems and party systems*. Oxford: Oxford University Press.

<sup>16</sup> *Parliament of Sri Lanka - The Electoral System*. (2012). *Parliament.lk*. Retrieved 15 March 2016, from <http://www.parliament.lk/members-of-parliament/the-system-of-elections-in-sri-lanka/the-electoral-system>

<sup>17</sup> *MMP Voting System*. (2014). *Electoral Commission*. Retrieved 8 March 2016, from <http://www.elections.org.nz/voting-system/mmp-voting-system>

<sup>18</sup> *Election of Members of the German Bundestag*. (2016). *Deutscher Bundestag*. Retrieved 8 March 2016, from [http://www.bundestag.de/htdocs\\_e/bundestag/elections/electionresults/election\\_mp/245694](http://www.bundestag.de/htdocs_e/bundestag/elections/electionresults/election_mp/245694)

<sup>19</sup> Djibouti: Assemblée nationale, Last elections", 2013

## Why the 20th Amendment cannot meet the manifesto promise?

The draft 20th Amendment (20A) to the Constitution was the government's original proposal to meet the electoral reform pledge in the President's manifesto. The Amendment was approved by cabinet in June 2015, but not tabled in parliament prior to dissolution.

Though discussed as an MMP system it had some limitations that would seriously undermine its ability to deliver an electoral system that met the twinned promises of re-introducing smaller districts and preserving proportionality. 20A would have re-introduced smaller (and pre-dominantly single member) districts but at the expense of proportional representation. Some key limitations are discussed below.

### *One vote is insufficient*

20A would grant electors one vote to select their preferred local candidate, who would need to belong to a registered political party or independent group. That vote would be used to determine both the local plurality voting and a wider sub-national and national level PR vote. The sub-national unit proposed was the larger electoral district that is currently used.

As discussed above, this creates a dilemma for voters who may be prone to vote strategically due to plurality based selection at the local level but are then prevented from splitting their ballot when declaring preferences at national or sub-national level.

According to Duverger's Law, a single ballot system favors the top two parties and leads to strategic voting, which is when electors in a plurality system choose to vote for a candidate that has a greater chance of winning rather than their preferred candidate. Duverger calls this the psychological factor because voters defect from their natural choice in the voting process based on calculations of how the electoral rules convert their votes into seats. Therefore, the single ballot and the polarization of the top political parties serve to undermine ability of ballot to elicit their true preferences of the voters.<sup>20</sup>

### *Seat proportions are skewed in favour of district representation*

The 20th Amendment called for a three tiered system of 237 seats: 145 local electoral districts (FPTP), 55 PR seats at the current electoral district level and 37 national PR seats.<sup>21</sup> This proportion, 3:2 in favour of district seats can become insufficient to preserve proportionality.

Further, the division into three tiers of seats, including two PR tiers, can also have a negative impact on proportionality. 20A leaves only 55 PR seats to be divided between 22 electoral districts (which was proposed as the subnational PR tier), severely limiting the

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<sup>20</sup> Benoit, K. (2006). Duverger's Law and the Study of Electoral Systems. *French Politics*, 4, 69-83. Retrieved from [http://file:///home/chronos/u-f4a7cf4513c4eddce3c4c13245718250d09a4434/Downloads/Benoit\\_FrenchPolitics\\_2006%20\(2\).pdf](http://file:///home/chronos/u-f4a7cf4513c4eddce3c4c13245718250d09a4434/Downloads/Benoit_FrenchPolitics_2006%20(2).pdf)

<sup>21</sup> Chandrasekara, G. (2015). Sri Lanka's cabinet approves 20th Amendment with 237 parliamentary seats. *Lanka Business Online*. Retrieved from <http://www.lankabusinessonline.com/sri-lankas-cabinet-approves-20th-amendment-with-237-parliamentary-seats/>

number of available PR seats per district. The break-up of PR seats into three tiers would therefore further inhibit proportional outcomes as the PR seat allocation is further divided. E.g. Under 20A the plurality/PR ratio at district level is 2.6:1

The international MMP systems looked at in this piece all utilize two tier systems. If the PR tier is provincial, as in Scotland and Wales, the results will not be as proportional as MMP systems like New Zealand which uses a national level PR list.<sup>22</sup> Thus, in order to promote proportionality, the PR seat allocations being merged into a single national tier with a small increase in the PR seat proportion would guarantee the simplest form of ensuring greater proportionality.

If maintaining a three tier system, the seat distribution and size of the sub-national unit may need to change. In a recent report, Kåre Vollan argued for a better distribution of seats in a Sri Lankan MMP system in order to maintain proportionality: 119 FPTP, 87 provincial PR and 25 national PR.<sup>23</sup> The province being a geographically larger unit and with less numerous (9 provinces) can allow for more proportional outcomes at subnational level than the 22 electoral districts. For example, even the inadequate PR allocation of 55 seats at subnational level results in an average of 6 PR seats per province to adjust for plurality voting distortions while 20A would allocate an average of 2.5 seats per electoral district. If maintaining the district as the sub-national unit it will then be necessary to both maintain the 'top-up' from the national list for inadequacies in district PR seats as stipulated in 20A and to increase the district PR seat share in comparison to the plurality seats.

Vollan contends three tiers can be used to promote geographical representation through the provincial level rather than the current electoral district which is smaller and therefore typically favours larger parties. However, this system will also need a national PR portion to make the total more proportional. Additionally, a two tier system which calculates the PR seats at the national level but allocates seats through province lists produce both geographical and proportional representation. Ultimately, PR at the national level can produce the more proportional results if the PR seat allocation is limited; yet, the provincial level promotes greater geographical representation.<sup>24</sup> Although a three tiered system has the potential to be proportional, a two tiered system is less complicated to implement, has been successfully used in all current MMPs and directly correlates to voters' preference; two votes for two tiers.

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<sup>22</sup> Vollar, K. (2015). *Options for a Mixed Member Proportional System for the Parliament of Sri Lanka*. Presentation, Colombo.

<sup>23</sup> Vollar, K. (2015). *Options for a Mixed Member Proportional System for the Parliament of Sri Lanka*. Presentation, Colombo.

<sup>24</sup> *Ibid*

### *Closed List*

As discussed above MMP countries all use closed lists. 20A allows half of the PR seats to be allocated to defeated candidates in order of highest percentage earned at the polls.<sup>25</sup> But the process of other nominations to PR seats allow political parties significant decision making power post-election. Similar to current practices, the proposed 20A also gives political parties full discretion to select a new MP in the event that an MP on the national list dies or resigns. The amendment states:

*The secretary of such political party or the leader of the independent group has the authority to nominate a member for the particular polling division out of the candidates who contested the election or out of any additional candidates who have been given nominations but not contested from the polling division.*<sup>26</sup>

Closed lists are the most effective way to remain accountable to the electorate. Under the current PR system, voters are not given the option of knowing who may represent them in their preferred party, and political parties can select candidates regardless of their party affiliations. Utilizing a closed list with the quota for defeated candidates offers a more democratic way of including these candidates than that proposed in 20A. Further, as previously stated, closed lists are also a constructive way to increase representation of traditionally under-represented groups. (See the section below on women's representation).

### *Bonus Seats*

Under the existing system, the political party or independent group securing the highest number of votes in each district is entitled to have one member declared elected.<sup>27</sup> The use of bonus seats distorts proportionality by giving larger parties additional seats in districts. For example, in the most recent Parliamentary election, the JVP polled proportionally more in the national vote, yet only won four seats, while the TNA attained 14 seats with 27,000 fewer votes, due to its voter base being concentrated in a few districts.

Despite the disproportionality bonus seats create, they are also included in the 20th Amendment as follows: "...the addition of one elector would entitle such electoral district to

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<sup>25</sup> *Ibid*

<sup>26</sup> Prime Minister and Minister of Policy Planning, Economic Affairs, Child, Youth and Cultural Affairs,. (2015). *The Gazette of the Democratic Socialist Republic of Sri Lanka: Twentieth Amendment to the Constitution*. Colombo: Department of Government Printing.

<sup>27</sup> *Parliament of Sri Lanka - The Electoral System*. (2012). *Parliament.lk*. Retrieved 15 March 2016, from <http://www.parliament.lk/members-of-parliament/the-system-of-elections-in-sri-lanka/the-electoral-system>

return an additional member, the ascertainment of the electoral district to which one such elector shall be deemed to be added".<sup>28</sup>

MMP systems use the PR portion of the vote to compensate for any disproportionality in plurality voting. Therefore, the continued use of bonus seats, which usually results in increasing disproportionality, would work against the logic of PR seats in an MMP system.

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<sup>28</sup> Prime Minister and Minister of Policy Planning, Economic Affairs, Child, Youth and Cultural Affairs, (2015). *The Gazette of the Democratic Socialist Republic of Sri Lanka: Twentieth Amendment to the Constitution*. Colombo: Department of Government Printing.



## Concerns with MMP

### *Overhang*

Overhang seats are given when a political party acquires a higher number of plurality (district) seats than its overall seat entitlement under the MMP system. When overhang seats are given the party is allowed to keep the additional seats. For example, if Party A is supposed to have 10 seats according to their PR national votes but only gets six local constituency seats, they will receive four additional PR seats. However, if Party B is supposed to get 10 and receives 11, the additional seat is considered an overhang.<sup>29</sup>

Current MMPs have adopted different methods to deal with overhang seats by either 1) enlarging the governing body or 2) incorporating the overhang seats within the fixed system. The Balance Seat Method is currently only utilized in the German Bundestag (since 2013) and is arguably the most proportional method of accommodating overhang seats. In the German system, the overhang seats are awarded and additional seats are given to the other parties in order to maintain their proportional share of the seats.<sup>30</sup> This method allows for full compensation towards all parties and ensures nearly 100% proportionality.

MMPs can also opt to simply award the overhang seats and not provide additional balancing seats. Currently, New Zealand utilizes this method to prevent parliament from expanding significantly beyond its standard size.<sup>31</sup> This method usually only adds a handful of seats to New Zealand's 120-member parliament, while Germany's Bundestag significantly varies in size.

The third practice for overhang seats is the least proportional and is used by Scotland, Wales, Bolivia and Lesotho. This method awards the overhang seats, and the corresponding number of seats is subtracted from the total PR seats in the legislature in order to maintain the size of the governing body.<sup>32</sup> Therefore, the parties with the overhang seats are given more than they are proportionally owed and the remaining parties receive proportionally less.

### *Incorporating Women's Representation*

Sri Lanka's Parliament has just under 6% women's representation, 11 holding district seats and only two obtaining national list seats. Further, no legislative requirements or voluntary quotas adopted by individual parties to include women have been utilized at the national level in Sri Lanka. Promoting women's representation can be done either through the local level vote or the PR vote. However, as political parties have the most control over the

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<sup>29</sup> *Overhangs*. (2012). *MMP Review: Have Your Say and Participate*. Retrieved 7 March 2016, from [http://www.elections.org.nz/sites/default/files/bulk-upload/documents/Overhangs\\_submissions.pdf](http://www.elections.org.nz/sites/default/files/bulk-upload/documents/Overhangs_submissions.pdf)

<sup>30</sup> *Election of Members of the German Bundestag*. (2016). *Deutscher Bundestag*. Retrieved 8 March 2016, from [http://www.bundestag.de/htdocs\\_e/bundestag/elections/electionresults/election\\_mp/245694](http://www.bundestag.de/htdocs_e/bundestag/elections/electionresults/election_mp/245694)

<sup>31</sup> *Overhangs*. (2012). *MMP Review: Have Your Say and Participate*. Retrieved 7 March 2016, from [http://www.elections.org.nz/sites/default/files/bulk-upload/documents/Overhangs\\_submissions.pdf](http://www.elections.org.nz/sites/default/files/bulk-upload/documents/Overhangs_submissions.pdf)

<sup>32</sup> *Ibid*

candidates and their placement on the list, implementing party list rules is the most effective way to increase women's representation. Therefore, having a dual ticket and incorporating women in the PR list would produce the most representation.

Over the last two decades, Bolivia has made a serious effort to include female representatives. In 1993, 13% of Bolivia's principal representatives were women. However, in 1995, Bolivia adopted a MMP system and included a party list quota requiring at least 30% of the candidates on the list be women.<sup>33</sup> Today, Bolivia requires each party list to alternate by gender, which has led to the most recent election in 2014 producing 53% women representation.<sup>34</sup>

Thus, legislated Candidate Quotas on a party's PR list would yield the most representative results. This includes alternating males and females on the party list (Zipper Quota), mandating the top two candidates cannot be the same sex, 40:60 ratio for every five posts, and one out of every group of three must be a woman (Dahlerup, 2013). The Zipper Quota is the most effective in producing a balanced governing body, as it ensures women have a minimum of 45% of the seats.<sup>35</sup> Currently, Bolivia and Lesotho utilize this method.

The less proportional legislative options are incorporating reserved seats either through a separate tier or through women-only constituencies. The first would require a third tier specifically for women, which would complicate the seat allocation and voting process. The second method would be reserving certain constituencies that would produce only female candidates. These districts would have to rotate so male candidates would not be eliminated over time.<sup>36</sup> Both options are far more complicated to incorporate into the electoral system and less proportional than the PR party list quota methods.

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<sup>33</sup> Benavides, J. (2003). *Women's Political Participation in Bolivia: Progress and Obstacles* (pp. 2-3). Lima: Institute for Democracy and Electoral Assistance (IDEA). Retrieved from [http://www.quotaproject.org/CS/CS\\_Costa\\_Bolivia\\_25-11-2003.pdf](http://www.quotaproject.org/CS/CS_Costa_Bolivia_25-11-2003.pdf)

<sup>34</sup> *Bolivia* / *quotaProject: Global Database of Quotas for Women*. (2015). *Quotaproject.org*. Retrieved 15 March 2016, from <http://www.quotaproject.org/uid/countryview.cfm?CountryCode=BO>

<sup>35</sup> Larserud, S., & Taphorn, R. (2007). *Designing for Equality: Best-fit, medium-fit and non-favourable combinations of electoral systems and gender quotas*. Stockholm: International IDEA. Retrieved from <https://www.ndi.org/files/Designing-for-Equality-PDF.pdf>

<sup>36</sup> Dahlerup, D. (2013). *Atlas of electoral gender quotas* (pp. 30-33). Stockholm: International IDEA.

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