



CENTRE FOR POLICY ALTERNATIVES
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STATEMENT ON THE TWENTIETH AMENDMENT

30th May 2015, Colombo, Sri Lanka: The Centre for Policy Alternatives (CPA) expresses its serious concern at the lack of clarity in the public discourse on electoral reforms in the country that has generated widespread misconceptions and confusion in the minds of the public. Many individuals and organisations have indicated support for the proposed Twentieth Amendment to the Constitution without appreciating that doing away with preferential voting is just *one* aspect of the reform proposals, and that critically assessing what will replace preferential voting, and the other features of the proposed Amendment, is very important. This is exacerbated by the fact that the public have had no opportunity to witness, let alone debate, the various proposals of political parties with regard to electoral reform, or at least the text of the Twentieth Amendment Bill, of which moreover there seem to be several different versions. What can be gathered from media reports, however, is that the current proposals seem to contemplate a largely first-past-the-post system with a minor element of proportional representation. For reasons below, CPA finds it misleading to describe this as a Mixed Member Proportional (MMP) system as some have done. On the contrary, the current proposals deviate significantly from constitutional first principles of democracy, diversity and accountability, follow no known tried and tested international model applicable to the specific circumstances of Sri Lanka, and would adversely affect the quality and nature of legislative representation. Changes as constitutionally important and as technically complex as electoral reforms cannot be undertaken this way.

PREFERENTIAL VOTING

We need to remember that while preferential voting has adverse consequences, its virtue is that it strengthens the power of the voter at the expense of the party leadership. It is the voter who chooses the party of his/her choice *and* the candidate from that party. Any new system must ensure that the voter retains the power to choose rather than abdicating the power to choose candidates completely to the leaders of political parties. It should also be noted that

while claims are largely true that the preferential voting system intensifies intra-party competition, and in this way encourages violence and corruption, this is more an indictment of our political culture than of the voting system. Eliminating preference voting will not resolve the deeper structural problems of violence and corruption, which can only be addressed by changing patterns of political behaviour and leadership, and by citizens refusing to reward with their preferences those who engage in violence and corruption.

A MIXED SYSTEM: FIRST-PAST-THE-POST AND PROPORTIONAL REPRESENTATION

There was since 1994 a widespread consensus that the system of proportional representation introduced by the Constitution of 1978 should be replaced by a new system that combines the best features of both proportional representation (PR) and the first-past-the-post system (FPP). The manifestos of both the People's Alliance and the United National Party at the 1994 elections pledged to introduce a mixed electoral system based on the German model. Such a system will ensure that the country would be divided into electorates so that the voter can choose MPs for each electorate. It will also ensure that the overall composition of Parliament is in proportion to votes received by parties, i.e., correspondence between votes and seats in Parliament, the essence of proportional representation.

The voters' power is retained and his/her choice expanded under such a genuinely Mixed Member Proportional (MMP) system. All parties will have to submit a PR list, which is a closed list. This requires political parties to specify the rank order of its nominees on the PR list before the election, which cannot be changed by the party leaders subsequently. Though the voter will lose the right to indicate a preference, at least by specifying the order before the election, the voter will have some influence over who is high on the list as the parties will have an incentive to add qualified, competent people, and persons diverse in terms of gender and other backgrounds, as leading candidates on the PR list. Since women's representation in Parliament in Sri Lanka is one of the lowest in the region, such a system will act as an incentive for parties to nominate competent women high on their PR lists.

STRENGTHENING THE POWER OF THE VOTER

In a properly designed MMP system, a voter will be given TWO ballot papers – one for his/her constituency MP; the other to choose the party of his/her choice. The voter's power to choose is therefore greater; a person can vote for the candidate who may be the best constituency MP while voting separately for the party s/he prefers. Such a system is easy for the voter to understand and also for the Elections Commission to administer.

Once the seats won by political parties on the basis of FPP are determined, the total number of seats that each party is entitled to is calculated on the basis of the "party votes" in proportion

to the votes received. Parties will then “top up” their seats from the party PR lists; parties will have a total number of candidates elected from their winning FPP candidates and from the closed PR list, in proportion to the votes received. The best of both the FPP and PR systems are thus retained under this system. Such a system is practiced in Germany, New Zealand and Scotland.

CONCLUSION

One of the primary objectives of a constitution is to protect and empower the people *vis-a-vis* the politicians who wield political power. Politicians and party advisors designing and amending constitutions without the people’s engagement and approval, is illegitimate and contrary to constitutional first principles. The process by which the Nineteenth Amendment was adopted, with the public in the dark as to what was proposed and opposed on the day it was passed, was a constitutional scandal. Repeating such a process for the introduction of the system by which the people elect their representatives will be utterly unacceptable. CPA calls for a transparent process with public engagement and where the final text of the Twentieth Amendment is available for public scrutiny before it is debated in Parliament.