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About the Commission

THE LAW REFORM COMMISSION OF MAURITIUS consists of –
(a) a Chairperson, appointed by the Attorney-General;
(b) a representative of the Judiciary appointed by the Chief Justice;
(c) the Solicitor-General or his representative;
(d) the Director of Public Prosecutions or his representative;
(e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
(f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
(g) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
(h) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
(i) two members of the civil society, appointed by the Attorney-General.

Under the direction of the Chairperson, the Chief Executive Officer is responsible for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is responsible for taking the minutes of all the proceedings of the Commission and is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.

The Commission may appoint staff on such terms and conditions as it may determine and it may resort to the services of persons with suitable qualifications and experience as consultants to the Commission.
Executive Summary

Opinion Paper “Aspects of Electoral Reform”
[May 2014]

On 24 March 2014, the Prime Minister released the Government’s Consultation Paper on Electoral Reform, which contains firm proposals on issues on which there is broad agreement, and calls for discussion with options on those aspects on which there is no broad consensus yet. Government invited the views of all interested parties on the Consultation Paper: Proposals/comments/suggestions to be sent by 5 May 2014.

This Opinion Paper contains the views of the Law Reform Commission on Electoral Reform. The Commission considers the objectives of the reform should be:

1. The elimination of Communal Representation (as per system of allocation of additional seats under First Schedule to the Constitution, commonly known as “Best Loser System”) whilst ensuring representation of diversity of electorate;
2. Fair Gender Representation through greater participation of women in National Assembly elections and their enhanced presence in Parliament;
3. Fairness to Political Parties and to the Electors through increased correspondence between share of votes and share of seats in National Assembly whilst ensuring stable, effective and responsive Government and discouraging emergence of communal parties.

These objectives could be attained *inter alia* through introduction of some form of proportional representation [PR] in the electoral system as the first-past-the-post-system [FPTP] may not ensure a fair representation of all interests, and by providing that a Political Party shall be under the obligation to ensure gender representation on its list of candidates.
Views on Government’s Consultation Paper on Electoral Reform


(I) Elimination of Communal Representation

2. The Commission expressed its agreement with the views of Professor S.A. De Smith, Constitutional Commissioner, in his November 1964 Report [Sessional Paper No. 2 of 1965, Report of the Constitutional Commissioner], about any form of ‘communal representation’:

“So some of the proponents of communal representation sought to show that this would discourage communalism and strengthen tendencies to vote along party lines; others conceded that it would encourage communalism but asserted that communalism was in any event an ineluctable fact of life in Mauritius. My own belief is that the immediate effect of the introduction of communal representation in any form would be to intensify communalism by endowing it with the accolade of legitimacy, that candidates in an electoral campaign would experience irresistible temptations to appeal to the narrower communal prejudices, that there would be increasing demands for communal representation in other walks of private life, and that the long-term effects would be deleterious both to the minorities which now think of it as a safeguard and to the general welfare of the island.”

The system of communal representation is contrary to human dignity and is inimical to the rule of law.

3. The Commission also took note that the system of allocation of additional seats to most successful unreturned candidates at legislative/national assembly elections on the basis of appropriate community and appropriate party, according to the First Schedule to the Constitution, while giving effect in some measure to communal considerations, institutionalized the political party as a vehicle to ward off those evils and dangers by encouraging multi-communal parties.

As pointed out by Justice Lallah (as he then was) in Sir Gaetan Duval v François [1982] MR 84:

“Unlike the case in constitutions where only one political party is institutionalized, our Constitution conforms to the model which implicitly recognises - and indeed encourages - a multiplicity of parties. With this essential difference, however, that elsewhere, first, the electoral law does not necessarily recognize the political party as a participant (nomination and ballot papers in the
United Kingdom, for example, show only the names of candidates) and, secondly, the existence of political parties is traditionally or conventionally determined by practical considerations of forming a government. Our Constitution, however, though permitting independent candidates to stand for election in the limited, though important, sphere of the direct election of members of Parliament, nevertheless expressly recognises, in Schedule I, the existence of political parties.

A complex system was devised in Schedule I to our Constitution which, while giving effect in some measure to communal considerations, institutionalized the political party as a vehicle to ward off those evils and dangers. Thus, in this system, communal parties could not expect to fare well in all twenty one constituencies. In normal circumstances, no independent candidate nor any party which had not returned at least one candidate could participate in the allocation of additional seats. But, most importantly, while the allocation of the first four of the eight additional seats was made to be determined by communal considerations, the party was given the constitutional guarantee to claim its rights in relation to the allocation of the remaining four seats a measure clearly designed as much to encourage multi-communal parties, if they had any pretensions to form a government as to prevent the result of the elections from being frustrated by depriving a party of a majority that it had democratically won. And the system of block voting was called in aid, if only with variable possibilities of success, to strengthen the notion of party politics in the mind of the electorate."

4. The Commission is of the view that one of the main objectives of the Reform should be the Elimination of Communal Representation (as per system of allocation of additional seats under First Schedule to the Constitution, commonly known as “Best Loser System”) whilst ensuring representation of diversity of electorate. This objective can be attained through introduction of some form of proportional representation [PR] in the electoral system, whilst maintaining the current first-past-the-post-system [FPTP].

5. The Commission is in favour of a closed, rank-based PR list, as it is in line with best international practice.

It shall be the responsibility of political parties to ensure that candidates on the PR list and for constituencies represent the diversity of the electorate.
(2) **Fair Gender Representation**

6. The Commission is also of the view that there is a need to correct the under-representation of women: there should be Fair Gender Representation through greater participation of women in National Assembly elections and their enhanced presence in Parliament.

7. The Commission considers the major responsibility for correcting the massive gender imbalance rests with the parties.

8. The Commission is favourable to the proposition that provision be made:

   (i) For at least one third of the total number of candidates from the FPTP constituencies to be of either gender;

   (ii) That neither gender represents less than 33 % of candidates on PR Party list;

   (iii) That there should be at least one person of a different gender out of every 3 sequential candidates on the PR list.

(3) **Fairness to Political Parties and to the Electors**

9. With our system of multi-member constituencies, where constituencies are mal-apportioned, there is bound to be discrepancy between share of votes obtained by a political party and its share of seats in the National Assembly. There is the serious risk that a party or an alliance of parties may win the majority of seats in the National Assembly whilst another party or alliance of parties may obtain the majority of votes of electors!  

10. The current mal-apportionment of constituencies is a problem which needs to be urgently addressed as the requirements laid down by section 39(3) of the Constitution are not complied with. This may lead to a challenge as to the fairness of elections to National Assembly.  

11. The Commission considers the introduction of the PR System would help bring about Party Fairness through increased correspondence between share of votes and share of seats in National Assembly. The PR must be designed, however, so as to ensure there is Government stability and the emergence of communal parties is discouraged.

12. The Commission also considers that, with the introduction of a dose of PR, there may be a need for anti-defection provisions as the successful persons on a party list will have got into Parliament because of the share that the party as a whole received of the national vote, and not because of a particular vote for him or her.

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