Electoral
Reconciliation Ordinance

Proposed by: Julio R. Romney
Comparative Government & Politics Scholar

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ORDINANCE NO. _____

AN ORDINANCE TO PROMOTE INSULAR ELECTORAL RECONCILIATION

WHEREAS, it is expedient to promote insular electoral reconciliation, to foster trust and confidence in the allocation of seats in Parliament and remove the vestiges of political vendetta and victimization, to make the election process more transparent and to amend certain ordinances for that purpose and for matters connected therewith and ancillary thereto; and

WHEREAS, the Electoral Ordinance adopted December 2010, Chapter 7, provides for the determination of the results from the (Parliamentary) election; and

WHEREAS, the Central Voting Bureau divides the total election results from all voting Districts by the number of (Parliamentary) seats available. The calculated quotient is called the quota.

As many times as the quota is included in the total number of votes of a (party) list, that number of parliamentary seats are awarded to the (party) list. (Article 95); and

WHEREAS, of the seats that remain unoccupied, after the application of Article 95 seats will consecutively go to the list with the highest average number of votes. If the averages are equal, the allocation is decided by lot.

List with total votes less than the quota are not taken into consideration for seats.

With the application of Article 95 to a list, if more seats are to be granted in excess of the number of its candidates, the remaining seats are to be allocated to one or more other party list, by continuing the application of the first paragraph; and

WHEREAS, the Central Voting Bureau divides the votes of the list by the number of seats allocated to the party list. The quotient thus obtained is called list quota; and

WHEREAS, in allocating the number of seats obtained by a party list; candidates are chosen who have received a number of votes equal to or greater than the list quota.

If fewer candidates from a list receive the number of votes equal to or higher than the quota, then the candidates is ranked by the number of votes received, starting with the candidate with the highest number of votes received. The seats are awarded to the highest ranked in the order of non-elected candidates on the list.

NOW, THEREFORE, BE **IT** ORDAINED BY THE PARLIAMENT OF ST. MAARTEN THAT:

SECTION 1

The allocation of seats to the Parliament will be allotted based on the _D'Hondt formula. T_he seats will be assigned as follows:

A. The first seat will be assigned to the party which has obtained the highest number of votes. After assigning the first seat the total number of votes polled by each party will be progressively divided by two, three, four, etc., and each time a result is obtained the seat will be assigned to the party which has the highest average as a result thereof. This process will continue until all seats in Parliament have been assigned.

B. The proportional representation party list system will remain the method whereby voters express their preference among candidates. Candidates will be elected to Parliament on the basis of a division quota determined by the number of valid votes cast divided by the available seats. As many times as the quota is included in the total election results, those votes are required to obtain a seat.

In the first phase only candidates with the division quota from each party will be elected to Parliament.

In the second phase another candidate will be elected from each party (to Parliament) from the pool of non-elected candidates and with a procedure intended (ranking candidates in order of highest votes received) to ensure that the number of candidates elected for each political party is equal to the number of seats which have been predetermined through the *D'Hondt formula*.

SECTION 2

Transfers, the declaring of non-elected candidates as independent and/ or subsequently aligning with a different party list will not be allowed. By not obtaining the division quota a non-elected candidate serves at the pleasure of the party list. If such candidate no longer wishes to serve at the pleasure of the party the seat will be surrendered and re-assigned by the same method used in the second phase of section 1. (Any such seat was obtained on the strength of the party list and not the candidate; as such, justifiable should remain under the helm of the party list.)

SECTION 3

Where on determining the members of Parliament a member deceased or otherwise separated, then the member is replaced from amongst the elected or non-elected candidates with the highest number of votes of the affected party list.

SECTION 4

All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this ordinance are hereby repealed to the extent of such inconsistency or conflict. All ordinances not inconsistent herewith will remain in full force and effect, and will be applicable to all future elections.

SECTION 5

This ordinance will take effect immediately upon its adoption by the Parliament of St. Maarten.

EXPLANATORY MEMORANDUM to the Electoral Reconciliation Ordinance

The present Electoral Ordinance provides for the legal framework of the electoral system of St. Maarten. These provisions establish the regulations and procedures for the purpose of conducting fair general elections. Central are the measures underlining the determination of the results of the election/ calculation and allotment of seats in Parliament (Chapter 7, Articles 95 - 102).

Members of Parliament are directly elected through an open (party) list. Politically, St. Maarten is treated as a single constituency divided into 15 electoral districts. Parliamentary seats are allotted to party list based on quotient. The quotient is obtained by dividing the number of votes won by the party list by a division quota (the total of all valid votes cast divided by the number of available seats). Any remaining seats, refer to as "rest zetel", are then allotted by dividing party list votes by the number of seats allotted. Party list with the highest averages receive the remaining seat(s).

In fulfillment of the seats allotted to the party list, each candidate on the party list who has received votes equal to or greater than the quota are declared elected. Where fewer candidates from the party list are elected than seats allotted the remaining seat(s) are awarded to the highest placed non elected candidates, ranked by the number of votes they obtained. (It is well to note that in the past election (September 2010) of the 15 Parliamentary seats only 3 candidates were outright elected/ received votes equal to or greater than the quota.)

When analyzing the measures underlining the determination of the results of the election from a proportional representation perspective, as required by the Constitution (Article 47.1) many procedural questions arise. Perhaps the ultimate question being does the "quotient" facilitated by the "rest zetel" concept provide for alike proportional representation between the party lists in Parliament. In effect, the quotient and rest zetel concept as used, do not lead to strict proportionality between votes and seats in Parliament. The allotment phase/ process of the awarding of seats must be more decisive -- more definitive if you will -- so that Parliament is as much as possible proportionate to the vote obtained by party lists.

There is also much concern with the falling of Government twice in less than 3 years, where 2 parliamentarians break with their party affiliation, declared themselves as "independent"; join forces with another parliamentarian and the minority party in Parliament to form a new coalition Government (April 2012). Again, eleven month later 3 members of Parliament likewise withdrew their support from the majority party in Parliament, joined forces with the minority party in Parliament causing Government to lose its majority and resulting in the formation of a new coalition government. Consequently, on May 17, 2013 the electorate took to the street in a public demonstration culminating with a petition supported by reportedly approximately 3,000 signatures demanding that the Prime Minister call for early elections.

These occurrences are generally regarded as having negative effects on the transformation of government, since it implies chronic instability of Government, with the greater ramification being how the political stability is viewed by the international community; not to mention the perception of high risk by foreign investors and sustainable development our new found Constitutional status – a constituent state of the Kingdom of the Netherlands.

Our electoral legislation is based on (political) party list. In reality, it is on the strength of party list that a party list candidate is awarded a seat in Parliament. Hence, it is grave defect of such legislation that it does not regulate the position of the party list. Particularly as to non elected party list candidates which have been directly linked to the collapse of Government, in both instances. No government can govern effectively if suspicion exists of indiscriminate political desertion and/or if it came into being by political desertion.

It is consequently considered that it is not to soon that the electoral legislation ensures a much compelling proportionality between the votes polled by a particular party list and the seats assigned to that party list in Parliament. Also reflects reality and is brought in line to address the successive demise of Government (twice) in the last three years. The more the electoral process is open to optimal proportional representation and closed to electoral abuse the greater will be the contentment of the electorate in the development of government.

For these reasons, it is being proposed to adopt the electoral system (allotting seats to Parliament) know as the "D'Hondt system" in order to ensure the observance of the principle of proportional representation mentioned in the Constitution (Article 47.1), and that the number of seat in Parliament assigned to a particular party is as much as possible proportionate to the votes received by that party, while not favoring larger and/ or longer established political parties over new political parties. The "D'Hondt system" is effectively being used for allocating party-list parliamentary seats throughout the world, including the Netherlands.

The single constituency, divided into 15 electoral districts will remain the method where by voters vote their preference between party-list and party list candidate to Parliament.

The basic difference with the present system will be the following.

1. Unlike the present system, with its "rest zetel" concept, the "D'Hondt system" does not favor the larger and/ or longer established political parties and better calculates the proportionality between votes and seats in Parliament;

2. Through the Central Electoral Committee or Electoral Council it would have already been determined how many votes each party list has obtained in all electoral districts and consequently the total number of votes received in the (general) election;

3. The number of Parliamentary seats allocated to each party list will be based on highest averages (d'hondt formula). This requires that the number of votes for each party list be divided successively by a series of divisors, and seats are allocated to parties that secure the highest resulting averages, up to the total number of available seats. In this case with 15 available Parliamentary seats, each party list votes will be divided by 1, then 2, then 3, then 4, then 5, then 6, then 7, then 8, then 9, then 10, then 11, then 12, then 13, then 14 and 15. The corresponding party lists to the 15 highest distribution figures get the allotted seat;

4. The total number of seats won by each party list would be added up, which determines the number of members of Parliament which each party list has the right to elect;

5. To fill the number of members of Parliamentary which each party list has the right to elect will be determined as follows:

    a)   Party list candidates will be declared elected on the basis of a division quota, namely the total number of valid votes divided by fifteen (the available number of Parliamentary seats) and subtract the results from the number of members of Parliament which each party list has the right to elect (as determined in the previous phase/ #4);

    b)   The difference, should there be any will be elected from non-elected candidates (candidates that have not received the quota votes).

6. The choice between the non-elected candidates will be done as follows:

    a)   From amongst the non-elected candidates of each party list, the candidates with the highest number of votes - - equivalent to the remaining number of members of Parliament which it has to elect - - will be declared elected;

    b)   As soon as the required candidates are elected all other candidates of the party list will be excluded.

No transfers or the declaring of non-elected candidates as independent and/ or subsequently aligning with a different party list will be allowed. This process will justifiable allow a party list to maintain the number of Parliamentary seats officially won in a general election.

The principal aim of the draft Ordinance is to ensure the highest average method for optimum proportionality between votes and seats in Parliament as required by the Constitution and provide a pragmatic solution that will remove the present anomaly where non-elected members of Parliament could declare themselves as "independent", align with a different party list and render the fall of Government.