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<u>INTRODUCTION</u>

1. On Tuesday 23 April 2002, a motion was passed by the National Assembly appointing a Select Committee of the Assembly in the wake of the report and recommendations of the Commission on Constitutional and Electoral Reform 2001\2002, better known as the "Sachs" Commission.

2. The Sachs Commission had been appointed by Government. It was composed of Mr. Justice Albie Sachs, member of the South African Constitutional Court as Chairman, Messrs B.B. Tandon, Election Commissioner of India and Robert Ahnee, a former Judge of the Supreme Court of Mauritius, as members. The Sachs Commission was called upon to "*make proposals regarding representation in Parliament on a proportional basis within the existing electoral system*".

3. When considering this item, the Commission noted[1] that –

> *... there was unanimity that the first past the post (FPTP) system in the three-member constituencies frequently produced results which were grossly disproportionate to the share of votes obtained by the different parties. At times, although obtaining a substantial vote, the Opposition was either completely or nearly completely eliminated. Thus, in 1982 and in 1995 the result was 60-0, while in 1991 and the year 2000 the presence of the Opposition barely reached symbolical levels. The purpose of introducing proportionality into the system was accordingly to correct the inordinate imbalances created by FPTP and only marginally compensated for by the Best Loser System*

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[1] para. 33

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4. The Commission also noted[2] that –

> As a matter of constitutional principle, a big question mark must accordingly be put against any electoral system which perpetuates a situation in which a party supported by substantially less than three-quarters of the electorate, possibly even less than half the voters, can push a constitutional amendment through in the same way is as it steers any ordinary law through Parliament. There is a qualitative difference between a law altering the nature of the electoral system in dealing with fundamental rights, and one raising or lowering the level of sales tax.

5. The Commission examined five possible models which would introduce some form of proportional representation in our electoral system. After consideration, the Commission recommended that –

> (i) There shall be 62 seats in the Assembly as at present, with 20 constituencies each returning three members and Rodrigues two members.

> (ii) There shall be a further 30 members chosen on the basis of lists provided by parties receiving more than 10% of the national vote. Such lists will be in descending rank of eligibility. They will be published in advance of elections and may contain a restricted number of names of persons standing for constituencies (should such persons in fact end up being as constituency members then their names on the list would be disregarded). The objective of the lists will be to introduce a measure of compensation in the outcome of elections so as to make the final totals of seats held by the different parties reflect more accurately the support that the parties have received in the country at large. The lists will be composed in such a way as to secure greater gender representativity and to provide the reassurance that the Best Loser System has until now provided.

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[2] Para. 37

6. The terms of reference of Your Committee require us, in the wake of the report and recommendations of the Sachs Commission –

(a) to examine further the Commission's report and the recommendations in the matter of the introduction of a measure of proportional representation in our electoral system;

(b) to make recommendations, without prejudice to the existing best loser system, regarding the modalities for the implementation of the Commission's recommendations that the National Assembly should be composed of 62 members as at present and of a further 30 members chosen proportionately from parties having obtained more than 10 per cent of the total number votes cast at a general election; and

(c) to propose appropriate legislative measures to give effect to the recommendations.

7. Your Committee was composed of nine members appointed by Mr Speaker on 07 May 2003, viz.-

   1. Honourable Emmanuel jean Leung Shing
   2. Honourable Raviraj Yerrigadoo
   3. Honourable Mrs. Leela Devi Dookun Luchoomun
   4. Honourable Ivan Collendavelloo
   5. Honourable Govindranath Gunness
   6. Honourable Vedasingam Baloomoody
   7. Honourable Madan Murlidhar Dulloo
   8. Honourable Dr. Mohammud Siddick Chady
   9. Honourable Louis Joseph Von Mally

Your Committee met for the first time on 10 May 2002 when the signatory was unanimously elected Chairman of the Committee.

8. On 17 May 2003, Your Committee advertised an invitation to all interested persons to submit memoranda. Your Committee also invited certain interested persons to present their views to Your Committee. Your Committee is thankful to all those who submitted memoranda and who responded to its invitation to appear before it.

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9. Your Committee held 16 sittings.

10. Your Committee's task is to make recommendations on the manner in which the Commission's recommendations are to be implemented. Such implementation must be made within the following constraints, viz.-

    (a) no prejudice is to be caused to the existing best loser system ;

    (b) in addition to the 62 members elected as at present, a further 30 members are to be chosen proportionately from parties having obtained more than 10 per cent of the total number votes cast at a general election.

11. In a nutshell, Your Committee is to recommend in what manner these 30 additional members are to be chosen.

12. The Sachs Commission fully analysed the requirements of a new system for Mauritius. It was fully aware that Mauritius required continued stability and at the same time required to respect the wishes of the electorate. Devising an electoral system is as complicated a task as it is ungrateful and unrewarding. There is no perfect representative system. But short of a tyranny, democracy must place at the helm of the nation people who have been chosen by the people.

13. Our anguish has been to preserve the balance between stability and fairness ; efficiency and representativity ; governance and democracy.

14. We paid particular attention to the issues raised by the Commission[3] -

> *Our task, however, was not to design an electoral system that would be theoretically ideal for Mauritius. What we had to do was to use the existing electoral system as a starting-point, and propose reforms that could help to remedy the particular defects and incongruities that had emerged. Accordingly, the questions we asked ourselves when making our recommendations were the following:*

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[3] Para. 36

How can a greater degree of fairness be introduced so as to avoid a 60-0 result such as was the case in 1982 and 1995?

In correcting the over-representation of the leading party or alliance, how could we nevertheless take account of the need to secure effective government?

How could the new proposals be grafted on to what already exists so that they would not be unduly strange and disturbing to the electorate, while securing broad acceptance because of responding to manifest defects in the present system?

How could the system be devised so as to be easy to operate and simple to understand?

Finally, what would the likely social and political impact of the innovation be on the unity of the diverse Mauritian nation and on access of all to public political activity?

15. Elections on the strict basis of proportionality would ensure that each party gets a number of seats which is proportional to the number of votes polled. This system (the nearest being the Israeli system) is bound to lead to profound instability with the largest party being at the mercy of fractious groups and having to enter into party-to-party negociations on each and every material issue facing government.

16. On the other hand, FPTP perverts basic rules of democratic representation. The more so that the drawing up of electoral boundaries provides an additional possibility of perversion.

17. Because of the need to avoid these perversions, the universal tendency is to establish mixed systems. The consensus, in Mauritius, is to give priority to stability and governability while paying due consideration to representativity.

18. We are humbled and extremely advantaged for having benefited from the clarity of the explanations given by Sachs. But also for having read the various articles, which from time to time have appeared in the press and by the submissions, made before us. We have paid due regard to all opinions expressed but we have deliberately chosen not to name any of these

contributors but, in many instances, have plainly adopted some of their arguments. We must be contrite about having proceeded as we did for we have failed to pay homage to these contributors. They will recognize themselves and, in the case of well-publicised contributors, the public will recognize them.

19. This report is divided in five chapters. The first chapter will be devoted to a summary of an historical perspective. We cannot discuss electoral reform without first approaching the historical perspective. Only a proper understanding of the events leading to the drafting of our Constitution can lead us to fully grasp the context of the times and the reasons behind the setting up of that system. Our work does have a historical context. The struggle for independence was marred by struggles of interests based on communal appurtenances which are, fortunately, only a matter of history. But our electoral system was bestowed upon us as a result of that desire of politicians to secure an adequate representation of all sectors of the population.

20. The second, third and fourth chapters will be devoted to a discussion of the aspects of the proposed reform while the fifth chapter will consider an alternative submission made.

CHAPTER ONE

A historical perspective

21. Mauritius is divided into 21 constituencies. All these constituencies return three candidates at general elections except for constituency no. 21 (Rodrigues) which returns two candidates. All candidates are returned on the FPTP system. In addition, a maximum of eight best loser seats are allocated in accordance with the provisions of the First Schedule to the Constitution.

Section I

The Road to Independence

22. As far back as 1956[4], it had been suggested that proportional representation should be adopted in Mauritius. The first London Agreement[5] rejected this proposal. Two possible alternatives were also examined, i.e. a Party List system of voting in multi-member constituencies or majority voting (FPTP) in single-member constituencies.

23. At the 1957 London Conference, the participants endeavoured to set up an electoral system that would enhance the development of voting on grounds of party affiliation rather than on race or religion. It was agreed that our electoral system should facilitate the development of voting "*on grounds of political principle and party rather than on race or religion*". In the same breath, however, it was also agreed that our electoral system should "*provide an adequate opportunity for all the main sections in (sic.) opinion in Mauritius to elect their representatives to the Legislative Council in numbers*

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[4] V. Sessional Paper No. 3 of 1956, Despatch of the Secretary of State to the Governor, 10 February 1956.
[5] 1 March 1957; V. Parliamentary Debates, House of Commons, Vol. 566, Cols. 115, 116 and 117)

corresponding to their own weight in the community". Thus became gradually ingrained in the minds of the Mauritian population that the 1960's would be the era of Mauritianism, such Mauritianism being enhanced by adequate provisions to cater for proper representation of ethnic groups. Ethnic representation the agenda of the day. Proportional representation was equated only to ethnic reassurance.

24. It was agreed that a Commission be set up to examine the possibility of setting up single-member constituencies, the overall objective being to ensure that each main section of the population would have adequate "*opportunity to secure representation in the Legislative Council corresponding to its own number in the community as a whole*". Failing this, the Commission would envisage the setting up of 11 three-member constituencies, such constituencies being roughly equal in the number of votes.

25. The London Agreement also envisaged the nomination of a maximum of 12 members, such nomination to be effected without frustrating the results of the elections but to ensure representation of "special interests" or those who had no chance of obtaining representation through election.

A. Trustam Eve paves the way for "best losers"

26. Sir Malcolm Trustam-Eve chaired the Commission set up under the 1957 London Agreement. He divided Mauritius into 40 constituencies. He further recommended that each of these 40 constituencies would return one member by majority voting (FPTP).

27. Trustam-Eve also recommended the appointment of "nominees". The Governor would appoint nominated members to be selected among those who had lost the elections but whose results displayed that they had a reasonable following. Nominated members would also be appointed to as "*to secure that the proper proportions are in fact attained*". For that purpose, Trustam-Eve

divided Mauritians into Indo-Mauritian Hindus, General Population and Indo-Mauritian Muslims[6].

28. On 5 February 1958, the Secretary of State sent a despatch[7] to the Governor confirming his approval of 40 single-member constituencies. But he also instructed the Governor to exercise his power of appointment of nominees to the Legislative Council "*in such a way that each of the three main sections* [8] *.. are so far as is possible represented in the Legislative Council in numbers broadly corresponding to their proportion of the population as a whole... In appointing members ... you should feel free to select candidates who had been unsuccessful in the election if, in your opinion, they had received a reasonable amount of support, as well as persons who had not stood at the elections. I need hardly say that no appointment of this sort should be made which would frustrate the result of an election...*"

29. This was to be the ancestor of the best loser system. This also led to that popular adherence to the primacy of constituency vote over any other form of poll.

30. The *Mauritius (Constitution) Order in Council 1958* provided[9] for the election of 40 elected members and a maximum of 12 nominated members. In 1964, the number of members nominated by the Governor was increased to a maximum of 15 [10].

31. It is a matter of record that no Governor ever dared to nominate members in such a manner as to upset the majority emerging from the popular vote. The power to nominate members was exercised along the following lines –

- to ensure that ethnic or communal representation was safeguarded ;

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[6] Most Sino-Mauritians had not yet been naturalized and were not then considered to constitute a significant part of the population.
[7] Despatch of Alan Lennox Boyd to Sir Robert Scott, KCMG etc…, Governor of Mauritius ref. PAC 36/13/01 ; Mauritius No. 50 dated 5 February 1958
[8] See footnote 6.
[9] Section 17, Mauritius (Constitution) Order in Council 1958
[10] Section 25, Mauritius (Constitution) Order 1964. But the Governor never nominated more than 12.

- when selecting nominees, regard should be had to persons who, though losing the electoral contest, showed that they commanded sufficient support in their electorate (for instance, best losers) ;

- even nominees who had not stood as candidates should be able to demonstrate that they had substantial support within the population;

- nominations should not be effected in a manner that would frustrate the will of the people.

32. The list of nominees was not known in advance and was, at the end of the day, within the discretion of the Governor.

B. From Banwell to Stonehouse – Best Losers

33. The 1961 London Conference steered clear of discussions on our electoral system. Secretary of State Macleod made a statement that Professor de Smith would visit Mauritius as Constitutional Commissioner. This was enough to satisfy the political leaders of the day. De Smith came to Mauritius in 1964. His visit was followed by that of Mr. Greenwood, Secretary of State for the colonies in April 1965.

34. The Lancaster House Conference of September 1965 failed to come up with proposals for an electoral system and the British Government appointed another Commission. This was to be the Banwell Commission of 1966 [11], which met with strong popular disapproval leading to a heated debate in Parliament. The British Government finally despatched John Stonehouse, MP[12] to Mauritius. On 4 July 1966, Stonehouse recommended the institution of the present best-loser system. The introduction of that unique system was considered to be a mode of PR but based on communal appurtenance.

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[11] Report of the Banwell Commission on the Electoral System with Despatch to the Secretary of State, Sessional Paper no. 5 of 1966.
[12] Then Parliamentary Under-Secretary of State for the Colonies

35. It is a matter of historical record that Gaetan Duval, Abdool Razack Mohamed and Seewoosagur Ramgoolam were all satisfied with this system. After an election, a proportion was to be worked out on the basis of the communal appurtenance of candidates and losers were to be declared winners on the sole basis of their community. In 1982, it was decided that the proportion would be worked out on the basis of the 1972 census. In 2003, we are unable to determine the exact proportion of communities in Mauritius on account of the census which determines religious and not communal appurtenance.

36. Fortunately for Mauritius, the debate has now been shorn of the ethnic and communal emotions which shrouded the thinking of the 1960's. Mauritius is unanimous on the necessity for reform based on political divides. And there is unanimity is that a measure of proportional representation should be introduced so as to ensure that our electoral system becomes fairer, more democratic, more representative and gives an adequate opportunity for those who vote against Government to have their voices heard in Parliament. At the same time, we need to ensure that we retain the degree of stability which will ensure stable and efficient government as part of the democratic process.

37. Our constitutional godfathers were motivated by the desire of ensuring communal representation. Over-representation of political parties was not the prime consideration. Banwell[13], for instance, felt that the fears of under-representation were exaggerated and that "*any party which is likely to be able to win over 25 per cent of the votes cast is not very likely to be grossly under-represented, given the constituencies and the number of seats which we are recommending ...*". It was felt that the electoral boundaries afforded sufficient protection. Indeed, the 1963 results were enough to allay the fears of party over-representation.

Section I I - Recent history

38. Nobody ever predicted 1982.

39. By the 1980's, Mauritius had ceased voting along communal lines and Mauritians adopted a party line in their decision-making process. That process of change was bound to fail a system that had been devised to ensure adequate representation of communities. 1982 brought home to the people of Mauritius that there was an inherent unfairness within our electoral system. The Labour Party obtained a substantial electoral support of more than 30% of the votes and, yet, obtained no seat in Parliament save for four best loser seats which would be allocated on communal grounds and not on grounds of party representation.

40. Over the years, since 1982, every political party has rallied round the proposal for reform. True it is that a measure of cynicism led political parties to fight reform when they were in power and to advocate same after an electoral defeat. The same has happened in the United Kingdom where the Conservative Party staunchly advocates reform when in the Opposition. The present Labour Party in power in the UK has also turned its back on its programme of reform for general elections although, it has not shied away from introducing PR for the Welsh and Scottish elections and even for the elections for the City of London. And the Liberal Democrats have recently felt bound to abandon their platform of electoral reform when faced with Tony Blair's negative reactions to reform.

41. In 1991, the MSM/MMM alliance, with 944,521 votes (i.e. 55.36%) secured 57 seats while the Alliance PTR/PMSD with 670,631 votes (i.e. 39.3%) secured only 3 seats.

42. The 1995 results show that the MSM/RMM alliance, with almost 20% of the total national vote, could not secure even one seat in the Assembly. Not even a best loser seat ! On the other hand, the PGD, with barely more than 6 % of the popular vote succeeded in obtaining one best loser seat. So did the MMP/Hizbullah Party Alliance with less than 2 % of the national vote !!!

V. para. 33

43. The same comments apply to the 2000 elections and they are clear illustrations of results frustrating the polls.

CHAPTER TWO

Fairness and Stability

44. There is no perfect electoral system. And there is no electoral system which will meet the approval of one and all. Whilst everybody may agree as to what is bad with the present system, such unanimity will never be found when considering the alternative. The overall objective is to achieve a balance between fairness and stability. After all, the overriding consideration must be to preserve stable and efficient government while ensuring fair and adequate representation.

Section I

The inherent dangers of the present system

45. All political parties have been victims of the present system. Everybody finds in this system an element of unfairness in that it ousts from the system a political party which rallies a substantial portion of the electorate. The huge disporportionality between votes polled and seats received is such that every Mauritian, at one stage of his electoral life, can say that, at least once, he has felt frustration with the results of general elections. The chance that we have is that, to-day, the need for reform is felt also at Government level. No reasonable Mauritian can be heard to say that a political party ought to be expelled from political life when a substantial portion of the electorate had voted for them.

46. The situation is worse when we consider that leaders of the magnitude of Ramgoolam, Jugnauth, Duval, Mohamed, Bissoondoyal and Berenger could,

at a stage of our history, have been expelled from Parliamentary affairs when their parties had polled a substantial portion of the votes. And when they, themselves had, in their respective constituencies, polled a substantial number of votes.

47. How can we continue to live democratically in a system that distorts the wishes of the electorate to the extent that has been demonstrated above. A system which ousts 20% of the electorate from our democratic institutions is not a system that does justice to political realities. There is a crying need to reform a system that rejects a SSR or a SAJ in spite of their 40 % vote capabilities or a Berenger who in 1987 polled almost 50% of the votes. And a system which, in the same breath, admits to its Parliament a party which scores 6% of the votes or even 2% !!!

48. In 1983, candidate Dr. Kasenally could not secure a seat with over 47 % of the votes while candidate Ramoly got in on a BLS with 16 %. In 1987 candidate Berenger was unreturned with 49 % of votes while candidate Finette was returned with 47 %. And in each case, the two candidates were of the same "appropriate community".

49. The problem with our FPTP system is that it breeds within itself an inherent perversity which, if left unchecked, may one day lead us into severe civil commotion. And it is in order to rid the system of this inherent perversity that the political class now wants to find a fairer way of ensuring democratic representation through a fair electoral reform.

50. Any simulation will establish that, in the appropriate context, it is hypothetically possible for a party to control the majority with less than 45% of the votes. In an extreme hypothesis (which has not yet been verified except on simulations), it is remotely possible for a party to win more than 75% of the seats with a minority of the votes. There is a patent likelihood of a party obtaining the majority with a minority of votes. This would be the classic example of the returns frustrating the results of the polls.

51. That is not a reason to introduce a system which would threaten stability.

Section II

The requirements of reform

52. It must be stressed, over and over again, that the Sachs Commission does not propose a "corrective" measure. The word "corrective" implies the allocation of seats on the basis of the vote to correct a communal or political imbalance. The best loser system, in that sense, is a pure corrective measure. And it allocates seats to losers and not to winners.

53. What Sachs recommends and what Your Committee must implement is in fact the introduction of a compensatory PR formula in order to ensure that a party which obtains the adherence of at least 10% of votes can be represented in Parliament.

54. . In the extreme, a strict PR system whereby the additional members would be chosen strictly in accordance with the proportion polled by their party, ensures proper representation. But this opens the door to grave instability. One simulation even suggests that over representation would be increased. No electoral system can be said to be workable where it provides the perfect recipe for instability. Further, there is a need not to encourage a proliferation of small parties.

55. Indeed, the majority of the electorate may not be held hostage by a system which empowers small parties to the extent that Government is bound to alter its policies in order to ensure stable government.

56. Following the elections for the Rodrigues Regional Assembly, certain fears have been expressed after the allocation of additional seats to the party which had secured a minority of votes in the "constituency" vote. Mauritius has adopted a simple compensatory formula for Rodrigues. This was secured by means of a unanimous vote of the National Assembly.

57. In Rodrigues, electors have three votes. For his local region (or "constituency"), the elector votes for two candidates. Then he casts a third vote for the party of his choice. For instance, he may vote for two candidates of different parties but still make a preferred choice for the party which he feels should "rule" Rodrigues.

58. Following the elections at constituency level, the OPR secured 8 seats (i.e. 66.66%) when, in the aggregate, they had secured only 54.97 % of the votes. On the other hand, the MR. secured only 4 seats (i.e. 38.34 %) when, in the aggregate, they had secured 43.54 % of the votes. The application of the mixed system applicable under the Rodrigues Regional Assembly Act resulted in the allocation of 4 seats to the MR.

59. Following the results in Rodrigues, certain commentators in Mauritius expressed some apprehensions which can be expressed as follows –

• How can the "results of the poll" be thwarted by the application of a mere formula ?

• How can a "comfortable" majority be transposed into a smaller majority in terms of seats in the Assembly ?

• The ultimate results were such that that a minority party could have easily obtained a shift of allegiance of 2 members and this would have resulted in a government which had not been democratically elected.

60. It is perhaps good to note that these fears were expressed in the island of Mauritius but not in Rodrigues. This is certainly because of the vast and effective campaign of Education which the Electoral Commissioner's Office relentlessly, efficiently and discreetly led to explain this new system to the electors. The active participation and unstinted adherence of the Rodrigues political parties to this campaign was decisive. The final test, surely, must be the unanimous approval of the Rodrigues electors.

61. These fears should be allayed. Failing which, the Sachs Commission will have been all in vain. The direct answer to the comments is that, contrary to the system of best losers, those who are elected on a party list are directly elected as victors and not as losers. Secondly, there is a direct poll in the course of which electors directly choose the party which they want to be in the majority. Thirdly, the electors know full well for whom they are voting since the list of candidates is published in advance. Fourthly, there is no conversion of a "majority" into a minority since the final results only serve to proclaim the reality of the vote and not the contingency of an unfair system where the minority becomes the majority.

62. At the end of the day, we need to know what we want. It does appear incongruous to clamour against the unfairness of the present system and we agree that we require a dose of PR to mitigate the rigours of the system. We ought not therefore to be surprised when a dose of PR precisely achieves this result.

63. But the huge difference between Rodrigues and Mauritius is the size of the electorate and the size of the Assembly. One need not be a great mathematician to understand that relative percentages applied to larger figures yields a greater margin in the absolute results. In Rodrigues, the OPR gathered 55% of the votes and the MR, 44%. But the OPR won two thirds of the seats. When applied to an Assembly of 62, the margin would be greater and would ensure stability while guaranteeing fairness to the losing party.

64. Sachs was clearly mindful of the need to assuage the fears of instability. His recommendations have the great merit of not only balancing but also of giving preponderance to the need for stability.

65. The Sachs recommendations strike a balance between the need for stability and the need for fairness. Germany strikes the balance right in the middle with 50 % of the seats for both modes. New Zealand has opted for 55 % / 45 % while in Wales it is 67 % / 33 % in favour of FPTP. The Sachs recommendations where only 30 out of a maximum of 100 seats (including 8

BLS) would emanate from a party list ensures that the results of the constituency polls will not be frustrated.

66. The issue, therefore, is not to install "corrective" measures as in the best loser system where losers win on the sole basis of community. The issue is to design a system which respects the will of the electors who make a democratic choice for the party they wish to be in power. And this system requires that a compromise be found between fairness and stability by applying a compensatory formula based on actual votes polled. This is probably where the Sachs Commission has paved the way for an advancement of democracy in Mauritius. Let it be said, with respect, that the Sachs Commission was not acting on a frolic of its own and has not made of Mauritius an experimental station in democracy. Sachs based himself on proven experience in other countries.

67. In Rodrigues, a further provision has been inserted to guarantee to the party which wins the majority of votes that it will, in any event, retain its majority by securing for such party 50% of the seats plus 1. We prefer leave it to the National Assembly to decide.

68. To conclude on this Chapter, we may again quote Sachs which recommends a model -

> *"... focussed on correcting under-representation of the Opposition without challenging the undisputed right to form the government of the party or alliance that gains a majority under the FPTP system". A list must be published in advance of the elections. The PR list is now well-established in several countries where electors vote for a list in order to show their preference for a party. We all know that people now vote, in their majority, for a party and not for the individuals. But at the back of their minds, they do look at the value of the candidates forming part of the party. Hence, some electors may look for the feminine content of the list or the participation of trade unions."*

CHAPTER THREE

Retaining the present system

69. Your Committee considers that the mixed compensatory formula propounded by Sachs is particularly suited to three-member constituencies where a minority of voters do allocate "sympathy" votes without any intention of sending that particular party to power.

70. The allocation of the 30 additional seats must be easily understood. It is a fair system which is not repugnant to our democratic thinking.

Section I – The Election of Sixty-Two members

71. Our present system returns 62 members to the Assembly on the "first past the post" system. Our terms of reference enjoin us to retain the present system, which has worked reasonably well over the years whilst calling upon us to devise modalities for redressing the dangers of party under-representation.

72. The First Schedule to our Constitution provides for the return of three members per constituency except for Rodrigues which returns two members. These members are returned "in such manner as may be prescribed". The Representation of the People Act prescribes the manner in which such election is held. In a nutshell, once Parliament is dissolved, the President must, not later than 55 days, issue a writ of election and appoint the day on which the poll is to be taken.

73. Within 14 days before nomination day, a political party may register with the Electoral Supervisory Commission. This is for the purpose of the election but also for the purpose of filling any vacancy in a best loser seat.

74. …….. days after "nomination day", candidates are allowed to withdraw from the race and, if there are more than three candidates in a constituency, a poll will be taken.

75. Candidates are either "independent" or have a party affiliation. If they belong to a party, they will have produced to the returning officer a certificate, or "ticket", certifying that they belong to that party and that they are allowed to use the party symbol.

76. Ballot papers are then printed. Names of candidates appear on the ballot paper in alphabetical order and they are each allotted a number. Their logo is printed alongside their names, occupation and addresses.

77. On polling day, electors are allowed into designated polling stations where they vote for three candidates of their choice. These three candidates need not be of the same party.

78. The ballot papers are counted on the next day and the three candidates who have polled the highest number of votes are declared to be returned. This is the "first past the post system".

Section II – The Best Loser System

79. Your Committee is to make recommendations without prejudicing the best loser system. In other words, in making our recommendations, we must ensure that we do not alter the basic philosophy which underscored the Stonehouse agreement of 1966, i.e. that appropriate communities are adequately represented in accordance with their population quota as computed on the basis of the 1972 census.

80. Accordingly –

(a) on nomination day, every candidate shall declare to which party he belongs and shall also declare to which community he belongs[14].

(b) in addition to the 62 members elected as above, 8 seats shall be allocated "in order to ensure a fair and adequate representation of each community"[15].

(c) immediately after the poll, a calculation must be made, on the basis of the 1972 census, to determine which community has scored the highest number of seats.

(d) on the basis of that calculation, a community is designated as being under represented and if that community has an unreturned candidate available, that candidate is allocated a seat in Parliament.

(e) this goes on until four seats have been allocated.

(f) then, four other seats are allocated to candidates of the most successful party who belong to a community that is still under represented. In 1991[16], paragraph 5(4) of the First Schedule was amended so as to provide that in the absence a candidate of the appropriate community, the seat would be allocated to the most successful unreturned candidates belonging to the most successful party, irrespective of community. This 1991 amendment created no upheaval even when it was applied in the 2000 general elections.

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[14] Paras. 2 and 3, First Schedule of the Constitution,
[15] Para. 5 (1), First Schedule of the Constitution,
[16] Act no. 48 of 1991

CHAPTER FOUR

The Reform :

A compensatory formula

81. The implementation of the Sachs recommendations requires the insertion, in our electoral system, of a dose of proportional representation based on a party-list vote. This means that, in addition to voting for the three candidates of his choice to represent him in Parliament, the elector shall also vote for a party of his choice. And in voting for that party, he will be voting for members of that party whose name appear on the party-list.

82. It is crucial to understand that the elector does cast a vote for the members appearing on the party list. Unlike the present best loser system, the seats are allocated to winners and not to losers. Electors will continue to vote for the three MPs of their choice. As a result of the count, 62 members are returned to the National Assembly. And 30 other members will be elected in accordance with the number of votes which their party has polled. And, after all this, the BLS will continue to guarantee that unreturned candidates at the constituency level will, if they belong to the "appropriate community", be guaranteed a seat in Parliament.

83. On a specified day following the day fixed for the withdrawal of candidatures, each registered party or party alliance having at least 12 candidates shall lodge with the Electoral Commissioner a list of not more than 30 persons which will be called the "party list".

84. The Sachs Commission refers to this system as Model C –,

The third proposal, which we refer to as PR Model C, would allow for a greater degree of fairness whilst still heavily favouring stability. This model would lean in favour of stability by ensuring that the number of PR seats was limited to a figure not exceeding 30. Whether or not the BLS is retained, the fact that there will be sixty-two members elected on a constituency basis and only a maximum of thirty elected according to the compensatory PR system, will load the House heavily on the side of the constituency form of representation. The exaggerated strength of the leading party produced by the FPTP will further emphasise the relative strength in the House of such party. Thus, any party or alliance which gets close to 50% or more of the votes will be assured of such a substantial number of constituency seats that its right to form a government could not be threatened by the introduction of thirty PR seats. In the elections of 2000, the MSM/MMM alliance got 58 out of 70 seats. If, the PR Model C had been applied and the additional number of PR seats was 20, the alliance would have ended up with a majority that could still have been more than 70%. If 30 PR seats had been added, it would have ended up with a majority of nearly 60%. Thus, while strongly geared towards protecting the right to form a government of the leader of a party that on its own gets close to 50% of the national vote, or a pre-election alliance that leads with even a low percentage, it would introduce a relatively significant correction to the present gross under-representation of the opposition party or parties. It should be noted, however, that even if PR Model C would not put at risk a party or alliance that received nearly half the votes cast, it could make a difference if no single party or alliance received close to 50% or more of the votes. In such narrow circumstances, it could, if three parties each got more than 10% of the vote, place the third party in a position to form a post-electoral alliance with a second party so as to form a majority in the House and thereby choose the Prime Minister. At this stage, one can only speculate on how any system of PR would affect electoral and party behaviour. The practical effect of PR Model C might well be to encourage the creation of post-election coalitions rather than pre-election alliances. At the moment, the electoral system gives enormous, and many say, disproportionate, incentives to form pre-election alliances. Some voters might see this as having the advantage of establishing a balanced ticket known to the electorate in

advance. The parties and the electorate generally, however, might prefer the extra degree of fluidity and voter-choice which PR Model C would introduce. [17]

85. The introduction of this system will call for a party list and the application of a compensatory formula to compensate underrepresentation.

Section I - The Party List

86. Each party will select the candidates to appear on the party list in accordance with such rules as the party may determine.

87. There will be two notable exceptions.

A. Gender representation and double candidacies

(i) Gender representation

88. Mauritius is already the subject of serious and ardent criticism for the low level of female representation in Parliament. The present electoral system will never do justice to the true role of women in society and will never enhance the empowerment of women. Gender parity must be preserved at representative level.

89. We must acknowledge that party establishments are largely male-dominated and male-orientated. The glaring lack of sensitivity of all party establishments towards half of the population cannot be a subject of pride and any system which does not attempt to cure this is not worthy of any consideration[18]. Only a party-list system can do justice to women and the role of women in society.

90. We therefore recommend that the first twelve persons on the list shall include at six persons of the female sex and at least six persons of the male sex, in whatever order the party decides. This will ensure that within a few years,

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[17] para. 39
[18] Sachs, para. 22 *et seq.*

political mentalities will have changed to such an extent that women will be adequately represented in Parliament.

91. We stress that this is not a quota system. Under the system which we recommend, female candidates will stand for election on a list and will be elected on their own merit. The only difference being that instead of being elected on a constituency basis, they will be elected on a national party list with the same duties and obligations. We are not adopting a system such as exists in Uganda where a separate electoral college elects a specific number of women to Parliament on account only of their gender.

(ii) Double candidacy

92. The issue here is whether a person may stand as candidate in the constituency poll and be also a candidate on his party list. This would mean that half of the candidates in the constituency elections could also be on the party list. Double candidacies exist in Germany, New Zealand, Scotland, Wales, Japan and other developed countries and it is up to parties to decide on the number of such double candidacies.

93. Your Committee do not agree that this is feasible in three-member constituencies such as we have in Mauritius. A general acceptance of double candidacy would defeat the whole purpose of having a party list while at the same time creating an inherent risk of infighting during the electoral campaign, with sly campaigns being conducted against those who do not appear on the party list.

94. However, after careful consideration, Your Committee recommends one exception for party leaders. The leader of a party will be able to appear both on the party list and on a constituency list. The existing prohibition against being a candidate in multiple constituencies will remain. This will ensure that the leader of a party securing more than 10% of the votes will stand a reasonable chance of being allocated a seat even where he loses his

constituency seat, especially if he is on top of his party's list (his ranking in the list being a matter for his party).

B. Registration of party lists

95. On the day following the date of withdrawal of candidatures, all political parties having registered themselves under paragraph 2 of the First Schedule, may register, with the Electoral Supervisory Commission, a list of not more than 30 persons. The list shall indicate the order of precedence of each of the candidates appearing thereon.

96. A number of conditions will need to be satisfied with regard to the list, viz.-

    (a)   The list shall be signed by the President and the Secretary of the executive committee of the party filing the list and shall be accompanied by a resolution of the executive committee of the party approving that list ;

    (b)   The candidates appearing on the list must be qualified to be candidates at an election to the National Assembly.

    (c)   The list shall be in such form as may be prescribed by the Electoral Supervisory Commission and shall contain (i) the name, address and profession of that person and (ii) the community to which that person belongs ;

    (d)   Each candidate whose name appears on the party list shall subscribe to a declaration to the effect that he agrees to his name appearing on the party list and his signature shall also appear against his name on the party list ;

    (e)   No political party or party alliance, even where registered under paragraph 2 of the First Schedule shall be entitled to register a list unless it has, at constituency level, fielded at least twelve candidates

who belong to such party or party alliance and who are candidates for elections.

(f)   Within two days following the registration of party lists, the Electoral Supervisory Commission shall publish, in the *Gazette* and in such number of newspapers as may be prescribed, all the party lists registered with the Commission. The lists shall also be posted in all polling stations.

(g)   The publication shall contain –

   (i)   the name and symbol of the political party ;

   (ii)   such particulars of the persons appearing on the list as the Electoral Supervisory Commission may prescribe ; and

   (iii)   a statement by the Chairman of the Electoral Supervisory Commission certifying that the list has been registered with the Commission within the prescribed delay and that, for the purpose of the election, the persons appearing on the list shall be allocated seats under the relevant provision of the First Schedule of the Constitution.

Section II – The compensation for underrepresentation

A. The voting process

(i) The poll

97. On the day of the poll, an elector shall be provided with two ballot papers. The first ballot paper will contain the list of candidates for election in the constituency. The second ballot paper will contain a list of parties who have registered their party lists. They need not contain the lists themselves. The

ballot papers shall be in such form as the Electoral Supervisory Commission may prescribe.

98. On the first ballot paper, the elector shall insert a mark to indicate the three candidates of his choice in the same manner as it is done now.

99. On the second ballot paper (the"party ballot paper"), the elector shall insert a mark to indicate the party for which he votes. For instance, an elector may, in the first ballot paper, have voted for two candidates of Party A and one candidate of Party B. But on the second ballot paper, he will indicate the party of his choice, which may be Party A or Party B or any other party appearing on the list. By voting for a particular party list, he actually votes for the party which he would like to represent him in Parliament and, at the same time, votes for those persons whose names appear on the party list in order of precedence. If his party passes the threshold of 10%, this elector may be represented in Parliament even if his chosen candidates have not been elected.

100. The elector shall place his ballot papers in two separate ballot boxes.

(ii) The Count

101. On "counting day", constituency and party-list ballot papers will be counted separately. In respect of each constituency, the first three candidates will be returned to Parliament.

102. With regard to party ballot papers, a count shall be effected at the level of each constituency so as to determine the number of electors who have voted for each party appearing on the list.

103. The results shall then be returned to the Electoral Supervisory Commission which will determine to which candidates appearing on the party list the 30 additional seats should be allocated.

B. Allocation of additional seats

104.   The system is not a complicated system except if one stubbornly refuses to understand it. The Electoral Supervisory Commission shall –

(a)   on the basis of returns effected by each Returning Officer, count the total number of votes which have been cast for each party in the "second ballot";

(b)   discard from consideration all parties who have polled less than 10% of the total votes cast ;

(c)   divide the total number of votes polled by each party having polled 10% or more of the votes *[a]* by the aggregate of one (1) and the number of candidates of that party who have been returned at the level of the 21 constituencies *(1+ b)*; The formula to be applied will therefore be *[a / (1+b)]*. In other words, where a party has, say, 20 returned candidates at constituency level, the number of votes polled by that party in respect of its party list is divided by 21. The result is the "PR figure".

(d)   The PR Figure of each party indicates whether that party is underrepresented. Where a party has a high PR figure, this means that it is underrepresented and, as a result, the first additional seat shall be allocated to the party with the highest PR figure ;

(e)   Since the allocation of that first additional seat may have upset the representation of parties, another PR figure needs to be recalculated by dividing the total number of votes polled by that party *(a)* by the aggregate of one (1) and the number of seats held by that party as a result of the previous exercise.

(f)   this process shall carry on until all 30 additional seats have been allocated.

105.   The following illustration, taken from the 1976 results[19] will reveal that the exercise is not as complicated as it reads –

- Independence Party obtained 456 177 votes and secured 25 seats.

- MMM obtained 469 420 and secured 30 seats.

- PMSD, obtained 200 559 votes (more than 10%) and secured 7 seats.

106.   One can immediately see that the PMSD was grossly underrepresented. This under representation may have contributed to the ensuing political instability of the late 1970's.

107.   The following tables indicate how the compensatory system would have worked[20] -

Total votes *per* party

IP Votes	IP Seats	MMM Votes	MMM Seats	PMSD Votes	PMSD Seats
456177	**25**	469420	**30**	200559	**7**

108.   To compensate for this underrepresentation, a PR figure would be worked out for each of these three parties as follows –

IP PR Figure	MMM PR Figure	PMSD PR Figure
456177/ (1+25)	469420/ (1+30)	200559/(1+7)
17,545.27	**15,142.58**	**25,069.88**

109.   This operation indicates that the first additional seat would be allocated to the PMSD which would, at that stage, have 8 seats.

110.   The allocation of this additional seat to the PMSD lowers its PR figure. The dividing figure remains the same for IP and MMM but is (1 + 8) for

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[19] The figures are provided by the Electoral Commissioner's Office. It is assumed, for the present purposes, that electors voted on a strict party line. This is not a correct assumption as it was as from 1982 that electors started voting *"bloc"*.
[20] Still on the assumption that votes were cast on party lines.

PMSD. The PR figure will therefore remain the same for IP and MMM but will decrease for PMSD which will, however, still have a higher PR figure.

IP	MMM	PMSD
PR Figure	**PR Figure**	**PR Figure**
456,177/ (1+25)	469,420/ (1+30)	200,559/(1+8)
17,545.27	15,142.58	**22,284.33**

111.   The second additional seat is therefore allocated to the PMSD.

112.   For the third additional seat, the dividing figure still remains the same for IP and MMM but is (1 + 9) for PMSD. The PR figure will, once again, decrease for PMSD. The process goes on as in the following table –

Party	IP Votes	IP Seats	MMM Votes	MMM Seats	PMSD Votes	PMSD Seats
	456,177.00	**25**	469,420.00	**30**	200,559.00	**7**
Add. Seats						
1	17,545.27	**25**	15,142.58	**30**	25,069.88	**8**
2	17,545.27	**25**	488.47	**30**	22,284.33	**9**
3	17,545.27	**25**	15,142.58	**30**	20,055.90	**10**
4	17,545.27	**25**	15,142.58	**30**	18,232.64	**11**
5	17,545.27	**26**	15,142.58	**30**	16,713.25	**11**
6	16,895.44	**27**	15,142.58	**30**	16,713.25	**11**
7	16,292.04	**27**	15,142.58	**30**	16,713.25	**12**
8	16,292.04	**28**	15,142.58	**30**	15,427.62	**12**
9	15,730.24	**29**	15,142.58	**30**	15,427.62	**12**
10	15,205.90	**29**	15,142.58	**30**	15,427.62	**13**
11	15,205.90	**30**	15,142.58	**30**	14,325.64	**13**
12	14,715.39	**30**	15,142.58	**31**	14,325.64	**13**
13	14,715.39	**31**	15,142.58	**31**	14,325.64	**13**
14	14,255.53	**31**	15,142.58	**32**	14,325.64	**13**
15	14,255.53	**31**	15,142.58	**32**	14,325.64	**14**
16	14,255.53	**32**	15,142.58	**32**	13,370.60	**14**
17	13,823.55	**32**	15,142.58	**33**	13,370.60	**14**
18	13,823.55	**33**	15,142.58	**33**	13,370.60	**14**
19	13,416.97	**33**	15,142.58	**34**	13,370.60	**14**
20	13,416.97	**34**	15,142.58	**34**	13,370.60	**14**
21	13,033.63	**34**	15,142.58	**35**	13,370.60	**14**
22	13,033.63	**34**	15,142.58	**35**	13,370.60	**15**
23	13,033.63	**34**	15,142.58	**36**	12,534.94	**15**
24	13,033.63	**35**	15,142.58	**36**	12,534.94	**15**
25	12,671.58	**35**	15,142.58	**37**	12,534.94	**15**
26	12,671.58	**36**	15,142.58	**37**	12,534.94	**15**
27	12,329.11	**36**	15,142.58	**37**	12,534.94	**16**
28	12,329.11	**36**	15,142.58	**38**	11,797.59	**16**
29	12,329.11	**37**	15,142.58	**38**	11,797.59	**16**
30	12,004.66	**37**	15,142.58	**39**	11,797.59	**16**

113.   The above table indicates how the compensatory PR formula allows for fairness while striking a balance with the requirement of stability. Indeed, the IP/PMSD coalition would have had a clearer majority in the Assembly and would have probably avoided the instability of the late 70's. The initial results meant that the MMM was overrepresented in Parliament. This would have been corrected by providing 9 additional seats to the PMSD and 12 to the Independence Party.

114.   One can also insert an additional guarantee to provide that the party having won the most seats at constituency level is guaranteed to have at least 50% + 1 of the seats in the Assembly even where its PR figure is the lowest.

CHAPTER FIVE

An alternative :

The Parallel formula

115.   At a time when our work had progressed significantly, one of the members of Your Committee suggested an alternative based on a parallel formula. Your Committee feel that, in fairness, this alternative ought to be brought to your attention. Hence the inclusion of this suggestion as an annex to this report.

116.   This formula is, with some distinctions, akin to the proposal referred to in the Sachs report as Model A[21]

117.   This alternative is certainly an improvement on the present system. It will provide to losers an opportunity to obtain additional seats. In practice, it means that best losers will be increased from 8 to 38.

118.   Sachs had found no difficulty in rejecting that system. In its report, the Sachs Commission had this to say on "Model A" –

> *... PR Model A has the merit of opening the debate on proportionality, being easy to implement and guaranteeing continuation of the stability offered by the present system. According to its critics, however, it suffers from the grave defect that it would hardly touch on the disproportionality emanating from the present system. Thus, calculations made available on our request by the Electoral Commissioner indicated that under the existing system, the MSM/MMM alliance received 52.3% of the votes and 82.6% of the seats in the most recent elections. After application of the PR Model A formula, extended*

to a maximum of 30 extra seats, they would still receive 76.04% of the seats. The Opposition PTR/PMXD alliance with 36.95% of the votes would move up from 11.43% of the seats to 19.79%. (If only a maximum of 20 seats are added, the disproportionality would be even greater). The significance of the figure for the Opposition is that it is substantially below 25% and accordingly would fail to provide the Opposition with sufficient votes to block constitutional amendments. The point of requiring a 75% majority for important constitutional amendments is that such an elevated vote is presumed to manifest a high degree of national consensus. The objective is not to place undue hurdles in the way of constitutional reform but to encourage the degree of give-and-take that leads to national consensus. Constitutional changes thereby emerge with a high degree of legitimacy. This is particularly important when certain sections of the community see themselves for historical and other reasons as having a special allegiance to particular parties. If opinions of such parties can easily be ignored, there is a danger that members of those communities will imagine themselves as having been marginalised. As a matter of constitutional principle, a big question mark must accordingly be put against any electoral system which perpetuates a situation in which a party supported by substantially less than three-quarters of the electorate, possibly even less than half the voters, can push a constitutional amendment through in the same way is as it steers any ordinary law through Parliament. There is a qualitative difference between a law altering the nature of the electoral system in dealing with fundamental rights, and one raising or lowering the level of sales tax. Critics of PR Model A claim that the way Parliament is to be constituted should take cognizance of this fact.

119. The cohesive and forceful arguments put forward by Sachs should be sufficient to dispose of the parallel system proposed under this alternative. Mauritius must decide whether it wishes to have a stable Government with fair representation or whether it wants to perpetuate the present system with just a token representation. The people want to see their votes represented in Parliament. The compensatory formula is, by itself, a compromise between FPTP and strict PR. The parallel formula is only a way of providing us with the beginning of a debate but not with the solution to the problem.

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[21] Para. 37. This was the brief submitted by Government to the Sachs Commission and which the MMM had, for a certain time, avowed as possible step towards the introduction of a PR system.

120.   This alternative proposal is not dissimilar from that obtaining in the Seychelles where the additional members are nominees chosen after the poll and are not elected from a list published prior to the elections. Moreover, the Seychelles is a presidential system where Parliament has a different function from our Parliament. And there is a strong body of opinion calling for reform. Mexico also tried it but was quick to abandon it following civil unrest. Mexico finally tempered the injustice of that system by providing that no party shall control more than 60% of seats.

121.   Let us see how the parallel allotment would work in the following hypothesis –

Difference between parallel and compensatory PR formula
With 70 FPTP and 30 PR seats

		Parallel v/s compensatory PR system				
	Seats					
FPTP	62					
PR	30					
Best Loser	8					
	100					
		PARALLEL allotment				
	% Votes	FPTP	BL	PR	Total seats	% of seats
Party A	52	60	0	17	77	80.2
Party B	42	0	2	13	15	15.6
Rodrigues		2	2		4	4.2
	94	62	4	30	96	100
		COMPENSATORY allotment				
	% Votes	FPTP	BL	PR	Total seats	% of seats
Party A	52	60	0	0	60	62.5
Party B	42	0	2	30	32	33.3
Rodrigues		2	2		4	4.2
	94	62	4	30	96	100

N.B. The calculation of BLS cannot be accurate as account should be taken of communities of candidates of each party.

122.   While the parallel formula gives some representation to Party B, it is far from being fair. A compensatory formula would take into account the huge distortions that occurred in the FPTP elections. As Party B has been obliterated in spite of polling 42 % of the votes, it is compensated with all the 30 PR seats. Party A is still the overall winner; it has a seat premium as it captures 62.5 % of the seats with 52 % of the votes. Party B gets a fair share of seats at 33.3 % for its 42 % votes. On the other hand, Party B does not get a proportionate share of seats, but is more representative than in a parallel formula.

123.   It should be noted that the majority does not change; it is only the wide gap between the vote polled and the seats won by the unsuccessful party that is narrowed. Under normal circumstances (1967,1976,1983,1987) both winners and losers would benefit from the allotment of the 30 PR seats.

124.   This alternative proposal offers several disadvantages –

- The additional members will be selected from those who have lost the elections. It further entrenches a "best loser" system, albeit under a different form.

- Candidates who have been rejected by the electoral body will be guaranteed a seat in Parliament. Under the "party list" system, on the other hand, the additional members are candidates for whom the electors have expressed a preference by adopting their list.

- There is a grave danger of perpetuating communalistic politics. It is a known fact that candidates at constituency level are selected so as to "secure" the electorate of that particular constituency.

- This alternative will be the death knell of all those who have militated for adequate gender representation. It is an established fact that female

candidates represent an insignificant percentage of candidates. The alternative system will in effect ban women from having any role to play in politics for the next fifty years. So much for gender empowerment.

- Within each constituency, there will be predictable infighting among the candidates of each party in order to win the best share of the votes.

- The best that can be said about this alternative is that, as Sachs put it, it opens the debate. But opening the debate does not mean that it offers the final solution.

- The alternative does not cure the defect of disproportionality.

125. On the basis of the results of the 2000 general elections, the MSM/MMM alliance would have, under this alternative, been allocated 5 additional seats and the PT/PMXD alliance, 3 additional seats.

126. For 1995, the PTR/MMM Alliance would have been allocated 6 additional seats and the MSM/RMM Alliance would have been allocated 1 seat!

127. For 1991, the Alliance MSM/MMM would have been allocated 5 additional seats and the Labour Party/PMXD Alliance would have been allocated 3 seats.

128. We are very far from curing the 60-0 syndrome or from reaching anywhere near ensuring that Mauritians are fairly and adequately represented in Parliament. And we would have singularly failed in our mandate to apply the Sachs recommendations.

CONCLUSION

129.   This report follows the terms of reference that we were set out for us. We have made it a point to set out the two alternatives which, finally, Your Committee felt should be drawn to your attention.

130.   Mindful of the rules governing committees such as ours, we have nevertheless thought it appropriate to annex the two alternatives that were mooted before Your Committee.

131.   Your Committee would wish to place on record its appreciation of the dedication which the Secretariat and shorthand writers of the Assembly demonstrated throughout the proceedings of Your Committee.

Ivan Collendavelloo

ANNEX A

PROPOSED CONSTITUTIONAL

AMENDMENT

132.   Should Your Committee's recommendations be adopted, it is proposed that the following amendments be brought to the Constitution–

1. By adding a new paragraph 4A after the existing paragraph 4 as follows -

4A. Allocation of 30 additional seats

(1) In order to ensure fair and adequate representation of political parties, there shall be 30 seats in the Assembly, additional to the 62 seats for members representing constituencies, which shall be allocated in accordance with this paragraph and in such manner as may be prescribed.

(2) A political party which has been registered under paragraph 2(1) and has at least twelve candidates who have been nominated for election, may, within within such time and in such manner as may be prescribed, register with the Electoral Supervisory Commission, a list (hereinafter referred to as the "party list) of not more than 30 candidates which that party nominates for election under this paragraph.

(3) A party list shall be in such form as may be prescribed and–

    (a) shall not include the name of a person who is not qualified to be a member under this Constitution;

    (b) shall indicate the order of precedence of each of the candidates appearing thereon ;

    (c) shall in respect of each candidate appearing thereon, indicate his or her name, address, gender and the community to which he or she belongs ;

    (d) shall, in respect of the first twelve candidates appearing thereon, contain six candidates of the female sex and six candidates of the male sex;

(e) except for those persons designated as leaders of parties under paragraph 2(3), shall not include a person who is already a candidate for election;

(f) shall be accompanied by a certificate in such form as may be prescribed and signed in the presence of two registered electors by each candidate appearing on the party list certifying that he accepts to be nominated as candidate ;

(g) shall, where the Commission is satisfied that it complies with this paragraph and within such time as may be prescribed, be registered by the Electoral Supervisory Commission;

(h) shall, upon registration, be published in such manner as may be prescribed.

(4) At a general election, every elector shall, in addition to the votes cast under paragraph 1(3), cast one additional vote on a separate ballot (hereinafter referred to as the "party ballot paper") which shall be in such form as the Electoral Supervisory Commission may prescribe and which shall contain a list, in alphabetical order, of parties having submitted a party list together with the symbol allotted to such party. The vote shall be taken in the same manner as specified in paragraph 1(3) except that no vote cast by an elector on a party ballot paper shall be counted unless he casts one valid vote for one party appearing on the party ballot paper.

(5) Paragraph 3 shall apply in respect of every candidate whose name appears on the party list.

(6) As soon as is practicable after all the returns have been made of persons elected at a general election as members to represent constituencies, the Electoral Supervisory Commission shall allocate the 30 additional seats as follows –

(a) The Electoral Supervisory Commission shall first count the total number of votes cast on the party ballot papers in respect of each party registered under subparagraph (2)(hereinafter referred to as the "total party votes").

(b) A party having polled, in the aggregate less than ten percent of the total votes validly cast on the party ballot papers, shall be disregarded for the purpose of this paragraph;

(c) With regard to a party having obtained ten percent or more of the votes validly cast on the party ballot papers, its total party votes shall be divided by the aggregate of one plus the number of candidates of the party who have been returned under paragraph (1) to represent constituencies, the result being referred to as the "PR figure" ;

(d) The party obtaining the highest PR figure shall be allocated the first additional seat;

(e) The second and subsequent additional seats shall be allocated to the party with the highest PR figure after any recalculation required by subparagraphs (f) and (g) has been carried out.

(f) In allocating the second seat, the PR figure of the party to whom a seat has been allocated under subparagraph (d) shall be recalculated by dividing that party's total party votes by the aggregate of one plus the previous aggregate figure used to calculate the PR figure of that party under paragraph (c);

(g) In allocating the third and the subsequent seats, there shall be a recalculation of the PR figure for the party to whom the previous seat was allocated and, on each recalculation, that party's total party votes shall be divided by the aggregate of one plus the previous aggregate figure used to calculate its previous PR figure.

(h) Seats allocated to any party under this subparagraph shall be filled by the persons on the party list of that party in the order of precedence in which they appear on the list.

(i) Once a party list has been exhausted by the return of persons included on it, the party shall be disregarded.

(j) Where the highest PR figure is that of two or more parties, these parties shall each be allocated one additional seat.

(k) Where the application of subsubparagraph (j) would result in the allocation of more than the maximum of 30 seats, the PR figure shall be recalculated after adding one to the number of the total party votes for each party.

(l) Where after a recalculation of the highest PR figure under subsubparagraph (k) is still that of 2 or more parties, the Electoral Commissioner shall decide between them by drawing of lots.

(m) Where at any time before the next dissolution of Parliament one of the 30 seats falls vacant, the seat shall as soon as is reasonably practicable after the occurrence of the vacancy be allocated by the Electoral Supervisory Commission to the candidate whose name appears next in order of precedence on the party list of the party to whom the person to whom the seat was allocated at the last general election belonged.

(n) Where the party list referred to in subparagraph (n) has been exhausted, no seat shall be allocated to fill the vacancy.

2. In paragraph 5(1) –

     (a) by deleting the figure "62" and replacing it by the figure "92" ; and

     (b) by adding the words "and for members returned under paragraph 4A" after the word "constituencies".

So that paragraph 5(1) reads as follows –

(1)   In order to ensure a fair and adequate representation of each community, there shall be 8 seats in the Assembly, additional to the **92** seats for members representing constituencies **and for members returned under paragraph 4A**, which shall so far as is possible be allocated to persons belonging to parties who have stood as candidates for election. As members at the general election but have not been returned as members to represent constituencies.

3. In paragraph 5(2) by adding the words "and for members returned under paragraph 4A" after the word "constituencies".

So that paragraph 5(2) reads as follows –

(2)   As soon as is practicable after all the returns have been made of persons elected at any general election as members to represent constituencies **and of persons elected under paragraph 4A**, the 8 additional seats shall be allocated in accordance with the following provisions of this paragraph by the Electoral Supervisory Commission which shall so far as is possible make a separate determination in respect of each seat to ascertain the appropriate unreturned candidate (if any) to fill that seat.

ANNEX B

THE PROPOSAL FOR A PARALLEL FORMULA

1. There shall be additional number of 30 seats, which shall be allocated under the Proportionately Elected Members System.

2. The 30 seats provided for under the proportionately elected members system shall be allocated after the allocation of the 8 additional seats, or such lesser number of additional seats as is possible depending on the results of a general election, provided for in the Constitution under Best Loser System.

3. The minimum level of support which a political party needs to gain to qualify for representation under the proportionately Elected Members System   shall be not less than 10% of the total valid votes cast.

"general election" means a general election referred to in paragraph 1 (2) of the First Schedule of the Constitution.

"political party" means –

      (a) a political party which has nominated a candidate in a general election;

      (b) a party alliance, where 2 or more political parties have been registered as such under paragraph 2(1) of the Constitution.

"relevant number" means the number of proportionately elected members referred to under the first paragraph above.

"remainder", in relation to a political party, means any remainder which results when determining under paragraph 2(1) the number of proportionately elected members a political party may be entitled to.

4. A political party which has nominated a candidate in a general election shall be entitled to the allocation of a number of proportionately elected members which shall be determined according to the formula set out below.

(1) The following formula shall apply for the purpose of determining the number of proportionately elected members to which a political party qualified for representation shall be entitled to-

$$A = \frac{B \times C}{D}$$

Where –

A = number of proportionately elected members a political party shall be entitled to;

B = relevant number;

C = total number of valid votes cast in favour of the candidates nominated by a political party at a general election; and

D = total number of valid votes cast at the election.

(2) Where under subparagraph (1), A is a fraction of one or consists of a whole number and a fraction of one, the fraction shall initially be disregarded but shall be treated as a remainder for the purposes of the application of subparagraph (3).

(3) Where on the application of the formula under subparagraph (1) the total number of proportionately elected members falls short of the

relevant number, the number of proportionately elected members represented by the shortfall shall be allocated as follows –

(a) Any political party with the highest remainder shall first be entitled to representation by a member, the party with the second highest remainder shall next be entitled in turn to a member, and so on.

(b) Where the shortfall is still not eliminated, the exercise shall be repeated, starting again with the party with the highest remainder until the shortfall is eliminated.

5. The Electoral Commissioner shall determine

(a) the political parties that shall be entitled to any proportionately elected member of the National Assembly; and

(b) the number of proportionately elected members.

6. The proportionately elected members to which each political party is entitled to shall be chosen among the most successful unreturned candidates, irrespective of community, in accordance with the First Schedule of the Constitution.

7. In the event that any of the seats to which the political party is entitled to still remains unfilled for lack of unreturned Candidates, then those seats shall be allocated to any of the members from a party list of 30 names in order of priority submitted to the Electoral Commissioner, on the nomination day, by the political party to which he belongs.