

Transparency International Sri Lanka (TISL) is an independent, non-governmental, non-profit and non-partisan organization with a vision of Sri Lanka in which government, politics, business, civil society and the everyday lives of citizens are free from corruption.

As the fully accredited national chapter in Sri Lanka of the Berlin-based Transparency International (TI), TISL partners and works with TI and its chapters world-wide.

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1. INTRODUCTION

Transparency International Sri Lanka (TISL) is an autonomous National Chapter of Transparency International (TI), the leading global movement against corruption, committed to promoting good governance and eradicating corruption in Sri Lanka. TISL is an independent, not for profit, local civil society organization registered under the Companies Act of Sri Lanka. Envisioning a nation that upholds integrity, TISL's goal is to support the collective effort to eradicate corruption in order to build a future Sri Lanka which is equitable, peaceful, and just. As a local organisation, TISL raises awareness on the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

TISL has been fighting corruption since 2002 and works with government officials, the private sector, citizens, and other civil society organizations to address day-to-day and high-level corruption issues ranging from corruption in school admissions and theft of public resources to political corruption. TISL works on a spectrum of governance issues, ranging from implementing Open Government initiatives such as the Right to Information to being an election monitor. TISL also provides free legal advice on bribery and corruption related issues.

Since 2001, TISL has through its Program for the Protection of Public Resources acted as an election observer in all national elections as well as in certain sub-national elections. Elections play a key role in TISL's vision of 'a nation that upholds integrity', as they are the cornerstone of a vibrant democracy which does not fall victim to corruption.

On the 20th of May, 2021, the Parliamentary Select Committee to Identify Appropriate Reforms of the Election Laws and the Electoral System and to Recommend Necessary Amendments requested the general public to submit proposals on the subject. TISL makes these submissions in response to this call, and believes that the contents herein will be used to guide the Committee's thinking.

2. Part I – Proposed Amendments to Existing Laws

2.1 Election Laws

Issue	Section	Recommendation	
1. "Offence of preventing the exercise of the Right to Vote" is not captured in Parliamentary Elections/ Presidential Elections/ Local Authorities Elections/ Provincial Councils Elections and Referendum Act	E.g., Section 5 of Parliamentary Elections Act	 Recognize the "Offence of preventing the exercise of the Right to Vote" Definition of offence, A person commits the offence of preventing the exercise of the right to vote when he or she: (a) in the exercise of duties entrusted to him or her relating to elections; (b) with the intent to prevent another person from exercising his or her right to vote: i. fails to record such person in a voter registration list; ii. removes such person from the voter registration list; or iii. in another matter prevents a person from exercising his or her right to vote. 	
2. Offence of "Bribery" committed by public officials during the election period is not captured and no link has been made to the Bribery Act of Sri Lanka	E.g., Section 80 of Parliamentary Elections Act	It is recommended that a proviso should be added to this effect.	

	0	Provided that, if any person involved in the act of bribery is a public servant, section 29 of the Bribery Act will be applicable.
 3. Under the offence of "Bribery" and "Treating" the concepts of vote buying and vote selling in order to receive a vote or to refrain from voting, are covered. However, those sections do not cover the fact that a bribe or treating can take place in order to: cast a void vote. 	E.g., Section 79 of Parliamentary Elections Act Section 80 of Parliamentary Elections Act	Broaden the sections on "Bribery and Treating" Treating and offering/accepting a bribe in order to cast a void vote should be captured as an offence and appropriate penalties should be defined including a fine and/or imprisonment)
4. Power to prosecute the offences are given to the Attorney-General	Section 71, 73, 81, 82, 87 and 88 of Parliamentary Elections Act E.g., "A prosecution for a corrupt practice shall not be instituted without the sanction of the Attorney- General."	Empower the Election Commission of Sri Lanka (ECSL) to prosecute offences related to elections To amend the legal provisions empowering the Election Commission to file a case directly in matters related to an election.
5. The penalties related to corrupt practices in the Parliamentary Elections, Presidential Elections/ Local Authorities Elections/ Provincial Councils Elections Acts are outdated.	E.g., Section 81 of Parliamentary Elections Act	Amend the penalties (fines and imprisonment duration) appropriately

Refer- https://elections.gov.lk/en/elections/ election_offences_E.html	
6. No clauses related to misuse of	Include clauses on misuse of public resources into
public resources during elections	election laws along with penalties, without leaving them
are included in these Acts.	to be gazetted prior to each election.



2.2 Declaration of Assets and Liabilities Law

Issue	Section	Recommendations
1. Make asset declaration mandato	ry for election candidates prior to elections	
It is not mandatory for the candidates to declare assets and liabilities prior to the elections being held i.e. at the point of nomination. The time bar for the submission of declarations is withing 3 months of nomination. This leads to two issues as election dates are usually within two or less months of nominations: 1. Voters or the ECSL cannot reject a candidate based on the content of their asset declaration 2. Obtaining asset declarations from candidates after elections proves an arduous and futile task ECSL cannot reject candidates' nomination papers or take legal action against successful/ unsuccessful candidates if they have not submitted the declarations. Hence, they face no consequences.	Section 3(2) Proviso- A person to whom the Law applies under Section 2(2)(dc) deemed to have complied with Section 3(2) (i.e. deemed to have made a declaration of assets and liabilities) - if he makes a declaration of his assets and liabilities as at the date of his nomination as a candidate for election under any of the Acts referred to in that paragraph on the date of such nomination or before he functions, or sits or votes, as President, a Member of Parliament, a member of a Provincial Council, member of a Development Council or any other Local authority, - and in the case of an unsuccessful candidate at an election within a period of three months after the date of nomination	Submission of declaration of assets and liabilities at the point/date of nomination (on a date specified by the ECSL) must be made a mandatory criterion for a candidate to be eligible to contest in the election. This would enable citizens to make informed decisions about their vote. Non submission of the declaration on the due date should disqualify the candidate from contesting in elections. ECSL should be empowered to verify information in all declarations, or the asset declarations, once received should be sent to CIABOC for random or complete verification. If ECSL either through independent verification or upon communication by the public discovers a submission of false statement in a declaration; or willful omission of information from a declaration; or failure without reasonable cause to give additional information as requested by ECSL, ECSL should be empowered to disqualify such a candidate

		from contesting and/or institute legal action against them.
2. Abolish payment of a fee for acce	ess to declarations	
Payment of a fee to obtain declarations excludes certain people. This provision contravenes the free right of access to information enacted through the Right to Information Act No 12 of 2016, as well.	Section 5(3) – power to refer to declarations. Any person shall on payment of a prescribed fee to the appropriate authority have the right to call for and refer to any declaration of assets and liabilities and on payment of a further fee to be prescribed shall have the right to obtain that declaration.	Repeal section 5(3).
3. Publicize asset declarations of all	candidates before elections	
The asset declarations submitted to the ECSL are not publicized, but can only be obtained by individual citizens on payment of a fee. Even if the general public gains access to this information upon payment of a fee, they are prohibited from revealing or publicizing the information they so acquire. The punishment for violating secrecy is more severe than the punishment for non-declaration of assets and liabilities, which defies the purpose of the law, which to prevent and apprehend the	Section 8 – preservation of secrecy a person shall <u>preserve and aid in</u> <u>preserving secrecy</u> with regard to all matters relating to the affairs of any person to whom this Law applies, or which may come to his knowledge in the performance of his duties under this Law or in the <u>exercise of his right under subsection (3) of</u> <u>section 5</u> , and <u>shall not communicate any</u> <u>such matter to any person</u> other than the person to whom such matter relates, <u>or</u> <u>suffer any unauthorized person to have</u> <u>access</u> to any papers or records which may	Once the ECSL receives declarations by al candidates, they should be publicized prior to the election date so that the public car make informed decisions when voting or make communications to the ECSI regarding any identifiable discrepancies. If verification is not possible due to lack or time and resources, the declarations should nevertheless be publicized. Section 8 should be abolished.

abuse of public resources and conflicts of interest.	have come into his possession in the performance of this duties under this Law or in the exercise of his right under subsection (3) of 'section on 5, "; Section 8(4) Any person who contravenes the provisions of this section shall be guilty of an offence and shall, upon conviction after trial before a Magistrate, be liable to a <u>fine not</u> <u>exceeding two thousand rupees or to a</u> <u>term of imprisonment of either description</u> <u>not exceeding two years</u> or to both such fine and imprisonment.	
4. Empower Election Commission Sr ECSL has no power to take action against discrepancies between declarations made by candidates and actual assets and liabilities of candidates. The public cannot complain to the ECSL about any discrepancies between candidate declarations publicized by ECSL and 'recent acquisitions of wealth or property or to any recent financial or business dealings or to any recent expenditures' of candidates, as there is no mechanism for this.	Section 7(6) - In this section," appropriate authority" shall mean the Attorney- General, the Bribery Commissioner, the Commissioner-General of Inland Revenue, the Head of the Department of Exchange Control and the Principal Collector of Customs. Section 7 - Procedure regarding written communications by any person.	Include ECSL under 'appropriate authority' empowering it to investigate or cause investigation, summon and question (similar to powers of the Attorney- General, the Bribery Commissioner, the Commissioner-General of Inland Revenue, the Head of the Department of Exchange Control and the Principal Collector of Customs under Section 7(2)). The public should be empowered to draw the attention of ECSL to any discrepancies between candidate declarations publicized by ECSL and 'recent acquisitions of wealth or property or to any recent financial or

		business dealings or to any recent expenditures' of candidates
5. Increase punishment for violation	s of Asset Declaration Law	
Punishment is not sufficiently severe. Candidates who amass wealth can easily pay the fine even if convicted, since in practice, it is the fine that is often imposed, and not imprisonment.	Section 09 – Offences under the Act for failing without reasonable cause to make declaration, makes false statements in the declaration, willfully omits assets and liabilities in the declaration, fails without reasonable cause to give additional information requested by CIABOC, any other contravention of the Act - shall be guilty of an offence and shall, unless any other penalty is otherwise provided, on conviction after trial before a Magistrate, be liable to a <u>fine</u> <u>not exceeding one thousand rupees</u> , or imprisonment of either description for a <u>term not exceeding one year</u> or to <u>both</u> such fine and imprisonment.	Punishment should be made more severe to act as a deterrence from not declaring or as a motivator to declare. Both the fine and imprisonment term should be increased.



2.3 Bribery Act - Sextortion

Issue	Section	Recommendation
Issue Bribery Act No.11 of 1954 does not recognize sextortion specifically, as an offence.	Section Part II – Offences	Recommendation 1. Make sextortion an offence Make solicitation and acceptance of sexual favours by any person being in a position of power or authority, who in the exercise of this authority an offence. Further, solicitation or acceptance of sexual favours as a condition for giving an opportunity to contest in any election or to be nominated in the national list, employment, a promotion, a right, a privilege or any other service, favour or advantage of any description whatsoever should be recognized as an offence. 2. Amending the definition of 'gratification' under the Act to generate the factor.
		However, here the victims of sextortion should not be subject to prosecution.

3. Part II – Proposed Amendments to Draft Laws

3.1 Campaign Finance

Issue	Section (Draft Bill)	Recommendation
1. Disclosure		
Disclosure limited to transactions from 7 days after an election is announced.	Section 82 KC - Local Authorities Elections Section 87 C Provincial Councils Election Section 86 C Parliamentary Election Section 85 C Presidential Election	While the system proposed for disclosure of campaign contributions and expenditure is good, it is recommended that there should be further clarification that any contributions or expenditure for the purpose of the election campaign chould
	A political party or independent group (or candidate as the case may be in a Presidential Election) is mandated to open a bank account within 7 days of announcing an election for the purpose of receiving donations. They need to keep records of these accounts and notify the ECSL details of this account (account number, account name, bank name and address). The Secretary of the political party or the independent group (or candidate as the case may be in Presidential Election) is to keep information on the donors (including ID numbers if it's an individual), amounts, and whether it is a donation, advance or a loan.	for the purpose of the election campaign should be disclosed, whether received through this account or otherwise. If such provision is not made, the objectives of the law will not be met, as parties, candidates and donors could rush to make financial arrangements in the run-up to an election, in order to circumvent the legal requirement.

Disclosure about account details to the ECSL and public disclosure comes after 10 weeks after the election and not before the election.	[Section 82 KD - local authorities elections], [Section 87 D Provincial Councils election] ,[86 (D) parliamentary election] [85 D Presidential election]- After 10 weeks from the conclusion of the election the Secretary of the political party or the independent group (or candidate as the case may be in Presidential Election) needs to send to the ECSL an audited statement of accounts, certified copies of the records, a statement from the bank at which the account was opened, certifying the deposits made in such account and the withdrawals from such account, a declaration that the information is true.	 Disclosure must be made prior to elections as well as after, to the ECSL and to the public. Taxpayers who are donors can be encouraged through tax incentives to disclose donations, so that campaign financing disclosures can be cross-checked. Disclosure of donations prior to elections will ensure that the interests of those supporting candidates and on an annual basis for non-election cycle contributions, are also disclosed. This is particularly suitable because of the already established practice of annually disclosing assets and liabilities of elected representatives. Political party and candidate financing disclosures should complement this practice. Further, it is advisable that reporting obligations require candidates and parties to reveal on the one hand the source and value of contributions and on the other hand the purpose and value of expenses. The disclosure of such information should cover all the elements necessary with sufficient details to allow effective public oversight and enhance transparency.

Disclosure to the ECSL does not cover candidates.	Section 82 KE Local Authorities Elections Section 87 E Provincial Councils Election Section 86 E Parliamentary Election Section 85 E Presidential Election Publication of accounts and records by the Election Commission is mandated. On receipt of the documents submitted by a political party or independent group, the EC is expected to publish them on the EC website and a notice in newspapers (English, Sinhala and Tamil) stating that they have received the statement of accounts and the place and times that these records can be examined by any person. Any person can examine them and take copies (subject to fee). Receipts need to be maintained wherever possible. Payments from the accounts also require the following information records - the amount, the purpose and the name and address of the person to whom the payment was made.	While the system proposed for publication of accounts and records is good, it is it is limited to political party or an independent group. Therefore, it is recommended that both parties and candidates should be liable in the entire law.
2. Donation Bans or Limits	Contra 02 KD Lovel Antheritation Florida	
law, but no donation limits are mentioned in terms of amounts/value.	Section 87 B Provincial Councils Election Section 86 B Parliamentary Election Section 85 B Presidential Election	essential, to level the playing field between electoral candidates, to promote political pluralism, and to avoid undue reliance on wealthy/regular donors making way for undue influence. When

Certain donations are prohibited - from a government department, a public corporation or a company incorporated in which the government or a public corporation owns any shares, a foreign government, an international organization or a body corporate incorporated or registered outside Sri Lanka, a company with foreign shareholders, and any person whose identity is not disclosed.

used, direct public campaign financing of political parties and, in some cases, candidates should be provided equitably and based on objective criteria.

Introducing spending limits without introducing donation limits only solves half the problem of campaign finance regulation. It would completely fail to address the need to control undue influence on national policy by parties donating money to political parties and candidates.

Establishing limits on campaign donations including private sector contributions to political parties and candidates is recommended, in order to promote fair competition during elections and lessen incentives for corruption and undue influence in politics. Such limitations may take the form of a threshold on the amount a donor may contribute to a candidate or political party, or a limit on the aggregate amount that a candidate or party may accept.

Care should be taken for limits to be imposed on contributions to parties and to individual candidates as well.

The legislation should also regulate in-kind contributions, such as subsidized advertising and printing, office and equipment rental. It is recommended that the legislation should define how in-kind contributions are valued, for example

		based on market prices. Additionally, if an individual or legal entity forgives an outstanding debt for goods or services, this should be considered an in- kind contribution, subject to the limitations that apply to contributions and, where applicable, counting towards expenditure limits.
The language used is vague and therefore this may leave room to exploit the law, if only the party or the candidate is regulated.	Section 82 KH - local authorities elections] [Section 87 H Provincial Councils election], [86 (H) parliamentary election] [85 H Presidential election]- Candidates or on behalf of such candidates to submit returns of contributions received and expenditure incurred within 10 weeks of the publication of the results of the election to the returning officer. The returning officer shall follow the same mechanism followed with regard to public disclosure of account details by the EC. In the case of the Presidential election, it is filed with the EC and the mechanism explained on disclosing this information on the EC website and newspapers remain the same.	Language Change, Propose changing 'such candidate or on behalf of such candidate' to 'such candidate or the relevant party on behalf of such candidate' This is in order to ensure that both parties and candidates are covered by the obligation to report on election contributions and expenditure.
3. Spending Limits		
Stationery, Postage and communication are not to be counted as part of spending which can be hugely costly in an election campaign. Individual candidates are not covered and the focus is on donations and	Section 82 KA and 82 KG - local authorities elections], [Section 87 A and 87 G Provincial Councils election], [86 A and 86 G parliamentary election], [85 A and 85 G Presidential election]-	Language Change, Propose changing 'Illegal practice' to 'Offence'

expenditure of party/independent groups. This would mean there still could be major expenses on the election that fall	The basis of the authorised amounts for expenditure are to be developed by the EC in consultation with political parties and	Spending Limits
outside of the regulatory purview. Leaving the provision as it is would therefore defeat the purpose of the law.	independent groups (and candidate as the case may be in Presidential Election) contesting in the said election. Calculation of the authorised amount - the number of registered voters x the basis amount. Spending beyond this amount is an illegal act unless the person/group proves that it was done without his/her canstion/consistence	The aim of such restrictions must be balanced with the equally legitimate need to protect other rights, such as freedoms of association and expression. Electoral contestants must be permitted to expend sufficient resources to convey their political message. The maximum spending limit usually consists of an absolute sum or a relative sum, determined by factors such as the voting population in a particular constituency and the costs of
	Sanction/ commvance.	Such limits should be clearly defined in the law and, ideally, be indexed for inflation to ensure that they stay relevant for subsequent elections. Limitations should also apply to all electoral contestants, including third parties, to prevent them being used as way to circumvent spending limits.
		Postage, Postage costs may be incurred for general communications with voters, parties and candidates, particularly for the provision of information sheets, manuals and election documentation.

		However, each candidate being eligible to use postal services, could incur an extravagant cost if all of the candidates use this service. Imposing spending limits should be backed up by a strong enforcement infrastructure in order to be effective. If not, Sri Lanka runs the risk of having nominal regulation that only adds to the cost borne by the State, with little impact on the results sought to be achieved.
4. Regulation and Offences		
The offences are not adequate to deter the illegal acts - for example the fines that are recognized under the Bill are woefully low. In some instances, it only says that it is an illegal act but no penalty is quoted. There is no mention of inter-linkages with other authorities like the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) that holds important information like the assets and liabilities of public officials, and has the authority to take action on non-filing or misdeclarations.	Article 104 B (1) of the Constitution of Sri Lanka - ECSL is the main regulatory body.	 The mandate of the Election Commission must be expanded to, require asset declarations with the nomination paper, and if not, to reject the nomination. publicly disclose asset declarations that are submitted to the election commission by candidates. investigate or cause investigation, summon and question or liaise with CIABOC to prosecute persons in instances where according to the information available to the ECSL, the information disclosed in the asset declaration is false The Election Commission of Sri Lanka is set up by the provisions of the Constitution, and has wide powers to ensure that free and fair elections are held, including the power to issue directions to provent the misuse of public property and

guidelines to any broadcasting or telecasting operator or any proprietor or publisher of a newspaper. It has a mandate to exercise all powers stipulated under the laws governing elections and referenda.

Political parties in Sri Lanka are required by law to disclose annual accounts to the Election Commission. In practice, this has not translated into any sanctions for political parties that do not file such accounts – except intermittently - resulting in ineffective regulation. Furthermore, there does not seem to be any diligent scrutiny of the accounts that are filed for discrepancies or illegal activities. While the mechanism that is already in place may be used to effectuate better oversight of political parties via disclosure, there needs to be provision for monitoring specifically related to election campaigns.

4. Part III – Proposed New Laws

4.1 Misuse of Public Resources

Since the commencement of the Program for the Protection of Public Resources (PPPR) in 2001, TISL has monitored all the national elections and a few sub-national level elections until today. Unlike other Election Monitoring Bodies (EMBs) in Sri Lanka the PPPR focuses on the misuse of public resources during the election period. This complements the overall vision of the organization which is a nation that upholds integrity.

Throughout the period TISL has revealed and prevented hundreds of incidents of misuse of public resources. Among such incidents TISL has most commonly seen the following types of misuses during the election:

- 1. Misuse of state-owned vehicles including rented vehicles
- 2. Misuse of state buildings, premises
- 3. Appointments, transfers and promotions
- 4. Misuse of state sponsored development activities
- 5. Government officers acting in favor of political parties and candidates
- 6. Giving incentives/equipment with political objectives
- 7. Use of state officials and security resources for election campaigns
- 8. Use of social media by government officers to promote or prejudice any party, group or candidate
- 9. Manipulation of state sponsored livelihood grants & allowances for election purposes
- 10. Using equipment and facilities of state institutions without paying

This not only gives a certain political party or candidate an undue advantage but also it is an act of stealing tax payers' money. Therefore, as TISL strongly believes that a new legal framework and law should be created to protect public property against abuse.

The current framework for the control of state resource abuse is by way of guidelines issues by the ECSL pursuant to its powers under Article 104B (4) (a) of the Constitution. TISL is of the opinion that this remains an ad hoc arrangement, and does not provide enough stability and predictability to the system, and proposes that a law should be enacted to prevent and apprehend the abuse of public resources.

In this regard we request the commission to consider the following framework in drafting a new law¹.

A. Principles	1. Rule of Law	 The legal framework should provide for a general prohibition of the misuse of public resources during electoral processes. The prohibition has to be established in a clear and predictable manner. Sanctions for misuse of public resources have to be provided for and implemented. Such sanctions need to be enforceable, proportionate and dissuasive. Stability of the law is a crucial element for the credibility of electoral processes. It is therefore important that stability of electoral law be ensured in order to protect it against political manipulation. This applies in particular to the rules on the use of public resources. It is important that rules – including laws, agreements and commitments that regulate or relate to the use of public resources during electoral processes, as well as judicial decisions interpreting them – are clear and accessible to all stakeholders, including public authorities, civil servants, voters, candidates, political parties, and that sanctions and consequences for not abiding with these rules are foreseeable. The possibility to bring complaints about the misuse of public resources to an independent and impartial tribunal – or equivalent judicial body – or to apply to an authorised law-enforcement body should be central in ensuring the appropriate use and to prevent the misuse of public resources during electoral processes.
	2. Political Freedoms	2.1. Freedoms to form an opinion, together with freedoms of association and expression, form the bedrock of any democratic system, including during electoral processes. Opinions and information should freely circulate during

¹ This section relies upon and cites from the framework proposed by the Venice Commission dated 14 March 2016, and has adapted it to Sri Lanka's local context and needs based on TISL's experience.

	pre-electoral periods, especially during electoral campaigns. It may be necessary to place certain restrictions on freedom of expression in order to secure public resources/prevent misuse.
3. Impartiality	3.1. The legal framework should provide explicit requirements for civil servants to act impartially during the whole electoral process while performing their official duties. Such regulations should establish the impartiality and professionalism of the civil service.
4. Neutrality	 4.1. The legal framework should ensure the neutrality of the civil service by prohibiting civil servants from campaign activities in their official capacity, either by being themselves candidates or when supporting candidates. This applies as well to public and semi-public entities. Here it is important to ensure the neutrality in use of social media by civil servants. 4.2. In order to ensure neutrality of the civil service during electoral processes and consequently to avoid any risk of conflict of interest, the legal framework should provide for a clear separation between the exercise of politically sensitive public positions, in particular senior management positions, and candidacy. In this respect, the legal framework should provide for a range of adequate and proportionate rules. Such rules may include a clear instruction on how and when campaigning in a personal capacity may be conducted, suspension from office or resignation of certain public authorities running for elections. 4.3. The non-involvement of judges, prosecutors, police, military and auditors of political competitors in their official capacity in electoral campaigning is of essential importance. Concrete measures should ensure such official neutrality throughout the entire electoral processes. 4.4. The legal framework should ensure the objective, impartial, and balanced coverage of election-related events by publicly-owned media. Law and

		practice should both ensure that publicly-owned media are not involved in "hidden" campaigning for or against particular political competitors.
	5. Transparency	 5.1. The legal framework should provide for transparency and accountability of the use of public goods and services by political parties and candidates during electoral processes. 5.2. A clear distinction between the operation of government, activities of the civil service and the conduct of the electoral campaign should be made.
	6. Equality of opportunity	 6.1. The legal framework should provide for an equal right to stand for elections and for equality of opportunity to all candidates, including civil servants, and political parties during electoral processes. 6.2. The legal framework should provide for equitable access for all political parties and candidates to public resources including publicly-owned media during electoral processes. This also applies to public buildings and facilities used for campaigning.
	7. Disclosure of Information	7.1. The legal framework should provide for the availability of trustworthy, diverse and objective information to voters and political competitors on the use of public resources during electoral processes operated by public authorities as well as entities owned or controlled by public authorities.
B. Prevention of misuse of public property	1. Basic legal framework	1.1. Clear restrictions should be provided on use of state funds and physical assets during the election period. This should include, but are not limited to, use of state owned and hired vehicles, buildings and premises, equipment, state sponsored development activities and state sponsored livelihood grants and allowances.
		1.2. If the use of public buildings, facilities or any other resources is permitted for campaign purposes, the legal framework should provide for equal opportunity

	 and a clear procedure for equitably allocating such resources among parties and candidates. 1.3. The legal framework should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaigning purposes, including charitable events, or events that favour or disfavour any political party or candidate. More precisely, reference is made to events which imply the use of specific funds (state or local budget) as well as institutional resources (staff, vehicles, infrastructure, phones, computers, etc.). This does not preclude incumbent candidates from running for election and campaigning outside of office hours and without the use of public resources. 1.4. The ordinary work of government must continue during an election period. However, in order to prevent the misuse of public resources to imbalance the level playing field during electoral competitions, the legal framework should state that no major announcements linked to or aimed at creating a favourable perception towards a given party or candidate should occur during campaigns. This does not include announcements that are necessary due to unforeseen circumstances, such as economic and/or political developments in the country or in the region, e.g. following a natural disaster or emergencies of any kind that demand immediate and urgent action that cannot be delayed. 1.5. The legal framework should provide for a clear distinction between 'campaign activity' and 'information activity' of public media in order to ensure equity among political competitors in the media as well as a conscious and free choice for voters.
2. Audit	2.1. An institution functionally independent from other authorities (such as the ECSL) should be responsible for auditing political parties and candidates in their use of public resources during electoral processes. In this respect, such a

			 body, regardless of its institutional form, should act impartially and effectively. The mere provision of audited financial records to the ECSL does not suffice. 2.2. That institution should be sufficiently empowered and resourced to supervise all public expenditure and use of public resources. Moreover, this authority should be required to report misuse during electoral processes in a timely, clear and comprehensive manner. 2.3. Political parties and candidates should be required to report on the origin and purpose of all their campaign finance transactions (see section 3.1 above) in order to facilitate transparency and the detection of potential misuse of public resources. Any permissible use of public resources for parties or candidates should be treated as a campaign finance contribution and be reported accordingly. 2.4. Communication between audit authorities and other bodies should be regulated in a way that facilitates efficient flows of information and effective implementation of transparent decisions
	3.	Whistleblower protection	3.1. Civil servants as well as their relatives should be protected against (hidden) sanctions, pressure or intimidation when they disclose an alleged fraud or misuse of public resources.
	4.	Information and awareness raising	4.1. Authorities should create wide reaching information activities, in which citizens and civil servants, candidates and political party leaders, are aware of their rights and responsibilities during electoral processes. Clear criteria should be established to distinguish electoral campaign activities from information activities. Such information should be distributed consistently.
C. Remedies and Sanctions	1.	Complaints and appeals	 1.1. The legal framework should provide for an effective system of appeals before a competent, independent and impartial court, or an equivalent judicial body.

	 1.2. The first instance appeal body in electoral matters should be either an electoral management body or a court or an equivalent judicial body. In any case, final appeal to a court must be possible. 1.3. The legal framework should ensure the independence of electoral management bodies, other administrative bodies, and courts in their decisions when adjudicating disputes regarding the misuse of public resources. 1.4. Authorised law-enforcement bodies – police, prosecutors – should investigate cases on the misuse of administrative resources effectively and timely. 1.5. The legal framework should ensure that the electoral management bodies and courts – and other judicial bodies – hold hearings and that their decisions are made public, written and reasoned. The legal framework should also ensure a timely adjudication and appeals process.
2. Sanctions	 2.1. The legal framework should define the misuse of administrative resources during electoral processes as an electoral offence. 2.2. The legal framework should establish clear, predictable and proportionate sanctions for infringements of the prohibition of the misuse of public resources, from administrative fines to the ultimate consequence of cancelling election results where irregularities may have affected the outcome. Civil servants who misuse administrative resources during electoral processes should be subject to sanction, including criminal and disciplinary sanctions, up to the dismissal from office.
	 2.3. Political parties and candidates who deliberately benefit from a misuse of public resources should be subject to a range of sanctions proportionate to the offence committed. This may include formal warnings, fixed monetary penalties, reduction in public financing, or referral for criminal prosecution. 2.4. The legal framework should foresee that in case of violations of the rules on public finances which imply a misuse of public resources or when illicit financial advantages are given to political parties or candidates, such financing

has to be returned to the state, provincial or municipal budget, regardless of
other applicable salicitoris.

4.2 Electoral System

Please refer to the document attached as Annexure 01

5. Annexures

Annexure 01 - Mixed-Member Proportional (MMP) electoral system

PROPOSALS FOR Electoral Reform In Sri Lanka

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ELECTORAL REFORM IN SRI LANKA: MIXED-MEMBER PROPORTIONAL SYSTEMS







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Executive Summary

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 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.

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.

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'.¹ 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.

¹ 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'.

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/subnational proportional representation.²

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 20th amendment proposed during the tenure of the previous parliament, calls for voters to use a single ballot.³ 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.⁴

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

² 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

 $^{^3}$ See also, the section on the $20^{\rm th}$ amendment below

⁴ 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.⁵ 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.⁶

	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	
А	16	10%	40%	48	30%	
В	32	20%	30%	16	10%	
С	32	20%	30%	16	10%	
Total	80	50%	100%	80	50%	

⁵ Siaroff, A. (2013). *Comparing Political Regimes: A Thematic Introduction to Comparative Politics* (3rd ed., pp. 109-191). University of Toronto Press.

⁶ 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.⁷ 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

⁷ Djibouti opposition ends election boycott - BBC News. (2013). BBC News. Retrieved 14 March 2016, from http://www.bbc.com/news/world-africa-21554465

candidates outside the list who contested elections for district level seats but failed to get 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.⁸ 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.⁹

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.¹⁰ 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.¹¹ Currently, Scotland, Wales and Bolivia utilize the D'Hondt Method.¹²

⁸ 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

⁹ *Māori Representation.* (2014). *Electoral Commission*. Retrieved 8 March 2016, from http://www.elections.org.nz/voting-system/maori-representation

¹⁰ *IFES Election Guide | Elections: Djibouti Parliamentary 2013.* (2016). *Electionguide.org.* Retrieved 16 March 2016, from http://www.electionguide.org/elections/id/1654/

¹¹ 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

¹² 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

Electoral Thresholds

Electoral thresholds impact party representation, which is the minimum amount of support a party needs to gain representation.¹³ Sri Lanka currently requires each party to attain 5% of the total votes in each electoral district.¹⁴

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 votes¹⁵ and German parties must acquire either 3 district seats (approximately 0.50% of seats) or 5% of the votes.¹⁶ Additionally, countries like Djibouti, who use a 10% threshold, sharply reduce the small party representation.¹⁷ Higher electoral thresholds lead to greater disproportionality. Ensuring that thresholds are not too high can help Sri Lanka to enhance multi-party representation.

¹³ Lijphart, A., & Aitkin, D. (1994). *Electoral systems and party systems*. Oxford: Oxford University Press.

¹⁴ 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

¹⁵ *MMP Voting System*. (2014). *Electoral Commission*. Retrieved 8 March 2016, from http://www.elections.org.nz/voting-system/mmp-voting-system

¹⁶ *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

¹⁷ Djibouti: Assemblée nationale, Last elections", 2013

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.¹⁸

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.¹⁹ 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.²⁰ 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.²¹ 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. Women's representation in Sri Lankan Parliament is very minimal. 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

¹⁸ 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

¹⁹ 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

 ²⁰ 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
 ²¹ Ibid

the most control over the 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.²² Today, Bolivia requires each party list to alternate by gender, which has led to the most recent election in 2014 producing 53% women representation.²³

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.²⁴ 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.²⁵ Both options are far more complicated to incorporate into the electoral system and less proportional than the PR party list quota methods.

²² 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

²³ Bolivia | quotaProject: Global Database of Quotas for Women. (2015). Quotaproject.org. Retrieved 15 March 2016, from http://www.quotaproject.org/uid/countryview.cfm?CountryCode=B0

²⁴ 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

²⁵ Dahlerup, D. (2013). *Atlas of electoral gender quotas* (pp. 30-33). Stockholm: International IDEA.

References

- Advantages and Disadvantages of MMP. (2016). Ace Project: The Electoral Knowledge Framework. Retrieved 14 March 2016, from http://aceproject.org/aceen/topics/es/esd/esd03/esd03a/esd03a01
- 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
- Benoit, K. (2006). Duverger's Law and the Study of Electoral Systems. French Politics, 4, 69-83. Retrieved from http://file://home/chronos/uf4a7cf4513c4eddce3c4c13245718250d09a4434/Downloads/Benoit_FrenchPolitics_2 006%20(2).pdf
- 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
- 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
- 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/
- Dahlerup, D. (2013). *Atlas of electoral gender quotas* (pp. 30-33). Stockholm: International IDEA.
- *Djibouti opposition ends election boycott BBC News*. (2013). *BBC News*. Retrieved 14 March 2016, from http://www.bbc.com/news/world-africa-21554465
- Djibouti: Assemblée nationale, Last elections. (2013). Inter-Parliamentary Union Database. Retrieved 8 March 2016, from http://www.ipu.org/parline-e/reports/2089_E.htm
- *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_m p/245694

Electoral reforms in a vacuum | The Sunday Times Sri Lanka. (2016). Sundaytimes. lk.

Retrieved 28 March 2016, from http://www.sundaytimes.lk/150322/sundaytimes-2/electoral-reforms-in-a-vacuum-140881.html

European Standards of Electoral Law in Contemporary Constitutionalism. (2005) (pp. 58-60).

- Gilling, A., & Grey, S. (2010). Representing Women: MMP and Women's Political Representation in New Zealand (pp. 7-8). Women for MMP. Retrieved from https://campaignformmp.files.wordpress.com/2010/09/representing-women-gillingand-grey-2010.pdf
- Gschwend, T., & Kolk, H. (2006). *Split Ticket Voting in Mixed Member Proportional Systems: The Hypothetical Case of The Netherlands* (pp. 41-42). Acta Politica. Retrieved from http://www2.sowi.unimannheim.de/gschwend/pdf/publications/Gschwend_vanderKolk'06_SplitTicketVoti ng.pdf
- Gschwend, T., Johnston, R., & Pattie, C. (2003). Split-Ticket Patterns in Mixed-Member Proportional Election Systems: Estimates and Analyses of Their Spatial Variation at the German Federal Election, 1998. *British Journal Of Political Science*, *33*, 109-127. http://dx.doi.org/10.1017/S000712340300005
- *IFES Election Guide | Elections: Djibouti Parliamentary 2013.* (2016). *Electionguide.org.* Retrieved 16 March 2016, from http://www.electionguide.org/elections/id/1654/
- *IFES Election Guide | Elections: National Assembly.* (2015). *Electionguide.org.* Retrieved 8 March 2016, from http://www.electionguide.org/elections/id/2809/
- King, C. (2000). Electoral Systems. Washington D.C.: Georgetown University.
- Lady Members. (2015). Parliament of Sri Lanka. Retrieved 9 March 2016, from https://www.parliament.lk/lady-members
- 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
- Lijphart, A., & Aitkin, D. (1994). *Electoral systems and party systems*. Oxford: Oxford University Press.
- *Māori Representation*. (2014). *Electoral Commission*. Retrieved 8 March 2016, from http://www.elections.org.nz/voting-system/maori-representation
- *MMP Voting System*. (2014). *Electoral Commission*. Retrieved 8 March 2016, from http://www.elections.org.nz/voting-system/mmp-voting-system
- Moser, R., & Scheiner, E. (2004). Mixed electoral systems and electoral system effects: controlled comparison and crossnational analysis. *Electoral Studies: An International Journal*, 23(4), 580-581. Retrieved from http://www.utexas.edu/cola/government/_files/moserweb/Moser_and_Scheiner_Mixed_Electoral_Systems_and_Electoral_System_Effects_ES_ 2004.pdf
- New Democratic Front,. (2015). *Maithri: A Stable Government. priu.gov.lk*. Retrieved 15 March 2016, from http://www.priu.gov.lk/presidential_manifestos/Manifesto-EN.pdf

- One Text Initiative Research, (2013). *Representative Democracy & Electoral Reforms in Sri Lanka* (pp. 10-12). Colombo: OTI. Retrieved from http://www.onetext.org/wpcontent/uploads/2013/03/04_July-2011.pdf
- *Open, Closed and Free Lists.* (2016). *Ace Project: The Electoral Knowledge Network.* Retrieved 7 March 2016, from http://aceproject.org/aceen/topics/es/esd/esd02/esd02e/esd02e03
- Overhangs. (2012). MMP Review: Have Your Say and Participate. Retrieved 7 March 2016, from http://www.elections.org.nz/sites/default/files/bulkupload/documents/Overhangs_submissions.pdf
- 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
- 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.
- Sainte-Laguë Allocation Formula. (2016). Elections: Electoral Commission. Retrieved 14 March 2016, from http://www.elections.org.nz/voting-system/mmp-votingsystem/sainte-lagu%C3%AB-allocation-formula
- Shaheid, F., & Jayakody, R. (2015). Systems and the 20th Amendment. *Ceylon Today*, pp. https://www.ceylontoday.lk/51-93192-news-detail-systems-and-the-20-a.html.
- Siaroff, A. (2013). *Comparing Political Regimes: A Thematic Introduction to Comparative Politics* (3rd ed., pp. 109-191). University of Toronto Press.
- *Sri Lanka*. (2015). *Quota Project: Global Database of Quotas for Women*. Retrieved 9 March 2016, from <u>http://www.quotaproject.org/uid/countryview.cfm?CountryCode=LK</u>
- The Daily Mirror,. (2015). Urgent Amendment Needed. Retrieved from http://www.dailymirror.lk/84453/urgent-amendment-needed
- The D'Hondt system: How MEPs get elected in Britain BBC News. (2014). BBC News. Retrieved 7 March 2016, from http://www.bbc.com/news/uk-politics-27187434
- *The Electoral System*. (2012). *Parliament of Sri Lanka*. Retrieved 14 March 2016, from http://www.parliament.lk/members-of-parliament/the-system-of-elections-in-sri-lanka/the-electoral-system
- *The MMP Electoral System Faces Political Challenges in Lesotho* —. (2016). *Aceproject.org*. Retrieved 15 March 2016, from http://aceproject.org/today/feature-articles/the-mmp-electoral-system-faces-political-challenges-in-lesotho
- *The Voting System*. (2016). *Europarl.org.uk*. Retrieved 14 March 2016, from http://www.europarl.org.uk/en/your-meps/european_elections/the_voting_system.html

- United Nations Development Programme. (2014) (p. 7). New York. Retrieved from http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Elect oral%20Systems%20and%20Processes/2122-UNDP-GE-bolivia.pdf
- Vollan, K. (2015). *Options for a Mixed Member Proportional System for the Parliament of Sri Lanka*. Presentation, Colombo.

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