

COMMISSION ON THE ELECTORAL SYSTEM

FINAL REPORT

November 1994

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Note: The following appendices still remain publicly unavailable; but an excerpted version of Appendix F can be found [here](#).

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Introduction

The Electoral System Commission was set up on the 3 May 1994 in order to study both the Electoral System and the Maltese Electoral Process. According to its Terms of Reference (Annex A), the Commission was asked to prepare a report with proposals, suggestions and alternatives which could be implemented so that:

(a) while respecting those principles which safeguard the democratic rights of the citizens and the governability of the country, the electoral system would ensure that the number of Parliamentary seats of a political party would be proportional as far as possible to the votes gained by the party in the first count; and

(b) the process and the electoral law would be improved so as to become more transparent and, at every stage, gain the confidence of all parties taking part in the election and of all citizens; and possibly to find a way how the final result of the general election could be announced earlier than so far.

The Commission was given up to the 30 September to prepare its report which had "to reflect the contribution the members of the Commission were going to make in a personal capacity". By letter of the 28 September 1994, the time limit given to the Commission to prepare the report was extended up to the end of November 1994.

The Commission held sixteen meetings. The public was invited to submit its suggestions and those persons who did so were given the opportunity of expanding on their proposals at a special meeting with the Commission that was open to the public and the media. A copy of the letters containing suggestions received by the Commission are to be found in Annexes B1 to B24, and a transcription of the public meeting is to be found in Annex C of this report.

The Commission also brought and considered publications regarding Electoral Systems practised abroad as also local publications and contributions including academic studies, as detailed in the list marked Annex D.

The Commission also wrote directly to the three political parties, the Alternattiva Demokratika, the Malta Labour Party and the Nationalist Party, and also to the Electoral Commission, so that these could formally make their suggestions. Copy of these submissions are to be found in Annexes E1 to E4.

According to its Terms of Reference, the Commission had three main aims which it wished to attain. The first aim was to find a way how representation in Parliament would reflect better the wishes of the electorate; the second was to seek to increase transparency and accountability in the running of the Elections and to strengthen the confidence of the people and the parties in the whole process; and the third was to quicken the process leading to the announcement of the result of the General Elections.

(A) The Electoral System.

The Commission dealt with this part of its assignment in the light of the difficulty which the present system may theoretically create if the result of the general election does not concur with the circumstances explained in article 52 of the Constitution of our country. This in view of the fact that, while article 52 of the Constitution ensures that the party obtaining the absolute majority of votes should have at least a majority of one seat in Parliament, the same article does not solve other problems such as proportionality in a situation where no political party obtains more than 50% of the valid votes in the first count of a General Election.

The Commission agreed that disproportionality in the electoral system results from these two mathematical factors: -

(a) that according to the present method of quota calculation, one out of every six (1/6) votes at a General Election is not translated into representation in Parliament; and

(b) that the number of electors in the various electoral divisions may vary by a total margin of ten per cent.

The discussions which were held during the meetings of the Commission were necessarily directed at seeking a solution which would fit both within the limits imposed by the terms of reference of the Commission and also within the political realities in our country as reflected in the submissions of the political parties and of those individuals who chose to put forward some suggestions regarding the electoral system of our country.

(I) Special Criteria resulting from the Terms of Reference.

The assignment received by the Commission lays down clearly certain criteria to which it had to conform. In fact, paragraph (a) of the letter of appointment bearing the date 3 May 1994 establishes in an unequivocal way that every suggestion, consideration or alternative to the present electoral system had to be made in such a way as to:

respect the principles which safeguard the democratic rights of the citizens;

respect the principles which safeguard governability;

ensure that the seats in Parliament obtained by a political party should be proportionate as far as possible to the votes obtained by the party in the first count.

Precisely regarding this last point, it obliged the Commission to formulate its proposals in the light of the principle that the proportionality of seats in Parliament is calculated according to the number of votes obtained in the first count. Any other proposal not conforming to this principle had necessarily to be discarded because it did not fall within the assignment given to it.

(II) General Criteria.

It has to be stated that the Commission had to choose one of two ways, that is, either propose suggestions that do not take into consideration the political realities of our country as resulting from the submissions which the political parties themselves presented to the Commission, or else formulate every suggestion in the light of these political realities and consequently try to arrive at a system that would not only be mathematically and theoretically correct but that could also be implemented because it was acceptable to the whole political spectrum in our country.

The Commission chose the second way which, although the most difficult, was also the only realistic one. The first alternative would have only been an academic exercise that would lead nowhere were it not to have at least an indication of the political support and consensus of the Maltese people and of the Maltese political parties.

In its considerations the Commission could refer to the written submissions made to it by the three political parties, and the emphasis laid on these general criteria was the result of this exercise.

Nationalist Party:

Proportionality has to be measured with the first count (page 3 of PN proposals).

Any new system that implies such a great change in the way the people look at elections should not be introduced (page 4 of PN proposals).

Any change and system have to be necessarily mathematically coherent (page 4 of PN proposals).

A threshold of 5% equivalent to more than three parliamentary seats (page 7 of PN proposals).

The votes that do not qualify for the threshold are to be transferred according to the preferences expressed to those parties/candidates of qualifying parties (page 8 of PN proposals).

Malta Labour Party:

The principles that safeguard the democratic rights of the citizens and the governability of the country have to be respected (page 3 of MLP proposals).

The electoral system is to ensure that the Parliamentary seats of a political party be proportionate as far as possible to the votes obtained by the party in the first count (page 3 of MLP proposals).

The system of transferability of the vote from one party to another should be retained (page 3 of MLP proposals).

Alternattiva Demokratika:

Proportionality should be related to the number of votes obtained by the political parties on a national basis compared with the number of seats gained in Parliament by the parties (page 1 of AD proposals). In its suggestions regarding a new system, the AD proposes that the proportion be established on the first count following the preliminary count when the votes of the parties that do not qualify are transferred to the parties that qualify (page 4 para 3 AD proposals).

The principle of governability is reached through a threshold (page 1 of AD proposals). The equivalent of three quotas on a national basis or the equivalent of a quota in a particular division should be the threshold that brings about a just balance between proportionality and governability (page 3 of AD proposals).

In the counting of votes it should be ensured that transferability of votes is retained from the parties that do not reach the threshold to those parties that reach the threshold (pages 1 and 3 of AD proposals).

The first priority in the change of the electoral system should be the solution of the problem that arises when no party obtains 50% + 1 of the votes (page 2 of AD proposals).

The change in the present system should be as little as possible (page 4 of AD proposals).

As is evident, there are elements that are common to the three political positions and these can be indicated as follows:

1. The main aim should be the creation of a system that ensures maximum proportionality between seats in Parliament and votes obtained by the parties.
2. Proportionality should be measured with the first count.
3. The change from the present system should be as little as possible.
4. The system should be one that respects the principle of governability in the country.

When the Commission came to discuss the suggestions it received (that is both those of the political parties and of the public) it established two criteria that were considered as desirable, namely:

- (i) In order to achieve the highest proportion possible the system should reach two main aims: (a) that every vote be translated into representation in Parliament, and (b) that the proportionality of the seats in Parliament with the votes obtained be calculated on a quota equal for every seat (Minutes meeting No. 2 pp.3.2).

(ii) Subject to the system that is chosen, the Commission suggested that preferably the number of members elected to the House be determined prior to the election (Minutes meeting N. 2 pp 3.4).

(III) Proposals and Suggestions

The proposals and suggestions for changes in the electoral system that were examined by the Commission came from three sources, namely from the public, from the three political parties, and from the expert appointed by the Commission to try and find a mathematically coherent solution. In the context of this report, the words "mathematically coherent" should mean that the system chosen should always give a good result (i.e. as proportional as possible) in any scenario including circumstances which today might appear to be remote or extreme.

The details of the proposals or suggestions submitted for the consideration of the Commission can be deduced from the documents annexed to this report, and therefore there is no need to enter into the merits of each and every proposal.

However, the Commission feels it necessary that this report indicates in brief the main reasons why no one of the main proposals submitted failed to obtain the unanimous consensus of the members of the Commission. At the same time it has to be emphasized that this fact, taken on its own, does not mean that the proposals are void of intrinsic validity, but it simply means that the Commission could not reach unanimous agreement on the proposals or on any one of them.

Proposals and suggestions received from the public.

Out of the 24 submissions sent to the Commission, 13 proposed changes in the electoral system. The rest, including those made by the Electoral Commission, dealt with the electoral process and these are discussed in the second section of this report entitled "The Electoral Process".

As has already been said in the introduction to this report, individuals who submitted proposals were given the opportunity to appear before the Commission at a meeting open to the public in order to explain "viva voce" some points which they or the members of the Commission wished to clarify. The questions and answers result from the transcription annexed to this document and marked Annex C.

Among these proposals there were some which the Commission unanimously decided to discard mainly because they did not conform to the specific or general criteria already mentioned in this report. There were proposals which were discarded because they were not practicable, while there were other proposals which either did not solve any of the present difficulties or were not mathematically coherent.

Among these types of proposals one finds suggestions for the introduction of a party list system; a system which calculates proportionality on the final count and not on the first count; a system which denies the right of voters to express their preferences and to chose

between candidates from different parties; systems which involve practical difficulties if they were implemented; and systems which could give results where the adjustment of lack of proportion would involve a number of seats without any practicable limit.

Proposals from the political parties.

As one can note from the submissions made in writing by the political parties, both the Nationalist Party and the Alternattiva Demokratika put forward specific proposals for changes in the electoral system.

As regards the proposal of the Nationalist Party, there were three main points on which unanimous agreement could not be reached, namely (a) the proposal that the vote should not be transferable when the transfer occurs between two candidates of different parties which have surpassed the threshold, (b) the proposed threshold of five per cent (5%) of valid votes, and (c) the proposal that the votes of those parties which have not surpassed the threshold should go only to those parties which have qualified and then a new calculation of the national proportion be worked out as if those votes belonged to those parties which had in fact qualified (see pages 7 and 8 of the PN proposals).

As regards the proposal of the Alternattiva Demokratika, there were three main points on which agreement could not be reached, namely (a) the proposal that only four out of the five members be elected using the present STV method, while the fifth member be assigned to make sure of proportionality; (b) the proposed threshold of three national quotas or the equivalent of a quota in a division; and (c) the transferability of votes between parties that do not reach the threshold and those that reach it, and the recalculation of the national proportion after this transfer has been done (see pages 3,4 and 5 of AD proposals).

The Malta Labour Party did not submit any specific proposal except for the general principles declared on page 3 of the MLP proposals.

Professor Anton Buhagiar's proposal.

As has been said, the Commission tried to examine from two angles every proposal received, namely (a) that the proposal would create a mathematically coherent electoral system, and (b) that the proposal would be such as to bring about political consensus on a national level.

It was obvious from the start that the technical and mathematical aspect was vital for the consideration of the Commission since the chosen system or the proposed change had necessarily to pass a mathematical test that would not only be rigorous but would also have to foresee every possibility, even the one that seems most extreme or remote but which could become a reality if the political circumstances of the country were to change as they have done in other countries.

The Commission therefore decided to seek the assistance of an expert in the matter, and after approaching the University of Malta appointed Professor Anton Buhagiar Ph.D., Head of the Department of Statistics and Computer Applications, to examine the mathematical problems concerning proportionality arising from the present electoral system, and particularly as a

result of the Single Transferable Vote (STV), the margins allowed in the size of the various electoral divisions, and the votes wasted in the last count. The Commission asked Prof. Buhagiar to study the existing system and mathematical problems and try to help it find some practical solutions for them (see minutes of meeting No. 6 of the 5 July 1994 pp. 3.1 to 3.5).

Obviously, this study had to be limited to seeking a mathematical solution without entering into the political aspects that arise from issues such as that of governability.

The final report and the proposals of Professor Buhagiar are annexed to this report (Annex F) and from them one can note that the proposed system retains the voting method to which the Maltese people has got used while changing in a radical manner the counting method and the method of allocating seats and assigning them to candidates. The cardinal points of the proposed system are as follows:

1. The general election will be held exactly as it is held presently.
2. The STV with the quota known as Droop will be used in all divisions.
3. There will be the counting on a national scale of the first preferences for the parties contesting.
4. Seats will be assigned to every party on a national basis by the use of a divisor according to the d'Hondt system on the basis of the strength of the parties in all divisions.
5. By the use of the same d'Hondt system, the seats obtained by every party on a national basis will be distributed among the divisions in such a way as to ensure that every party obtains a number of seats equivalent to the number assigned to it on a national scale.

By means of the technique used in this method, the maximum possible proportion is guaranteed because every party will elect the number of candidates equivalent to the proportion of votes obtained on a national basis. The system also allows the transfer of votes, up to the last possible stage, even between candidates of different parties.

However, the question of governability remains unsolved, and therefore the Commission tried to delve into the political questions necessarily involved, namely (a) whether there should be a national threshold; (b) what is or what should be this national threshold and/or divisional quota; and (c) what happens to the votes given to the candidates of the parties that have not qualified for parliamentary representation.

In spite of intensive discussions within the Commission, no unanimous agreement could be reached regarding the three points mentioned.

The Commission recommends that contact be maintained at a political level in an effort to reach agreement on these three points. If such agreement were reached, then the Commission has no doubt that Prof. Buhagiar's proposal can be adopted as a lasting solution to the difficulties mentioned at the beginning of this report.

(B) The Electoral Process.

As has been stated in the introduction to this report, the Commission received various suggestions for changes in the electoral process. These suggestions came from these main sources: (I) the Electoral Commission; (ii) the Political Parties; (iii) the public; and (iv) the members of the Commission itself. Every proposal made in writing to the Commission is annexed to this report in Annexes B1 to B24 and E1 to E4, and therefore there is no need to go into the details of these proposals.

The Commission had the opportunity to discuss some of these reports with their proposers both at the public meeting (see transcription in Annex C) and also during its meetings, and particularly when it invited a representative of the Electoral Commission to appear before it and clarify some aspects of the submissions made by that Commission.

For practical purposes, it was decided that this section of the report should only mention those proposals on which there was unanimous agreement within the Commission as results from the minutes of its meetings. Wherever possible, the Commission chose to indicate the articles of the law that had to be amended or added, mainly in the 1991 Act regarding General Elections (Act No. XXI of 1991, hereunder referred to a "Act XXI/91").

The proposals on which agreement was reached can be classified under three distinct categories, namely (I) proposals that the electoral legislation be updated and that certain aspects of the process be made more transparent; (II) proposals that can contribute to the earlier announcement than hitherto of the final result of a General Election; and (III) general proposals and comments regarding specific fields.

Note: The above-mentioned proposals for updated legislation and greater transparency are not included here. These 61 items dealt with essentially technical questions of electoral administration, such as procedures for handicapped and elderly voters, the role of Assistant Electoral Commissioners, the functioning of the Electoral Commission, appeals from Commission decisions, and the like.

These items can, however, be found in a [Maltese-language version of the Gonzi Report](#).

(II) Proposals that might contribute to the earlier announcement of the final result of a General Election than hitherto.

In the introduction to this report it was stated that the third aim of the Commission was to identify measures which quicken the whole electoral process and therefore enable the final result of a General Election to be known within a time period relatively less than at present. Obviously, the identification of these kinds of measures depends, to a certain extent, on the electoral system chosen. Thus, for example, if the method suggested by Professor Anton Buhagiar were to be used (see Section A of this report) there is no doubt that that system would make it possible for the result on a national basis to be known within a few hours following the closure of voting in the sense that one would know how many seats have been won by every party and in what divisions these have been won.

But there are other measures that might be adopted, even if one were to retain the present system, which would contribute substantially to cut down on the time taken so far to start the process of counting the votes, to finalize it, and to render the process more fluid.

The Commission discussed this aspect and agrees that the following proposals be considered:

1. The ballot boxes should be opened for checking votes with the Ballot Paper Account immediately each box is delivered to the Electoral Commission, and not, as is the current practice, when all ballot boxes have been delivered. For this to happen, articles 85 and 86 of Act XXI/91 have to be amended. At this phase more than one ballot box from a division can be opened, provided that it is ensured that the relative votes are not mixed.
2. The reconciliation of cast votes process can be made simultaneously with the process mentioned above (para 1).
3. During the phase of counting first preferences assigned to the candidates, the Commission can count and add the totals of two candidates simultaneously provided that it has to physically separate the votes of one candidate from those of the other one.
4. A system should be found which would do away with delay caused because some ballot boxes may have mixed votes. It has been suggested that all persons who would be voting away from their locality (for specific reasons) might be invited to vote at an apposite centre (Ta' Qali itself) on the day preceding the General Election, in separate ballot boxes (i.e. in thirteen different ballot boxes) in such a way as to eliminate totally ballot boxes containing mixed votes.

Regarding this aspect reference is also being made to proposal No. 18 in Section B(1) of this report in which it was suggested that residents in Homes for the Elderly and in Hospitals should vote in a ballot box belonging to the division where they are registered and not in a ballot box containing mixed votes.

The implementation of this proposal, both in Homes for the Elderly and in hospitals such as St Luke's, St Vincent de Paule and Boffa, is subject to the condition that the ballot papers are mixed with those of other ballot boxes of the same division when they are in the sorting and counting stages, especially if the number of patients from one division were less than a number that has to be specified; this in order to prevent any possibility of a patient's vote being identifiable.

5. An amendment should be passed to allow, for calculation purposes, the acceptance of decimal fractions as if they were vulgar fractions. Thus, in the calculation of transfers, decimal remainders can be used and not fractional remainders as at present.

6. Calculations can be done by computers.

7. The Commission is agreed that the present practice in the counting of votes as agreed formally by the political parties, such as, for example, when two ballot boxes are opened and sorted together, be made possible also facultatively to the Electoral Commission. For this reason, the necessary amendments should be made to Act XXI/91 enabling the Commission to open up to three ballot boxes at one time in each division as long as the counting of each ballot box is done separately so that the votes do not get mixed.

(III) General proposals and comments on specific areas.

This section deals with two specific fields identified as being of great importance for the greater confidence of the Maltese people and the political parties in the whole electoral process. These two fields are (a) the identity card and its administration, and (B) the use of computers and information technology by the Electoral Commission.

(A) The Identity Card.

It is a known fact that the database on which the Electoral Register is drawn up is the same as that on which the Identity Card system is based. Therefore there is an intrinsic link between the electoral process and the administration and issuing of identity cards to Maltese citizens. Up to now, the identity card is not used directly in the electoral process, in the sense that another document, known as the "Voting Document", is used (Article 46 of Act XXI/91).

At present, therefore, we have two systems which emanate from the same source of information but which move on parallel lines to perform two functions which up to now have been left separate from each other. There is no doubt that with the introduction of information technology the situation needs to be rectified immediately to allow for one system to be used to verify the other system.

But until that stage is reached it is absolutely necessary that an effort be made so that the administration of the identity card system becomes more efficient. This is being said because this factor on its own can be one of the main reasons for doubts and suspicions that might arise from time to time.

The Commission therefore is in agreement that:

1. The Electoral Commission should be given adequate personnel to start immediately on a process by means of which all expired identity cards be renewed and the system updated in such a way as to ensure that this renewing continues to be made in a more efficient and effective manner. This should constitute a priority for the Electoral Commission.²⁰
2. Means should be found for the upgrading of the identity card from the security aspect so that it can be used in the electoral process as a double check on the identity of the person who is going to vote.

3. The photos on the identity card (as also those on the voting document) have to be of good quality and should henceforth be in colour.
4. Stricter control procedures should be introduced on the data entered in the database as is being suggested the next section of this report.

(B) Information technology and Computers.

The Commission had the opportunity to hear a detailed explanation of the information technology systems and procedures which the Electoral Commission uses to (a) build the database from which the Electoral Register is published; (b) keep the data updated; (c) protect the system against abuses and mistakes; (d) protect confidentiality vis-a-vis third parties; and (e) contract information technology services when it needs them.

From what was said to the Commission it transpires that far stricter measures have to be taken so that existing control and security procedures be put into practice and other control measures are taken to eliminate every possibility of mistake or abuse.

The Commission feels that this is also a matter of absolute priority and therefore recommends that these measures are taken as soon as possible.

1. The Electoral Commission has to ensure that its employees are those who manage all information technology systems connected with the electoral system and process, without any dependence on third parties.
2. The Electoral Office should have its own personnel who should be qualified and trained in computer techniques, such as System Analysts and others, and who also understand the responsibility and security of the system. The Electoral Commission has to be given the faculty to employ these persons as soon as possible.
3. The existing security measures should be implemented much more strictly, and other security measures should be introduced for better control of those who have access to computer terminals and keyboards. The use of passwords, finger-print access, sleeper facilities and system audits is of crucial importance for the continuous control of the various levels of the Commission's employees from the aspects of security, confidentiality, mistakes and also abuse, as also for the introduction of a method of finding out whoever is responsible in case of some fault.
4. Severe penalties should be introduced in the case of those who are found guilty of abusing in any way the whole information technology system used in the Electoral Office. 20
5. The software used at present by the Electoral Office should be exploited to its maximum possibility so that it will itself generate audit trails and checks for double or wrong entries, or for entries which are somehow modified without authorisation or without valid reason. Besides, the Commission's

database structure should be changed by the transfer of the records of dead persons, foreigners or persons who in some way or for some reason do not have the right to vote, from that database to a separate one instead of the present practice of retaining them, even though tagged, in the same database.

Conclusion

The members of the Commission wish to thank all those who contributed so that it could reach its conclusions and recommendations. Anything which is suggested or proposed in this document is the fruit of the contribution given to the Commission by its own members and by the experts it appointed, by the public, by the political parties and by the Electoral Commission.

(Signed by:)

Dr. L. Gonzi, Chairman of the Commission

Dr. Austin Gatt, Member

Dr. Paul Lia, Member

Dr. Wenzu Mintoff, Member

J. R. Grima, Secretary to the Commission

Translation from the Maltese by Joseph Felice Pace