



**A SYSTEM OF ELECTORAL REPRESENTATION
FOR SRI LANKA:
THE PRINCIPLES BEHIND THE CHOICE**

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1. Overview

Recent discussions about electoral reform in Sri Lanka have mainly concentrated on the introduction of a Mixed Member Proportional system (MMP) to replace the current system. The existing system of proportional representation is district-based, with a national component (National List). In approaching electoral reform, it is important to bear in mind the objectives and principles of reform. It is only once there is, to the extent possible, clarity and agreement on these that a system may be designed to achieve them. Some principles may be mutually contradictory and different people would weigh the relative importance of the objectives and principles in different ways. The solution will therefore have to be a compromise, balancing the various qualities of the system.

The aim of this Working Paper is to discuss various principles behind a system of representation for the lower house of Parliament,¹ and how an MMP system can fulfil these principles. The discussion is relevant also for elections other than for Parliament, but those issues will not be covered here. Towards this aim, the paper will also briefly discuss certain basic concepts regarding the MMP system and the most commonly cited reasons for reforming the electoral system.

Understanding the Mixed Member Proportional System

MMP is a mixed electoral system providing a proportional overall result, while allowing voters to choose individual candidates (most often) in single-member constituencies (SMCs). As opposed to the other common mixed system, the parallel system, which is made up of two independent votes, MMP uses the proportional representation (PR) method to compensate for any disproportionality in the results from the SMCs, making the total result proportional. In most countries, the vote for individual candidates is done in SMCs under a plurality or first-past-the-post system (FPP).

In MMP, the voters will normally be asked to cast votes for FPP and PR separately. This enables a voter to make a choice of an individual candidate for the SMC, but not necessarily vote for that candidate's party in the national PR race. Allowing voters to cast two ballots (one for FPP and one for PR separately) will give voters more choice. At the very least, it allows voters to choose the candidate they least oppose in the SMC, and the political party that is closest to their ideology in the PR race.

It is common to have more or less the same number of seats elected under FPP and as PR compensatory seats,² but other mixtures are possible. On one hand, one wants to have many SMCs since it gives a direct link to the voters, on the other hand, one wants to secure a proportional result. In a situation where the total number of seats in Parliament is

¹ The term 'lower house of Parliament' is used deliberately because there has been discussion on the possibility of the re-introduction of a Senate or upper house of Parliament. The system of election of members to the Upper house of Parliament will depend on a variety of factors and will not be discussed in this paper.

² In Germany (50-50 %) and New Zealand (58 – 42 %), there is about the same number of FPP seats and PR seats. New Zealand has a simple two-tier model with FPP constituencies and nationwide compensation. In Germany, the result is calculated at national level, but the seats are filled from province lists.

fixed,³ the former objective would result in a system with fewer PR seats, while the latter objective calls for a system with more PR seats.

There is never a guarantee that a certain mixture of FPP and PR will produce a proportional result. Independent candidates or small regional parties may win more seats than their countrywide result would justify, and a big party may win more FPP seats than their proportional share of the full membership of Parliament. Therefore, a certain disproportionality will have to be accepted from time to time. However, the more PR compensatory seats there is in the mixture, the lower would be the chance for that to happen.

Understanding Sri Lanka's Existing Electoral System

The electoral system introduced in Sri Lanka by the 1978 Constitution is based on PR. The system was subject to several changes between 1978 and 1988. The key characteristics of the current system include:

- Parliament consists of a total of 225 MPs, of which 196 MPs are elected from 22 electoral districts and 29 MPs elected in a nationwide constituency (National List).
- The number of MPs each electoral district is entitled to return is determined in the following way:
 - Each of the nine provinces is first allotted four seats ($9 \times 4 = 36$), and they are apportioned “equitably among such electoral districts” within the province.
 - The remaining 160 district seats ($196 - 36 = 160$) are distributed according to registered voters by using the method of largest remainder (See Article 98(4) – 98 (9) of the Constitution).
- The number of seats received by each political party at an election in an electoral district is determined in the following way:
 - Each voter can cast **one** vote to a political party and up to **three preferences** for candidates nominated by that political party.
 - The political party, which polls the highest number of votes in each electoral district, is entitled to one bonus seat in each district.
 - Only parties polling at least 5% of the total votes polled in that electoral district may win seats.
 - The seats of the district minus the bonus seats are distributed to the parties by the method of largest remainder. (Articles 98 (6) (7) and 99 (9) of the Constitution)
- The 29 National List seats are distributed in terms of Article 99A of the Constitution proportional (by the method of largest remainder) to the total number of votes polled by each political party in the entire country.

This system was the basis for all parliamentary elections in Sri Lanka held after 1988. As the number of seats returned by a political party was largely proportional (with some important exceptions) to the number of votes it received, this system seems inherently

³ As is the case in Sri Lanka where there is little political appetite to have a floating number of Members of Parliament.

more democratic than FPP which operated prior to this.⁴ The deviation from proportionality has been due to the comparatively small electoral districts combined with bonus seats, which in particular has been a disadvantage for the smallest parties and for mid-size parties with support scattered around the country.

However, since the mid 1990s there has been a clamour for reform of this system, especially close to or immediately after parliamentary elections. The major flaws articulated by those calling for reform are varied, but can be summarised as follows:

- As the electoral districts cover large areas (at minimum the extent of an administrative district), large amounts of resources were required to be expended by a candidate in an election campaign. This incentivizes corruption within the political system.
- The preferential vote system has led to fierce intra-party competition, which leads to more violence during elections.

It is important to note that changing the electoral system itself will not rectify all these issues. Other reforms, particularly on campaign finance, would also need to take place to achieve some of the stated goals. However, the electoral system can incentivise particular behaviour, which could have a positive impact on changing the political culture of the country, or at the very least, provide a disincentive for behaviour which has a negative impact on the political culture.

2. Principles that Underpin A System of Representation

This part of the paper will explain the principles identified by the authors as being important when designing a system of representation. This is by no means an exhaustive list and only represents the key ideas the authors thought necessary to discuss.

1. Proportionality

Proportionality is the degree to which votes are translated into seats in Parliament in proportion to the total number of votes. This is for many a question of fairness. Should a party winning 10% of the votes only win one 1% of the seats, or should a party with 35% of the votes win more than 50% of the seats?⁵ Parties represent different political views and may represent different groups of the society. Some would value that the Parliament is as representative of the voters as possible, in order for the legislative process to produce fair and responsive laws and policies.

⁴ The FPP system that operated prior to the 1978 Constitution resulted in strange and sometimes unfair results. For an example in the 1970 General election, the United National Party won 39.7% of the total votes, which resulted in 17 seats in Parliament (11.25% of the total seats in Parliament). The Sri Lanka Freedom Party won 38.6% of the total votes, which resulted in 91 seats in Parliament (60% of the total seats in Parliament). See A. Welikala, 'Representative Democracy, Proportional Representation and Plural Society in Sri Lanka' in R. Edrisinha & A. Welikala (Eds.) (2008) *The Electoral Reform Debate in Sri Lanka* (Colombo: Centre for Policy Alternatives) Ch.II at pp.12-13.

⁵ This is often the result under a FPP system.

2. Credible and Stable Governments

There is also a legitimate need for a stable and efficient government. Often stable governments are seen to be more probable if there is a one-party or one-alliance majority government. However, parties and alliances in Sri Lanka are not always very firm constructions, and they may in themselves represent looser coalitions. Nevertheless, a one or few party alliance may have a better chance of surviving a parliamentary term in office, than one based on much looser coalitions with many parties.

On the other hand, for a country like Sri Lanka, coming out of an armed conflict, ensuring the legitimacy of Parliament may be a challenge. If the communal diversity of the polity is not reflected in Parliament, the tendency to extra-parliamentary forms of politics⁶ may become more significant and could even turn violent. The FPP system used in pure Westminster models where 35% of the votes may turn into 55% of the seats in Parliament, and in turn produce a one-party majority government, may be less suitable in a post-conflict situation.

3. Reflecting Diversity: Minority Interests

A representative Parliament is not only about a proportional representation of parties. It is also about a Parliament mirroring the population along other important dimensions of identity, such as religion or ethnicity. Not least after a conflict, this aspect of representation is vital for the credibility and acceptance of the political system. Communities should be able to feel safe in their representation in Parliament and believe that they have a real possibility to influence policies and share power with the majority.

4. Gender Balance

Sri Lanka has a low representation of women in Parliament, not only in an international context but also compared to other South Asian countries.⁷ Diversity in representation also entails an acceptable gender balance. The aim is to have a system of representation which would lead to policies benefitting all segments of the whole population, not only one dominant segment of it.

5. Geographical Representation

In most countries, it is seen as a value that Parliament consists of members from across the whole country. In order to secure that, at least larger countries would divide the country into electoral constituencies. Geographical constituencies will strengthen accountability since voters are more likely to know the candidates running for elections.

⁶ Extra-parliamentary activities are not negative at the outset but if significant groups choose such activities *instead of* parliamentary participation, it may destabilise the country - even more so if such activities turn violent.

⁷ According to data compiled by the Inter-Parliamentary Union IPU) Sri Lanka is ranked 176 out of 193 countries (See <http://www.ipu.org/wmn-e/classif.htm> data as of 1st November 2016)

6. Accountability

Accountability describes the relationship between the voters and those elected. The more the voter can influence the choice of the persons elected, the more the elected are held accountable for their performance as the people's representatives. Under the current system, accountability is secured by the preferential voting system. However, a side effect of the system has been that candidates within the same party campaign against each other, and this has been seen as one reason for changing the system.

In representative democracies, parties are the cornerstone of policy formulation, and it is important that parties are held accountable to voters. The general principle is therefore that the voters know whom they vote for and that they have a genuine choice in terms of both parties and candidates. Within PR and closed lists, voters know the priority list of candidates, and therefore for whom they vote.

The smaller the constituencies are, the stronger the accountability may be. However, under a PR system, small constituencies will lower the degree of proportionality.

7. Simplicity and Intuitive Results

The system should be simple for the voters. That means that the ballot should be designed to reduce the possibilities for misunderstandings and spoiled ballots. The system should also produce intuitive results, which means that the public should find that the distribution of seats and filling the seats with candidates are done in a reasonable and predictable manner. It does not mean that everybody needs to understand the details of the mathematics, but the overall principles should be reasonably simple.

The system should also be relatively simple for election organisers when it comes to logistics and costs. However, the Election Commission will be able to have the expertise needed for the calculation of results even if the details may seem complicated.

8. Sustainability over Time

The system of representation should not be changed frequently, and in particular, it should not be changed for tactical reasons by shifting majorities. That is also a reason why the main principles underpinning the electoral system should be written into the constitution.

3. Application of Principles to the Mixed Member Proportional System

As described above, MMP is a mixed electoral system with a number of seats filled by a FPP system in SMCs, and another set of seats used as compensatory seats in order to produce a fully proportional result. A number of aspects of the system may vary from country to country and they should be decided by weighing the principles discussed above. In this section, we attempt to evaluate to what extent MMP meets the criteria discussed above.

Proportionality

MMP is a fully proportional system, provided that there are enough PR compensatory seats to make up for any disproportionality in the FPP part of the election. There is no guarantee that a given mix would work at all times, but a fifty-fifty national MMP system will normally produce a proportional result, and even sixty-forty in favour of FPP may work most of the time. However, adjustments to the model might increase the risk of disproportionality and therefore the model chosen might be a compromise between proportionality and other qualities.

Credible and Stable Governments

One quality, which may work against proportionality, is the need for stable government. Issuing some bonus seats to the biggest party or alliance may increase the chance of a one-party or one-alliance majority government. On the other hand, the larger the number of bonus seats issued the more disproportionate the result becomes. Moving further away from proportionality may make the government less credible. Balancing the various criteria may make it reasonable to issue a limited number of extra seats to the winning party or alliance. However, the system of awarding bonus seats should be done in a targeted manner that minimises random effects, and therefore the bonus seats should be issued at national-level, based on the nationwide result.

One measure against a very fragmented Parliament – and thereby a less manageable majority – would be to introduce a threshold for parties in order to win PR compensatory seats. Such thresholds are normally in the range of 1% to 5%,⁸ but would differ depending on whether the threshold is imposed at the national or sub-national level.

Reflecting Diversity – Minority Interests

As has been emphasised above, MMP is a proportional system. That means that every vote counts. More votes can give a party more seats, as opposed to FPP where it is sufficient to have the largest share of the votes, but votes beyond that will not bring more seats. In diverse communities, successful FPP candidates would normally represent the largest group or represent a policy which is acceptable to the largest group or voters. It will therefore not promote diversity in representation.

Seats won at the compensatory side of MMP are most often filled through closed lists of candidates. That means that candidates are nominated before the elections and ranked from one onwards to the total number of candidates. The electorate may be mixed in terms of communities, and a party would want to appeal to all groups in order to win their votes. Even if a party may have candidates from the majority community at the top, they may want to have minority candidates at prominent places in order to attract minority group voters. Such candidates need to be respected among their group in order to attract more votes, and then in turn more seats. The incentives for inclusion are therefore strong in PR systems with closed lists.

⁸ The practice varies a lot. Some countries would not have thresholds at all, in particular if the elections are held in geographical constituencies, in other countries, they would take different values. Some selected examples are, as of 2016: There is no threshold in for example South Africa, Finland, Macedonia and Norway at constituency level. The Netherlands has a threshold of 0.67%, Denmark has a threshold of 2% or winning one constituency seat, Argentina and Greece have 3%, Sweden (for compensatory seats) has 4%, and Germany has 5% or three constituency seats.

Gender Balance

Underrepresentation of women has been an issue in Sri Lanka. In many countries, there would be binding rules to promote gender balance. Such rules are easier implemented in PR than in FPP systems, and many countries have legal provisions requiring women to be prominently placed on candidate lists. For example, every second or third candidate on the list could be required to be female. Should the mixture of FPP and PR be 50% - 50%, a 50% requirement of women on the list would give 25% in Parliament, a one-third requirement to the list would give around half of that.

However, even without binding requirements, the incentives will over time work in favour of increased gender balance. The public may eventually not accept male dominated lists.

Geographical Representation

Geography is another dimension of a representative Parliament. If all MPs came from one geographical area, such as the district of the capital, Parliament would probably not be seen as a credible representative body. The FPP seats are filled from SMCs, which would cover the whole country and would therefore provide geographical representation. Filling the compensatory seats from provincial lists, rather than from nationwide lists, would strengthen the geographical representation. Province-based lists may be used in provincial and three-tier models, where compensatory PR seats are calculated on the basis of the province results, and even in national MMP systems, where such seats may be calculated on a national basis but allocated at a provincial level.

Accountability

Accountability is strong with FPP elections where the voters get to vote for a particular candidate. However, also in PR, accountability can be strong. With open lists (preferential voting), the voters may choose candidates within the list of their choice. In Sri Lanka, this has led to intra-party competition and the proposal now is for closed lists, which means that the lists are fixed prior to the elections. They would be ranked from one onwards to the total number of candidates, and the seats won by a party would be filled from the top of the lists downwards. The voters would therefore know for whom they are voting. If a party wins five seats, the five top candidates are elected. With province-based lists, the chance for the voters to know the qualities of the candidates would be higher than with national lists, so accountability would be strengthened with such lists.

It is sometimes claimed that a mixed system would produce two sets of members of Parliament with different status. Those winning a FPP may claim that they have a more direct mandate from the voters, whereas those elected by PR might claim that they represent the whole country or a province. It is important to emphasise that all members of Parliament elected by MMP are directly elected. The only difference is the system of representation, both being legitimate with different qualities. Those winning FPP seats would often represent the largest party in the constituency, whereas those not winning, may still enjoy a high confidence within their party, even if it is not the largest. Similarly, the candidates of a party list collectively contribute to the success of the list. Once elected, all Members of Parliament are responsible to their electorate and there is no difference in their legitimacy or status.

Simplicity and Intuitive Results

MMP is simple for voters. In Sri Lanka, voters are used to giving a vote for a party and up to three preferential votes within a party list. With MMP, they will be able to give one vote for an individual candidate and one for a party, and the system will most likely appear simpler than the current system. However, as with any change in an electoral system all stakeholders will have to invest in voter education at the beginning of the change.

In FPP, the candidate with the highest number of votes will be elected. The PR vote will result in a proportional result at either province or national level. 10% of the votes will result in 10% of the seats. The current system is proportional at district level, except that there is a bonus seat given to the biggest party in each district, which makes the system less proportional. The result of an MMP election may therefore seem more intuitive than the current system.

Sustainability over Time

The electoral system should not change with shifting parliamentary majorities. The constitutional protection will make changes difficult anyway, but it is also important to have a broad agreement on the rules of the game. Consensus will not always be possible but efforts should be made to get as many parties and groups subscribing to a compromise as possible.

Related Legal Reforms

Reform of the system of representation may improve important aspects of the electoral processes, but may not be sufficient to make the process as free and fair as people may want. The prominence of money in elections and the effects of top driven parties may need other measures. Political finance and internal democracy in parties may be areas of legal reforms, and those may include: transparency in the funding of political parties, regulation of permitted sources for funding, ceiling on donations from a single source, ceilings on spending in particular during elections, etc. In addition, access to media may be regulated. Regulations on internal party democracy may include methods of electing party leadership and methods for nominating candidates for public elections.

4. Conclusion

There is a large variety of systems of representation available to countries. When the main system, in our case MMP, has been selected, there is still a number of options which need to be decided on, such as the number of tiers (national or provincial basis for PR element, or a combination of both), the mixture of FPP and PR in terms of seats, electoral threshold, number of ballots, etc. The choices will give different weight to the qualities that the system should fulfil.

Political parties may often take short-term considerations into account in deciding which system would benefit them most, usually based upon past election results. Voting behaviour is changing over time, and there are many examples of parties miscalculating the effect of a system of representation on future elections. The best advice is therefore for all stakeholders to start the review of a new system by establishing the criteria the system should meet, and make decisions on what system realises those criteria the best,

and what is simply the fairest system. Then it is up to the voters to decide the composition of future Parliaments.