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Democratization, Post-conflict Elections and
Electoral Assistance
“Counting the Vote: A Case Study on Kosovo’s
2010 Parliamentary Elections”

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Natascha Golan

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Acronyms

AAK	Aleanca për Ardhmërinë e Kosovës (Alliance for the Future of Kosovo)
ACE	ACE Knowledge Network
AKR	Aleanca Kosova e Re (New Kosovo Alliance)
ARC	IFES' F. Clifton White Applied Research Center for Democracy and Elections
BM	By-Mail
BMO	By-Mail Operation
BRF	Batch Result Form
CB	Conditional Ballot
CEC	Central Election Commission
CECS	Central Election Commission Secretariat
CRC	Count and Result Center
CRF	Candidate Result Form
CSP	Comprehensive Settlement Proposal
DPKO	Department of Peacekeeping Operations
EA	Electoral Assistance
EC	European Commission
ECAP	Election Complaints and Appeals Panel
EIDHR	European Instrument for Democracy and Human Rights
EMB	Electoral Management Body
ENEMO	European Network of Election Monitoring Organizations
EOM	Electoral Observation Mission
EP	European Parliament
EU	European Union
EU EEM	European Union Election Expert Mission to Kosovo
EULEX	European Union Rule of Law Mission in Kosovo
EUPT	European Union Planning Team
EUSR	European Union Special Representative
FRY	Federal Republic of Yugoslavia
FVL	Final Voters List
FYROM	Former Yugoslav Republic of Macedonia
IC	International Community
ICJ	International Court of Justice
ICO	International Civilian Office
ICR	International Civilian Representative
IDEA	Institute for Democracy and Electoral Assistance
IOM	International Organization for Migration
IOM-OKV	Out of Kosovo Voting Program
IFES	International Foundation for Electoral Systems
KFOR	Kosovo Force
KIPRED	Kosovar Institute for Policy Research and Development
KLA	Kosovo Liberation Army
KPC	Kosovo Protection Corps
KSIP	Kosovo Standards Implementation Plan
LDD	Lidhja Demokratike e Dardanisë (Democratic League of Dardania)
LDK	Lidhja Demokratike e Kosovës (Democratic League of Kosovo)

LGE	Law on General Elections
LLE	Law on Local Elections
MEC	Municipal Election Commission
NATO	North Atlantic Treaty Organization
NDI	National Democratic Institute for International Affairs
NGO	Non-governmental Organization
OCV	Out-of Country Voting
OECD	Organization for Economic Cooperation and Development
ODIHR	Office of Democratic Institutions and Human Rights
OMIK	OSCE Mission in Kosovo
OSCE	Organization for Security and Co-operation in Europe
PDK	Partia Demokratike e Kosovës (Democratic Party of Kosovo)
PISG	Provisional Institutions of Self-Government
PR	Proportional Representation
PS	Polling Station
PSC	Polling Station Commission
PTK	Post Telecommunication of Kosovo
RRF	Result and Reconciliation Form
SAA	Stabilization and Association Agreements
SAP	Stabilization and Association Process
SNV	Special Need Voting
SRSG	Special Representative of the Secretary-General
UÇK	Ushtria Çlirimtare e Kosovës
UN	United Nations
UNDESA	United Nations Department for Economic and Social Affairs
UNDP	United Nations Development Program
UNDP/EAD	Electoral Assistance Division of the Department of Political Affairs
UNEAU	United Nations Electoral Assistance Unit
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNIFEM	United Nations Development Fund for Women
UNMIK	United Nations Interim Administration Mission in Kosovo
UNOPS	United Nations Office for Project Services
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
USAID	United States Agency for International Development
UNV	United Nations Volunteers

Chapter I: Introduction and Purpose of this Study

1. Introduction

Universal Declaration of Human Rights
The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.
Article 21(3) ¹

Elections are a key element of the recognition of human rights (i.e. freedom of expression, of assembly and association, etc.) and are a vital and important step in the democratization process by giving the opportunity for political participation and representation.

Only after the end of the Cold War has the ideal of democratic governance spread across the globe, and the importance of transparent and functioning governance institutions become widely recognized. Promoting democratic development and giving support to the institutions and processes related to elections has become an important element of international support programs, as elections can act as a catalyst for a new political order in a post-conflict environment. This can be witnessed through Electoral Assistance programs being part of major UN led peace-building missions around the world in countries such as Cambodia, East Timor, South Africa, El Salvador, Iraq, Afghanistan, Bosnia, Kosovo and many more.

It was with my deep involvement in Kosovo's electoral process since 2002, as well as my personal belief in an individual's right to participate in free and fair elections, that I decided to write about the role of International Electoral Assistance in Kosovo as my thesis topic. During this period, I have participated in numerous national elections, and was involved in the transformation of processes within the Count and Result Center.

Following the disputed military intervention by NATO in 1999 and the withdrawal of Serbian security forces, the UN Security Council Resolution 1244 established the UN

¹ UN Electoral Assistance Division. <http://www.un.org/Depts/dpa/ead/index.shtml>, [access: 01/05/2010]

Interim Administrative Mission in Kosovo (UNMIK). The resolution defined the borders of Kosovo as remaining within the former Yugoslavia, but was to be led toward “substantial autonomy and self-governance”². In 2000, after the establishment of the Joint Interim Administration Structure, the OSCE Mission in Kosovo (OMIK) initiated the election operation as an important tool for the democratization of Kosovo. In years to follow, different areas of responsibility were handed over from the electoral assistance providers to Electoral Management Bodies (EMB) within the country.

In the case of Kosovo (as well as Bosnia), international organizations were mandated to directly shape the institutional, constitutional and legal set up, whilst in other cases electoral assistance and general legal reform programs have provided less visible but significant assistance contributing to the change and modification of the electoral framework and its processes. There were two main international players involved in Kosovo’s electoral process: OSCE, as mentioned above, and the International Foundation for Electoral Systems (IFES), a non-governmental organization focusing on electoral assistance and democracy promotion. Both organizations were involved in assisting the central Count and Result Center (CRC), where the results of all polling stations are audited and tabulated. Throughout the ten years since the first post-war elections in Kosovo, the international community has played a continuous role within the CRC – either by entirely supervising and managing the operation, or by acting in an advisory function. This continued role in the CRC by the international community poses interesting questions: Why does the local EMB seem unwilling or unable to own this absolutely vital electoral process that effectively audits criteria which deems their elections to be free and fair. Why does the international community still oversee the overall results processing? Consolidating thoughts around this issue by using Tom Stoppard’s quote “Its Not the Voting that’s Democracy, Its the Counting.”³, the work in the CRC plays an important role in Kosovo’s electoral cycle and therefore in its democratization efforts.

² Paragraph 11 a “...main responsibilities of the international civil presence will include: (a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo....“ Full text available at <http://www.unmikonline.org/misc/N9917289.pdf>, [access: 03/04/2011]

³ Tom Stoppard, *Jumpers*, Act I, Grove Press, 1971

Despite ten years of large-scale and continuous international electoral assistance in Kosovo, the fraud observed during the 2010 Parliamentary Elections proved the difficulty in achieving a sustainable and credible electoral process, and specifically “free and fair” elections without the commitment of all actors involved.

It is within this setting that this thesis sets out to explain the status quo of international electoral assistance in Kosovo and to interlink an operational reality into a theoretical context, explaining why the elections 2010 might or might not have failed in being free and fair due to massive fraud in the polling stations.

There could be certain antagonism in political science towards this rather technical case study, but as pointed out by Andrew Ellis at a conference on Effective Electoral Assistance: “It [Electoral Assistance] is a political process. It may be called technical assistance but it is not a technical process where you design solutions and parachute them in. It is a political process with political actors and therefore needs to be handled in a political manner.” With these words in mind, this study will try to look into the broad spectrum of democratization from a different angle.

1.1. Field of Inquiry

Through my election work in Kosovo, first with the Organization for Security and Cooperation in Europe (OSCE), and later with the International Foundation for Electoral Systems (IFES), I was able to not only gain an inside view of “how things work” in a conflict-prone society, but also a different perspective on democratization, transitional elections and international assistance.

Working on this thesis has raised a number of questions in my mind as to the parallels that exist between the theory described in democracy literature and that what is actually taking place on the ground in Kosovo. Scanning through the wave of publications of the late 1980s and early 1990s on the topic, I found myself wandering about the relation between theory and reality in political science, the missing link between democracy assistance programs and academic democratization theories, and the difficulty of implementing these theories into reality. There is little scholarly work

on distortions in election results due to fraud, although elections are fault-prone ventures where electoral manipulation may have serious implications on the legitimacy of the elected and the regime. The challenge therefore is trying to include my practical experience into academic, political science research and putting the different objectives into perspective by methodizing all research questions to be able to plan the direction of this study.

The objective of the present thesis is to analyze the role of electoral assistance in democracy and democracy promotion. In particular, examine the role of electoral assistance in the democratization process of post-war Kosovo, with the attention of past year's Parliamentary Elections.

First and foremost, it is vital to clarify the terms democracy and democratization and to point out the role of election in democracy and democracy promotion. Discussing democracy assistance demanded an understanding of how the international community tries to make processes sustainable and effective, and how electoral assistance programs are designed to support free and fair elections.

In the case of Kosovo, the obvious question to ask is “what did electoral assistance providers do to ensure the integrity of the vote and transparent elections in the past”. More specifically what was their specific role in the 2010 election?

Therefore three main research questions will be analyzed in this study:

- What is the role of elections in democracy and the democratization process?
- What is the role of elections in post-conflict environments?
- How can electoral assistance help to assist and ensure free and fair elections in Kosovo?

Further questions can be raised regarding the different motivations and interests of the IC behind aid programs, the questions how to measure the effectiveness of external aid programs in general and how to improve them, however these topics are not within the scope of this paper.

1.2. Hypotheses

Hypotheses 1:

Although elections are a core element in democracy promotion and institution building efforts of external aid programs in Kosovo, **its long-term outcome is very much dependent on local actors and conditions.**

Hypotheses 2:

Despite the fraud identified by Kosovo's Count and Result Center and the partial election boycott by the Serbian minority, the Kosovo Parliamentary Elections of 2010 can be deemed free and fair as the integrity of the vote remained intact through the recount of ballots and re-election in certain municipalities.

Hypotheses 3:

Without substantial change to Kosovo's political culture, the development towards democracy will not be possible.

1.3. Methodology

In methodological regard, the present study will rely upon a combination of methods:

- Analysis of primary and secondary sources
- Participant observation (informal interviews and field notes)

To begin with, a consideration of democracy and democratization theorist literature is useful in examining the relationship of elections, democracy and democratization with regard to the link between international election assistance and democracy promotion. Furthermore, a study of election assistance literature, analysis by NGOs and electoral networks is needed when attempting to define the exact nature of election assistance. As there is a large volume of literature available, I will use the qualitative content analysis by Mayring to collect relevant data and information for further analysis. "Qualitative content analysis defines itself [...] as an approach of empirical, methodological controlled analysis of texts within their context of communication, following content analytical rules and step by step models, without rash

quantification.”⁴ This methodological approach is helpful in identifying key data from documents in order to systematically collect, evaluate and analyze it. This helps finding correlations between literature and the research questions.

The following international and Kosovar NGOs and electoral think tank analyses and reports, mostly available through the internet, are analyzed: International Institute for Democracy and Electoral Assistance (IDEA), ACE Electoral Knowledge Network, International Foundation for Electoral Systems (IFES), European Network of Election Monitoring Organizations (ENEMO), Kosovar Institute for Policy Research and Development (KIPRED), Freedom House.

Further documents and reports from organizations like the Organization for Security and Cooperation in Europe (OSCE), United Nation Mission in Kosovo (UNMIK), US State Department, the United Nations Development Program (UNDP), and the UN Security Council are used and available in the world wide web as well.

The Kosovo Constitution, Laws on Kosovo Elections, UN Resolutions and other relevant official documents are included in this thesis.

Based on the character of this thesis and its focus on the Parliamentary Elections 2010 (specifically the work in the Count and Result Centre), the participant observation method is an appropriate approach as it allows emphasizing a detailed contextual analysis and focusing on the process and different aspects of it. Participant observation enables the researcher to observe and understand the interactions of people from the position of an insider.⁵ Participant observation is a methodology to become directly involved into every day's life of the people and maintain the relationships established.

The participant observation is a method of data collection. Danny Jorgensen point out conditions when participant observation is appropriate:⁶

- the research problem is concerned with human meanings and interactions viewed from the insiders' perspective;

⁴ Mayring, Philip, Forum Qualitative Research, Qualitative Content Analysis, Vol.1, No.2 (2000), <http://www.qualitative-research.net/index.php/fqs/article/view/1089>, 13/01/2011

⁵ Jorgensen, Danny, A Methodology for Human Studies, Applied Social Research Methods Series, Vol. 15, SAGE Publications Inc., California, 1989, p.21

⁶ *ibid.*

- the phenomenon of investigation is observable within an everyday life situation or setting;
- the researcher is able to gain access to an appropriate setting,
- the phenomenon is sufficiently limited in size and location to be studied as a case;
- study questions are appropriate for case study, and
- the research problem can be addressed by qualitative data gathered by direct observation and other means pertinent to the field setting.

My personal experience working for elections in Kosovo in 2002, 2004 and 2009/2010 contributes to this subject area and is essential in gathering necessary information through work and personal relations with local and international election personnel, members of international organizations and Kosovar citizens.

The empirical source to the following thesis is casual conversations, as well as informal interviews, official and unofficial documents, report and field notes in combination with primary and secondary sources.

For reasons of clarity, the international prevalent form 'Kosovo', which is common in most English-language publications, is used as opposed to the Albanian form 'Kosova' or 'Kosovë'. For Kosovo's municipalities, the author follows UN practice: both, the Albanian and Serbian names, divided by a slash were used.⁷

1.4. Content

This thesis is composed of five chapters.

Following the introduction, the second Chapter discusses concepts of democracy and democratization, the role of elections in democracy and the linkage with democracy assistance.

⁷ UNMIK/REG/2000/43. 27 July 2000. On the number, names and boundaries of municipalities, http://www.unmikonline.org/regulations/2000/re2000_43.htm, [access: 12/19/2011]

Chapter Three gives an overview of the role of electoral assistance in post-conflict societies and talks about its role as a tool for democracy promotion. The most important organizations involved in electoral assistance programs are presented and electoral administration and the electoral cycle approach explained, in order to make the complex structure of electoral processes and the implications of sustainability more understandable. Furthermore, the establishment of international standards for free and fair elections and their applicability are discussed in this section.

Chapter Four sets up the context in which the case will be presented. It gives an overview about the political structure in Kosovo after 1999. It describes the establishment of UNMIK and delineates the current situation with EULEX and the EU. Attention is paid to Kosovo's Electoral Management Body, the Central Election Commission (CEC) who is responsible for the organization and implementation of elections in Kosovo, and the Electoral Complaints and Appeals Panel (ECAP), the authority for adjudicating complaints and appeals concerning the electoral process.

The case of Electoral Assistance in the Count and Result Center for the Parliamentary Elections in Kosovo 2010 considers the contextual importance of electoral assistance in light of the standards for free and fair elections and the integrity of the vote. It demonstrates the significant role electoral assistance took in this specific situation under pressing circumstances and elucidated the implementation of processes for getting more accurate results to account for each and every voter who casted a ballot on election day. A discussion on how "free and fair" can be measured in this context and/or if it can be reduced to various checks in the CRC, is essential in evaluating the implications of the findings of the CRC. Furthermore it discusses the prospects for further developments in Kosovo and why or why not the 2010 elections can be considered "free and fair".

The final chapter concludes the thesis and closes the loop by describing up to which point Electoral Assistance is mandated to assist, and where national Electoral Management Bodies act themselves, based on their own decision and own political interests.

Chapter II: Theoretical Framework

2.1. Democracy and Democratization

Democracy and democratization are of central concern for this work on 'Democratization, Post-conflict Elections and Electoral Assistance'. However, democracy itself is a widely contested term, and trying to define its meaning is a challenging task, as no single valid concept or definition for it exists.

There are uncountable contributions to this topic – many of them contradictory in their approaches and unsatisfying in the answers they attempt to form. This thesis cannot attempt to pursue the full spectrum of democracy concepts, but rather it shows exemplarily the ones with contemporary relevance to demonstrate the broad range of the democracy debate and its dynamics. In carrying out such an exemplarily overview, it must be acknowledged that conceptualizing democracy is an ongoing process and the societal contexts and dimensions are still changing.

Historically, early contributions to the topic of democracy dates back to ancient Greece where citizens⁸ participated directly in legislative and judicial functions. "Athenian democracy required a general commitment to the principle of civic virtue: dedication to the republican city-state and the subordination of private live to public affairs and the common good."⁹ Aristotle used the term in order to designate one of the deviations from his ideal of a well-ordered commonwealth.¹⁰ Later in the feudal system of the Middle Ages, power was not vested in elected bodies but was based on rank that could be only attained through inheritance or by force. A new aspiration began in the Renaissance, and finally the nineteenth century was the start of liberal democracy and new debates about the true content of liberty and liberal values emerged.

⁸ Females and slaves were excluded to count as Athenian citizen.

⁹ Held, David, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, Polity Press, UK, 1995, p.6

¹⁰ Schumpeter, Joseph, *Capitalism, Socialism, and Democracy*, Harper and Row, New York, 1942, p.218

According to the “liberal” or Lockean view, the democratic process accomplishes the task of “programming the government in the interest of society, where the government is represented as an apparatus of public administration, and society as a market-structured network of interactions among private persons”. Here politics (in the sense of the citizens’ political will-formation) has the function of bundling together and pushing private interests against a government apparatus specializing in the administrative employment of political power for collective goals.¹¹

The dilemma of balancing between “the sovereign power” and the “limits on that power”, quasi liberty versus authority was the difficulty of the liberal democracy discourse.¹²

Etymologically the term “democracy” originates from the two Greek words: demos (people) and kratos (rule), hence the “rule by the people”, which immediately raises some complex issues. Held depicts these by setting out the various problems and questions this phrase entails:¹³

- Who is to be considered “the people”?
- What kind of participation is envisaged for the people?
- What conditions are assumed to be conducive to participation?
Can the disincentives and incentives, or costs and benefits, of participation be equal?
- How broadly or narrowly is the scope of rule to be construed?
Or what is the appropriate field of democratic activity?
- If “rule” is to cover “the political”, what is meant by this? Does it cover (1) law and order? (2) relations between states? (3) the economy? (4) the domestic or private sphere?
- Must the rules of “the people” be obeyed? What is the place of obligation and dissent?
- What roles are permitted for those who are avowedly and actively “nonparticipants”?

¹¹ Habermas, Jürgen, *Constellations Volume I*, No I, 1994. @ 1994. Published by Blackwell Publishers, 1&9 Cowley Road, Oxford OX4 1JF, UK and 238 Main Street, Cambridge, MA 02142, USA, p.1, www.euro.ubbcluj.ro/.../habermas_3_normative_models_of_democracy.pdf

¹² Held (1995), p.9

¹³ Held, David, *Models of Democracy*, 1st ed., Polity Press, Cambridge, UK, 1996 (2nd ed., 2002), p.2

- Under what circumstances, if any, are democracies entitled to resort to coercion against their own people or against those outside the sphere of legitimate rule?

Bearing this excerpt of questions in mind, it can help to imagine the broad range of notions within the discussion of democracy, not only in political science theory but also in philosophy and economics.

David Held's definition "democracy means a form of government in which, in contradistinction to monarchies and aristocracies, the people rule"¹⁴ seems in many ways to be the best suited and least disputed one. Linz goes one step further and defines democracy as "the free competition for power, [that] implies a whole list of freedoms and rights that citizens do not enjoy in other political systems and that are in themselves valuable."¹⁵

Attila Agh uses four 'definitions' of democracy that can also be seen as stages of the democratization process:¹⁶

- 1.) Procedural democracy: Free and fair elections, constitutionalism, rule of law including minority right (a very sensitive issue for the 'nationalizing' states)
- 2.) Liberal democracy: free enterprise economy, clear separation of public and private, and the political representation of economic interests through intermediaries.
- 3.) National democracy: a communitarian period in which the political community is organized in a nation-building process with citizenship participatory rights.
- 4.) Egalitarian democracy: distinction between formal and substantial equality by acting as a welfare state (supporting some social strata through a 'social' market economy).

¹⁴ Held (1996), p. 1

¹⁵ Linz, Juan J., Some Thoughts on the Victory and Future of Democracy, in: Berg-Schlosser (Ed.), Democratization: The State of the Art, VS Verlag für Sozialwissenschaften (2004), p.128

¹⁶ Agh's definition is based on Ellen Comisso's studies in Central European and Balkan regions: Agh, Attila, Emerging Democracies in East Central Europe and the Balkans, Edward Elgar, Cheltenham, UK, 1998, p.10

For Agh, democratization is not just a political process, “since democratic transition proceeds as a ‘triple transition’ in politics, economy and society and their intricate relationships; they are closely connected to a nation-building process, and these feedbacks decide the progress of democratization as a whole”.¹⁷ When there is ‘disharmony’ within the ‘triple transition’, it can cause a ‘vicious circle’ with negative impact, which can undermine the democratization process. In contrast a ‘virtuous circle’, that is “politics creates all preconditions for a prosperous market economy, and economic growth accelerates social transformations, [...] the result is ‘harmony’ between democratic politics, a stable market economy and post-industrial society.”¹⁸

According to Sorensen, the processes of democratization and globalization additionally “sparked new debates about the economic, cultural and social conditions under which democracy can develop, and about the consequences of globalization for democracy.”¹⁹

Held outlines the ingrained conflict in democracy theory as, “whether democracy should mean some kind of popular power (a form of politics in which citizens are engaged in self-government and self-regulation) or an aid to decision-making (a means of conferring authority on those periodically voted into office)”.²⁰

Based on this conflict, Held offers a definition of the two broad types dividing the different models of democracy²¹:

- Direct or participatory democracy: a system of decision making about public affairs in which citizens are directly involved, and
- Liberal or representative democracy: a system of rule embracing elected “officers” who undertake to “represent” the interests and/or views of citizens within the framework of “the rule of law”.

Held also points out that “the consolidation of representative democracy has been a (late) twentieth-century phenomenon”

¹⁷ Agh (1998), p.9

¹⁸ *ibid*, p.11

¹⁹ Sorensen, Georg, Handbook on Democracy and Democratization, 2010, www.dpsa.dk/2010%20filer/Democracy%20and%20Democratization.doc [accessed: June 27, 2011], p.5

²⁰ Held (1995), p.5

²¹ Held (1995,1996), p.6

In consideration of this study, and its focus on the role of elections as a tool for choosing representatives in liberal and representative democracies, my focus lies on the political process, leaving the economical and societal factors aside but not forgotten.

2.2. Democratic Agendas

Gerardo Munck illustrates in his study *Democracy Studies: Agendas, Findings, Challenges* an evaluation of the great body of literature on democracy studies, and identifies three primary agendas of democracy theory: democratic transition, democratic stability, and democratic quality.²²

The distinction between these agendas is not only useful for organizing scholarly research and literature, but it also gives a good overview of the discussions on democracy and democratization focused predominantly over the past 30 years.

Furthermore it is beneficial to be able to link it with Kosovo's status quo as a democracy in transition and the role elections played in this process.

2.2.1. Democracy Transition

Democratic transition literature focuses strongly on election, "or more specifically, on the critical step in history of democracy when a country passes a threshold marked by the introduction of competitive elections with mass suffrage for the main political offices in the land"²³. The conceptual design with its emphasis on elections as a threshold for democratic transition excludes various issues concerning the formulation and implementation of public policy and respect for the rule of law.²⁴

Attila Agh goes beyond the summarizing concept of democracy transition and distinguishes between "transitions *from* authoritarian rule and transitions *to* democracy".²⁵ He states, the pre-transition crisis is "the climax of the crisis in the

²² Munck, Gerardo L., *Democracy Studies: Agendas, Findings, Challenges*, in: Berg-Schlosser (Ed.), *Democratization: The State of the Art*, VS Verlag für Sozialwissenschaften (2004), p.65

²³ *ibid*, p.66

²⁴ Munck (2004), p.68

²⁵ Agh, (1998), p.7

authoritarian system” that reaches a critical point and has a negative impact in form of destruction and disintegration. The next period is the creation of “a new system through transitory measures and institutions”.²⁶

The decision to focus on democratic transitions is driven by two insights:²⁷

- 1.) Elections are a significant event and can alter a country’s political dynamics;
- 2.) Transition to democracy is a distinct process and is theorized in its own terms.

The domain of democratic transition research was dominated by a Schumpeterian approach to democracy in its earlier stage.²⁸ Joseph Schumpeter offered in his work *Capitalism, Socialism and Democracy* a redefinition of democracy, which in his view was simply a mechanism for choosing political leadership. His ‘democratic elitism’ marks a rather pessimistic perspective, as he believes that the electorate is neither motivated enough nor interested in political issues to make appropriate political decisions. Therefore political parties and their competing elites dominate the political process.

As Schumpeter argues, “[t]he democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote.”²⁹

As he conceives it, the electorate can choose political leadership during elections, who are then making political decisions between elections. At the next election, the electorate can substitute their elected leadership and vote for another political party or individual. This ability to choose between leaders at election time is democracy – an approach of democracy that dismantles democracy of ethical or economic content and gives elections the utmost importance.

In comparison to the classical doctrine, Schumpeter saw certain advantages such as “a proper recognition of the vital fact of leadership”, that “the will and the good of the people” was not an ideal criterion to distinguish democratic governments from others, non-neglect of group-wise volitions, restricted “the kind of competition for leadership

²⁶ *ibid*, p.7

²⁷ Munck (2004), p.68

²⁸ *ibid*, p.66

²⁹ Schumpeter, Joseph, *Capitalism, Socialism, and Democracy*, Harper and Row, New York, 1942, p.241

which is to define democracy, to free competition for a free vote”, clarification of the relationship “between democracy and individual freedom”, function of evicting a government by electorate.³⁰

“Democracy is a political method, that is to say, a certain type of institutional arrangement for arriving at political – legislative and administrative – decisions and hence incapable of being an end in itself, irrespective of what decisions it will produce under given historical conditions. And this must be the starting point of any attempt at defining it.”³¹

With the shift in world politics during the 1960s and 1970s the Schumpeterian notion of democracy and democratic transitions became less relevant.³² Later, with the third wave of democratization in 1974³³ and the influential writings of Robert Dahl, democratic transition regained its popularity and Schumpeter’s conception about democracy resumed acceptance within the academic world.³⁴

Robert Dahl’s notion of polyarchy is for many scholars a root concept, especially for empirically oriented democratization studies and attempts to conceptualize democracy. In his work *Polyarchy* he attests that “no large system in the real world is fully democratized” and uses the term ‘polyarchy’ for “relatively democratized regimes that have been substantially popularized and liberalized”.³⁵ His concept of democratization offers two dimensions: Public Contestation (Liberalization) and Right to participate (Inclusiveness)³⁶. For the transition from a closed hegemonic regime to polyarchy he characterizes at least seven conditions:³⁷

- 1.) Historical sequences
- 2.) The socioeconomic order
- 3.) The level of socioeconomic development

³⁰ Schumpeter (1942), pp.242-244

³¹ *ibid*, p.217

³² Munck (2004), p.67

³³ The year 1974 is marked as the beginning of the third wave (worldwide movement to democracy) by Samuel Huntington with a coup d’état in Portugal, Huntington, Samuel P., *The Third Wave: Democratization in the Late Twentieth Century*, University of Oklahoma Press, 1991, p.3

³⁴ Munck (2004), p.67, Huntington (1991), p.6

³⁵ Dahl, Robert A., *Polyarchy, Participation and Opposition*, Yale University Press, London, 1971, p.8

³⁶ *ibid*, p. 6

³⁷ *ibid*, see summary p.203

- 4.) Equalities and inequalities
- 5.) Subcultural pluralism
- 6.) Domination by a foreign power
- 7.) Belief of political activists

Elections with universal suffrage are of central importance in Dahl's theory, in contrast to Schumpeter who neglected this criterion. Dahl's explicit two dimensions, the amount of regular and open competition in a political system, and the extent of different forms of participation in the process of political decision-making by the population of a given society, show a limited but useful characterization of contemporary democracies. Implicit in his notion is a third (normative) dimension that concerns basic civil liberties, such as freedom of information and organization, and a political order that guarantees and maintains the rule of law to make regular political contestation and participation possible and meaningful.³⁸

Berg-Schlosser summarizes these factors as the "input" side of political systems, whereas historical, economic and cultural bases and conditions of democracy and the actual performance and effectiveness of democratic systems imply the "output" side.³⁹

Dahl's polyarchy is often criticized as having a minimalist approach like Schumpeter's elite theory of democracy, but its conditions seem tangible and applicable towards a practical understanding.

Guillermo O'Donnell and Philippe Schmitter's work *Transitions from authoritarian rule* was another important step to establish the grounds for a normative and analytic research.⁴⁰ They define 'transition' as "the interval between one political regime and another [...] Transitions are delimited, on the one side, by the launching of the process of dissolution of an authoritarian regime and, on the other, by the installation of some form of democracy, the return to some form of authoritarian rule, or the emergence of a revolutionary alternative"⁴¹. They mark the beginning of a transition with the modification and change of rules by the authoritarian regime.

³⁸ Berg-Schlosser, Dirk (Ed.): *Democratization, The State of the Art*, VS Verlag für Sozialwissenschaften_GWV Fachverlage GmbH, Wiesbaden, 2004, p.52

³⁹ *ibid*, p.53

⁴⁰ Munck (2004), p.67

⁴¹ O'Donnell, Guillermo/Schmitter, Philippe C., *Tentative Conclusions about Uncertain Democracies*, Johns Hopkins University Press, Baltimore, Md., 2.print, 1989, p.6 In O'Donnell et al., eds., *Transitions from Authoritarian Rule*, Part 4, pp. 1- 78.

The process “of making effective certain rights that protect both individuals and social groups from arbitrary or illegal acts committed by the state or third parties” O’Donnell and Schmitter characterize as ‘liberalization’, an early stage in the transition.⁴² They further differentiate between liberalization and democratization, their analysis’ central concern. The distinction between these two terms is a useful starting point: political liberalization implies a lifting of oppressive rules and regulations and extension of civil and political liberties within an authoritarian regime, whereas political democratization “entails an expansion of political participation in such a way as to provide citizens with a degree of real and meaningful collective control over public policy.”⁴³ The distinction between these concepts is important as it calls for the key differences between the two. “Political repression can be relaxed without expanding political participation”⁴⁴, vice versa can political participation be granted with political liberties still remaining limited. Furthermore O’Donnell and Schmitter emphasized, the “key role of elite interaction and strategic choice during the transition and in most cases ascribed limited importance to mass mobilization from below”⁴⁵.

In their seminal work, giving particular attention to founding elections, “elections must be freely conducted, honestly tabulated, and openly contested”.⁴⁶ The role of elections for a transition to political democracy is of significant value, whereas political parties hold a minor role. Twenty-five years later Schmitter reviews their conclusions and states, “no democratization process can afford to do without parties, especially once elections are convoked. For better or worse, parties seem to be indispensable in structuring competition for representation within territorially defined constituencies.”⁴⁷ They also point out the relevant but sensitive technical issues for elections in transitional periods. For one the need of establishing thresholds for representing minor parties and social groups (ethnic or religious minorities), the formula for the seat distribution within constituencies, and the choice of political systems.⁴⁸

⁴² *ibid.*, p.7

⁴³ Brynen, Rex/Korany, Bahgat/Noble, Paul (eds.), *Political Liberalization & Democratization in the Arab World. Theoretical Perspectives*, Vol.1, Lynne Rienner Publisher Inc., Boulder, Colo., 1995, p. 3

⁴⁴ *ibid.*, p.4

⁴⁵ Schmitter, Philippe C., *Twenty-Five Years, Fifteen Findings*, *Journal of Democracy*, Volume 21, Number 1, January 2010, pp. 17-28 (Article), The Johns Hopkins University Press, p. 18

⁴⁶ O’Donnell, Schmitter (1989), p. 62

⁴⁷ Schmitter (2010), p. 23

⁴⁸ O’Donnell, Schmitter (1989), p. 60

The famous work of Samuel Huntington *The Third Wave: Democratization in the Late Twentieth Century* (1991) coined the term “Third Wave” and describes the emergence of democracies in waves.⁴⁹ Huntington’s explanatory factors contributing to the third wave of democratization are legitimacy crises in authoritarian regimes, economic growth with the new educated middle-class demanding greater rights and freedoms, and an increasing urbanization. Furthermore he sees a new political role of the Catholic Church, supporting more progressive politics. The changes in the US-Soviet politics and the expansion of the EU were additional multipliers advancing pro-democracy movements, with a snowballing effect.⁵⁰ Huntington also follows the Schumpeterian tradition in terms of the significance choosing political leadership through free, fair and regular elections in a democracy. He adds Dahl’s two dimensions – contestation and participation – and its implying civil and political freedoms in his analysis framework on democracy.⁵¹ The replacement of a government in free, open and fair elections is the “critical point in the process of democratization” and the processes surrounding Election Day vast and extensive.⁵²

Agh also points out the importance and dominance of politics in the period of democratic transition and argues the importance of parliaments as a central site and political parties as the major actors in the process of transition, thus focusing as well on an elite approach.

In this regard there is again an emphasis on elections as party politics’ main focus is to remain in power and therefore be re-elected. The possibility of government change through elections is considered as a positive sign in the transition process and the democratic spirit.

⁴⁹ Berg-Schlosser summarizes the emergence in waves: “Democracies have emerged in increasing numbers since the beginning of the 19th century, mostly in Anglo-Saxon and Western European countries. This culminated in a more rapid expansion shortly after World War I, still mostly in Europe but now including some parts of the former Tsarist, Habsburg and Ottoman Empires. This trend was the considerably reversed, leading to fascist or other types of authoritarian regimes, through until the end of World War II. The breakdown of the colonial empires after World War II then led to the emergence of many more independent states, first in Asia and then in the Middle East and Africa. These included a number of new democracies. In addition to the latter, some civil-authoritarian or military regimes in Southern Europe and Latin America have also democratized or redemocratized since the middle of the 1970s. The most recent upsurge occurred after the democratic changes in Eastern Europe in 1989-90, the dissolution of the Soviet Union and its worldwide repercussions.” See Berg-Schlosser (2004), p.16

⁵⁰ Huntington, Samuel P., *The Third Wave: Democratization in the Late Twentieth Century*, University of Oklahoma Press, 1991

⁵¹ Huntington (1991), p.7

⁵² *ibid*, p.9

The connection between political elites and the institutions of governance is another parameter examined in democracy theory literature. For instance, Linz & Stepan claim:

“A democratic transition is complete when sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power as a direct result of a free and popular vote, when this government de facto has the authority to generate new policies, and when the executive, legislative and judicial powers generated by the new democracy do not have to share power with other bodies de jure.”⁵³

As Munck formulates, “Democratic transitions do not occur through a single process but rather through multiple paths defined by factors such as the power and strategies of elites and masses and the top-down or bottom-up impetus for political reform.”⁵⁴

“A focus on democratic transitions, thus, does not deny that countries vary along other dimensions or that other dimensions may be as important as those highlighted by a Schumpeterian approach. [...] [it] is not based on a judgment about the importance of a Schumpeterian approach compared with any other approach but it is a rather conceptual decision, which helps to distinguish dimensions of concern within democratic theory that most likely vary independently from each other.”⁵⁵

Democratic transition remains an important challenge to a large number of countries. Many countries in the Middle East, Asia or China have not yet reached a democratic status, whereas “on the other hand, countries that have passed the democratic threshold always face the possibility of a democratic breakdown.”⁵⁶

2.2.2. Democratic Stability

Munck offers with the term ‘Democratic Stability’ a clarifying approach to the

⁵³ Linz, Juan J., Stepan, Alfred, Problems of Democratic Transition and Consolidation. Southern Europe, South America, and Post-Communist Europe, Johns Hopkins University Press, Baltimore, 1996 p. 4

⁵⁴ Munck (2004), p.70

⁵⁵ *ibid*, p.69

⁵⁶ Munck (2004), p.68

concept of ‘democratic consolidation’⁵⁷, which created confusion among scholars themselves regarding the meaning of “consolidated democracy”.

Originally, the term’s purpose was to “describe the challenge of making new democracies secure, of extending their life expectancy beyond the short term, of making them immune against the threat of authoritarian regression, of building dams against eventual ‘reverse waves’.”⁵⁸ Agh epitomizes it by two simple terms: “Democratic transition can be characterized by ‘chaos’ as a mixture of two social systems, and democratic consolidation by ‘routine’ as a full accommodation to the new homogenized system.”⁵⁹

Munck sees the research on democratic stability as the most direct continuation of research of democratic transitions. “It is concerned, quite simply, with the sustainability and durability of the democracies, defined in Schumpeterian terms, that result from successful democratic transitions.”⁶⁰

Linz and Stepan allegorize a democracy as consolidated – or in Munck’s sense stabilized – as the „only game in town“⁶¹. In their study *Problems of democratic transition and consolidation* they define a consolidated democracy by three factors:⁶²

- 1.) Behaviorally: no relevant stakeholders are seriously engaged in secession or regime change.
- 2.) Attitudinally: most people belief in democracy as the best form of government and contra-democratic attitudes in a society or public opinion are marginal.
- 3.) Constitutionally: democracy is consolidated when all major actors of the state operate according to the democratic process including specific laws, procedures and institutions.

Linz and Stepan continue by criticizing the dominance of electoralism and market mechanisms in the democratization debate and argue for five interacting arenas necessary for a consolidated democracy. As first arena they define the need for an

⁵⁷ First Munck suggested using the label “thin” and “thick” concepts of democratic consolidation. Later he moved his focus on the notion of democratic stability and democratic quality, to precise the discussion about consolidated democracy and to introduce a conceptual order.

⁵⁸ Schedler, Andreas, What is Democratic Consolidation?, *Journal of Democracy* - Volume 9, Number 2, April 1998, pp. 91-107, p.91

⁵⁹ Agh (1998), p.8

⁶⁰ Munck (2004), p.82

⁶¹ Linz, Stepan, (1996), p.5

⁶² *ibid*, p.6

environment, which allows for the development of a civil society, second arena a “relatively autonomous and valued political society”, the third is characterized as rule of law, the fourth arena spans “useable state bureaucracy” and the fifth an “institutionalized economic society” as essential conditions.⁶³

In summary all of these arenas are inter-related and supportive of each other. A failure of one arena can have an adverse effect on another arena and compromise the consolidation.

Linz and Stepan’s pre-requisite for a consolidated democracy is a state: “Democracy requires statehood. Without a sovereign state, there can be no democracy.”⁶⁴ But they do offer a solution for ‘multinational’ states in a political “roof” that protects the rights of individuals and focuses on consensual policies in the five arenas.⁶⁵

David Held’s model of ‘democratic autonomy’ also requires both, an accountable state and a democratic reordering of civil society.⁶⁶ But he spans an even wider bow of preconditions for a consolidated, stable democracy.

“Persons should enjoy equal rights and, accordingly, equal obligations in the specification of the political framework which generates and limits the opportunities available to them; that is, they should be free and equal in the process of deliberation about the conditions of their own lives and in the determination of these conditions, so long as they do not deploy this framework to negate the rights of others.”⁶⁷

His concept does not merely comprise of casting a vote on Election Day but calls for a “bill of rights including equal opportunity for participation, individual preferences and citizens’ final control of the political agenda”⁶⁸ as Sorensen summarizes in his handbook on Democracy and Democratization. It also includes social and economic rights. Held’s model of “democratic autonomy” can be seen as a wide and comprehensive notion of democracy in contrast to Schumpeter’s very narrow definition.

It needs to be said that more and more countries that had democratized after 1974 remained democratic and scholarly attention shifted to “theories of convergence and

⁶³ Linz, Stepan (1996), p.7ff

⁶⁴ *ibid*, p.19

⁶⁵ *ibid*, p.35ff

⁶⁶ Held (2002), p.316

⁶⁷ Held (1995), p.147

⁶⁸ Sorensen (2010), p.4

the end of history that suggested that major political differences were bound to diminish”⁶⁹ as world politics have changed with the end of the Cold War. The relevance of research on democratic stability is an interesting factor in regard to potential and actual breakdowns of democracies as witnessed in Latin America, Africa or Asia.⁷⁰

The notion within academia was not to diminish the relevance of elections in the new democracies as “the free and fair nature of elections evident in many countries serve as a reminder of basic differences in the democratic-ness of countries” and “there is little doubt that competitive and fair elections leading to alternation in power have become fairly common events.”⁷¹

The point made is that elections might not be enough to explain the discrepancies between different countries in their democratic behavior but other issues that are linked with democracy such as the rule of law, corruption, nepotism, freedom of media, etc. need to be further explored. A multitude of variables⁷² were included to explore the reasons why some new democracies were more stable than others but had not much explanatory power.

As per Munck this could mostly be explained by the narrow indicator “durability”, therefore further research needs to be done before rejecting any explanatory variable. Another suggestion was to use explanatory variables in reference to democratic quality. One positive finding was that level of economic development, which does not explain democratic transitions, is nonetheless an important determinant of the stability of democracy based on the work by Lipset, Przeworski et al.⁷³ Furthermore argue Linz and Stepan that elite consensus on the distribution of power among political institutions is a critical factor for democratic stability.⁷⁴

According to Linz and Stepan,

⁶⁹ Munck (2004), p.83

⁷⁰ *ibid*, p.83

⁷¹ *ibid*, p.83

⁷² Variables like the modality of transition to democracy, economic and political reforms, economic performances, the strength of civil society and political parties, the presidential or parliamentary form of government, etc. See Munck, p.85

⁷³ Munck (2004), p.86

⁷⁴ Linz, Stepan (1996)

“Disagreements among the core actors of transition over the type of government and electoral system may create questions about the legitimacy of the emerging democratic government, the decision-making process, and the future of the political system. Such institutional indeterminacy about core procedures necessary for producing democracy may not only leave the transition incomplete, but also postpone any consolidation of democracy.”⁷⁵

2.2.3. Democratic Quality

A new research agenda “democratic quality” is in its early stages and in the process of defining and delimiting the subject. Linz, in his paper *Some Thoughts on the Victory and Future of Democracy* also identifies the complex problem of the quality of democracy and points out the need to find a “more positive justification” in favor of democracy as “democracy by comparison ha[s] lost strength”.⁷⁶

Munck points to Guillermo O’Donnell who has done much work on democratic quality and stresses the fact that more and more countries are democratic, but many differ from the classic democracies “failing to enshrine the rule of law, eradicate clientelistic and other particularistic practices”.⁷⁷

Democratic consolidation in the Balkans and other countries face some serious issues but nonetheless argues Linz rightly that even if some of the problems or crises result in a questionable democratic quality, the chance of a backslide to authoritarian rule low.⁷⁸ He points out that the quality of democracy is furthermore affected by the quality of the political class. Referring to Schumpeter’s view that political individuals need to be of “high quality” in order for a successful democratic method.

Indicators of the quality of the “political class” would be:⁷⁹

1. The proportion for whom politics is “a vocation” rather than just a way of making living.
2. The commitment to some values or goals relevant for the collectivity, without, however, pursuing them irrespective of consequences. This means some

⁷⁵ *ibid*, p. 4

⁷⁶ Linz, Juan J., *Some Thoughts on the Victory and Future of Democracy*, in: Berg-Schlosser (Ed.), *Democratization: The State of the Art*, VS Verlag für Sozialwissenschaften (2004), p.127

⁷⁷ Munck (2004), p.91

⁷⁸ Linz (2004), p.116

⁷⁹ *ibid*, p.130f

mixture between being guided by a *Gesinnungsethik* and a *Verantwortungsethik* in Max Weber's sense.

3. The amount of political corruption, relatively narrowly defined, as use of power for private and personal ends, specifically enrichment, or to illegally favor particular organizations or groups.
4. The use or tolerance of illegal violence, even against enemies of the state and democracy, and even when a majority of citizens are ready to condone it.
5. Willingness to play with or use the disloyal opposition, revolutionary extremists or putschists, against other democratic forces or the institutions, to blackmail them or gain power.

Linz also indicates a very high or very low rate of voter participation as a sign of a crisis of democracy. "Extremely high rates of participation and extraordinary majorities for one party or candidate (in presidential systems) are suspect."⁸⁰

In *Assessing the Quality of Democracy*, Diamond and Morlino suggest "democratic quality can be thought of as a system in which improvement in one dimension can have diffuse benefits for others (and vice versa)."⁸¹ They lean on Dahl's polyarchy in defining their framework of democracy for their analysis and exclude hybrid or "electoral authoritarian" regimes, who fail in holding free and fair elections, a fundamental prerequisite of democracy. Their definition of a quality democracy includes a "high degree of freedom for its citizens, political equality, and popular control over public policies and policy makers through the legitimate and lawful functioning of stable institutions" based on three meanings of quality: procedure, content and result.⁸²

⁸⁰ *ibid*, p.132

⁸⁰ Munck (2004), p.91

⁸¹ Diamond, Larry/Morlino, Leonardo (Ed.), *Assessing the Quality of Democracy*, John Hopkins University Press, Maryland, 2005, p.x

⁸² *ibid*, p.xii

This resulted further in eight dimensions of varying quality of democracies:⁸³

Procedural Dimensions:

- 1.) Rule of law⁸⁴: base upon other dimensions rest
- 2.) Participation: participation in a broader sense; not only in voting but also in the political process
- 3.) Competition: electoral competitiveness between different political parties and fair access to mass media
- 4.) Vertical Accountability: obligation of elected political leaders to account for political decisions
- 5.) Horizontal Accountability: office-holders are answerable to other institutional actors; checks and balances by public entities

Substantive Dimensions:

- 6.) Respect for civil, political and social Freedoms
- 7.) Progressive implementation of greater political Equality

Results Dimension:

- 8.) Responsiveness: to the expectations, interests, needs and demands of citizens

Interestingly they conclude from findings resulting from their case studies that “competition and participation are engines of democratic quality”, and underline the benefit for stronger, resourceful and influential social groups in comparison to small, powerless and marginalized ones for these qualities.⁸⁵ “Leveling such inequalities, giving voice to the voiceless, and bringing all citizens more fully into the arenas of civic participation remain the most enduring and difficult challenges for the deepening of democracy.”⁸⁶

⁸³ *ibid*, p.xii ff

⁸⁴ “Democratic rule of law ensures political rights, civil liberties, and mechanisms of accountability which in turn affirm the political equality of all citizens and constrain potential abuses of state power.” See: O’Donnell, Guillermo, *Why the Rule of Law Matters*, in Diamond, Larry/Morlino, Leonardo (Ed.), *Assessing the Quality of Democracy*, John Hopkins University Press, Maryland, 2005, p.3

⁸⁵ Diamond/Morlino (2005), p.xl

⁸⁶ *ibid*.

2.2.3.1. *Democratic Sub-types*

Georg Sorensen argues successfully in his book *Democracy and Democratization* that there has been a “shift from “transition” to “standstill” in the sense that many regimes remain in the gray area of semi-democracy or semi-authoritarianism.”⁸⁷ Also Berg-Schlosser find “at a closer look, however, these new democracies show a bewildering variety of specific sub-types and concrete defects when compared to their more established counterparts, especially those in Western countries.”⁸⁸

This paragraph exemplarily chooses three examples of democracy sub-types:

Defective Democracy

Wolfgang Merkel approaches democracy in his reference work *Embedded and Defective Democracies* with the root concept of embedded democracy⁸⁹, which consists of five interdependent partial regimes (electoral regime, political rights, civil rights, horizontal accountability, effective power to govern). He criticizes the perception of ‘electoral democracy’ and its dichotomy, arguing that it is ignoring the “distinction between consolidated liberal democracies and their diminished sub-types”⁹⁰, which he calls defective democracies. “Defective democracies are democracies in which the partial regimes are no longer mutually embedded, the logic of a constitutional democracy becoming disrupted” meaning when one of the partial regimes is defective, it ceases being an embedded democracy. Merkel identifies four sub-types of defective democracy: exclusive democracy, illiberal democracy, delegative democracy and tutelary democracy.

He sees democratic elections as an inadequate indicator to explain democracy. Rather, he concludes that “Democracy seems to be periodical phenomena, occurring when elections are held, rather than a continual and omnipresent process of social order.

⁸⁷ Sorensen, Georg. *Democracy and Democratization. Processes and Prospects in a Changing World*, 3rd Edition, Westview Press, Boulder, Colorado, 2008, p.2

⁸⁸ Berg-Schlosser (2004), p.13

⁸⁹ “The concept of embedded democracy follows the idea that stable constitutional democracies are embedded in two ways. Internally, the specific interdependence/independence of the different partial regimes of a democracy secures its normative and functional existence. Externally, these partial regimes are embedded in spheres of enabling conditions for democracy that protect it from outer as well as inner shocks and destabilizing tendencies.” In Wolfgang Merkel. *Embedded and Defective Democracies*, p.34; In: *Democratization*, Vol.11, No.5, December 2004, pp.33–58, p.33

⁹⁰ *ibid*, p.33

Therefore, competitive and free elections appear insufficient for guaranteeing other relevant aspects of democracy, such as the rule of law, civil rights, and the accountability of its representatives for example.”⁹¹ In his view, only the other four partial regimes assure the constitutional principles of democracy and the purpose of democratic elections fulfilled.⁹²

Delegative Democracy

Guillermo O’Donnell published his article *Delegative Democracy* in 1994⁹³ conceptualizing the term ‘delegative democracies’. In this form it characterizes the politics of new democracies and relates to the “exercise of power” and not the “access to power” that were of relevance for democratic transition and democratic stability.⁹⁴

In delegative democracies “electoral competitiveness and relative civil and political freedom” prevail but executive office-holders, once elected, “are minimal responsive to citizens preferences, constrained by other agencies of government, and respectful of the rule of law.”⁹⁵

Mechanisms of horizontal accountability – the checks and balances by other institutions – are circumvented or forfeit by the political leadership, albeit opposition parties and assemblies may vocalize criticisms.⁹⁶ Elections are essentially the only mechanism of accountability. Thus, a defining feature of delegative democracies is the dominance of the executive leader and the absence of a “network of relatively autonomous powers (i.e., other institutions) that have the capacity of calling into question and eventually punishing “improper” ways of discharging the responsibilities of the given officer”.⁹⁷

Illiberal Democracies

Another democracy sub-type is called illiberal democracies. In this case “democratically elected regimes, often ones that have been reelected or reaffirmed through referenda, are routinely ignoring constitutional limits on their power and

⁹¹ Merkel (2004), p.34

⁹² *ibid.*, p.37

⁹³ O’Donnell, Guillermo, *Delegative democracy*, *Journal of Democracy*, 5:1,2004, pp. 55-70

⁹⁴ Munck (2004), p.92

⁹⁵ Diamond/Morlino (2005), p.xl

⁹⁶ O’Donnell (1994), p. 65

⁹⁷ *ibid.*

depriving their citizens of basic rights and freedoms”.⁹⁸ Zakaria argues that the reason for the late recognition of this dilemma arises from the western perspective of democracy as free and fair elections in combination with the rule of law and basic human rights, the so-called constitutional liberalism. He elaborates his argument further by stating that the concepts of democracy and constitutional liberalism diverge in some countries with a negative effect: centralized regimes, erosion of liberty, ethnic conflict and war. His conclusion, in regards to the international community is to minimize the high priority of voting and advance the gradual liberalization of societies.

2.2.3.2. Attempts to measure Democracy

With the rise of democracies around the world and the varying concepts of understanding the democratization processes, the need for “measuring” those democracies became an increasing relevant and preferred objective.

Berg-Schlosser summarizes: “The current indices of democratization provide information only about the state of affairs in a country at a given point in time; they do not assess the stability and durability of democratic systems as such.”⁹⁹ He describes the varying purposes and problems accompanying the “measurement” of democracy (type of method and research instrument used; developing and measuring concrete sub-types of democratic political systems, etc.).¹⁰⁰

Freedom House

One of the best-known and most popular indexes to date is Freedom House¹⁰¹, which ascertains long-term development trends of democracies. Freedom House is a non-profit and self-professed watchdog organization established in 1941. Over the past 40 years Freedom House has become a preferred source by attempting to compare country data based on specific criteria; with free and fair elections as a minimum requirement. This rather paltry qualification indicates a state as electoral democracy in the Freedom House index. In 1989, for example, 69 countries were labeled

⁹⁸ Zakaria, Fareed, The Rise of Illiberal Democracy, Foreign Affairs, Volume 76- Number 6, November/December 1997, p.2-23, p.2

⁹⁹ Berg-Schlosser (2004), p.57

¹⁰⁰ *ibid*, p.53

¹⁰¹ see Freedom House, <http://www.freedomhouse.org/> [access: 07/05/2011]

“Electoral Democracies”, while in 2011 115 countries can be found. Based on available literature and known dimensions of democracy, the demarcation of holding free and fair elections as minimum requirement of democracy seems too narrow and problematic.¹⁰²

*Freedom of the World*¹⁰³ the organization’s annual survey designates one of three categories ‘free’, ‘partly free’¹⁰⁴, and ‘not free’ to each country in the index. This is not an index of democracy per se but “both the ‘political rights’ and the ‘civil liberties’ indicators which cover important dimensions of democratic systems.”¹⁰⁵

Despite its weaknesses, Freedom House serves to identify trends and developments, though the data needs to be applied with care, as their coding system is based to a certain degree on subjectivity, a political checklist methodology which itself is problematic, and intuitive observations.

Democratic Audit

“Democratic Audit” by David Beetham and Stuart Weir is a normatively more demanding perspective.¹⁰⁶ “They originally examined four major aspects of democratic quality and performance: free and fair elections; open, accountable and responsive government; civil and political rights; and democratic society.”

The original four expanded to 14 areas:¹⁰⁷

1. Nationhood and citizenship
2. The rule of law
3. Civil and political rights
4. Economic and social rights
5. Free and fair elections
6. The democratic role of political parties
7. Government effectiveness and accountability
8. Civilian control over the military and police

¹⁰² Merkel (2004), pp.34-35, Merkel also states that “in general, fair and correct execution of elections is difficult to determine empirically”.

¹⁰³ According to the survey’s findings is Kosovo rated as partly free and not an electoral democracy.

¹⁰⁴ A Partly Free country is one in which there is limited respect for political rights and civil liberties. Partly Free states frequently suffer from an environment of corruption, weak rule of law, ethnic and religious strife, and a political landscape in which a single party enjoys dominance despite a certain degree of pluralism. (<http://www.freedomhouse.org/template.cfm?page=594>), (05/27/2011)

¹⁰⁵ Berg-Schlosser (2004), p.56

¹⁰⁶ *ibid*, p.59

¹⁰⁷ *ibid*.

9. Minimization of corruption
10. The media and open government
11. Political participation
12. Government responsiveness
13. Decentralization
14. International dimensions of democracy

The goal now is to generate a comparative model with the support of the Institute for Democracy and Electoral Assistance (IDEA) in order to contribute to the idea of a critical qualitative assessment.¹⁰⁸

With the discussed concepts of democracy it might be easier to categorize different countries, putting them into a specific schema but nonetheless it is not explanatory in all the aspects.

2.3. Democracy Assistance

The underlying notion of why democracy is a value that needs to be transported around the world is embedded in the idea of democratic peace – democracies are less likely to begin a war with each other. Promotion of democracy from the outside is a very delicate balancing act between influencing the process of democratization while “leaving ultimate control to insiders”¹⁰⁹

Democracy assistance has vastly increased in the 1980s with the democratic transition in Latin America and parts of Asia, and expanded further in early 1990 with the democratization wave in Eastern Europe, the former Soviet Union and Africa. Democracy-related assistance programs were developed and donor governments engaged in the notion of a democratic world order.

¹⁰⁸ Berg-Schlosser (2004), p.59

¹⁰⁹ Sorensen (2008), p.2

Thomas Carothers identifies a duality of purpose that characterizes western aid efforts aimed at democracy promotion:¹¹⁰

- 1) Idea of promoting democracy as a political good that will improve the lives of citizens by bringing more freedom, political representation, and governmental accountability (esp. Latina America, Eastern Europe).
- 2) Democracy as a valuable goal to advance social and economic development - democracy as one component of an overall approach to attaining sustainable development (esp. Africa, Asia).

In his paper *Democracy Assistance: The Question of Strategy*, Carothers offers an explanation of the strategies used by donors of democracy assistance programs. He points out the fact that the strategy used is based on a western model of liberal democracy, more specifically a “US-specific blueprint”.¹¹¹ But in comparison to the standard US political science definition of democracy, which centers on elections and respect for basic political and civil right, the model for democracy assistance is more institutionally oriented.¹¹² Democracy aid programs therefore are aimed at shaping a particular institution along the lines of a western counterpart institution.

The quintessential elements of democracy aid programs are designed around this well summarized definition: “Democracy is equated with regular elections, a constitution guaranteeing basic political and civil rights, a three-part governing structure, viable local government structures, national political parties, independent trade unions, independent media, and at least some advocacy NGOs capable of channeling citizens’ demands to the government.”¹¹³

Assistance programs are therefore based on three main categories¹¹⁴:

- 1.) Electoral arena
- 2.) Governmental institutions

¹¹⁰ Carothers, Thomas, Democracy assistance: The question of strategy, *Democratization*, 4:3, 1997, 109-132, p.110 <http://dx.doi.org/10.1080/13510349708403527>, [access: Oct 7, 2010]

¹¹¹ Carothers (1997), p.115

¹¹² Carothers acknowledges in his concluding remarks the existence of differences between non-US donors or actors (for example: methods of project implementation, long-term vs short-term approach, direct grants, political profiles and legacies) but argues the concept of institutional modeling as prevalent and the substantial similarity of the same democratic assistance strategy. See Carothers (1997), p.130

¹¹³ *ibid*, p.115

¹¹⁴ *ibid*, p.112ff

3.) Civil society

Ad 1.)¹¹⁵

Goal: Holding of free and fair elections – presidential, parliamentary, and local

Aid can consist of:

- Technical assistance to electoral commissions to improve election administration;
- Support for voter education campaigns implemented by local civic groups or EMBs
- Election monitoring by international delegations or domestic organizations;
- Political party development: Strengthen the main political parties through technical assistance and training on campaign methods and institutional development.

Goal: party system marked by a limited number of national political parties differentiated by mild ideological shadings, with genuine national institutional reach, and strong campaign capacities.

Ad 2.)

Goal: Build democracy from top down

Aid can consist of:

- Constitutional assistance (Expert advice, conferences, exchange visits and seminars on constitutionalism and constitutional analyses)

Goal: Adopting a constitution that guarantees democratic government and a full range of political and civil rights.

- Parliamentary assistance (training for staff and members of the parliament, technical assistance for parliamentary libraries, research units and public affairs offices)

Goal: Strengthen the overall institutional capacities of parliaments and help operate in a more effective, representative manner.

- Judicial reform (training of judges, prosecutors and other legal personnel, technical assistance relating to court administration, underwriting the publication of court decisions, providing law books and legal materials, and

¹¹⁵ Electoral Assistance will be discussed more detailed in chapter three.

supporting the establishment of arbitration mechanisms and other forms of dispute resolution)

Goal: Increase the efficiency and independence of judicial systems.

- Local government strengthening (training and technical assistance)

Goal: Increase the capacity of local government officials to perform administrative, fiscal, and developmental functions, and policy dialogue with the central government.

Ad 3.)

Goal: Strengthening civil society

Focus on:

- Advocacy-oriented non-governmental organizations (NGOs) – Human right groups, election monitoring organizations, and environmental organizations

Goal: policy-oriented advocacy as crux of the pro-democratic function of civil society

- Media (training programs for journalists, sometimes equipment donations to newspapers, radio or television stations)

Goal: Fostering the growth of independent, professionalized media

- Unions

Goal: Strong, independent unions are a crucial component of democracy.

The status quo of an institution in the recipient country is being compared to the idealized endpoint of a western counterpart institution. The identified gaps should be closed with the help of an assistance program, in most cases by a sea of trainings. Aid providers are seeing the process of knowledge transfer and behavioral training as essential for democracy and view democracy assistance in the role of a facilitator of it.¹¹⁶

The institution-modeling approach, which is neither based on US domestic political experience nor on academic theory, is rooted in “the actual experience of the democratic transition that the assistance is attempting to support”.¹¹⁷

¹¹⁶ Carothers (1997), p.116

¹¹⁷ *ibid*, p.119

“According to this model, the transformation process begins with a political opening in which a non-democratic regime opens up the political system. The political opening gains momentum and leads to national elections, and in some cases, to the drafting and adoption of a new constitution. Once an elected government is in place, the transition proceeds with the rationalization and democratization of government institutions and the simultaneous strengthening and diversification of civil society.”¹¹⁸

Carothers highlights the existing discrepancy between academic democratization theory and actual democracy assistance in the field and finds rather pragmatic explanations for it. On the one hand he states academic research is backward oriented whereas democratic assistance is and must be forward oriented, based on the actual work experience in the field. Competing theoretical approaches of democratization do not help matters, as seemingly everything in a society seems vital for the transition process, in so far as democracy theory little output relevance for assistance providers.

Furthermore there is a “low tolerance for the political science jargon”¹¹⁹ and the limited time for academic research in regard to program design and implementation for a recipient country.

Although Carothers identifies the strategy of institutional modeling as a logical explanation of rapid democratic transitions and western actors involved in giving assistance, he criticizes that it is “superficial and too generic”.¹²⁰

Twelve years later Carothers detects in his work *Democracy assistance: political vs. developmental?* not only a maturing field of democratic assistance, but also an emergence of two distinct approaches: the political approach and the developmental approach of democratic assistance.¹²¹

Whereas the political approach is the continuation of the institution-modeling approach with a narrow conception of democracy and a focus on elections and political liberties, the developmental approach is based on a broader democracy

¹¹⁸ *ibid*, p.116

¹¹⁹ *ibid*, p.118

¹²⁰ *ibid*, p.130

¹²¹ Carothers, Thomas, *Democracy assistance: political vs. developmental?*, *Journal of Democracy* Volume 20, Number 1 January 2009, 5-19, p.5

definition. “One that encompasses concerns about equality and justice and the concept of democratization as a slow, iterative process of change involving an interrelated set of political and socioeconomic developments. It favors democracy aid that pursues incremental, long-term change in a wide range of political and socioeconomic sectors, frequently emphasizing governance and the building of a well-functioning state.”¹²² In this sense the developmental approach is part of the larger national development process and proponents deem social and economic rights equally important as political and civil rights.¹²³

¹²² *ibid*, p.5

¹²³ *ibid*, p.8

2.4. Elections and Democracy

Elections and the right to vote have undergone tremendous change over the past hundred years. As an example, manhood suffrage was introduced in many countries only in the early 19th century with an expanding on universal suffrage, meaning the right to vote for women as well, only in the later 19th and early 20th century.¹²⁴

The People Act in the United Kingdom granted only in 1918 “most men over twenty-one obtain the vote, together then with women over thirty, who were not treated equally with male electors in regard to age until 1928”.¹²⁵ In Austria’s neighboring country Switzerland, women were only granted the right to cast a vote in 1971, and some even waited twenty more years to vote at local level. During the apartheid era in South Africa voting was practically limited to a white electorate. Even to this day, women have limited rights of suffrage in some Arab countries.

As previously argued, elections have a distinctive role for a democracy and are an important impetus for the democratization process. They are “the defining institutions of modern democracy”.¹²⁶ Scholarly research on the importance of elections offers controversial interpretation, with some scholars dismissing ‘electoralism’ as an ethno-centric diversion from genuine democracy, while others emphasizing its centrality.¹²⁷

Katz analyzed the role elections play in democracy in his homonymic book *Democracy and Elections*. He tried to identify and connect the two fields of inquiry by exploring the relationship between them.

In his words, “elections are to prevent tyranny, confirm authority, articulate externally determined truth, select and empower representatives, allow the will of the people to be articulated and carried into effect, prevent selfish interests from using control of the government to exploit others, promote the flowering of human potential, and foster the development and maintenance of viable communities.”¹²⁸

¹²⁴ http://en.wikipedia.org/wiki/Universal_suffrage, 04/06/2011

¹²⁵ Goodwill- Gill, Guy, *Free and Fair Elections: International Law and Practice*, Inter-Parliamentary Union, Geneva, 2006, p.94

¹²⁶ Katz, Richard S., *Democracy and Elections*, Oxford University Press, Oxford, NY, 1997, p.3

¹²⁷ Pastor, Robert A., *The Role of Electoral Administration in Democratic Transitions: Implications for Policy and Research*, *Democratization*, Vol.6, No.4, Winter 1999, pp.1-27, Frank Cass, London, 1999, p.5

¹²⁸ Katz (1997), p.100

He points out five functions of elections:¹²⁹

- 1.) Legitimation: Democracy is to take virtually universally to be the only acceptable form of government, this becomes a general argument about the legitimacy of a political system, which is legitimate because it is democratic, and democratic because it holds elections.
- 2.) Installation of Officials: Most elementary function; an electoral system that left unfilled vacancies would be a failure.
- 3.) Selection and Choice: Democratic theory must allow some element of choice by the citizens (elections as choices among persons and elections as choices among policies).
- 4.) Representation: Create or foster representation in the twin senses of establishing a normative expectation and facilitating a recruitment or reward structure for the elected to represent the electors.
- 5.) Popular Involvement: Elections are expected to provide an occasion for popular involvement in politics and for popular education about politics. Election campaigns provide a setting for candidates and other involved citizens to present alternative views to the wider electorate, and an occasion when ordinary citizens are expected, and expect. To devote more attention than usual to listening to that debate.

Katz further analyzed various models of democracy with greatly diverging institutional frameworks (see fig. below) based on four fundamental values of democracy, popular sovereignty, liberalism, participation, community, adding 'equality' as fifth value.¹³⁰ The concept of 'equality' he views as essential as "no theory can be said to be democratic without a significant element of equality" and pinpoints the lowest common denominator as "equality at the ballot box"¹³¹.

¹²⁹ Katz (1997), pp.101-105

¹³⁰ Four values: Popular sovereignty ('will of the people' should determine government personnel and policy), Liberalism (groups need not just formal rights but practical power to protect themselves from abuse by their governors), Participation (participation in self-government is an essential prerequisite for full human development), Community (democracy both reflects and fosters a single demos that both has, and perceives itself to have, a commonality of interest). See: Katz, Richard S., *Democratic Principles and Judging "Free and Fair"*. In: *Revisiting Free and Fair Elections, An International Round Table on Election Standards*, Inter-Parliamentary Union, Geneva, 2004, p.21

¹³¹ Katz (1997), pp.100-101

The four values of democratic theory are largely incompatible and different choices concerning electoral institutions must be made between them. In Katz's global empirical study on electoral systems, his objective was finding the institutions most applicable to each model of democracy.

Fig.1: Models of democracy¹³²

Model of Democracy	Assumptions	Institutional Prescription
Binary Popular Sovereignty	<ol style="list-style-type: none"> 1. All issues cluster into two complexes, so that choice is between this' and 'that'. 2. The choice of the majority is 'the will of the people'. 	<ol style="list-style-type: none"> 1. A two-party system, with each party representing one of the two complexes of opinion. 2. An electoral system (FPTP) that will support two-party politics and provide reasonable assurance that the party with the most votes will control the government.
Downsian Popular Sovereignty	<ol style="list-style-type: none"> 1. All issues can be summarized in terms of a single dimension. 2. The first preference of the median voter along the assumed single dimension of politics (the Condorcet choice) is 'the will of the people'. 	<ol style="list-style-type: none"> 1. A two-party system, with each party free opportunistically to alter its policy position along the issue dimension. 2. An electoral system (FPTP) that will support two-party politics and provide reasonable assurance that the party with the most votes will control the government.
Legislative Popular Sovereignty	<ol style="list-style-type: none"> 1. The issue space is multidimensional. 2. While there is no Condorcet choice, the 'will of the people' can be approximated through the formation of a parliamentary coalition representing a majority. 	<ol style="list-style-type: none"> 1. A multiparty system, with each party representing a different combination of policy positions. 2. An electoral system (PR) that will accurately reproduce in parliament the distribution of opinions found in the electorate.
Majoritarian Liberalism	<ol style="list-style-type: none"> 1. Society is basically homogeneous, with no politically relevant and stable subgroups. 2. Majority rule is adequate to protect against elite tyranny, and majority tyranny is not a concern. 	<ol style="list-style-type: none"> 1. A two-party system, with each party representing an alternative team of leaders prepared to assume the direction of government. 2. An electoral system (FPTP) that will support two-party politics, and provide citizens with an effective opportunity both to dismiss the party an power and to dismiss individual politicians who are perceived to be abusing their positions.
Pluralist Liberalism	<ol style="list-style-type: none"> 1. Society is made up of stable, but cross-cutting, groups. 2. The problem of majority tyranny can be mitigated through multiple veto points, privileging different combinations of political resources. That at least one of these veto-points is majoritarian is adequate protection against elite tyranny. 	<ol style="list-style-type: none"> 1. A party system in which each party (or at least one party in any potential coalition of parties) is to a significant degree dependent on the support of <i>every</i> significant group in society. 2. An electoral system (e.g., FPTP) that encourages parties to build broad coalitions rather than to mobilize a narrow constituency. 3. An institutional system that makes it difficult for a majority to gain control of all of the institutions of government (e.g., separation of powers, federalism, etc.)
Veto-Group Liberalism	<ol style="list-style-type: none"> 1. Society is divided (pillarized) into stable and non-overlapping groups. 2. Majority tyranny can be avoided only by giving <i>each</i> politically relevant group unilateral veto power. 	<ol style="list-style-type: none"> 1. A party system in which <i>each</i> segment of society is represented by at least one party, but preferably by exactly one party. 2. An electoral or other device to make the leadership of each segment responsible to the members of that segment. 3. An institutional system (e.g., government by grand coalition) that will afford <i>each</i> segment of society veto power over decisions that it perceives to be excessively threatening.
Participationist and Communitarian Democracy	<ol style="list-style-type: none"> 1. Full human development requires taking active responsibility in government. 2. Active involvement in the collective enterprise of governing will foster the development of community. 	<ol style="list-style-type: none"> 1. Structures that afford maximum opportunities for direct citizen involvement in decision-making. 2. Institutional arrangements that move decisions to the most local (i.e., smallest) units possible. 3. Structures that maximise 'political talk'.

¹³² Katz (2004), pp.24-25, The models present an ideal type and serve as point of reference.

Manin, Przeworski and Stokes also highlight the double role of elections and reason that for one elections enable the electorate to select the rulers, and on the other hand elections act as an ‘accountability mechanism’. “Elections are a “contingent renewal” accountability mechanism, where the sanctions are to extend or not to extend the government’s tenure.”¹³³

Agh points out the fact that general and local elections play an important role “in the political learning of both the masses – the party constituencies – and the elites – the party leaders – from election to election.”¹³⁴

A focus report on ACE (The Electoral Knowledge Network), *Electoral Laws: A Macroscopic Perspective*, with the goal of examining the laws that govern the conduct of elections around the world, came to some interesting conclusions. Firstly, the data suggested that electoral rules are rarely correlated with economic development, an expected finding assuming that “economy may be a strong prerequisite in the democratization process but it may have little to do in the precise forms of democracy that a country chooses”. In addition, the second surprising discovery was the general absence of a relationship between the degree of democracy and the nature of electoral rules. This suggested to the authors “the lack of consensus on even the minimal conditions under which elections should be contested in a democracy.”¹³⁵

¹³³ Przeworski, Adam, Stokes, Susan C., Manin, Bernard (Ed.), *Democracy, Accountability, and Representation*, Cambridge University Press, UK, 1999, p. 10

¹³⁴ Agh (1998), p.19

¹³⁵ Blais, André, Dobrzynska, Agnieszka, *Electoral Laws: A Macroscopic Perspective*, on ACE (The Electoral Knowledge Network, <http://aceproject.org/ace-en/focus/focus-on-electoral-laws-a-macroscopic-perspective> [access: 07/08/2011]

2.5. Conclusion

The swift progress of democracy in many countries raised hopes for a better world; the expectations were that democracy would not only promote political liberties and other human rights but would also lead to rapid economic development and increased welfare as well as to international relations characterized by peaceful cooperation and mutual understanding.

Georg Sorensen¹³⁶

The previous paragraphs clearly demonstrate the pivotal role of elections in a democracy. Electoral processes relating to voting, as well as its underlying notions and values play a critical role in safeguarding the quality of elections in a democracy. Democratic elections mirror many aspects of democracy including the rule of law, participation, legitimacy of a political system, civil and social freedoms, and thereby provide a mechanism to give citizens a voice. Pastor sees a consensus that defines democracy as a system of government by which the people choose their leaders in a free election, and those leaders have effective power under the rule of law.¹³⁷

In order to conduct a study of democratization and electoral assistance it is crucial to have a concise and practical definition of democracy. As this chapter has demonstrated, several different concepts of democracy exist. David Held's definition "democracy means a form of government in which, in contradistinction to monarchies and aristocracies, the people rule"¹³⁸ is little disputed but leaves a lot of questions unanswered. It serves as a wider and comprehensive notion of democracy in contrast to Schumpeter's very narrow definition. Schumpeter's approach to democracy as a mechanism for choosing political leadership is elitist and simplifies the overall mechanisms of democracy. Robert Dahl's polyarchy as a tool for conceptualizing democracy is valuable for democracy theory as he places emphasis on universal suffrage within elections, in contrast to Schumpeter who neglected this criterion. Dahl's two dimensions, contestation and participation imply a third dimension concerning basic civil liberties. With the addition of civil rights, an important aspect is given to the notion of democracy. Huntington follows the Schumpeterian tradition in terms of the significance in choosing political leadership. He adds Dahl's two

¹³⁶ Sorensen, Georg (2008), p.1

¹³⁷ Pastor (1999), p.5

¹³⁸ Held (1996), p. 1

dimensions – contestation and participation – and its implying civil and political freedoms in his analysis framework on democracy and considers the importance of free, fair and regular elections. Guillermo O’Donnell and Philippe Schmitter give particular attention to the significant value accrued through the role elections play in the transition to political democracy. Linz and Stepan also claim, “A democratic transition is complete when sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power as a direct result of a free and popular vote, when this government de facto has the authority to generate new policies, and when the executive, legislative and judicial powers generated by the new democracy do not have to share power with other bodies de jure.”¹³⁹ Wolfgang Merkel sees democratic elections as an inadequate indicator to explain democracy for his model of embedded and defective democracies, whereas O’Donnell concludes in his theory of delegative democracies, that elections are an essential mechanism of accountability.

Although democracy cannot be reduced to the holding of regular elections, many academic analyses employ a minimalist definition of democracy, namely free and fair elections for an adult electorate. While this makes data more comparable and safer to apply, this should only be viewed as the start of the democratization process with its manifold implications. Elections present a crucial opportunity to instill and consolidate practices that enable meaningful social and economic development.¹⁴⁰

But not only can citizens choose their representatives and participate directly in a political process, “conversely, elections are crucial to the political legitimacy of governments and represent a foundation for states to serve every citizen and take on the challenges of poverty focused development”.¹⁴¹ Assessing the future outlook as to whether democratic advancement will continue or there will be a more peaceful world as a result of democratization efforts cannot be answered by this study.

The author chooses the definition set forward by Dahl in his classical work of *Polyarchy* in which he views democracy as an ideal that does not exist in the real world, but as a model which allows citizens to formulate their preferences freely,

¹³⁹ Linz & Stepan, *Problems of Democratic Transition and Consolidation*, p. 4

¹⁴⁰ UNDP Evaluation Office, *UNDP Practice Area: Democratic Governance Synthesis of Lessons Learned*, Essentials No.14, December 2003

¹⁴¹ *ibid.*

signify these preferences to other citizens and the government by individual or collective actions and finally to have their preferences weighed equally in the conduct of government.¹⁴² His two dimensions contestation and participation constitute a framework for defining regimes. Within this framework democracies are regimes, which endorse contestation and participation for its citizens to the highest degree. Dahl's polyarchy is structured procedurally and institutionally, and is therefore a useful tool not only for this work but also for democracy practitioners and donor countries in terms of democracy promotion.

One additional topic, the question of a prerequisite of democratization, namely territorial boundaries and a nation-state, needs to be re-addressed at this juncture.¹⁴³ Scholars argue that the state formation and nation building are "prerequisites of any meaningful democratization"¹⁴⁴ The conditions for developing a liberal democracy with an "unsolved identity or stateness crisis" are also noted by Merkel who sees civil and political rights endangered in such cases.¹⁴⁵

With regard to Kosovo's status and questions of its territorial sovereignty, the question of its democracy stability and quality is an extremely complex issue. Despite the acceptance of Kosovo as an independent state by eighty-seven states¹⁴⁶, many countries have not yet recognized its independence. Serbia, as the major opponent, sees Kosovo's declaration of independence as a violation of international laws and has continued influence over the mostly Serbian populated north. For the purpose of this paper the author does not address these issues directly as the mostly consolidated Albanian population structure has the same political goals. The boycott of most elections after the Kosovo conflict by the Serbian population will be addressed at a latter stage.

With regards to the questionable scenario of whether to consider Kosovo as a "democracy" without a resolved status, the author has decided to take a pragmatic approach for this study by assuming Kosovo's independent status within its boundaries as given.

¹⁴² Dahl (1971), p.2

¹⁴³ Linz, Stepan (1996), Held (2002), Berg-Schlosser (2004) et al

¹⁴⁴ Berg-Schlosser, Dirk (Ed.): Democratization, The State of the Art, VS Verlag für Sozialwissenschaften_GWV Fachverlage GmbH, Wiesbaden, 2004, p.14

¹⁴⁵ Merkel (2004), pp.54-55

¹⁴⁶ Wikipedia, http://en.wikipedia.org/wiki/International_recognition_of_Kosovo, [access: 12/12/2011]

Chapter III: Electoral Assistance

3.1. Introduction

Over the past thirty years, elections have played a pivotal role in democratic transitions around the world, in addition to acting as a central pillar towards conflict resolution. This theme continues to play a more important role with the current shift towards globalized world politics meaning that interests move beyond local borders. However, in order for elections to succeed in gaining international legitimacy, free and fair elections have become vital for the transitional country and its leadership.

The international community¹⁴⁷ has established elections as a major impetus for promoting democracy around the world, and over the last two decades, the elections have become a vital factor for international assistance programs that have shifted from pure peace building to a wider state-building approach.

Following from this, electoral assistance has developed into “something of a growth industry”¹⁴⁸, where different organizations with different backgrounds are (sometimes) competing for assisting programs and the various funds available. Many post-conflict elections would not have materialized without international assistance and/or funding, or would have lacked credibility. The success of elections in regards to a democratization effect differs considerably from country to country. Where in some cases successful elections were vital in mobilizing further democratic steps, in other cases flawed elections led to additional problems. The primary goal of electoral assistance is first and foremost to ensure that countries have the ability to organize future elections with little or no external help.¹⁴⁹

Studying the relationship between elections, democracy and their interdependencies is instructive, but not at all self-explanatory.

¹⁴⁷ “The term ‘international community’ refers to all the multilateral and bilateral agencies, international organizations, philanthropic organizations, relief agencies, and private sector firms involved in development, conflict resolution, and humanitarian assistance.” See: Kumar, Krishna, *Postconflict Elections and International Assistance*, in: *Postconflict Elections, Democratization & International Assistance* (Krishna Kumar ed.), 1998, p.5

¹⁴⁸ Reilly, Benjamin, *Elections in Post-Conflict Scenarios: Constraints and Dangers*, *International Peacekeeping*, 9:2, p.118-139, 2002, p.118, <http://dx.doi.org/10.1080/714002729> [access:08/26/2010]

¹⁴⁹ UNDP Evaluation Office, *UNDP Practice Area: Democratic Governance Synthesis of Lessons Learned*, Essentials No.14, December 2003

Democracy cannot be reduced to the holding of periodic and genuine elections, however free and fair criteria imply important aspects of democracy such as the rule of law, the political system, exercise choice, the involvement of political parties within the population, freedom of media and speech, participation of minorities and campaigning, acting quasi as a safeguard to human rights.

According to Benjamin Reilly, “[can] the holding of elections have a decisive influence on how the rhythm of peaceful democratic politics can evolve and become sustainable, to what extent the internal politics of fragile new states become stabilized, and whether a peace settlement and new post-conflict regime comes to be viewed as legitimate.”¹⁵⁰

The democratic norm of free and fair elections and its implications for the electoral process itself are important factors for electoral assistance programs and democratization processes. Electoral assistance, which enables countries to hold free and fair elections, is a valuable source of promoting democracy in a broader sense.

The level of importance which elections are given by political actors and donor countries is correlated to the importance of elections in democracy theory. Elections are fundamentally important for a democratic transition but do not equate to democracy. Nevertheless, elections in a post-conflict scenario have a different point of departure and need to be set up in challenging circumstances.

In this chapter, the author of this study will discuss electoral assistance, the particular characteristics and objectives of elections in a post-conflict scenario, emphasize the role of election administration, introduce the most important players in the field of electoral assistance and outline international standards for free and fair elections.

3.2. Electoral Assistance as a Tool for Democracy Promotion

The notion of international electoral assistance has transformed over the years and has roots in the broad area of democracy assistance and part of democracy development

¹⁵⁰ Reilly Benjamin, Electoral Assistance and Post-Conflict Peacebuilding – What Lessons Have Been Learned?, p.3ff, ACE Project, www.aceproject.org/ero-en/topics/elections-security/Reilly-2505.pdf, [access: 04/03/2011]

of countries in transition.¹⁵¹ The proclamation of the UN Universal Declaration of Human Rights in 1948 provides in Article 21¹⁵² the legal and moral justification for democracy assistance. International organizations that were foremost used for arbitration and peacekeeping functions are more and more involved in state building, especially in electoral programs. As there is a strong emphasis on election as a key component of the democratization process, it is in the international community's utmost interest to help ensure the organization of a credible voting.

Election assistance may be defined as the technical or material support given to the electoral process. It may imply professional help to establish a legal framework for the elections. It may also take the form of a general input to the national electoral body, such as providing voting materials and equipment, or helping in the registration of political parties and/or of voters. It may also imply support to NGOs and civil society in areas such as voter and civic education or training of local observers, as well as support in media monitoring and training of journalists.¹⁵³

According to Reilly...“electoral assistance forces critical choices to be made and elections represent a key step in a broader process of political maturation and legitimation. The holding of elections can have a decisive influence on how the rhythm of peaceful democratic politics can evolve and become sustainable, to what extent the internal politics of fragile new states become stabilized, and whether a peace settlement and new post-conflict regime comes to be viewed as legitimate.”¹⁵⁴

As previously described at great length, elections are an important tool in soliciting citizen participation and a vital forum to exercise political voice.¹⁵⁵ The electorate gets the opportunity to choose their representatives and hold governments accountable

¹⁵¹ Electoral Assistance, ACE Electoral Knowledge Network, <http://aceproject.org/electoral-advice/electorals-assistance> [access: 05/19/2010]

¹⁵² The Universal Declaration of Human Rights, Article 21:

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

See: <http://www.un.org/en/documents/udhr/index.shtml#a21> [access: 08/02/2011]

¹⁵³ EC Supporting Elections, http://ec.europa.eu/europeaid/what/human-rights/election_observation_missions/about-electoral-support_en.htm [access: 07/12/2011]

¹⁵⁴ Reilly, ACE Project, p.3

¹⁵⁵ UNDP Evaluation Office (2003), p.1

for their actions. It is a highly visible process with high-stakes not only for the concerned citizenry but also for the IC. Once the balloting is organized in a free and fair manner, it brings credit and reputation not only for the government in question but also for the organizations involved. The process depends therefore much on the quality of the elections and of the representative institutions. “Many countries have started to reform their electoral practices to more closely meet the interconnected goals of accountability, legitimacy, representativeness and sustainability.”¹⁵⁶

The widespread and strong emphasis on elections by the international community is comprehensible, viewing them as a tool for settling the question of ‘who’ will govern after a conflict to lead a country towards democracy. “Not holding elections or refusing to provide a timetable for elections may raise serious questions about the commitment of negotiating parties to a democratic future.”¹⁵⁷ This helps to explain why elections often form the nucleus of peace accords. Clearly, the situation of fragile states in a post-conflict setting is different due to its unstable security situation with the possibility of a relapse of violence and conflict. In this frequently politically complex and volatile environment players in electoral assistance must often respond quickly to delayed requests from a host country. With these scenarios in mind, any approach of electoral assistance will depend on the type of election: post-conflict, breakthrough, consolidating or procedural”.¹⁵⁸

Post-conflict elections take place in the aftermath of war or civil conflict, and are often part of a peace agreement. They are fragile operations and can be jeopardized by outbreaks of violence in violation of a ceasefire. Problems concerning this type of election can include demobilization and disarming of combatants, and the establishment of new public security forces.

Breakthrough elections are the first or second round of elections after a period of authoritarian or military rule. This type is characterized by a “shift to a constitutional government based on civilian rule and competitive elections”. This period is prone to a

¹⁵⁶ *ibid*, p.1

¹⁵⁷ Garber, Larry, Introduction to Postconflict Elections, Democratization & International Assistance, ed. Kumar Krishna, 1998, p.2

¹⁵⁸ UNDP Evaluation Office, UNDP Practice Area: Democratic Governance Synthesis of Lessons Learned, Essentials No.14, December 2003 from USAID: Managing Assistance in Support of Political and Electoral Processes, 1999

reversion into authoritarian rule due to uncertainty and antagonism due to the electoral rules and procedures.

Consolidating elections are the third or fourth round of elections, which serve to advance the process of democratization, and have in some measure become routine. A limited degree of uncertainty still exists, however assistance centers around maximizing performance and building institutional capacity. On an operational level, countries may benefit from assistance in refining election legislation, introducing technological or procedural innovations, and in improving strategic planning and organizational management.

Procedural elections are routine elections held in accordance with times and procedures set out in the constitution. Processes have been set up and adopted by institutions, which are capable of executing them. There may be little reason to provide assistance to procedural elections.

Efficient assistance programs need to target weaknesses within the system and its institutions, assessing how problems and deficits can be supported – financially and/or technically – and build electoral capacity to close the gaps. The context of elections is a key factor in deciding what type of strategy and assistance is suitable. Assessing the context means considering the “type of election, the configuration of the political environment, social-cultural factors, the economic situation, institutional issues, and security concerns”.¹⁵⁹ Building electoral capacity is not limited to the establishment of electoral institutions and legal prerequisites. Safeguarding the effective knowledge transfer, the build up of manpower and competence development of local staff is a special challenge for assistance programs, as the ability to remain in the assigned position for local personnel is often impractical.

Kumar and Ottaway conclude rightly that “without international assistance, elections would not have materialized [in many countries] [...] and would have been less credible”.¹⁶⁰

Financial and technical assistance enables the holding of elections in precarious circumstances and might help in preventing fraud, however it does not resolve the

¹⁵⁹ Managing Assistance in Support of Political and Electoral Processes, USAID, 1999

¹⁶⁰ Kumar, Krishna/Ottaway, Marina, General Conclusions and Priorities for Policy Research, in: Postconflict Elections, Democratization & International Assistance (Krishna Kumar ed.), 1998, p.229

question of its impact, the efficiency of electoral assistance programs and high costs related to it. A further analysis is needed to understand the positive and negative effects of assistance in post-conflict scenarios.

With regards to Kosovo, the first municipal elections in 2001 as well as the first Kosovo-wide elections in 2002 can both be considered post-conflict elections, whereas those held in later years as consolidating or better ‘transitional’ elections. The author prefers the term transitional due to Kosovo’s contested status as a democracy. The term ‘consolidated’ might imply a certain degree of democracy stability and routine electoral processes, which needs further discussion.

3.2.1. The Role of International Electoral Assistance

Post-conflict and transitional elections can require various forms of external support of which electoral assistance is one. Its relevance is extremely significant, due to the importance in conducting free and fair elections, often a vital component of peace accords and mark simultaneously an important step towards democracy and international reputation. Elections serve so to speak as peaceful alternative to war for contesting political power.

The degree of engagement by the IC in post-conflict and transitional elections varies enormously. In some cases, international intervention is limited to financial help, technical assistance programs or/and election monitoring. In other cases, the role of a local government and EMB to design and implement post-conflict elections is assumed by international organizations themselves.

Krishna Kumar classifies international support for post-conflict elections into four categories:

- 1) Peacekeeping Operations
- 2) Creating Political Prerequisites
- 3) Developing Electoral Infrastructure
- 4) Monitoring Elections

Establishing a peacekeeping force to oversee cease-fires and prevent a new outbreak of violence is vital to the holding of elections. International peacekeeping forces provide a sense of security to people and can have a mediating effect on conflicted parties. In addition to security aspects, logistical capabilities such as transport and communication are of high value for elections.¹⁶¹

The categories ‘Creating Political Prerequisites’ and ‘Developing Electoral Infrastructure’ can be subsumed under the term ‘(Technical) Electoral Assistance’. The ample scope of electoral assistance activities ranges from ‘institutional strengthening’ programs with a focus on building capacity within existing EMBs, assisting them with general issues such as budgeting, management, planning, logistical strategies, staff recruitment, training, etc. to a more sophisticated approach, helping designing electoral systems, creating codes of conduct, drafting constitutional changes, reform of legal codes and so on. Between these two approaches lies the gross of electoral assistance programs.¹⁶²

According to Reilly, international EA consists of the following major sub-areas (see in detail Annex, table 1, p.152):

Support for first-time elections, assistance for constitutional and legal reforms, assistance for EMBs, voter registration, civic and voter education programs, international monitoring and observation, and strengthening of political parties.

Besides the problems addressed earlier in connection to post-conflict elections, there are further concerns regarding efficiency and costs of external support programs and the subsequent question, how can international electoral assistance ensure free and fair elections?

With the number of electoral assistance programs around the world growing, concern about its effectiveness in designing and implementing such programs and its outcomes have emerged. Events have shown that elections can bring two parties back together to the table and end hostilities, or they can lead to new violent outbreaks. One key issue for consideration of electoral support is the sustainability of its processes and technologies for a recipient country. Electoral technologies must be chosen in accordance to the capacity of the host country to handle it respectively as

¹⁶¹ Kumar (1998), p.9

¹⁶² Reilly, ACE Project, p.3

well as processes, which might need great logistical, financial or (trained) human resources. “The real challenge facing the international community is to help build sustainable procedures that function effectively without external assistance” concludes Reilly and raises the fact of the international’s tendency to focus on a country’s first election. This kind of support is very shortsighted and ignores the cyclical nature of elections and its learning curve. The progress in this area is slow (mostly due to financing) but the trend towards long-time programs is continually increasing and the Electoral Cycle approach designed to encourage improvements in this direction.

3.3. Elections in Post-conflict Situations

Post-conflict elections differ significantly from elections organized under normal circumstances. First and foremost, the political landscape in a post-conflict country is ill-suited for political reconstruction, development and reform. Signing of peace treaties and setting dates for the first post-conflict election are taken as a positive signal by all stakeholders, but offers limited guarantees for solving deep political cleavages and political reconciliation.¹⁶³ They symbolize an end to intra-state conflicts and carry prospect and hope in a conflict-ridden society for genuine elections. The resulting pressure on its outcome is enormous as it can act as tightrope walk between war and peace. Benjamin Reilly summarizes the positive role of elections in post-conflict scenarios as: “Elections provide an inescapable means for jump-starting a new, post-conflict political order; for stimulating the development of democratic politics; for choosing representatives; for forming governments; and for conferring legitimacy upon the new political order.”¹⁶⁴

Given the difficulties and risks of elections in a post-conflict context, electoral assistance faces numerous challenges – from the creation of a voter list, the security situation around Election Day, to the counting of the votes, which the case study of this paper will demonstrate. There are numerous factors, which can lead to the success

¹⁶³ IFES, Sivapathasundaram, Dileepan, Elections in Post-conflict Environments: The Role of International Organizations, 2004, www.ifes.org/.../2004_Manatt_Dileepan_Sivapathasundaram.pdf [access: 05/12/2011]

¹⁶⁴ Reilly, Benjamin (2002), <http://dx.doi.org/10.1080/714002729> [access:08/26/2010]

or failure of an election and consequently the beginning or full stop of a democratization process. Considering the two goals of post-conflict elections, namely war termination and democratization, competitive elections act as “instruments used not only to promote democracy but also to attempt to consolidate a fragile peace”.¹⁶⁵ Negotiating peace agreements often translate into a claim for free and fair elections to establish a new legitimate government for a renewed post-conflict order. Two additional factors influencing post-conflict elections that are relevant for this study point directly to electoral assistance programs: ¹⁶⁶

- Existence of effective political institutions and
- Capacity of those institutions to undertake elections

Such political institutions are interim governments, electoral management bodies like election commissions and political parties. They play a pivotal role in establishing a working electoral framework and conducting credible post-conflict elections, thus making important steps towards democratization. Constituting a forum for active participation of former opponents and an opportunity for establishing democratic norms and create a democratic framework, political institutions are an important area of international assistance. Characteristic for post-conflict societies is the lack or the extreme fragility of these fundamentally important institutions.¹⁶⁷ “Many such countries do not have the legal framework for free and fair elections. They lack an election commission, personnel with the technical training to organize elections, and voter lists. [They] lack the economic and human resources to launch competitive elections.”¹⁶⁸ Only with substantial international assistance can such obstacles be overcome. Albeit the good intentions of all actors involved, Reilly identified three areas with a dire influence on post-conflict elections: Timing, Electoral Mechanics, and Political Parties and Power-sharing.

¹⁶⁵ Reilly Benjamin, ACE Project, p.1

¹⁶⁶ Sivapathasundaram (2004), p.15

¹⁶⁷ Kumar (1998), p.8

¹⁶⁸ *ibid*, p.8

Timing

“Issues of timing also directly affect administrative choices, electoral system designs and the way political parties form”¹⁶⁹. When post-conflict elections are organized too soon, national political issues are not brought to resolution – instead focus remains on the current conflict. In their quantitative analysis Brancati and Snyder determine that “in post-conflict settings, holding elections too soon after a civil war ends generally increases the likelihood of a return to war.”¹⁷⁰ According to their study, early elections can be successful when “the opposing sides are not well armed and have institutional guarantees of their security, as in the case of decisive victories, demobilization, peacekeeping, and power sharing.”¹⁷¹ All too often the IC has pushed for early elections with the anticipation of a quick moving democratization process, the belief of political stability and the hope of fast withdrawal of international troops. The possibility of ill-timed elections leading to renewed conflict is high without the necessary preconditions and right context. The demobilization of former combatants as well as assisting post-conflict regimes to strengthen their impartial administration capacity and justice are crucial criteria to build the right environment for post-conflict elections and a less likelihood for a return to war.

Electoral Mechanics

Reilly divides electoral mechanics into two areas:¹⁷²

- 1.) Electoral system (the formula by which votes are converted into seats, ballot papers, structure of electoral districts)
- 2.) Electoral administration (electoral management body, provisions for voter registration, boundary delimitation, etc.)

1.) Electoral system

The design of electoral systems is one of the most important institutional choices for any political system. Electoral systems have a rewarding or restricting influence on political behavior. They are “a key mechanism in shaping wider political practices,

¹⁶⁹ Reilly (2002), p.119

¹⁷⁰ Brancati, Dawn and Jack L. Snyder, “Time to Kill: The Impact of Election Timing on Post-Conflict Stability.” Washington University in St. Louis, Department of Political Science and Columbia University, War and Peace Institute, 2010, p. 30

¹⁷¹ *ibid.*

¹⁷² Reilly (2002), p.124

and can have an effect far beyond the elections themselves.”¹⁷³ While most scholars subscribe to this belief, strong controversy exists when trying to specify which electoral system is best suited for divided societies emerging from conflict.

Two main schools of thought predominate: the consociational and the centripetal approach. Whereas the consociational argue “that some form of proportional representation is all but essential for divided societies, as this enables all politically-significant ethnic groups, including minorities, to form ethnically-based parties”, proponents of the centripetal approach advocate electoral systems “that encourage cooperation and accommodation between rival groups, and therefore work to break down the salience of ethnicity rather than foster its representation in parliament.”¹⁷⁴

Despite the difference of these approaches, there is basic agreement on some sort of power-sharing government. Proportional representation (PR) systems are designed to include the proportions of the constituents in the government and are therefore for all intents and purposes an important step of democracy building. PR systems can resolve inequalities of party representation, guarantee minority representation and achieve a higher female quota in the assembly. In the last years, most major transitional elections used PR systems using open or closed lists (allowing voters or parties themselves choosing candidates). According to Reilly, “party-list PR has become the de facto norm of UN parliamentary elections. [...] PR systems have many advantages, for transitional elections in new democracies: they are fair, transparent and provide a clear correlation between votes cast in the election and seats won in parliament.”¹⁷⁵

More generally electoral systems are defined in terms of the ‘4-Ps’: politics, parties, polling and proportionality.¹⁷⁶ The proportionality factor is the most contested one, as it concerns the plurality-majority, the semi-proportional and the proportional systems.

2.) Electoral administration

Electoral administration is, in contrast to electoral systems, an uncharted territory that has until recently received scant attention from comparative political scientists. Its value for post-conflict elections is high and rather underestimated by scholars. The implications for democratic transitions are explained in greater detail below, as there are some valuable insights to be gained for the case study of Kosovo’s count center.

¹⁷³ *ibid*, p.127

¹⁷⁴ *ibid*, p.128

¹⁷⁵ *ibid*, p.130

¹⁷⁶ Pastor (1999), p.6

The role of EMBs is to organize and manage post-conflict elections and combine functions relating to both conflict resolution and democratization. The primary purpose of any electoral commission is to deliver credible (“free and fair”) election services to the constituency and all political parties. Impartiality and independence, efficiency, professionalism, and transparency are important attributes for an election administration in the context of a hostile post-conflict environment.¹⁷⁷ The composition of an EMB – whether in some form of Independent Electoral Commission or based around party representatives and political appointees, has a great influence on elections and decisions to be made. “The world-wide trend is definitely towards independent electoral commissions staffed by non-partisan civil servants.”¹⁷⁸ The election commission in Kosovo as an example is based on the less-favorable US form of electoral administration with party representatives which, as Reilly argues rightly, has “an almost inevitable tendency to split along party lines”¹⁷⁹, therefore becoming inefficient when it comes to cases in favor of one party or another. Impartiality, independence and efficiency are integral parts of the overall credibility of the electoral process.¹⁸⁰ Partisan commissions can severely damage the credibility and jeopardize the democratization process.

The registration of voters is another force to be reckoned with as in most post-conflict scenarios records of civilians are lost or have been destroyed. Often a basic census of the population is missing altogether. Creating a voter register is a great logistical and time-consuming challenge but necessary to ensure someone’s right to vote, the assignment to a polling location and electoral districts.

Political Parties and Power-sharing

As mentioned earlier, political parties play a pivotal role in engineering post-conflict environments. Scholars identified the need to build “broad-based, cross-regional and multi-ethnic political parties in fragile multi-ethnic states, particularly those susceptible to separatist appeals, [...] and to avoid the narrow, personalized and

¹⁷⁷ Harris, Peter, ‘Building an Electoral Administration’, in Harris and Reilly, eds., *Democracy and Deep-Rooted Conflict*, 1998, p.310

¹⁷⁸ Reilly (2002), p.125

¹⁷⁹ *ibid.*

¹⁸⁰ Harris (1998), p.311

sectarian parties and party systems that have undermined so many new democracies.”¹⁸¹

In order to achieve such broad based political parties and party systems, there have been various institutional approaches in transitional democracies:¹⁸²

- 1.) Party rules governing formation, registration and campaigning encouraging parties to constitute along cross regional and cross-ethnic lines
- 2.) Electoral systems with preferential voting (enables voters to rank candidates of preferences for candidates on the ballot paper)
- 3.) Distribution requirements (voter support must be collected from across different regions)
- 4.) ‘Rules of the game’ encourage/require parties to submit multi-ethnic lists of candidates, advocating multi-ethnicity within parties
- 5.) External intervention: as ‘top-down’ impetus to organizing and building sustainable political parties. As an example, a network of ‘political party service centers’ was established in Kosovo to support political parties with “logistical and material assistance and, by implication, helping them move towards becoming functioning, policy-oriented political parties”.

Besides these issues, Reilly points to the ‘generals-to-politicians transformation’¹⁸³, a problem occurring especially in the Balkans, where leaders who fought the conflict become the party elites. This is problematic in terms of their political programs and goals.

Post-conflict elections are entrenched in the process of war termination and democratization. They are “marred by political instability, violence and social intimidation. Where they exist, these conditions can threaten the integrity of any elections process and call for sensitized and cautious external support”¹⁸⁴ Overcoming those challenges, building sustainable and feasible electoral institutions and processes are important measures towards long-term democratization for a post-conflict country. Post-conflict elections are a ‘form of conflict resolution’ but are not a ‘quick-fix’ solution for war torn societies, which need to socially and politically stabilize and

¹⁸¹ Reilly (2002), p.133-134

¹⁸² *ibid*, p.134ff

¹⁸³ Reilly, ACE Project, p.4

¹⁸⁴ UNDP Evaluation Office, Essentials No.14, December 2003

recover. Demilitarizing politics is a pre-condition for elections to promote peace and democracy as is creating reliable and effective electoral institutions.

Garber offers a comprehensible summary of the characteristics of post-conflict elections:¹⁸⁵

- 1.) Occur after the negotiation of peace accords that involve most, if not all, the parties in the conflict.
- 2.) Peace accords afford a major role to external actors (either an international organization or a group of nations), often involving the deployment of military or police forces to the country emerging from conflict.
- 3.) External actors generally commit to assuming a major role in administering, supervising, observing, funding, and otherwise supporting the elections.
- 4.) Elections often take place while reconstruction efforts are still in their infancy, refugees and displaced persons have not returned to their original places of residence, and land mines make travel difficult in certain regions of the country.

3.4. An Underestimated Function: Electoral Administration in Democratic Transitions

The fair and effective administration of the rules is often as important as the rules themselves.

Robert A. Pastor¹⁸⁶

This study has elaborated on the conditions and consequences of democracy and democratization, following the theoretical scholarly tradition. As will be analyzed later in detail in the case study, the administration of elections is an often-disregarded link between democracy and elections, as well as theorists and practitioners. Practitioners identified the relevance of electoral administration as a result of their experience in the field but its particular impact still needs further analysis.

The conduct of elections consists of many tasks once the constitution approves the government framework, establishes an Election Commission and sets a date for elections to be held. The tasks at issue in the individual areas of administration are

¹⁸⁵ Garber (1998), p.1

¹⁸⁶ Pastor (1999), p.6

included in the three different elections stages: Pre-Election Stage, Election Day, Post-Election Verification and Dispute Settlement (see Annex, p.153).

Electoral administration can lead to the success or failure of an election, hence a failure of a democracy transition and a relapse to conflict and war. “Elections are both the supreme political act and a routine administrative exercise. [...] In a poor, relatively uneducated, developing country, the administration of an election is no simple matter. In such countries, the boundary line separating political manipulation and technical incapacity is rarely surveyed, and elections can fail for one or both reasons.”¹⁸⁷

Political suspicion is strong in an environment emerging from conflict, and technical incapacity can be seen as a politically motivated manipulation therefore being highly explosive. Certain administrative tasks can result in technical problems and lead to intensified political polarization. As Pastor argues rightly, “The failure to conduct an election that is judged fair by all sides can preempt a democratic transition. Repeated failures can lead to violence and chronic instability.”¹⁸⁸

In advanced democracies electoral administration is taken for granted – a routine exercise for all participants. In transitional democracies however, the situation is extremely different, as political leaders have limited experience in the political arena or with the procedural rules governing an election. In addition, these leaders are not used to subtle tactics needed for political compromise, or from a practical perspective the “technical elements of conducting an election also of a magnitude of difficulty as to overwhelm most poor countries.”¹⁸⁹

Reilly has pointed out the influential forces of the composition of EMBs and their potential danger in a post-conflict society. Also Pastor stresses the importance of the structure and character of this function as it can determine “whether an election is a source of peaceful change or a cause for serious instability.”¹⁹⁰ The stakes of post-conflict elections are high and therefore the manner in which they are administered plays a key factor in their outcome, legitimacy and further democracy transition and stability. Election administration has a direct impact on how elections are perceived

¹⁸⁷ Pastor (1999) p.2

¹⁸⁸ *ibid.*

¹⁸⁹ *ibid.*, p.8

¹⁹⁰ *ibid.*, p.5

by voters, political parties, candidates and civil society.¹⁹¹ Electoral assistance programs are often engaged in advising or mediating roles to Election Commissions, trying to improve and strengthen their institutional capacities.

Election administration is a critical variable in a democracy transition as “technical problems converge into the political ones, threatening the entire process”¹⁹². It is not a variable explaining democracy itself, as Pastor suggests, but an important variable explaining successful or flawed elections. “A ‘flawed’ election is one in which some or all of the major political parties refuse to participate in the election or reject the results. This definition contrasts with a more traditional one that relies on ‘checklists’ to determine whether an election is free, fair and meaningful. [One of the main] problems with this ideal definition is that it fails to confront the pattern of manipulation and boycott, which is what stymies most transitional elections.”¹⁹³ This definition does not imply that all developing countries have a patent for fraud, corruption and manipulation or that it cannot be corrected. According to Pastor, most elections have some sort of irregularities but much depends on credible institutions to monitor and if necessary prosecute such felonies, which is the case in established democracies.¹⁹⁴ This is an important example why monitoring elections is crucial, but not only by the IC much more so by political parties, domestic NGOs and citizens.

Pastor identifies the most persistent problems in transitional election as, registration, multiple voting, and the count.¹⁹⁵ The registration of voters is extremely challenging due to missing or incomplete civil registries or a census. Voter registration is “one of the most complex, time consuming and expensive operations of the electoral administration. At the basic level, it consists of collecting and storing data to create lists of those who are eligible to vote in an election.”¹⁹⁶ Multiple voting can result because of flawed voter lists or deliberate fraud. Providing indelible ink is one of the means trying to prevent multiple voting but variations in quality or available solvents can circumvent this measure of precaution. The counting of ballots, which this case

¹⁹¹ Rakner, Lise/Svasand, Lars, *Maybe free but not fair: Electoral administration in Malawi 1994-2004*, CMI Chr. Michelsen Institute Working Papers, 2005, p.1

¹⁹² Pastor (1999), p.10

¹⁹³ *ibid*, p.15

¹⁹⁴ *ibid*, p.5, 16

¹⁹⁵ *ibid*, p.17

¹⁹⁶ UNDP Electoral Assistance Implementation Guide, p.37

study will examine in greater detail, is sensitive as increasing the number of votes of a favored candidate/political party, and/or reducing the number of votes of a rival candidate/party can alter results. The aggregation of results at the regional and national level falls into this category as well.¹⁹⁷

Goodwill-Gil recommends implementing measures for states to “ensure the achievement of democratic goals and the progressive strengthening of democratic traditions”. He points out the importance of a neutral and impartial EMB which needs to ensure following:¹⁹⁸

- a) Those responsible for the administration of the election are trained and act impartially
- b) Coherent voting procedures are established and made known to the voting public
- c) The registration of voters, updating of electoral rolls and balloting procedures, with the assistance of national and international observers, as appropriate
- d) Encourage parties, candidates and the media to accept and adopt a Code of Conduct to govern the election campaign and the polling period
- e) The integrity of the ballot through appropriate measures to prevent double and multiple voting and fraud
- f) The integrity of the process for counting votes
- g) Announce the election results and facilitate any transfer of authority

Building up of institutional capacities to allow for the identification of material gaps in electoral processes, addressing them and trying to resolve them, is an important step in gaining the confidence of the people for elections and a further democratic transition.

3.4.1. Sustainability through Process-based Electoral Cycle Approach

The reasons for including the Electoral Cycle into this study are many. Firstly, it illustrates the electoral process including technical aspects in a comprehensible way,

¹⁹⁷ *ibid*, p.17

¹⁹⁸ Goodwill-Gil (2006), p.164ff

and secondly it helps further on connecting free and fair criteria to actual tasks and analyzing the efficacy of electoral assistance programs.

The Electoral Cycle was developed by the EC, IDEA and UNDP by recognizing the principles of the Paris Declaration in Aid Effectiveness¹⁹⁹ and serves as a “visual planning and training tool designed to assist development agencies, electoral assistance providers and electoral officials in partner countries”.²⁰⁰

Electoral assistance focused for a long time on the running of a specific election in a specific country rather than taking a more long-term approach. For many years, assistance programs were designed to help with the particular electoral event, disregarding the very cyclical nature of elections and its surrounding processes. One of the key errors of judgment lay in the “belief that such support alone would suffice to ensure the sustainability of the following electoral processes, ensuring results in the independence and transparency of the electoral management bodies concerned and the consequent democratic development of the partner country.”²⁰¹

Whereas short-term (event-driven) assistance supported a particular election and sought to assure that the outcome was free and fair by domestic and international stakeholders, long-term (institutionalizing) assistance is developmentally oriented. The goal is to build or strengthen institutional and human capacities involved in the electoral process, “either as managers and implementers (election commissions, monitoring groups, the judiciary) or as participants (political parties, candidates, civil society). The primary concern is with strengthening the electoral process per se in order to make it a sustainable endeavor in the long term.”²⁰²

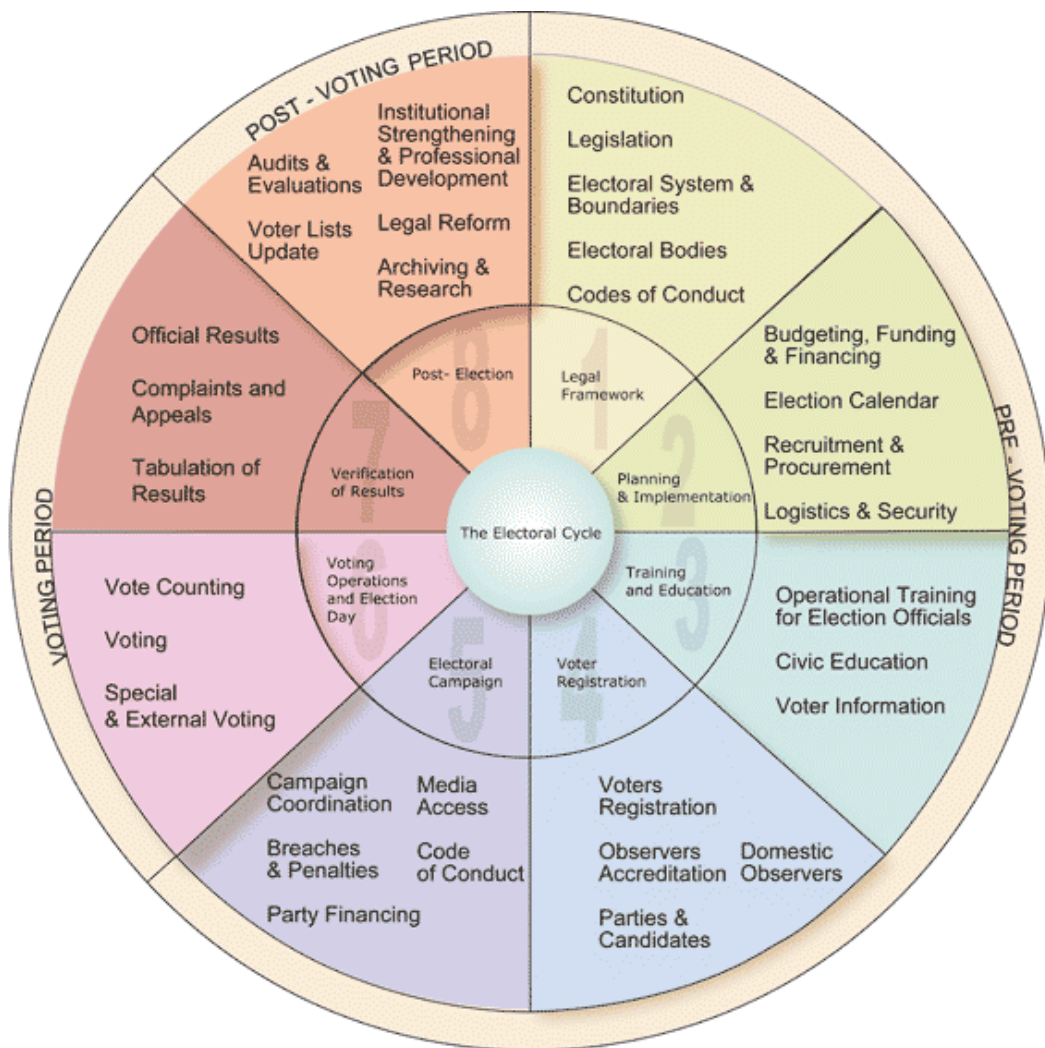
¹⁹⁹ The Paris Declaration (2005) committed the signatories to five principles related to ownership, alignments, harmonization, managing for results and mutual accountability. See: Paris Declaration on Aid Effectiveness <http://www.oecd.org/dataoecd/11/41/34428351.pdf> [access: 08/02/2011]

²⁰⁰ See: Electoral Cycle, ACE Electoral Knowledge Network, <http://aceproject.org/electoral-advice/electoral-assistance/electoral-cycle> [access: 05/19/2010]

²⁰¹ Electoral Cycle, ACE, *ibid*.

²⁰² USAID, Managing Assistance in Support of Political and Electoral Processes; document identification number (PN-ACF-631). Center for Democracy and Governance, Bureau for Global Programs, Field Support, and Research, U.S. Agency for International Development Washington, DC 20523-3100

The Electoral Cycle²⁰³



The Electoral Cycle is mainly divided into three periods: pre-voting period, voting period and post-voting period. There are no fixed starting or ending points for the three periods or for the segments inside the cycle.

Elections are composed of a number of interacting and influencing modules with different stakeholders. They are not mutually exclusive, but complementary, and therefore the failure of one aspect can have a negative impact on any other – in the worst case “on the credibility of the elections itself, and thus on the legitimacy of the elected government and the democratization process of a partner country and its overall development objectives.”²⁰⁴

²⁰³ The Electoral Cycle, EC-UNDP Partnership on Electoral Assistance, http://www.ec-undp-electoralassistance.org/index.php?option=com_content&view=article&id=125&Itemid=136&lang=en [access: 07/12/2011]

²⁰⁴ Electoral Cycle, ACE Electoral Knowledge Network

Some examples of inter-dependencies within the electoral cycle are the following: the printing of ballots are delayed, causing polling stations to be inadequately prepared for their assigned voters; security of the transport is insufficient, hence manipulation by a political party is possible; malfunction of a voter registration system leads to an eligible voter being denied their right to cast a ballot, etc. The counting and the tabulation of results are additional sensitive areas where possible violations or manipulations of the process can put free and fair elections at risk, and will be analyzed in a later chapter.

The goal of the Electoral cycle is to plan and implement electoral assistance within the democratic governance framework by forecasting five to ten years out. The decision must be made politically and operationally, as “such a decision entails an overarching involvement and commitment to the democratic evolution of the concerned country”.²⁰⁵

3.4.1.1. Election Observation

Election Observation is another important component of electoral support by the IC. It is more visible than technical electoral assistance as it communicates with the global media and is therefore a useful communication tool on one hand and a form of “measuring instrument” on the other.

To some regard election observation is the political complement to election assistance. Its main objectives are “the legitimization of an electoral process, where appropriate, and the enhancement of public confidence in the electoral process, to deter fraud, to strengthen respect for human rights, and to contribute to the resolution of conflict.”²⁰⁶

The precondition of an Electoral Observation Mission (EOM) is the invitation of a host government and reflects in a sense the will of a country to engage in a democratic political dialogue with the international community. A Needs Assessment Mission assesses the host country and makes recommendation about the size of a potential EOM. Once an EOM is deployed, the strengths and weaknesses of an electoral process are evaluated and reported. Recommendations based on the

²⁰⁵ Electoral Cycle, ACE Electoral Knowledge Network

²⁰⁶ EC Supporting Elections, http://ec.europa.eu/europeaid/what/human-rights/election_observation_missions/about-electoral-support_en.htm [access: 07/12/2011]

observations conducted during the election period are important factors in determining further assistance programs for the concerned country.²⁰⁷

Election observation is a useful tool, not only in the above-mentioned context, but also for an election's credibility. In this sense it is not vital who the observers are – international or local organizations – but more the fact that the process is observed and occurrences (good or bad) reported.

As a critical side remark, Wolfgang Merkel argues the difficulty to empirically prove free and fair elections based on election observation, and whether elected leaders rule so-called electoral democracies by democratic and constitutional principles between elections.²⁰⁸ Reilly also points out the huge resources that were spent on international election observation in the 1990s. A shift to a more efficient process of elections observation, and a focus on building domestic observation capacity more recently have streamlined this kind of 'election tourism'.

3.5. Organizations involved in electoral assistance

There are three main actors that shaped electoral assistance since the 1960s: the United Nations, the United States and from the mid-90s, the European Commission. For the Balkans (which represent very unique circumstances under the Dayton Peace Agreement for Bosnia and the Rambouillet Accords for Kosovo) the OSCE was mandated with the organization of elections and establishment of electoral institutions.²⁰⁹ Other electoral assistance providers offer additional services to elections and democracy strengthening.

3.5.1. United Nations – UN

The UN focuses on providing electoral assistance as a “strategic entry point for broader democratic governance programs” and has two primary goals:²¹⁰

- To assist Member States in their efforts to hold credible and legitimate elections

²⁰⁷ *ibid.*

²⁰⁸ Wolfgang Merkel. Embedded and Defective Democracies, p.34; In: Democratization, Vol.11

²⁰⁹ Assistance Providers, ACE Electoral Knowledge Network, <http://aceproject.org/electoral-advice/electoral-assistance/assistance-providers>, p.1, [access: 05/19/2010]

²¹⁰ UNDP Electoral Assistance Implementation Guide, p.4

in accordance with internationally recognized standards; and

- To contribute to building, in the recipient country, a sustainable institutional capacity to organize democratic elections that are genuine and periodic and have the full confidence of the contending parties and the electorate.

The assistance programs aim to transfer skills and operational knowledge and strengthen capacity and institutions of various actors involved into an electoral process. The leitmotif of UN's electoral assistance is to "ensure that elections are fully owned nationally"²¹¹, meaning it is a national operation with international help.

The United Nations' involvement in electoral assistance began in the 1960s with the Trusteeship Council with the observation and/or supervision of elections. The end of the 1980s saw major UN assistance of three kinds – organization and conduct of elections; supervision and control of elections; and verification of electoral processes.²¹²

The electoral assistance under the UN umbrella is organized through UNDP. The Electoral Assistance Division of the Department of Political Affairs (UNDPA/EAD) supports the Under-Secretary-General for Political Affairs in his capacity as the UN's focal point by responding to country requests and determining the political feasibility of assistance.²¹³ Their role is mainly to provide technical assistance to an electoral event and to longer-term electoral systems and processes.²¹⁴ There are a number of other UN actors directly or otherwise involved in electoral assistance activities like the UN Department of Peacekeeping Operations (DPKO), the UN Volunteers (UNV), the UN Development Fund for Women (UNIFEM), the UN Population Fund (UNFPA), the UN Office for Project Services (UNOPS) and the UN Department for Economic and Social Affairs (UNDESA).²¹⁵

²¹¹ *ibid*, p.1

²¹² Assistance Providers, ACE, p.1

²¹³ UNDP Electoral Assistance Implementation Guide, NY, 2007, p.1

²¹⁴ Assistance Providers, ACE, p.1

²¹⁵ *ibid*, p.4

3.5.2. European Commission – EC

The EC started its electoral assistance activities in the 1990s, within the larger domain of democracy promotion, as set forth in Article 6 of the European Union Treaty.²¹⁶ The support it was providing shifted from solely financial contributions to a more substantial and visible approach, in the process becoming one of the key international donors and a leading global actor for electoral assistance programs and election observation. “The creation of a quality support unit within the main implementation arm of the EC, Europe Aid, steered the steep increase of funding designated to electoral assistance operations (from 2004 to 2006, about 320m EUROS), with senior level attention increasingly focused on the specific challenges of supporting elections in post-conflict scenarios.”²¹⁷

The EC’s primary role is to support institutions and agencies that implement electoral assistance activities. EC Delegations worldwide operating under the ‘de-concentration’ principle, thus having the leading role, together with the relevant national authorities, over the identification, formulation, implementation and evaluation phases.²¹⁸

EC electoral assistance projects and EU election observation missions are funded through different financial instruments (geographic funds for the electoral assistance and centrally managed EIDHR funds for the observation missions).²¹⁹ EC views electoral observation as the political complement to election assistance. Its main goals are “the legitimization of an electoral process, where appropriate, and the enhancement of public confidence in the electoral process, to deter fraud, to

²¹⁶ Article 6 of the European Union Treaty, http://www.europarl.europa.eu/hearings/20000222/libe/art6/default_en.htm, [access: 04/23/2011]

1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.
2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
3. The Union shall respect the national identities of its Member States.
4. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

²¹⁷ EU-EC History Election Assistance, http://www.ec-undp-electoralassistance.org/index.php?option=com_content&view=article&id=54&Itemid=71&lang=en, [access: 08/29/2011]

²¹⁸ Assistance Providers, ACE, p.2

²¹⁹ EU-EC Approach (Electoral Support), http://www.ec-undp-electoralassistance.org/index.php?option=com_content&view=article&id=61&Itemid=78&lang=en, [access: 08/29/2011]

strengthen respect for human rights, and to contribute to the resolution of conflict.”²²⁰ EU election observation involves the assessment of the strengths and weaknesses of an electoral process and recommendations acting as a crucial basis for deciding on further assistance after the elections. It further strengthens other key EU foreign policy objectives, in particular peace-building.

3.5.3. United States – US

At the end of the 1980s the United States initiated their electoral assistance programs through the United States Agency for International Development (USAID), the Department of State and the National Endowment for Democracy.²²¹ Their focus was centered on election observation and political party support. IFES (the International Foundation for Electoral Systems) devoted exclusively to technical aspects of electoral processes, was established in 1987 (see more details about IFES below).

3.5.3.1. United States Agency for International Development – USAID

USAID is an independent federal government agency that receives overall foreign policy guidance from the Secretary of State. It supports long-term and equitable economic growth and advances U.S. foreign policy objectives by supporting.²²²

- Economic growth, agriculture and trade;
- Global health; and,
- Democracy, conflict prevention and humanitarian assistance.

3.5.3.2. International Foundation for Electoral Systems – IFES

IFES is a non-governmental organization and was founded in 1987 specializing in election assistance and democracy promotion. The organization “promotes democratic stability by providing technical assistance and applying field-based research to the electoral cycle in countries around the world to enhance citizen participation and strengthen civil societies, governance and transparency.”²²³

Through fieldwork, applied research and advocacy, IFES strives to promote citizen

²²⁰ *ibid.*

²²¹ Assistance Providers, ACE, p.1

²²² USAID, http://www.usaid.gov/about_usaid/, [access: 08/29/2011]

²²³ IFES, <http://www.ifes.org/About/Who-We-Are.aspx> [access: June 8, 2011]

participation, transparency and accountability in political life and civil society. IFES helps improve transparency and efficiency in government institutions through capacity building initiatives, and independence and professionalism of public officials so they can better serve their constituents. IFES' F. Clifton White Applied Research Center for Democracy and Elections (ARC) generates innovative applied research to enhance the practice of democracy building and to bolster the development of democratic and participatory institutions, processes and cultures. Through its research and outreach activities, ARC seeks to bridge the gap between theories of democratic development and the practical realities of democracy building in order to enrich democracy programming.

IFES has been involved in Kosovo since 1998 “when an agreement between Slobodan Milosevic and the international community was reached that allowed for diplomatic verification and humanitarian assistance as well as some sort of self-rule for Kosovo and elections within nine month's time.”²²⁴ The organization conducted certain electoral assessments concerning the quality of population registries for the province and the extent of the Kosovar Albanian population's participation in public administration and electoral processes.²²⁵ Further projects in the areas of election processes, capacity building and promoting the rule of law were developed and implemented.

The cooperation with the Central Election Commission in regards to reforming the electoral framework and certain processes continues.

3.5.4. Organization for Security and Cooperation in Europe – OSCE

The OSCE is a leading organization in the field of election observation. It conducts election-related activities across the 56 participating states, including technical assistance and election observation missions. ODIHR, the Office of Democratic Institutions and Human Rights is OSCE's specialist institution primarily concerned with elections, human rights, and democratization. ODIHR is based in Warsaw, Poland. The organization “promotes democratic election processes through the in-depth observation of elections and conducts election assistance projects that enhance meaningful participatory democracy.”²²⁶

²²⁴ IFES in Kosovo, <http://www.ifes.org/Content/Projects/Europe-Asia/Kosovo/About.aspx>, [access: 08/29/2011]

²²⁵ *ibid.*

²²⁶ <http://www.osce.org/odihr/43595> [access: 29/08/2011]

One of OSCE's standard setting instruments, the 1990 Copenhagen Document, had an important role in the elaboration of the Declaration on Criteria for Free and Fair Elections.²²⁷

OSCE has been involved in Kosovo's elections since 2000 and continues their engagement until now. The OSCE Mission assisted with organizing and supervising elections (four on local, three on central level) from 2000 to 2008 and still holds a non-executive advisory role to the Central Election Commission CEC and the Election complaints and Appeals Panel, providing considerable assistance to these institutions.²²⁸ OSCE is part of a working group on electoral reform to improve the legislative and administrative frameworks for Kosovo's elections.

3.5.5. Additional Assistance Providers

3.5.5.1. *International Institute for Democracy and Electoral Assistance – IDEA*

IDEA is an intergovernmental organization that supports sustainable democracy worldwide. International IDEA's mission is to support sustainable democratic change by providing comparative knowledge, and assisting in democratic reform, and influencing policies and politics.²²⁹ It was established in 1995 and operates at regional, national and international levels.

Their activities include:

- Providing comparative knowledge derived from practical experience on democracy building processes from diverse contexts around the world;
- Assisting political actors in reforming democratic institutions and processes, and engaging in political processes when invited to do so; and
- Influencing democracy-building policies through the provision of our comparative knowledge resources and assistance to political actors.

3.5.5.2. *European Network of Election Monitoring Organizations – ENEMO*

ENEMO (European Network of Election Monitoring Organizations) is a group of 21 civic organizations from seventeen countries of the former Soviet Union and Central and Eastern Europe. These nonpartisan organizations are the leading domestic

²²⁷ Goodwill-Gill (2006), p.50

²²⁸ <http://www.osce.org/kosovo/43390> [access: 29/08/2011]

²²⁹ <http://www.idea.int/about/> [access: June 15, 2011]

election monitoring groups in their countries. In total, ENEMO member organizations have observed more than 110 national elections and trained more than one hundred thousand election monitors. ENEMO seeks to support the international community's interest in and support for democracy in the post-communist countries of the OSCE region, to assess electoral conditions and the political environment, and to offer accurate and impartial observation reports. ENEMO international observation missions evaluate the electoral process using international standards for democratic and fair elections and benchmarks in the assessed country's legislation and constitution.²³⁰

3.5.5.3. *The International Organization for Migration – IOM*

IOM supports the inclusion of migrant communities (refugees and displaced persons) into democratic electoral processes in their countries of origin. In cases where “certain concentrations of a population are residing beyond the territorial confines of the area embarking in electoral exercises, the establishment of structures for external voting is essential to ensure their participation in the democratic process taking place in their countries of origin.”²³¹

Under the auspices of UNMIK and OSCE, IOM-OKV (Out of Kosovo Voting Program) created the structures to involve 300.000 eligible Kosovars temporarily residing outside of Kosovo to register and vote in the Municipal Elections in 2000. The program involved in-person voting in Montenegro, Albania and Macedonia and voting by-mail in other countries with Kosovo refugees and displaced persons. The Kosovo Assembly elections in 2001 were organized for in-person voting in Serbia proper and in Montenegro, and all other countries were included in the by-mail operation.

3.5.5.4. *National Democratic Institute – NDI*

NDI is a nongovernmental organization, which was founded 1983. NDI and its local partners have worked to establish and strengthen political and civic organizations, safeguard elections, and promote citizen participation, openness and accountability in government.²³²

²³⁰ ENEMO, <http://www.enemo.eu/member.htm> [access: 08/29/2011]

²³¹ IOM Support to Out of Country Voting: www.iom.int/jahia/webdav/shared/shared/.../op.../esu_ocv_080107.pdf, [access: 08/29/2011]

²³² NDI, <http://www.ndi.org/whoweare>, [access: 08/29/2011]

NDI's election-related programs have the goal to advance democratic progress and promote the integrity of electoral and political processes. Their activities are „tailored to the broader political process in each country to promote citizen participation as electors, and electoral candidates as a means of achieving democratic governance, mitigating potentials for violent conflict, and improving the lives of people.“²³³

3.6. International Standards for Free and Fair Elections

I do think that fair elections are extremely important.

This is not because such elections will necessarily lead to wonderful outcomes. It is because these elections, per se and due to the political freedoms that must surround them if they are to be considered fair (and, consequently, if the resulting regime is to be democratic), mark a crucial departure from the arbitrariness of authoritarian rule. When some fundamental political freedoms are respected, this means great progress in relation to authoritarian rules and gives us ample reason to defend and promote fair elections.

Guillermo O'Donnell²³⁴

One of the main features of democracy is the holding of free and fair elections, including the accurate depiction of the voters will as represented in the institutions elected to govern them. This principle is rarely challenged, however, when it comes to clarify the term free and fair and its underlying rules and their adoption, there is much less consensus. Katz explains it with the many conceptions of democracy “each of which having distinct implications about what kind of legislation should be adopted“²³⁵.

With Guy Goodwill-Gill's seminal work *Free and Fair Elections: International Law and Practice*, a constructive approach developing a definition for ‘free and fair’ was offered.²³⁶ Nonetheless, scholars and practitioners have yet to come to an agreement on the evaluation of freeness and fairness of an electoral process. Interestingly, the

²³³ NDI, <http://www.ndi.org/content/elections>, [access: 08/29/2011]

²³⁴ O'Donnell, Guillermo, In Partial Defense of an Evanescent “Paradigm”, “Journal of Democracy”, 13, 1 (2002), pp. 6- 12.

²³⁵ Focus on Electoral Laws, ACE Project, <http://aceproject.org/ace-en/focus/focus-on-electoral-laws-a-macroscopic-perspective> [access: 07/08/2011]

²³⁶ Goodwill-Gill, Guy, *Free and Fair Elections: International Law and Practice*, Inter-Parliamentary Union, Geneva, 2006

work of institutions involved in election observation provides helpful insights and gives valuable input into this debate.²³⁷ Reilly, acknowledging the great variation in the meaning of free and fair elections, classifies it in general terms: “A ‘free’ election typically is in which contestation for office is open and competitive, and free from significant electoral violence; while ‘fair’ usually refers to features such as a level playing field, equal rights to participation, and acceptance of outcomes by all parties.”²³⁸ But he also points out that the overuse of the term ‘free and fair’ bears the danger of becoming meaningless and is inadequate “for capturing the complexity of democratization in a post-conflict society”.²³⁹

Goodwill-Gill suggests, “the dynamic and programmatic dimension to free and fair elections as institutional means to representative democracy can best be understood by returning once again to the underlying premises. Amongst others, ‘free’ is about participation and choice; ‘fair’ is about equality of participation and of the vote, and about impartiality and non-discrimination; together, they imply respect for human rights at large and the absence of coercion.”²⁴⁰

When ‘free’ is about “participation and choice” and ‘fair’ about “equality of participation and the vote, and about impartiality and non-discrimination” when does ‘not free’ and ‘not fair’ begin? How can it be judged and which criteria included?

As was implied earlier, a successful election is more than a voting exercise on E-Day; it is a totality of processes that include the nature of the electoral system, voter entitlement and registration, political parties, civic education, campaigning and processes after a ballot was cast.

Goodwill divided the requisite activities and criteria into ten broad categories:²⁴¹

- 1.) Electoral law and system;
- 2.) Constituency delimitation;
- 3.) Election management;
- 4.) The right to vote;

²³⁷ Boda, Michael D., Revisiting the „Free and Fair“ Question, See: Revisiting Free and Fair Elections, International round table on election standards, Inter-Parliamentary Union, Geneva, 2004, p.8

²³⁸ Reilly, ACE Project, p.3

²³⁹ *ibid.*, p.23

²⁴⁰ Goodwill-Gill (2006), p.73

²⁴¹ *ibid.*, p.113ff

- 5.) Voter registration;
- 6.) Civic education and voter information;
- 7.) Candidates, political parties and political organization, including funding;
- 8.) Electoral campaigns, including protection and respect for fundamental human rights, political meetings, media access and coverage;
- 9.) Balloting, monitoring and results;
- 10.) Complaints and dispute resolution.

Ad 1.) Electoral law and system

The choice of the electoral system is a State's domain of domestic jurisdiction, and "there is not a single political system or electoral method that is equally suited to all nations and their people..."²⁴² The accepted desideratum agreed upon by international law "genuine periodic elections guaranteeing the free expression of the will of the electors, which shall be the basis of the authority of the government", allows considerable room for variation. But choosing between a proportional or majoritarian system of representation has considerable consequences to further electoral processes like political campaigning, the political culture and has an effect on related political rights. The underlying notions are that "a chosen system must facilitate the expression of the will of the people"²⁴³ and that "no vote should carry disproportionately more weight than any other".²⁴⁴

Ad 2.) Constituency delimitation

The general objective is to translate the will of the electorate into representative government. How the State delimits its electoral boundaries or districts lies in the State's practice and choice of electoral system but considerable differences in the population proportion between electoral districts would raise a number of questions.

Ad 3.) Election management

As was earlier mentioned, an independent and fairly administered electoral process is essential. At a practical administrative and oversight level, the institution of an independent Electoral Commission is now widely adopted as an important step in building traditions of independence and impartiality, and the confidence of the

²⁴² Goodwill-Gill (2006), p. 113

²⁴³ *ibid*, p.114

²⁴⁴ *ibid*, p.115

electorate and parties alike. In practice, the election machinery can either be impartial, or in balance. The ideal or most effective model will depend on the relative maturity of the national system.²⁴⁵

Ad 4.) The right to vote

Formal constitutional recognition of the citizen's right to vote is common to most States and plays both a substantive and a confidence-building role. This right may be subject to reasonable restrictions which are not arbitrary and do not interfere with the free expression of the people's opinion. However, it is important that the State respects the principle of non-discrimination including race, religion, sex, social group, political opinion or other irrelevant consideration. It is also critical to note that an electoral system which denied the vote to minority populations, or which disenfranchised half the citizenry, for example, by excluding women, would be incompatible with international standards, and incapable of reflecting the 'will of the people'.

Ad 5.) Voter registration

The right to vote is normative, however in practical terms it is only given once the voter is enrolled on an electoral list. An efficient voter registration process is crucial to a successful election, and can vary from country to country due to its own political and societal contexts and available resources.

The electoral list must enable all eligible citizens to be included and prevent electoral misuse and fraud. Accuracy is important for a system in place, which ensures a regular updating of the voting registers. "Electoral lists should be published promptly, and clear effective means should be available for correcting errors, including omissions and cancellation of those deceased or who have moved."²⁴⁶

Not only is the integrity and transparency of the voter registration system important, but also its security. Publishing electoral lists enhance a degree of confidence to the electorate and contribute therefore to ensure free and fair elections. "Only if the population at large is aware of the procedures and effectively able to access them, will a resulting election likely be fair."²⁴⁷

²⁴⁵ *ibid*, p. 122ff

²⁴⁶ *ibid*, p. 131

²⁴⁷ *ibid*, p.133

Ad 6.) Civic education and voter information

Civic education and voter information are central in achieving the objective of free and fair elections, as an environment understanding the values of democracy must exist and acted upon.

Ad 7.) Candidates, political parties and political organization

Another substantial index of free and fair elections is that of candidates, political parties and political organization. It falls within the concept of human rights. “Article 25 of the Covenant on Civil and Political Rights, for example, provides that every citizen has the right, without discrimination, to take part in the conduct of public affairs, to be elected, and to have equal access to public service in his or her country. Those rights are not absolute, however, and may be subject to a variety of reasonable limitations.”²⁴⁸

The choice of electoral system can influence the right of individuals to present themselves as candidates for election. This also applies to threshold requirements, which can limit representation possibilities for parties that fail to obtain a certain percentage of the vote and thus fail to have access to the Parliament Chamber. Registration criteria, funding, public space, media etc. have all a critical effect in enabling or hinder in establishing and forming political organizations and parties.

Ad 8.) Electoral campaigns

Electoral campaigns, another index of free and fair elections, are important with respect to certain fundamental human rights, together with the responsibility of the State, as described in article 2 of the 1966 Covenant on Civil and Political Rights, “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²⁴⁹

In an assessment, national and international observers will evaluate if “freedom of movement, assembly, association and expression have been respected throughout the election period; whether all parties have conducted their political activities within the

²⁴⁸ *ibid*, p.134

²⁴⁹ *ibid*, p.143

law; whether any political party or special interest group has been subjected to arbitrary and unnecessary restrictions in regard to access to the media or generally in regard to their freedom to communicate their views; whether parties, candidates and supporters have enjoyed equal security; whether voters have been able to cast their ballots freely, without fear or intimidation; whether the secrecy of the ballot has been maintained; and whether the overall conduct of the ballot has been such as to avoid fraud and illegality.”²⁵⁰

Ad 9.) Balloting, monitoring and results

Free and fair elections are not defined by Election Day alone, but it still deserves particular attention. There is a multitude of issues to scrutinize: the location of polling stations, and their accessibility for the population; the presence of competent officials, versed in the procedure; the presence of party representatives; secrecy of the act of voting and the security of the ballot box; the integrity of the counting process and its translation into a genuine political result.²⁵¹

Balloting involves the “organization and management of voting, including the opening and closing of polling stations at stated times; the arrangement of booths and the orderly movement of voters; the identification and verification of voters (hence the importance of a credible registration system, discussed above); an established procedure for objection and challenge; the issue of ballot papers to recognized voters; the marking of ballot papers out of sight of officials or other electors; the deposit of marked ballots; and, in the absence of other sufficient guarantees, the identification of voters, for example, with indelible ink, in order to prevent double voting.”²⁵²

International Assistance providers regularly point out the importance of national and international observers in the polling locations to emphasize the confidence of the electorate into the voting processes.

Interestingly, counting is not included explicitly as a separate factor, rather part of ‘Balloting, monitoring and results’. In general terms a State’s legal framework should

²⁵⁰ *ibid.*

²⁵¹ *ibid.*, p.152

²⁵² *ibid.*

“ensure that all votes are counted and tabulated accurately, equally fairly and transparently.”²⁵³

The author wants to emphasize the importance of the count process, which is already suggested by this thesis on Kosovo’s Count Center processes and Pastor’s analysis as one of the most persistent problems in transitional elections²⁵⁴. A fair and transparent vote count is a linchpin for democratic elections.

Counting

“Complementary to the principle of secret ballot is the integrity of the count, which looks both to ensure that the expressed wish of the elector is taken into account, and that the result declared corresponds with the totality of the votes cast.”²⁵⁵

The counting process must ensure the demand that ballot boxes are emptied before the beginning of the vote and are closed and secured once polling stations (PS) are closed or ballot boxes transferred.

In general, ballots are counted directly in the PS following the voting but sometimes due to security issues or administrative reasons (no time for training PS staff about counting procedures, a lack of trust towards PS officials, etc.) ballot boxes are transferred to a central count location. One of the administrative tasks of an EMB is to detail standard procedures for the closing of a PS and counting the ballots.

Once the voting has ended, PS officials must seal the ballot-box slot and record the number on the designated form. PS staff must then account for all ballot papers (used, unused, spoiled) and other polling material, ensuring that the number of ballots distributed to voters matches the number of voters recorded as having voted (counting the signatures on the voters list). Once this has been verified, the material needs to be packed away separately. The ballot box is then opened and the ballots counted according to the designated procedure. Once the count process is finalized the ballots need to be put back into the ballot box and the box re-sealed and the numbers recorded.

The transparency, accuracy and fairness of this process can be enhanced by the presence of domestic or international observers, achieved by preventing fraud or manipulation.

²⁵³ IDEA Counting and tabulating votes;
www.idea.int/.../13.%20Counting%20and%20tabulating%20votes.pdf, [access: 10/16/2011]

²⁵⁴ Pastor (1999), p.17

²⁵⁵ Goodwill-Gill (2006), p.157

An IDEA factsheet offers some guiding principles for counting and tabulating votes:

General principles:

- The legal framework must clearly state the electoral formula that will be used to convert votes into legislative seats.
- Thresholds, quotas and all details of the electoral formula must be stated clearly and all possibilities, such as ties, withdrawals or death of a candidate, must be addressed. The law must lay down clear criteria for determining valid and invalid ballots in all polling and counting stations across the jurisdiction.
- Rules for determining the validity of ballots to be counted should not be so stringent as to unreasonably result in disenfranchising a voter.
- The paramount principle should be that if the intention of the voter is clear, the ballot should be counted.

Counting ballots:

- Regardless of whether ballots are counted at the polling station or at a central counting location or at both places, the representatives of parties and candidates and election observers should be permitted to remain present on this occasion.
- As well as ensuring the presence of above all entities during the counting of ballots, the legal framework should provide safeguards where technology is used to count ballots.
- The legal framework must make possible the independent verification of the accuracy and soundness of hardware and software used for counting ballots.
- Whether manual, mechanical or electronic counting is used, overview procedures must be in place to ensure accuracy and reliability.
- The law must also allow objections to counting procedures, including objections to criteria used to determine the validity of ballots.
- The legal framework for elections should clearly specify that the representatives of parties and candidates and election observers be given, as far as practicable, certified copies of tabulation and tally sheets.
- The law must also clearly specify what authorities, if any, are entitled to receive this information prior to certification of the election results by the central EMB.

Tabulating results:

- The legal framework should provide, in clear and objective language, the procedures for transferring the certified copies, results of counting, ballot papers and other election materials from polling stations and other, lower levels of EMBs to intermediate and higher EMBs for consolidation and safekeeping.
- The law should require that all consolidation of vote counts be available in tables or similar format so that representatives of parties and candidates and observers may track the vote count of any polling station all the way up, through intermediate levels to the final consolidated results.
- The tabulation for any polling station should provide detailed information such as the number of ballots used and returned, the number of blank, spoiled and invalid ballots, and the number of votes for each political party or candidate.
- This information should be broken down for alternative methods of voting, such as voting by mail or mobile voting, where this can be done without compromising the secrecy of the ballot.
- This degree of detail is necessary to enable the representatives of parties and candidates and election observers to track results and locate specifically, if fraud has occurred, where the numbers have been unlawfully changed during the consolidation processes.
- A strictly defined division of responsibility among various tiers of EMB and the state authorities is vital during the tallying process.
- Election legislation should underline the principle that only EMB members should be involved in this process.
- To ensure this it is also important that representatives of parties and candidates and election observers are given access to all stages of the process of counting, tabulating, consolidating and tallying results.

Ad 10.) Complaints and dispute resolution

Complaints, appeals and dispute resolution are important mechanisms for any electoral process. Complaints and appeals can occur at any moment of the electoral process and can be a matter of claimed misinterpretations of electoral procedures and

laws, disputes regarding the transparency and accuracy of the count, violations of the criminal law or other irregularities that may arise during the process, etc.

Responsible authorities should deal with complaints as promptly as possible to avoid any delay of the election outcome.

All these are important aspects of an election, and only through thoroughly evaluating respective processes can elections be judged as ‘free and fair’ within the established norms and indices by national and international observers.

3.6.1. Tool kit for electoral assessment

The analytical framework suggested by Jorgen Elklit and Andrew Reynolds at the IPU Round Table 2004 is the connecting link between the previously touched free and fair criteria, democratization and the case study about Kosovo’s count process.

Elklit and Reynolds argue “that the quality of election administration has a direct and important impact on the way in which elections and their outcomes are regarded”.²⁵⁶ They focus on how “institutional factors and institutional choices, and the ensuing administrative and political behavior, contribute to the quality of the entire electoral process and therefore also to the transition and the eventual consolidation of democracies.” In their analysis, they concentrate primarily on how to determine electoral quality and legitimacy, more specifically “the effectiveness and positive contribution of institutional choices related to electoral process management and the impact of the various stages of the implementation process”²⁵⁷. While lacking a fitting approach to apply onto stable and emerging democracies, they developed a more operational and empirically oriented framework of electoral governance for practitioners and academics alike.

They refer to a certain margin of human error or technical issues affecting electoral governance. On a small scale there is no influence on the outcome of elections and electoral credibility. The legitimacy of competitive elections becomes contested when electoral manipulation is widespread and/or technical and security complications are

²⁵⁶ Elklit, Jorgen/Reynolds, Andrew, Judging Elections and Election Management Quality by Process, IPU Round Table, Geneva, 2004, p.54

²⁵⁷ *ibid*, p.54

great enough to become evident. Elklit and Reynolds agree on the difficulty to operationalize and empirically measure electoral manipulation due a lack of theoretical arguments and empirical evidence. The ability to draw valid conclusions is limited although it can very well act as an indicator for political legitimacy.²⁵⁸

Highlighting the bias of election assessment in “either good or bad or, when a fudge is required, it is ‘substantially free and fair’” is limiting. Therefore it is argued to “look at both process and outcome to gauge the full picture of election quality.”²⁵⁹

The model consists of eleven steps ranging from the legal framework, electoral management, constituency and polling district demarcation, voter education, voter registration, access to and design of ballot paper, party and candidate nomination and registration, campaign regulation, polling, counting and tabulating the vote, resolving election related complaints/verification of final result and certification, and post-election procedures (see Annex, table 2, p.155).

For the analysis of this case study, steps eight to ten are essential:

8. Polling

- 8.1. What is turnout as a percentage of total registration?
- 8.2. What is turnout as a percentage of the voting age population?
- 8.3. Is there a low level of serious election-related violence?
- 8.4. In how many polling stations did polling happen according to rules and regulations.
- 8.5. Are there systems in place to preclude and/or rectify fraudulent voting?
- 8.6. Is polling accessible, secure, and secret?
- 8.7. If there is substantial desire for election observation, is the desire satisfied?
- 8.8. If there is substantial desire for political party election observation, is the desire satisfied?
- 8.9. Are there systems in place to preclude vote buying?
- 8.9. Is the level of intimidation sufficiently low that voters can express their free will?

9. Counting and tabulating the vote

- 9.1. Is the count conducted with integrity and accuracy?
- 9.2. Is the tabulation transparent and an accurate reflection of the polling booth count?
- 9.3. Are results easily available to interested members of the general public?

²⁵⁸ *ibid*, p.56

²⁵⁹ *ibid*, p.57

9.4. Does counting take place with no undue delay?

9.5. Are parties and candidates allowed to observe the count?

10. Resolving election related complaints. Verification of final result and certification

10.1. Are serious complaints accepted for adjudication?

10.2. Is there an appropriate dispute resolution mechanism which operates in an impartial and non-partisan manner?

10.3. Are court disputes settled without undue delay?

10.4. Do election observation organizations confirm that the elections were without serious problems?

10.5. If legislation prescribes a timeframe for the constitution of parliament, is this timeframe met?

10.6. Is a person with a reasonable case able to pursue that case without unreasonable personal and financial risk?

10.7. Are seats taken only by those properly elected?

3.7. Conclusion

Elections are not merely a technical endeavor, but more so a practical example of human rights. They are a means for managing the potential for violent war and conflict and advancing human rights and security for a countries citizen.

“Although other elements of democracy can develop before competitive elections are held, a country cannot be truly democratic until its citizens have the opportunity to choose their representatives. Elections can be a primary tool to expand political openings and increase citizens’ political participation, offering political parties and civic groups an opportunity to mobilize and organize supporters and develop alternative platforms. If there is real interest in democratization and systemic reform, then missions cannot afford to ignore the electoral process.”²⁶⁰

Achieving a democratic electoral process is part of establishing a system of government that can ensure respect for human rights, the rule of law and the development of democratic institutions. Post-conflict elections need to be transparent, fair and reflect the will of the people. As political events with high-stakes outcomes,

²⁶⁰ USAID, Managing Assistance in Support of Political and Electoral Processes

“it is often useful to counter them with conflict-sensitive and cautious external support”.²⁶¹

Despite the growth of electoral assistance since the end of the Cold War, elections have had mixed success in meeting the broader goals of democratization. International assistance has made important contributions to the conduct of post-conflict elections, however the IC and all players involved in electoral assistance must determine how to balance the need for democracy with local realities, giving security issues the highest priority. Without a certain degree of security there can be no free and fair elections, which are indispensable to democracy, and no start of a real effective democratization process. “Efforts to foster democracy must also support an ongoing process of reconciliation among former enemies, security sector reforms, law-enforcement and judicial reforms, human-rights monitoring and enforcement, strengthening civil society, and a complementary dedication to economic development and job creation.”²⁶²

The focus on one-off elections in the past by the IC was supported by the belief that “fast elections could be the panacea for transitional countries structural and economic problems and set a sort of virtuous circle in motion in the partner country”.²⁶³ The realization followed soon however, that this kind of support was contra productive.

In contrast to this is long-term support less visible and less politically attractive but more sustainable in the long run. Sustainability remains a critical mass of international electoral assistance. Large financial investments into advanced electoral technology, processes and training are not always maintained and are lacking broad local acceptance and know-how. The impact of external support is limited and much depends on local actors and conditions and a sustainable domestic environment. Building an institutional framework and maintaining support not only for initial elections, but also subsequent ones, are important factors for effective and sustainable electoral assistance. The electoral cycle approach is one important model to emphasize the cyclical nature of elections and its need for cyclical support. It

²⁶¹ UNDP Electoral Assistance Implementation Guide, p.24

²⁶² Atwood, Brian J., in: Postconflict Elections, Democratization & International Assistance (Krishna Kumar ed.), 1998, p.vii

²⁶³ Bargiacchi, Fabio/Tuccinardi, Domenico/Guerin, Paul/Maquire, Linda, ACE „Focus On...” Series – Making Electoral Assistance Effective: From Formal Commitment to Actual Implementation, (2008), p.10 See” http://www.idea.int/publications/making_electoral_assistance_effective/index.cfm [access: 08/29/2011]

furthermore stresses the need to provide assistance to a wider range of actors (EMBs, political parties, media institutions, civil society organizations etc.) – all of which can be critical success factors of an election.

Whether an election is deemed free and fair by observers depends on many different aspects and processes. Local circumstances and specific national interests influence each election. For transitional democracies with great economic, socio-economic and other internal problems, a positive election observation assessment promotes the people's confidence for change and evokes an optimistic attitude from the international community. "Just as democracy is not founded on a single ballot, so an election does not become unfree or unfair solely by reason of one or more breaches of international standards."²⁶⁴ In this sense 'free and fair' is more of a semantic notion and acts rather as a benchmark for elections.

²⁶⁴ Godwin-Gill, p.144

Chapter IV: The Case of the 2010 Kosovo Elections

4.1. Introduction

With the end of the military conflict and the creation of a more secure environment in Kosovo, the international community shifted their focus towards the development of democratic structures as a precondition and cornerstone for a ‘democratic self-administration’. Kosovo became one of the most prominent examples of ‘state-building’ by the IC since 1999, with the United Nations Mission in Kosovo (UNMIK) and the OSCE playing a critical role in the creation of institutions and democratic structures. This was not an easy task, as Kosovo’s history was characterized as lacking fundamental sine qua non. Traditional societal structures (patriarchic, clan-oriented), high birth and illiteracy rates, a difficult relationship between the majority Albanian and minority Serbian population in Kosovo, and quasi a missing “political culture” made it a rather difficult project for the responsible international organizations.²⁶⁵ Kramer and Dzihic illustrate in their book *“Die Kosovo-Bilanz. Scheitert die internationale Gemeinschaft?”* UNMIK and OSCE’s dilemma of institution-building and developing democratic structures, as a task that was taken-over without accounting for the lack of aforementioned political culture, tolerance, a willingness to cooperate and the protection of minorities by the political class in Kosovo.²⁶⁶ The expectation of the international community was that democracy and institutionalization would materialize once democratic elections were held, a parliament and government established, and Kosovo began to follow the example set by their presence.²⁶⁷ The international organizations were ill prepared however for the juxtaposition of a relatively “well established civic society” and, of principle importance, a male dominated clan society²⁶⁸.

Kosovo has seen a number of elections since the adoption of UN Security Council Resolution 1244 in 1999. Two Municipal elections (2000 and 2002) and two Assembly elections (in 2001 and 2004) were followed by Mayoral, Local and General

²⁶⁵ Kramer, Helmut/ Dzihic, Vedran: *Die Kosovo Bilanz. Scheitert die internationale Gemeinschaft?*, LIT Verlag GmbH, Wien 2006 (2.Auflage), p.57

²⁶⁶ Kramer/Dzihic (2006), p.59

²⁶⁷ *ibid.*

²⁶⁸ *ibid.*

Elections held in November 2007. Prior to 2008, the OSCE Mission in Kosovo supervised all these elections to a varying degree and the UNMIK, of which the OSCE Mission was part, certified the final results. In 2007 UN Special Envoy Martti Ahtisaari proposed a status settlement agreement, which included issues related to Kosovo's future status and measures to protect minority communities in Kosovo. After failed negotiations between Belgrade and Pristina, the government of Kosovo declared independence in 2008, committing to implement the Ahtisaari plan. The plan also "called for general and local elections to be held within nine months of the entry into force but negotiations later led to a changed electoral timetable. One of the key points in the Ahtisaari package was the decentralization plan whereby a number of new or expanded municipalities with community majorities other than Kosovo Albanian would be established with extensive autonomy. In order to fulfill this plan it was agreed to start with local elections in 2009 and to postpone the Kosovo Assembly elections to 2011."²⁶⁹

After the declaration of independence in 2008, the Central Election Commission (CEC) assumed the responsibility for administering elections based on a new legislative framework without foreign assistance. The role of the international community became officially an advisory one, ensuring that international standards were met and to assist with technical preparations. The headcount of international electoral assistance providers dropped significantly.

Municipal and Mayoral Elections were held on 15 November 2009 and early general elections, on 12 December 2010, representing Kosovo's first parliamentary elections. Both elections experienced an ample number of irregularities, systematic fraud and complaints. A multitude of factors are used to explain why previous elections were better organized than those of 2009 and 2010, however the dominant explanation appears to be the heavy presence of international observers and electoral experts between 2000 until 2007. Another reason for a declining quality of the electoral process might be found in political disillusionment, the lacking democratic culture as suggested by Kramer et al. or a different approach being taken in the Count and Result Center, trying to uncover electoral manipulation.

²⁶⁹ ENEMO, Election Observation Mission, Kosovo Assembly Elections 12 December 2010, p.3

4.2. Political Background

The Kosovo conflict ended with NATO's intervention over the Federal Republic of Yugoslavia and Slobodan Milosevic's capitulation. In June 1999 the UN Security Council passed Resolution 1244, mandating the Kosovo Force's (KFOR) presence and the creation of the United Nations Interim Administration Mission in Kosovo (UNMIK) to establish and oversee Kosovo provisional democratic institutions of self-government within a framework of Yugoslav sovereignty.

UNMIK was headed by the Special Representative of the Secretary-General (SRSG) and divided into four 'pillars'.²⁷⁰

- Pillar I (initially led by the Office of the High Commissioner for Refugees (UNHCR); phased out in June 2000): Police and Justice Pillar, United Nations (UN)
- Pillar II: Civil Administration, United Nations (UN)
- Pillar III: Democratization and Institution Building, Organization for Security and Cooperation in Europe (OSCE)
- Pillar IV: Reconstruction and Economic Development, European Union (EU)

In 2002, SRSG Michael Steiner introduced the 'Standards before Status' policy as a stopgap local mission response to Kosovo Albanian demands for international community clarity to Kosovo's status.²⁷¹ "The policy stated that if the Provisional Institutions of Self-Government (PISG) made progress towards achieving certain standards, Kosovo's final status could be addressed in mid-2005. The eight standards concerned functioning democratic institutions, rule of law, freedom of movement, refugee returns and reintegration, economic progress, property rights, dialogue with Belgrade and the establishment of the Kosovo Protection Corps."²⁷²

The latent existing ethnical tensions between the Albanian and Serbian population were unleashed in the violent riots of March 2004, which initially started with demonstrations against the inefficiency of UNMIK and the open status question. As

²⁷⁰ What is UNMIK?, <http://www.un.org/peace/kosovo/pages/unmik12.html>, [access: 11/24/2011]

²⁷¹ International Crisis Group, Kosovo Conflict History, <http://www.crisisgroup.org/en/key-issues/research-resources/conflict-histories/kosovo.aspx>, [access: 11/24/2011]

²⁷² Schleicher, Elisabeth, *The International Engagement in Kosovo Achieving Positive Peace?*, Wien, 2010, p.86

an answer to the unrest UNMIK published the Kosovo Standards Implementation Plan (KSIP). The KSIP described “actions to be undertaken by the PISG and other institutions to achieve the standards.”²⁷³ UN Secretary-General Kofi Annan appointed UN Special Envoy Martti Ahtisaari as chief navigator for the Kosovo status talks in Vienna. Following internationally orchestrated, but fruitless status talks, Kosovo’s Assembly unilaterally declared independence on 17 February 2008. “In the declaration, Kosovo committed to fulfilling its obligations under the Ahtisaari [comprehensive proposal] Plan, embracing multi-ethnicity as a fundamental principle of good governance, and welcoming a period of international supervision.”²⁷⁴

Serbia backed by Russia opposes/d the declaration of independence, calling it illegal. The government in Belgrade, which lobbied actively against the international recognition of Kosovo’s independence and access to international bodies, achieved a UN General Assembly backing for the International Court of Justice to issue an advisory opinion on the compatibility of Kosovo’s independence declaration with international law. In July 2010, the Court ruled that the declaration did not violate general international law or UNSCR 1244. This much-anticipated court decision did not greatly alter the international support base for an independent Kosovo.

Throughout 2010, Kosovo remained subject to a complex “array of governing authorities, with elected Kosovar officials overseen by the International Civilian Representative (ICR)/EU Special Representative (EUSR) and supported by the EU Rule of Law Mission (EULEX). The UN’s Interim Administration Mission in Kosovo (UNMIK) maintained its presence in municipalities north of the Ibar River, which remained outside of Pristina’s control. The Republic of Serbia continued to support parallel governing structures in Kosovo’s ethnic Serb-dominated northern municipalities.”²⁷⁵

As of February 2011, 75 countries had recognized Kosovo's independence, including 22 of 27 EU member states, all of its neighbors (except Serbia), and other states from

²⁷³ Kosovo Standards Implementation Plan (KSIP), <http://pbosnia.kentlaw.edu/symposium/resources/KSIP%20final%20draft%2031%20March%202004b.htm>, [access: 11/24/2011]

²⁷⁴ Schleicher (2010), p. 84

²⁷⁵ Freedom House, Country profile: Kosovo, www.freedomhouse.org/images/File/nit/.../NIT-2011-Kosovo-.pdf, [access: 11/30/2011]

the Americas, Africa, and Asia.²⁷⁶ Achieving membership to the International Monetary Fund (IMF) and the World Bank in spring 2009 was a diplomatic success for independent Kosovo.²⁷⁷

4.2.1. EU & Kosovo

The EU's intervention in post-conflict Kosovo started with its mandate to contribute to the process of economic development and stabilization, "including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation" in Resolution 1244, point 17.²⁷⁸ But the EU-led Pillar IV failed in developing a clear and successful economic strategy and was criticized from all sides for its poor performance and inefficiency. "An [...] obstacle to a consistent EU economic strategy in Kosovo was certainly the fact that, owing to the unresolved status issue, the hands of both the EU and the Kosovan authorities were tied with regard to the EU accession process."²⁷⁹

With the beginning of status talks, the need for reorganization of international efforts became clear. In 2006 the Council of the European Union decided to establish the European Union Planning Team (EUPT) to prepare for a possible future EU crisis management operation in the field of rule of law in Kosovo.²⁸⁰

As set out in the Ahtisaari plan, formally the Comprehensive Proposal for the Kosovo Status Settlement (CSP), an EU mission was to succeed UNMIK on the basis of Kosovo's independence and its new constitution. The Serbian government greatly objected to replacing UNMIK with a EU mission, arguing that this would informally mean accepting an independent Kosovo by the European Union.

"In November 2008, the UN Secretary-General submitted the so-called —Six- Point Plan, negotiated between the UN and Serbia, which provided for a status-neutral role for the EU mission and the extension of UNSCR 1244. Under the —Six-Point Plan, the protection of the rights of the Kosovo Serb population with regard to policing,

²⁷⁶ US Department of State, <http://www.state.gov/r/pa/ei/bgn/100931.htm> [access: 11/11/2011]

²⁷⁷ Dzihic, Vedran/ Kramer, Helmut: Kosovo After Independence. Ist he EU's EULEX Mission Delivering on ist Promises?, Friedrich Ebert Stiftung, July 2009, p.2

²⁷⁸ Security Council Resolution 1244, Point 17 <http://www.nato.int/kosovo/docu/u990610a.htm> [access: 11/18/2011]

²⁷⁹ Dzihic/Kramer (2009), p.15

²⁸⁰ EULEX Kosovo, European Union Planning Team, <http://www.eulex-kosovo.eu/en/info/EUPT.php> [access: 11/23/2011]

customs, justice, transportation and infrastructure, the borders of Serb communities and Serb Orthodox religious heritage was transferred to the Serbian government.”²⁸¹

The outcome of the ‘Six-Point Plan’ surprised Kosovo’s government, who (believing in the support of the USA) had not partaken in the debates and consultations of the UNMIK to EU transfer talks.²⁸²

The European Union Rule of Law Mission in Kosovo – EULEX Kosovo was officially launched on 9 December 2008 and reached its full capacity on 6 April 2009.²⁸³ The mission’s aim is to assist and support the Kosovo authorities in rule of law matters, particularly in the areas of police, judiciary and customs.²⁸⁴ EULEX is a technical mission and its legal basis the Council Joint Action 2008/124/CFSP of 4 February 2008.²⁸⁵

In addition to EULEX, the EU is represented in Kosovo by:²⁸⁶

The European Commission Liaison Office to Kosovo

The European Commission Liaison Office to Kosovo was established in September 2004, being given the responsibility of enabling the European agenda in Kosovo with the aim to promote Kosovo's integration to the European Union. As integral part of the European External Action Service and the European Commission's representation in Pristina, the office ensures that a permanent political and technical dialogue is maintained with the Brussels institutions.²⁸⁷ The Liaison Office’s role includes deployment of enlargement tools under the Stabilization and Association Process and fostering Kosovo’s regional and European integration. It is further tasked with strengthening Kosovo’s institutions, developing the economy and realizing the achievement of European standards.²⁸⁸

²⁸¹ Schleicher (2010), p. 87

²⁸² Dzihic/Kramer (2009), p.16

²⁸³ *ibid.*, p.17

²⁸⁴ EULEX <http://www.eulex-kosovo.eu/en/info/whatisEulex.php> [access: 11/23/2011]

²⁸⁵ The European Commission Liaison Office to Kosovo: How is the EU represented in Kosovo?, http://eeas.europa.eu/delegations/kosovo/eu_kosovo/political_relations/index_en.htm, [access: 23/11/2011]

²⁸⁶ *ibid.*

²⁸⁷ *ibid.*

²⁸⁸ Schleicher (2010), p. 88

European Union Special Representative (EUSR)

The EUSR offers support and assistance to the Kosovo authorities in the political process of developing a peaceful, democratic and multi-ethnic Kosovo. EUSR provides overall coordination for the EU presences in Kosovo and contributes to the development and consolidation of respect for human rights and fundamental freedoms. The EUSR reports to the Council of Europe, the inter-governmental body representing the 27 EU member states, through the High Representative/Vice President of the European Commission.²⁸⁹

The EU Member State representations (Embassies and Liaison Offices)

EU member states are represented in Kosovo on a bilateral basis and are also active in supporting Kosovo towards a European future.²⁹⁰

4.2.1.1. Is EU integration possible?

Vedran Dzhilic marked the year 2000 as the beginning of a form of “Europeanisation” in the region, “a process of incorporating European ideas, values, norms, rules and procedures in the domestic political framework of the Western Balkan countries.”²⁹¹

Eleven years later the prospects for the future are dim. Although enormous financial and operational resources were granted to Kosovo’s state-building and democratization processes, the results and achievements of UNMIK and EULEX are meager. High unemployment rates, high poverty and very low economic growth in combination with the current global economy crisis act as “ticking bomb”.²⁹²

Helmut Kramer and Vedran Dzhilic arrive at the conclusion that despite Kosovo’s declaration of independence, Kosovo remains an “unfinished state” with limited sovereignty and as a matter of fact divided into an Albanian dominated south and

²⁸⁹ The European Commission Liaison Office to Kosovo, http://eeas.europa.eu/delegations/kosovo/eu_kosovo/political_relations/index_en.htm [access: 11/23/2011]

²⁹⁰ Schleicher (2010), p. 89

²⁹¹ Dzhilic, Vedran: Prospects the Europeanisation of State-Building Efforts in Kosovo and Bosnia (p.24-31), In: Foreign Policy in Dialogue, State-Building and Regional Cooperation in the Western Balkans: Europe’s Engagement Twelve Years after Dayton, Vol.8, Issue 23, 2007, www.deutsche-aussenpolitik.de, [access:11/11/2011], p. 25

²⁹² Dzhilic/Kramer (2009), p.20

Serb north.²⁹³ EULEX was so far unable to prevent the division of the country, fight excessive corruption and organized crime and improve the economic situation.

Five EU member states (Cyprus, Greece, Romania, Slovakia and Spain) continuously refuse to recognize Kosovo's independence, preventing the EU from integrating Kosovo into the Stabilization and Association Process (SAP), one of the central components of the EU's strategy to stabilize the Western Balkans countries.²⁹⁴ The Stabilization and Association Agreement (SAA) is the centerpiece of SAP with high political value and the formal mechanisms and agreed benchmarks that allow the EU to work with each country to bring them closer to the standards, which apply in the EU.²⁹⁵

SAA focuses on respect for key democratic principles and the core elements at the heart of the EU single market. Through a free trade area with the EU and the associated disciplines (competition and state aid rules, intellectual property etc.) and benefits (e.g. rights of establishment), this process will allow the economies of the region to begin to integrate with that of the European Union. The implementation of SAA is a prerequisite for further assessment by the EU of a country's prospects of accession. Kosovo has not signed SAA due to EU's partition towards Kosovo's independence.

The continuous "lack of unity in the EU is one of the reasons for the current weaknesses and only moderate achievements of the European Union's biggest and most cost-intensive mission, the European Rule of Law Mission (EULEX), and the paralyzed policy of the EU in Kosovo."²⁹⁶

Dzihic deduces correctly that "Kosovo and Bosnia in their present shape are still far away from a new and modern form of statehood and thus from the ultimate goal of full EU-integration."²⁹⁷ Wielfried Wöß concluded from his study that the EU could have defused the "ticking bomb" by giving Kosovo a concrete perspective towards a path for EU-integration. But Kosovo has not signed the SAA and was not part of the visa liberalization process like other Western Balkan countries. The key to a

²⁹³ Dzihic/Kramer (2009), Key points

²⁹⁴ Dzihic/Kramer (2009), p.19

²⁹⁵ European Commission Enlargement, The Western Balkan countries on the road to the EU, http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/sap/history_en.htm, [access: 11/23/2011]

²⁹⁶ Schleicher (2010), p. 1

²⁹⁷ Dzihic (2007), p.25

successful EU accession is primarily in the hands of the Kosovar government to establish well-functioning institutions, in addition to their cooperativeness with neighboring Serbia. Another factor should be EU's demand from Serbia to cooperate with EULEX and a direct dialogue with Kosovo's government, and with Russia's reconsideration towards its Kosovo policy.²⁹⁸

Serbia and the EU reached consensus on a 9 September 2010 General Assembly resolution calling for dialogue between Serbia and Kosovo to promote cooperation, achieve progress on the path to European Union membership and improve the lives of the people.²⁹⁹

4.3. Legal Framework and Electoral System

Kosovo is a parliamentary democracy³⁰⁰ with a unicameral parliament. The Kosovo Constitution, which came into force on 15 June 2008,³⁰¹ the Law on General Elections³⁰² and other election related laws determine the election system for the Kosovo Assembly.

The Constitution follows the recommendations and obligations set out in the Ahtisaari package, which emphasizes the rights and freedoms granted to minority communities living in Kosovo. According to Article 22 in the Constitution, Kosovo is obligated to prioritize several main treaties (e.g. Universal Declaration of Human Rights, International Covenant on Civil and Political Rights) over Kosovo laws, as Kosovo has not signed any human right treaties.³⁰³

²⁹⁸ Wöß, Wölfried, Die Politik der Internationalen Gemeinschaft, insbesondere der Europäischen Union, in Bosnien und Herzegowina sowie im Kosovo: Strategien, Entwicklungen und Perspektiven., Wien, 2010, p.181ff

²⁹⁹ General Assembly, 9 September 2010, <http://www.un.org/News/Press/docs/2010/ga10980.doc.htm> [access: 11/11/2011]

³⁰⁰ Parliamentary democracy and proportional representation (PR) electoral systems in modern states are predicated not only on the idea that parties are cohesive units but also on the idea that it is those cohesive units for which electors vote and which therefore have a democratic mandate from the voters. See: Katz, Richard S., Democratic Principles and Judging "Free and Fair". In: Revisiting Free and Fair Elections, An International Round Table on Election Standards, Inter-Parliamentary Union, Geneva, 2004, p.19

³⁰¹ Constitution of the Republic of Kosovo, Chapter IV "Assembly of the Republic of Kosovo", Article 64 and Chapter XIV "Transitional Provisions", Article 148.

³⁰² LGE, Chapter XVII "Electoral System for the Assembly of Kosovo", Articles 110-112

³⁰³ ENEMO Election Observation Mission, Kosovo Assembly Elections 2010: Statement of Preliminary Findings and Conclusions, p.4

The Assembly comprises one hundred twenty (120) members, where twenty (20)³⁰⁴ seats are set aside for representation of minority communities.³⁰⁵

- Kosovo Serb Community 10
- Roma³⁰⁶ community 1
- Ashkali³⁰⁷ community 1
- Egyptian³⁰⁸ community 1
- The Roma, the Ashkali or the Egyptian community with the highest overall votes 1
- Bosnian³⁰⁹ community 3
- Turkish³¹⁰ community 2
- Gorani³¹¹ community 1

Certified political entities competing for reserved seats of minority communities must declare the community the wish to represent.³¹²

³⁰⁴ This number represents a numerical overrepresentation compared to their proportion of the population. See more about 'Sustaining multi-ethnicity in Kosovo' in: Simonsen, Sven Gunnar, Nationbuilding as Peacebuilding: Racing to Define the Kosovar, in: International Peacekeeping, Vol.0, Summer 2004, pp.289-311

³⁰⁵ Please see Section 4.6.5 "Participation of Minorities: Reserved Seats and Guaranteed Seats".

³⁰⁶ The Roma are believed to originate from India. They speak their unique language called Romano and Serb. See: Post-Election Opinions in Kosovo 2008: Findings from an IFES public opinion survey, USAID – IFES, 2008, p.2

³⁰⁷ The Ashkali communities speak Albanian and have mostly Albanian traditions. The Ashkali live in the eastern and central part of Kosovo. The origins of these communities are disputed. See *ibid*, p.2

³⁰⁸ The Egyptian communities speak Albanian and have mostly Albanian traditions. The Egyptian reside mostly in the south-west of Kosovo are not to be confused with nationals of Egypt. The origins of these communities are disputed. See *ibid*, p.2

³⁰⁹ Bosniacs are a minority ethnic group living in Bosnia and parts of Serbia and Montenegro, with smaller populations living in Croatia, Kosovo and Macedonia. Bosniacs in Kosovo live in the southern parts of the country, south-east of Prizren. They adhere to Islam and speak a dialect of Nasinke. See *ibid*, p.2

³¹⁰ Kosovar Turks are a minority ethnic group believed to have their origins in Turkey; however, many are assimilated Albanians and converted Catholics who adopted the Turkish language and adhered to Islam for different reasons. Turks live throughout Kosovo, but are concentrated primarily in Prizren while smaller populations live in Prishtina, Vushtrri and Mitrovica. See *ibid*, p.2

³¹¹ Goranis are a minority ethnic group living between Albania, Macedonia, parts of Montenegro and Kosovo. In Kosovo, they inhabit the mountainous regions south of Prizren. Goranis speak a Slavic Torlak dialect called Nasinske. Goranis adhere to Islam. See *ibid*, p.2

³¹² ENEMO (2010), p.4

ENEMO followed up on criticism from some political parties that Kosovo Albanian candidates are running on the ticket of non-majority entities in order to find an easier access to the Assembly. The law does not specify any rules for the ethnicity of the individual candidates. In fact it only states that a political entity shall indicate in its application whether it wishes to contest any of the seats guaranteed for the non-majority communities.

The remaining 100 members are to be elected from one Kosovo-wide electoral district, through proportional representation, on the basis of open candidate lists³¹³ of political entities. There is a five percent threshold for non-minority parties to pass in order to enter parliament, which means that the minimum number of seats an Albanian parliamentary party can have is six.³¹⁴

The President is elected by parliament to serve a five-year term, as well is the Prime Minister appointed by the parliament. The elected assembly members serve a three-year term.³¹⁵ The prime minister assembles the government.

In the proportional tier³¹⁶, there is a 30 percent female quota under which every third candidate must be female.³¹⁷ This special provision aims to ensure enhanced participation of women in politics. “Among the seats allocated to a political entity the gender that has received fewer seats shall have at least 30% of the total seats received by the party. If this is not the case the elected majority gender candidate with least votes shall be replaced by the next minority candidate on the entity list. The replacements will continue until the minority gender has at least 30% of the seats.”³¹⁸

An interesting antagonism exists in the implementation of the present voting system, which combines a minority gender quota with an open list system³¹⁹. Both principles, the principle of representing the will of the voter and the principle of promoting gender equality, are laid out in the Kosovo Constitution. The requirement of replacing a candidate, who received more votes than a female candidate, does not reflect the will of the voter.

³¹³ Electors may vote for up to five individual candidates within the list of up to 110 of their party of choice.

³¹⁴ BalkanInsight: Kosovo Election 2010: Key Facts <http://www.balkaninsight.com/en/article/kosovo-elections-2010-key-facts> [access: 03/22/2011]

³¹⁵ <http://www.electionguide.org/country.php?ID=253>, [access: 02/23/2011]

³¹⁶ Tier (legislative): Legislatures can be conceptually divided into groups of seats called tiers. Each tier is defined by a feature of interest in the respective set of electoral rules. In mixed-member systems, for example, one tier may be elected in single-seat constituencies, and another tier may be elected under list proportional representation, from: <http://www.electionguide.org/glossary.php> (03/21/2011)

³¹⁷ LGE, Chapter XVIII, Article 111.6

³¹⁸ ENEMO (2010), p.5

³¹⁹ An open list voting system is designed to capture election results that directly reflect the candidate preferences of voters. See: ENEMO (2010), p.5

4.4. Kosovo's Electoral Management Body

Since 1999, four election cycles (2000, 2001, 2004 and 2007) have been almost exclusively international undertakings. The OSCE Mission in Kosovo (OMIK), as UNMIK Pillar III, was mandated with the organization and supervision of these elections. From 2004 onwards, elections were managed to an increasing extent by a Kosovan electoral administration, the Central Election Commission of Kosovo (CEC) and its Secretariat. Twelve years later, the OSCE Mission retains a non-executive advisory role and continues to provide substantial assistance and capacity building support to the CEC and the Election Complaints and Appeals Panel (ECAP).³²⁰

Electoral events in Kosovo are managed by a three-tier election administration comprising the CEC, 37 Municipal Election Commissions (MECs) and 2,280 Polling Station Committees (PSCs) located in 746 Polling Centers.

4.4.1. The Central Election Commission of Kosovo (CEC)

The CEC is the main independent and permanent body authorized to draft, implement, and enforce the rules and regulations for Kosovo's elections.³²¹ The CEC ensures the preparations and the conduct of elections in accordance with the principles and requirements of the law on General Elections (LGE) and Law on Local Elections (LLE).

Currently Valdete Daka³²² holds the position of the Chairperson of the CEC, which is appointed by the President of Kosovo from among the judges of the Supreme Court and courts exercising appellate jurisdiction.³²³ The Chair serves for a seven-year term³²⁴, and a maximum of two consecutive terms.³²⁵

Ten other CEC members are nominated by the major political parties represented in

³²⁰ Elections – OSCE Mission in Kosovo, <http://www.osce.org/kosovo/43390>, [access: 11/25/2011]

³²¹ LGE, Chapter X, Article 59

³²² Valdete Daka was appointed to complete the term of the previous CEC President who resigned for health reasons in 2010.

³²³ Constitution of the Republic of Kosovo, Article 139.3

³²⁴ LGE Chapter X, Article 61.2.

³²⁵ LGE Chapter X, Article 61.3.b.

the Kosovo Assembly in accordance with article 139 of the Constitution of Kosovo.³²⁶ Criteria for the selection and nomination of CEC board members as well as the rules for early termination are defined in the LGE. Interestingly it is not stated who decides upon whether a member of the CEC meets the required “conditions and criteria” of the LGE or whether a member’s actions violates and “seriously affects the status and integrity of the CEC”.³²⁷

At present, PDK is represented by two members, and LDK, LDD, AAK and AKR by one member each. Four party members of non-majority communities complete the composition of the CEC board. This arrangement of party representatives gives the impression of acting as some sort of political panel during decision-making processes in the electoral cycle. This was also mentioned in the Final Report of the European Union Election Expert Mission to Kosovo (EU EEM). In some respects CEC members seem biased, perceiving “themselves as members of a ‘political board’ overseeing the election, rather than professional election administrators. One is left with an impression that they are not always on ‘top of the election issues’, which are left mostly in the hands of the CEC Secretariat, a body stipulated in the LGE to assist the CEC discharge its responsibilities and functions, and whose Chief Executive the CEC appoints. This attitude has the potential to make the CEC membership ‘hostage’ to the CEC staff who could have their own agendas, despite being formally civil servants.”³²⁸

As was described earlier in this study, the composition of an election commission can vary, and there are no binding international standards. An impartial and independent commission is recommended, but Kosovo’s CEC model can be seen as conducive to transparency as it gives the main parties of the day the possibility to have an insight into and involvement in the process.³²⁹ “This solution will work as long as neither the authorities nor political parties are in a position to influence the performance of the

³²⁶ Constitution of the Republic of Kosovo, Article 139.4

Six (6) members shall be appointed by the six largest parliamentary groups represented in the Assembly, which are not entitled to reserved seats. If fewer groups are represented in the Assembly, the largest group or groups may appoint additional members. One (1) member shall be appointed by the Assembly deputies holding seats reserved or guaranteed for the Kosovo Serb Community, and three (3) members shall be appointed by the Assembly deputies holding seats reserved or guaranteed for other Communities that are not in majority in Kosovo.

³²⁷ LGE Chapter X, Article 61.5. a and d

³²⁸ European Union Election Expert Mission to Kosovo, EU EEM to Kosovo 2010, Final Report, 2011, p.6

³²⁹ *ibid.*

election commissions beyond the limits of the law and as long as the commissions conduct business in a professional and politically impartial manner.”³³⁰

The role and responsibility of the CEC is laid out in Art. 59.3:

- a) Undertake voter education activities designed to increase voter awareness of and participation in elections;
- b) Undertake projects or research in relation to electoral system and related matters;
- c) Establish appropriate procedures and undertake activities to ensure that all persons with disabilities are able to exercise their right to vote and participate fully in electoral processes in Kosovo; and
- d) Perform any other functions ancillary to the holding of elections in Kosovo assigned to it by relevant laws and subsidiary instruments there under, including actions necessary to protect the integrity of elections process in the face of force major.

The CEC is still dependent on external electoral assistance in many parts of the election process. Setting up the Count and Result Center (CRC)³³¹ and mobile polling stations in the northern Kosovo Serb municipalities were organized by IFES. The By-Mail Voting operation and certain logistical processes (e.g. ballot printing, distribution of sensitive electoral material, etc.) were strongly supported by the OSCE.

Room for Improvement

Through strong support by the International Community, the LGE was amended by the CEC in haste in November 2010 in order to regulate the upcoming parliamentary elections. The LGE gives considerable authority to the CEC, which is tasked to draft numerous rules enabling clarification of the law. Examples of such include the rules on certification and decertification of political entities, certification of candidates for a given election, political party financing and Election Day procedures etc. “This

³³⁰ Ibid.

³³¹ The CRC is the location where reconciliation and results forms from all polling stations Kosovo-wide are audited and tabulated, and the final results compiled. Conditional ballots, By-Mail ballots, and any other ballots as required by the CEC or Electoral Complaints and Appeals Panel (ECAP) are counted.

effectively enables the CEC to legislate, which does not accord with good practice. It also lessens transparency as it could prevent broad and timely understanding of election rules by voters and candidates alike.”³³²

The authors of the EU EEM Final report rightly observe that “in view of the rules determining the composition of the CEC as a multi-party body, the certification of entities and candidates for contesting an election, essentially takes the form of a ‘peer review’, and may therefore result, or be perceived to result, in conflicts of interest.”³³³

The CEC Secretariat (CECS)

The CECS is defined as the operational arm of the CEC, being a locally recruited body with a permanent and independent public-service structure. The CECS is an entirely technical organization with a non-political mandate.

In 2004 the CECS was responsible for activities related to field-coordination and planning, political entity and candidate certification, public information, accrediting observers and distribution of election materials. Other critical areas of competence such as the preparation of the voters’ list, out of Kosovo voting, and the Count and Result Centre remained the responsibility of the OSCE. Later OSCE and IFES strongly supported the Secretariat in technical aspects.

The Municipal Election Commissions (MECs)

MECs are the bodies established by the CEC in each municipality to assist in the conduct of elections. MECs are responsible for providing information to voters and political entities about their rights and obligations. Prior to an election, they also appoint and train Polling Station Committees and assist in technical arrangements at polling stations (PS). The MECs are expected to conduct their affairs in an unbiased and professional manner, providing an equal level of service to all.

The MEC and PSC have one chairperson and six members nominated by parliamentary political entities. *De facto*, some MECs have more representatives in order to facilitate representation of non-majority communities on election commissions. The EU EEM found this to be the case in Pejë/Peć.

³³² EU EEM Final Report (2011), p.21

³³³ *ibid.*

4.4.2. ECAP Elections Complaints and Appeals Panel³³⁴

The ECAP is a permanent and independent body competent to adjudicate complaints and permitted appeals concerning the electoral process as established pursuant to Law No. 03/L-073 or the Law on General Elections [LGE] and electoral rules.³³⁵

ECAP has been considerably strengthened compared to the 2009 municipal elections, following some amendments to the legal framework. ECAP is guided by the principles of political impartiality, confidentiality and professionalism.³³⁶ Needless to state, its decisions should be guided by the Fundamental Principles provided in the Law on General Elections especially on free, equal, universal, direct and secret votes.³³⁷

The Law on General Elections provides the following powers to ECAP:

1. Adjudicate election complaints pursuant to the laws
2. Adjudicate appeals from decisions of Central Elections Commission as specified in the laws
3. Investigate allegations in the complaint and appeal as necessary
4. Order recount of ballots in a polling station or polling centre and examination of the balloting materials if and when necessary as part of its investigative powers.
5. Conduct hearings if and when necessary.
6. Establish its Rules of Procedure.
7. Require any kind of assistance from all Kosovar authorities when it deems necessary.
8. Ex officio investigate and provide sanctions if warranted in cases involving submission of false information pursuant to LGE, Articles 29.9 and 119.

³³⁴ Source ECAP, Quick Reference Guide Book, IFES, Kosovo, 2010

³³⁵ Law 03/L-073 otherwise known as the Law on General Elections in the Republic of Kosovo, [Hereinafter to be referred to as LGE], Article 115.1 as Amended by Law No. 03/L-256 entitled Law Amending and Supplementing the Law No. 03/L-073 on the General Elections in the Republic of Kosovo [hereinafter referred to as the Amendment]. See also Article 3 of LGE as Amended defining ECAP as “. . . an independent body in charge of adjudicating complaints and appeals concerning the electoral process.” Law No. 03/L-072 otherwise known as the Law on Local Elections by virtue of Article 28 thereof makes Chapter XX on ECAP and other provisions relating to ECAP in the LGE as applicable to the Local Elections.

³³⁶ ECAP Rules of Procedure, Article 1.3. See also ECAP’s First Annual Report, August 2010, p.3

³³⁷ LGE, Article 2.

A complaint is a written allegation of a violation or violations of the electoral laws and/ or rules filed by a legal or natural person who has a legal interest in the matter or whose right has been injured.

ECAP adjudicates two kinds of complaints.

- a) Those that involve violations that do not affect the election results and which according to LGE, Article 38.1 merit administrative fines; and
- b) Those that involve violations that “have attempted to affect the elections results” and are considered administrative offenses as well as criminal offenses pursuant to the Criminal Code of Kosovo.

Timeframe of filing a complaint:

- a) Complaints regarding the conduct of voting shall be submitted to ECAP within twenty-four (24) hours after the close of the polling stations.
- b) Complaints concerning the conduct of the count at Counting & Results Center (CRC) shall be filed with ECAP within twenty-four (24) hours of the occurrence of the alleged violation.
- c) All complaints not related to voting and counting shall be filed within seventy-two (72) hours (for example, those related to campaigning).

4.5. Choosing Parties and Candidates on the Ballot

*The choice of electoral system is one of the most important institutional decisions for any democracy. Yet, in historical terms, it is rare indeed that electoral systems are consciously and deliberately chosen.*³³⁸

The electoral system in Kosovo has undergone tremendous changes since 1999 and has been subject to a degree of criticism. Due to the mixed political structure of an international UN Mission holding ultimate power, and an elected Assembly with limited authority – the foundation of democracy and the accountability of the elected Assembly to its own citizens was restricted.

“The importance of the electoral system should not be neglected as it influences all the spheres of political life in a country. As the Kosova electoral system was designed under special circumstances, it is extremely important to the fragile peace in Kosova

³³⁸ Reynolds, Andrew <http://www.aceproject.org/main/english/es/esa.htm>, [access: 03/05/2011]

that all communities agree to a viable system of political representation that is conducive to [an] accountable governance and interethnic cooperation.”³³⁹

Following the conflict, the OSCE saw the necessity to implement an electoral system that voters would understand and accept, hence taking the post-conflict scenario into account.

Kosovo’s electoral system was one of Proportional Representation (PR) with Kosovo as one electoral district for the Kosovo Assembly, designed on the premise that PR gives minority communities a greater chance of being elected to the legislature and an individual citizen’s vote being represented at the national level.³⁴⁰ Electoral PR systems are relatively common in post-conflict scenarios to enable the entry of minority political representatives. The reserved seats for minority communities were especially important for the credibility of the international community in Kosovo and concessions to Serbia to smooth the waters after the conflict.

A summary of the electoral system Kosovo from 2000-2010:³⁴¹

Date	Type of Election	System	Reserved Seats	Threshold
28 Oct 2000	Local Elections	PR, Open Lists	None, minority officials were later appointed.	None
17 Nov 2001	General (Assembly) Elections	PR, Closed Lists*, Single District	10 for Serbs; 10 for other minorities	None
26 Oct 2002	Local Elections	PR, Closed Lists	None	None
23 Oct 2004	General Elections	PR, Closed Lists	10 for Serbs; 10 for other minorities	None
17 Nov 2007	Local Elections	PR, Open Lists	None	None
17 Nov 2007	General Elections	PR, Open Lists (selecting up to 10 candidates)	10 for Serbs; 10 for other minorities	5%
15 Nov 2009	Local Elections	PR, Open Lists	None	None
12 Dec 2010	General	PR, Open Lists	10 for Serbs; 10 for	5%

³³⁹ KIPRED, Reforming the Electoral System of Kosova, Discussion Paper, Pristina, 2005, p.4

³⁴⁰ UNDP, Human Development Report Kosovo 2004, The Rise of the Citizen: Challenges and Choices, Pristina, 2004, p.58

³⁴¹ In the KIPRED publication “Reforming the Electoral System of Kosova“ Leon Malazogu and Ilir Dugolli summarized the electoral system(s) in Kosovo from 2000-2002. The author of this study added details from elections in 2004, 2007, 2009 and 2010, leaving Mayoral Elections (2007, 2009) aside.

	Elections	(selecting up to 5 candidates)	other minorities	
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* Closed candidates' Lists mean that a voter can choose a political party but not an individual candidate.

The electoral system was criticized because it was:³⁴²

- Indirectly encouraging ethnic parties
- Increasing party hierarchy
- Eliminating the possibility for a considerable opposition
- Unclear accountability due to a closed list system until 2007
- Leaving a number of municipalities without any representative, thus weakening the voter-MP link
- Enacted by a resolution, the ownership by its constituency was lacking, hence the legitimacy limited.

Having been seen as one of the major obstacles for democratic accountability and legitimacy of the political class, improvements towards an electoral system to increase the political accountability of the Kosovo Assembly were put forward. The system is now a wholly open-list system, with voters able to select up to five preferred candidates of their party of choice. "The possibility to have up to five preference votes was introduced with a view to enhancing the election of women candidates by merit."³⁴³ The quota of a third of the "minority gender" – in practice, women – on both the party lists and in parliament remains.

Kosovo remained one electoral district. The possibility dividing Kosovo into several electoral districts would enhance the link between the electorate and elected Assembly members.

Preference Vote

Certified political entities are listed in an open list ballot where the voter can mark a preferred political entity and up to five candidates from the same entity. Candidate names do not appear on the ballots but are represented by pre-assigned numbers. The voter can find the number for each candidate in a separate booklet inside the Polling station.

³⁴² KIPRED, Reforming the Electoral System of Kosova, Discussion Paper, Pristina, 2005, p.4

³⁴³ EU EEM Final Report (2011), p.26

Conditional Voting

Conditional Voting is a voting feature unique to Kosovo, which enables voters to vote outside their assigned polling stations. If a voter can prove eligibility to vote but cannot be found on the Final Voters List (FVL) in the PS, he/she is entitled to cast a so-called 'conditional ballot' (CB).

The EU EEM state in their Final Report on the 2010 Kosovo elections "Conditional voting is well understood as an enfranchising tool in a post conflict environment where (a passive system for) voter registration is based on permanent population registers."³⁴⁴ EU EEM further remark, "[...] It opens an avenue for manipulation of the election and delays the process of announcing results. The justification given is the timeframe of these elections and that it serves as a means to enhance Serb participation."³⁴⁵

Conditional Ballots are counted in the Count and Result Center after all Final Voters Lists are scanned manually and CB-envelope information³⁴⁶ has been data entered into the CRC software application. In order to approve a conditional ballot it has to be verified that a voter has not voted in more than one PS. This process is costly in terms of time, human resources, in addition o lacking transparency. The announcement of final results is therefore delayed and the credibility of the overall electoral process endangered.

Basics of Conditional Voting³⁴⁷

- A still-to-be-confirmed/verified right to vote in the municipality where the voter wishes to cast a ballot
- Rational: Post-conflict and Voter List issues
 - Emphasis on inclusivity
- How does it work?
 - Not on Final Voters List (FVL)
 - CB envelope (secrecy; eligibility; fraud prevention)

³⁴⁴ EU EEM Final Report (2011), p.35

³⁴⁵ *ibid.*

³⁴⁶ Each conditional ballot is cast in a security envelope, which is inside a Conditional Ballot Envelope (CBE) with the detailed information of the voter on it.

³⁴⁷ IFES Working Summary - Presentation, Kosovo 2009

- Drawbacks: crutch; cost; fraud

Reasons for Denying Conditional Ballots³⁴⁸

- Voter not Registered (not on Voters List)
- Voter already Voted by Regular Ballot
- Voter already Voted by CB, BM, SNV
- Voter Registered in another Municipality

4.6. Political Party Landscape

Although Kosovo's party system and its development are not crucial for this case, its existence and development must be addressed here in order to highlight the main national actors involved, in addition to serving as an example of international involvement in the development of Kosovo's party systems.

Political parties play an important role in the management of conflict in societies divided along cultural, linguistic, religious, regional, or other lines.³⁴⁹ In theory they represent "the political expressions of underlying societal cleavages".³⁵⁰ In regard to post-conflict situations "political parties are the key link between masses and elites, and play an absolutely crucial role in building a sustainable democratic polity."³⁵¹ For many scholars³⁵² the goal is to create broad-based, multi-ethnic political parties, as they are less likely to have a negative impact on democracy promotion. Huntington argues, that fractionalized and ethnically exclusive party systems are inherently damaging for democratic prospects and are, consequently, found widely in failed democracies.³⁵³ Although there are reasonable empirical arguments in favor of avoiding ethnic parties, the guidelines of the OSCE "explicitly affirm the right of ethnic minorities to form their own parties and compete for office on an ethnic basis."³⁵⁴ The OSCE introduced a network of 'political party service centers' to

³⁴⁸ *ibid.*

³⁴⁹ Reilly (2006), p.811-827

³⁵⁰ *ibid.*

³⁵¹ Reilly, ACE Project, p.5

³⁵² Reilly (2006), Huntington (1991), Gunther, Richard and Diamond, Larry, 'Types and Functions of Parties' in Larry Diamond and Richard Gunther (eds.), *Political Parties and Democracy*, Baltimore, MD, and London: John Hopkins University Press, 2001, p.23-24

³⁵³ Huntington, Samuel P., *The Third Wave: Democratization in the Late Twentieth Century*, Norman, OK: University of Oklahoma Press, 1991

³⁵⁴ OSCE's 1990 Copenhagen declaration available at www.osce.org/docs/english/1990-1999/hd/cope90e.htm [access: 09/11/11]

support the developing political groups to “help move them towards becoming more coherent, policy-oriented political parties.”³⁵⁵ Reilly further points out “Kosovo too has seen overt attempts by the international community to mandate multi-ethnicity in the political system. However, despite some inflated claims to the contrary, the success of such interventions so far has been modest, and ethnic parties continue to dominate the Balkans’ political landscape.”³⁵⁶

In Kosovo, political parties are clearly divided along ethnic lines and are organized around personalities, narrow political interest, and tribal and ethnic loyalties. Kramer’s analysis shows that due to their history, Kosovo’s political parties, its leadership, party activists and the electorate have little experience with living democracy and political pluralism³⁵⁷, hence creating a unique “political culture”.

The political orientation of Kosovo’s party landscape is significantly defined by the situation of the 1990’s and the war in 1999. “During the first phase, from 1989 to the international engagement in 1999, the Kosovo Albanian political arena was dominated by a single political party, the Democratic League of Kosovo (LDK) under Ibrahim Rugova, although it faced a challenge from the more militant KLA.”³⁵⁸ Political party leadership and other representatives of political parties were already active in the early 90s and were able to position themselves in the context of the conflict against the Serbian regime. There was almost no change after the war, more a political confirmation of the status quo.³⁵⁹ Kosovo’s parties are political movements or representations of certain groups around a strong leader or personality with high political ambitions, which sometimes are held together by a clan-structure. They are patriarchal like the existing societal structure and women are represented in parliament only due to UNMIK’s introduced female quota. In reality they are playing a minor role in the political establishment and decision-making process.³⁶⁰

The five parties of the Kosovo Albanian majority represented in the 2007-2010 Assembly, the Democratic Party of Kosovo (PDK), the Democratic League of Kosovo (LDK), the Alliance for the Future of Kosovo (AAK), the Alliance for New

³⁵⁵ Reilly (2006), p.823

³⁵⁶ *ibid*,

³⁵⁷ Kramer/Dzihic (2006), p.64

³⁵⁸ Schleicher (2010), p. 110

³⁵⁹ Kramer/Dzihic (2006), p.65

³⁶⁰ *ibid*, p.65

Kosovo (AKR) and the Democratic League of Dardania (LDD) defined themselves as center-right.³⁶¹ Whereas PDK formed a coalition with LDK, the other three parties were in opposition.

The two main and contrasting traditions of the Kosovo Albanian political spectrum have their origins either in the Kosovo Liberation Army (KLA) or from the non-violent resistance movement to Serbian rule. PDK and AAK are both led by former KLA commanders: Hashim Thaci, who has served as Prime Minister since 2008, heads the PDK, and AAK's leader is Ramush Haradinaj, who is indicted for war crimes by the International Criminal Tribunal for the Former Yugoslavia (ICTY). Fatmir Sejdiu succeeded the LDK's founding leader and President of Kosovo, Ibrahim Rugova, after his death in 2006. Nexhat Daci heads the LDD. Behgjet Pacolli, a construction magnate, founded the AKR to contest the 2007 elections.³⁶²

Political Entities for the December elections

For the 2010 elections, the CEC certified in total 29 political entities, including two coalitions and three citizens' initiatives.³⁶³

The following parties were registered for the parliamentary elections:³⁶⁴

- | | |
|----------------------------------|--|
| 1. AAK | Alliance for the Future of Kosovo |
| 2. PAI | Ashkali Party For Integration |
| 3. SNSD | Association of Independent Social Democrats |
| 4. BSDAK | Bosniak Party of Democratic Action of Kosovo |
| 5. GIG | Citizen's Initiative of Gora |
| 6. AKR-PD-PSD-PPI-PPK-PNDSH-PGJK | <i>Coalition</i> |
| 7. VAKAT | Coalition Vakati |
| 8. LDD | Democratic League of Dardania |
| 9. LDK | Democratic League of Kosovo |
| 10. PDK | Democratic Party of Kosovo |
| 11. PDAK | Democratic Party of Kosovo Ashkanlive |
| 12. KDTP | Democratic Turk Party of Kosovo |
| 13. SLS | Independent Liberal Party |
| 14. LEK | League of Kosovo Egyptians |
| 15. VV | Lëvizja Vetëvendosje! |
| 16. CDS | Montenegro's Democratic Party |
| 17. GIKN | National Initiative Civil Wing |
| 18. IRDK | New Democratic Initiative of Kosova |
| 19. NDS | New Democratic Party, Kosovo |
| 20. FER | New Spirit Party |

³⁶¹ EU EEM to Kosovo 2010, Final Report, 2011, p.11

³⁶² *ibid*, p.11ff

³⁶³ Central Election Commission, Office of PP Registration and Certification: Candidate's List.

<http://www.kqz-ks.org/SKQZ-WEB/al/rrethkqz/lk.html> [access: 01/12/2011]

³⁶⁴ CEC, <http://www.kqz-ks.org/SKQZ-WEB/al/rrethkqz/lk.html>, [access: 01/12/2011]

21. SDA	Party of Democratic Action
22. SDSKIM	Serbian Democratic Party of Kosovo and Metohia
23. SKMS	Serbian Kosovo Metohia Party
24. SNS	Serbian National Party
25. SSDS	Serbian Social Democratic Party
26. SDSG	Social Democratic Party of Gora
27. KTB	Turkish Union of Kosovo
28. PREBK	United Party of Kosovo Roma
29. JSL	United Serbian List

Two new Kosovo Albanian entities, Vetëvendosje (Self-Determination) and Fryma e Re (New Spirit, FER), defining themselves in opposition to the five parties represented in the Assembly, contested for the first time and tried to gain support from disillusioned voters.³⁶⁵ Some other minority parties entered the political arena for the first time as well.

Due to the 5% eligibility threshold for Kosovo Albanian parties to be represented in the Assembly, smaller parties formed coalitions with larger parties.³⁶⁶

4.7. The Context of Parliamentary Elections 2010

In September 2010, the president of Kosovo, Fatmir Sejdiu, resigned from his position after the Constitutional Court ruled that he had breached the constitution by holding both the position as head of state and leader of the Democratic League of Kosovo (LDK).³⁶⁷ Thereupon, Jakup Krasniqi, the President of the Kosovo Assembly, resumed the responsibilities and duties as Acting President as required by the constitution and set an early election date for February 13th 2011 with the full agreement of other political parties. With Sejdiu's resignation and the backing of the ratification of the privatization of the Post Telecommunication of Kosovo (PTK), the internal policy and party agenda within LDK changed. The party withdrew from the ruling coalition between PDK and LDK, leaving the government without parliamentary majority and therefore at a political stalemate. The LDK held the post of deputy prime minister and five ministerial posts in the twelve-member cabinet.

“Following these events, the Alliance for New Kosovo (AKR) submitted a vote of no

³⁶⁵ EU EEM to Kosovo 2010, Final Report, 2011, p.12

³⁶⁶ *ibid.*

³⁶⁷ Case No. KI 47/10, The Constitutional Court of Kosovo. 29 September 2010. http://www.gjk-ks.org/repository/docs/ki_47_10_eng_2.pdf, [access: 11/28/2011]

Kosovo president resigns after losing constitutional court case, Deutsche Welle 27 Sept 2010, <http://www.dw-world.de/dw/article/0,,6050006,00.html>, [access: 11/25/2011]

confidence on the government led by the PDK. The motion was approved on November 2, 2010 with the crushing majority of the voters present in parliament, including members of parliament of the PDK.”³⁶⁸

After the breach of the coalition, Hashim Thaci’s government needed to establish a caretaker government within eight days or hold elections within 45 days after that.³⁶⁹

While the elections were called within the legal limit of 45 days, as required by law, the minority government could have ruled as technical government to vote the already prepared budget and run the country until the February 13, 2010 early election term.³⁷⁰ This would have given time to the CEC, political parties and civil society to prepare for elections accordingly.

Organizing elections in such a short time frame was a huge task for the CEC, even given the right “to change time frames as needed in accordance with the circumstances”.³⁷¹ Valdete Daka, Head of the CEC, stated in an interview with the daily newspapers Koha Ditore that the CEC could not guarantee the quality of the processes for the upcoming elections on December 12th, 2010.³⁷² Additionally, civil society agents and international election experts were concerned about possible malpractices in areas of political parties’ voter strongholds.

The Electoral Management Body faced a number of challenges that stretched their capacities, including adapting to the newly adopted electoral legislation, facilitating the Out-of-Kosovo voting (OCV), certifying political parties and candidates, appointing and training PSCs, updating the Voter List (VL) and setting up the Count and Result Center (CRC). International electoral support was once again highly in demand. The OSCE provided advice and technical assistance to the CEC up to Election Day, helping to finalize the Voter List, prepare the OCV program and support the logistical and operational processes.

IFES played a key role in setting up the CRC, supporting the voter information campaign and administering 14 alternative polling stations positioned in northern Kosovo where the Election Commission experienced difficulty recruiting for and

³⁶⁸ KIPRED Kosovar Institute for Policy Research and Development, Kosovo National Elections 2010: Overview and Trends, Pristina, 2011, <http://www.kipred.net/web/eng.php?cid=2,3>, [access: 11/01/2011]

³⁶⁹ Kosovo's ruling coalition collapses, prompting early elections, Deutsche Welle 16 Oct 2010, <http://www.dw-world.de/dw/article/0,,6119244,00.html>, [access: 11/25/2011]

³⁷⁰ KIPRED, Kosovo National Elections 2010, p.6

³⁷¹ LGE, Art. 4.5

³⁷² Koha Ditore, 18 Oct. 2010

opening regular polling centers.³⁷³

“The overall preparations for the elections of December 2010 were seriously overburdened by a number of circumstantial factors, not the least of which were related to the dates being changed twice in a short period of time. The CEC was faced with a number of challenges that stretched their capacities, not the least of which was the budget of 2.5 euro per registered voter that was allocated for the parliamentary elections”³⁷⁴

It needs to be mentioned at this point that difficulties were faced during the local elections in 2009 as well. The trust in the election administration, the political parties’ behavior and the lack of prosecution of officials violating electoral law decreased based on the experience on the municipal elections a year earlier. “The phrase “defend the vote” has consolidated in Kosovo’s lexicon since the 2009 elections, usually meaning the need to take action at polling station level to prevent manipulations by activists of opposing parties. It contains the risk of escalating confrontation between rival party supporters.”³⁷⁵

4.8. The Count and Results Center (CRC)

*The quality and transparency of the counting process is imperative for the integrity of the electoral process and the legitimacy of its most tangible product – the results. The vote counting “requires accuracy, speed and security”.*³⁷⁶

Vote counting is one of the most deciding phases of the election process. Delays and failure to complete the count and announce results in a timely, transparent and accurate manner can jeopardize public confidence and trust in the electoral process, and hence the democratic development of a country. Political parties and candidates may furthermore refuse to accept the final outcomes and challenge the overall process. “Frequently, the importance of detailed planning, training and organization is overlooked, or is considered of secondary importance.”³⁷⁷

³⁷³ IFES, <http://www.ifes.org/Content/Galleries/I/IFES-Assists-Kosovo-with-First-Ever-Parliamentary-Elections.aspx>, [access: 03/12/2011]

³⁷⁴ KIPRED, Kosovo National Elections 2010, p.10

³⁷⁵ EU EEM to Kosovo 2010, Final Report, 2011, p.10ff

³⁷⁶ ACE Project, Vote Counting, <http://aceproject.org/ace-en/topics/vc>, [access: 09/12/2011]

³⁷⁷ ACE Project, Overview of Vote Counting, <http://aceproject.org/ace-en/topics/vc/vc10>; [access: 12/12/2001]

The Count and Results Centre is the central location in Kosovo where all the sensitive electoral material is brought to after Election Day. At the close of polls and at the completion of the count within the polling stations, the polling station chairperson transports their respective polling station material to their municipal election commissions. At the municipal hub the material is checked and consolidated prior to onward transportation to the central location.

The CRC also receives all the Special Needs Voting³⁷⁸ material from the municipal special needs teams and those ballots that were cast By-Mail from voters residing outside of Kosovo. The CRC is responsible for counting all those ballots that were not regularly cast on Election Day, however are required to be counted before the Final Results can be announced. This also includes those ballots that were cast conditionally in Dual Polling Stations with the Polling Centers of Kosovo.

The CRC is required to verify and audit all the Reconciliation and Results Forms (and corresponding Candidate Results Sheets) that were compiled by polling station committees on Election Day. The PS commissioners need to complete two result forms after the closing of the polling. The RRF includes information about the total number of ballots received and cast, total number of votes for a political entity, as well as information regarding spoiled, blank and invalid ballots. The second form is the Candidate Result Form (CRF), which includes the candidate votes per political entity.

The Centre's Data Entry Area enters all information of the result forms per polling station and scans all Final Voters Lists in order to record all those voters who voted regularly on election day to ensure that no voter is able to cast a further, conditional, By-Mail or conditional Special Needs ballot.

³⁷⁸ LGE Art.99.1

- a) Homebound voters: eligible voters who cannot leave their home to vote in person at a regular PS due to physical, medical, or any other kind of disability;
- b) Voters confined to an institution: eligible voters who are hospitalized, elderly people in specially designated homes for the elderly, persons of diminished mental capacity in institutions of health care, inmates in prisons and detainees in detention centers;
- c) Special circumstance voting: eligible voters living in communities who, due to relocation from the vicinity of their regular PS or security concerns, cannot vote at their assigned PS. This type of voting shall require the approval of the Municipal Election Commission.

The CRC operates in accordance with strict procedures which have been approved by the CEC of Kosovo, and define in great detail the processes and procedures that need to be followed to ensure a transparent, accurate and timely count. This process ultimately ends with the announcement of the Final Results, which upon the closure of the appeals period ends in Certification of the results.³⁷⁹

The CRC is staffed with approximately 500 personnel that are divided into the core team and daily staff. The CRC Coordinator is responsible for ensuring the overall operation and processes at the CRC according to international standards.

The key functions of the CRC entail:

- Auditing of results compiled by Polling Station (PS)
- Counting of Conditional Ballots (CBs) and Special Needs (SNVs) and By-Mail (BM) Ballots
- Conduct investigations, as needed, with the goal of reconciliation
- Tabulate results by PS for each constituency
- Generate the published and final results for the CEC

4.9. Electoral Assistance in Count and Result Center

Until the elections in 2007, the Count and Result Center was an OSCE-led operation. However, with a changed political landscape, the OSCE was no longer mandated to support the CRC for the elections in 2009 and 2010, requiring another international assistance provider needed to step in.

The International Foundation for Electoral Systems (IFES) entered into a mutual cooperation agreement with CEC, and was asked to provide technical support to the CEC in the areas of voter education and awareness, Count and Result Center, media outreach, “in addition to helping the CEC conduct efficient and transparent elections”.³⁸⁰

³⁷⁹ Count and Results Center Procedures 2010, CEC in collaboration with IFES (Nov. 2010)

³⁸⁰ Embassy of the United States, Kosovo Pristina, Press Release, Oct 1, 2009, <http://pristina.usembassy.gov/usaiddpr.html>, [access: 11/02/2011]

The agreement was signed between the former CEC President, Nesrin Lushta, USAID Kosovo Mission Director, Patricia Rader, and IFES Chief of Party, Chedomir Flego. As a side note, the USAID Director indicated that the agreement is another example of cooperation in the long standing relationship between the US Government and the Republic of Kosovo.”³⁸¹

The international advisory team experienced a slew of problems facing the set-up of the CRC for a number of reasons:

- Short time frame
- Limited budget
- Inexperienced local staff
- Late realization of the importance of the CRC by the CEC (the vote count and the tabulation of the results comes last in the electoral cycle)
- Little interest before Election Day in the CRC

Activities of the Electoral Assistance providers:³⁸²

IFES provided nine international advisory staff to the CRC, starting with two advisors six weeks prior to election day, and gradually adding advisors with particular experience leading and managing CRC operations as election day neared. Some of the advisory team had been employed by the OSCE in the Kosovo CRC during previous elections. Their skills included general count center management, facility management, CRC IT support, data entry, as well as specialist knowledge in intake, count, election audit and investigational procedures.

For the 2010 elections, the advisory team saw the urgent need to re-write the CRC Procedures (based on the 2009 version) to ensure alignment with the 2010 Assembly election requirements. The CEC approved the procedures just prior to Election Day. Barring significant changes in the electoral system, structure or procedures, the Kosovo CEC was left with a clear and concise manual that would subsequently require little change for future elections and increase the efficiency and sustainability

³⁸¹ *ibid.*

³⁸² Following summary of activities by the international advisory team are based on a report written by Matthew Jenkins (CRC Coordinator Advisor) for IFES, Kosovo 2010

of the CRC set-up process. Whilst finalizing the procedures, extensive advice and support to the establishment of a training program was provided.

Over six hundred local staff, including forty-five core team members, received training for their respective areas, including the intake of sensitive material after election day; the processing and counting of conditional ballots; the data entry of all polling station and CRC generated results protocols; the scanning of final voters lists and the audit of all results forms. The international consultant team also enhanced the preparation for the Kosovo Serb staff working at the CRC through additional information and trainings.

Moreover, the advisory team recommended several changes to the overall procedures in order to streamline the intake, including the establishment of an intake schedule, increased capacity (area and staffing) for intake and an improved process for receiving problematic cases from the MECs. These process improvements were meant to reduce the volume of material that would need be quarantined or require immediate investigation, thereby increasing the speed with which the intake could be undertaken. Furthermore there were recommendations and subsequent changes to the way conditional ballots (CB) and Special Needs (SNV) material were processed, which would alleviate reconciliation and provide greater transparency and accuracy in the provision of results for those voters who did not vote regular on election day. In order to ensure voter secrecy, the team advised on changes to the By-Mail processing and counting due to the low numbers of registered By-Mail voters.

Changes were also been made to the Data Entry Area where the speed of data entering forms, the scanning of Final Voters List (FVL) and in particular the method of verifying conditional ballots was greatly enhanced.

Important changes have also been recommended in the audit area, where crosschecks of the Results and Reconciliation Forms (RRFs) and the Candidate Result Forms (CRFs) were implemented into the IT system. This was a recommended feature according to the amendments of the LGE³⁸³, where voters can choose a political entity and up to five candidates of that entity. For a detailed list of crosschecks please refer to Annex, table 3, p.158.

³⁸³ Art. 7 of the Amendments Law (LGE, Art. 110.4)

To recall the preference vote options on a ballot:

- A Voter can vote for a political entity
- A voter can choose up to five candidates from the same entity
- If a ballot is marked for more than five candidates only the vote for the political entity shall be counted
- A voter cannot choose only a candidate

The creation of a stand-alone Investigation Team was promoted to facilitate the more efficient processing of problematic cases encountered at the CRC. The national CRC Coordinator was advised on closer co-operation with the representatives of ECAP that should help the CRC better inform the CEC on cases that require investigation or that are subject to complaints.

Electoral IT solutions provide extremely valuable support to numerous electoral processes, despite the sensitive nature of their handling. One of the major components of the Count and Result Center is its IT system, which was designed and implemented by a Macedonian IT company (avoid challenging a Kosovo company towards their political affinity). As the electoral procedures should dictate the specifications of an IT software application, an international IT advisor was needed to translate electoral needs and changes of former CRC procedures into IT language and therefore support the overall performance of tabulating result data.

Programming “bugs” were present within the software application during the process, caused mainly due to a lack of testing before Election Day. Many additional changes were made shortly before the data entry of forms started, without having adequate time to properly validate or test the modifications, hence increasing the risk of reduced performance.

The IFES Advisory highlighted that the local CRC staff was greatly hindered by the fact that the CRC Facility was only available two weeks after agreement had been reached with CECS. Against this background, CRC staff lacked transport, heating, telephone lines and working computers for some time after they commenced work at the center. The training material was too little too late. Many of the Core staff lacked any relevant previous election (or otherwise) experience for the positions for which

they had been recruited, which made the task of preparing them for this challenging assignment extremely difficult. As a consequence, the internationals team advised strongly to use the more experienced staff in managerial positions, as well as External Relations, whose task it was to guide observers through the CRC. The greater knowledge of the national staff's respective areas could have only facilitated the efficiency of the count center's work.

One of the main problems for recruiting qualified staff remained that of common and widespread nepotism, which is counterproductive to the transparency and efficiency of the CRC election process. Members of the CEC, CECS and CRC alike were trying to recruit family members, disregarding the occupational aptitude needed for certain positions within the Count Center, e.g. knowledge in the use of computers to work in the Data Entry Area, affinity to numbers for the audit of result forms, physical strength to work as porter in the Intake area, etc.

While nepotism is certainly fueled by the bad economic conditions and the high unemployment rate in Kosovo, it curtails the overall quality of the electoral process in the long-term.

4.10. Election Day

The first reports submitted by numerous domestic and international observers on Election Day were positive. The European Union and the United States viewed Kosovo's first general elections since independence "as a test of its democratic maturity, with free and fair proceedings a condition for eventual membership of the EU."³⁸⁴

Allegations of fraud arose only later that day, with LDK reporting unusually high turnouts in two PDK strongholds.³⁸⁵ The European Parliament Election Observation Delegation stated in their report, that "the turnout in Skenderaj/Srbica, Decane/Decan and Glogovac/Glocovac was twice as high as the country-wide average turnout and reached an unrealistic level of around 90 per cent. Furthermore, the situation in some

³⁸⁴ Reuters UK, <http://uk.reuters.com/article/2010/12/13/uk-kosovo-election-idUKTRE6BB04120101213>, [access: 12/06/2011]

³⁸⁵ *ibid.*

Kosovo Serb municipalities South of Ibar was chaotic.”³⁸⁶ However the EP Delegation assessed a general good outcome of the election and described the increased participation by Kosovo Serbs as a positive sign but “the delegation regretted that participation in the Kosovo Serb municipalities in northern Kosovo was non-existent.”³⁸⁷

US Ambassador Christopher Dell observed the election and witnessed irregularities.³⁸⁸ “Local media reported a high number of complaints of irregularities. The Election Complaint and Appeals Panel received 171 complaints from political entities over various violations, such as stuffing ballot boxes, multiple voting and defective verification ultraviolet lamps.”³⁸⁹

ENEMO presented in their Statement of Preliminary Findings and Conclusions from Dec 13th, that “the 12 December Kosovo Assembly elections were organized in an orderly manner meeting many international standards, but procedural shortcomings and challenges remain.”³⁹⁰ The voting process was depicted as “generally calm and peaceful but some cases of breaches of procedural and irregularities were observed”.³⁹¹ The disregard for the secrecy of the vote by the widespread practice of family voting and “allegations of the voting and counting processes in certain municipalities along with doubts over reported turnout figures in certain parts of Kosovo have been registered.”³⁹²

Further observations of the count were described as “the counting process was assessed as bad or very bad in 12% of the polling stations observed during the closing and counting procedures. In some cases voters arriving after 19.00 were allowed to vote and in 6% of the polling stations unauthorized persons were seen directing the counting process in the PSC. Some of the counting procedures were not fully adhered

³⁸⁶ European Parliament, Election Observation Delegation to the General Election in Kosovo (12 December 2010, 9 January 2011), p.4,

www.europarl.europa.eu/intcoop/election.../kosovo_parl_10_11.pdf, [access: 11/11/2011]

³⁸⁷ *ibid.*

³⁸⁸ Embassy of the United States, Kosovo Pristina,

http://pristina.usembassy.gov/statement_on_the_elections.html, [access: 11/03/2011]

³⁸⁹ SETimes.com,

http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2010/12/14/nb-03, [access: 08/09/2011]

³⁹⁰ ENEMO (2010), p.1

³⁹¹ *ibid.*

³⁹² *ibid.*, p.2

to and in 15% of the polling stations the chairperson did not announce the results, nor were the results posted in the wall as stipulated in the law.”³⁹³

The Election Appeals and Complaint Panel received 365 complaints from political entities over various violations, such as multiple voting, stuffing ballot boxes and defective UV lamps.³⁹⁴ “On 16 December, based on the Election Appeals and Complaint Panel decisions, the Central Election Commission concluded that complete re-runs would have to take place in three municipalities (Skenderaj/Srbica, Glogovac/Glogovac and Decan/Decane) and partial re-runs (in one polling centre) in two municipalities (Lipjan/Lipljan and Malishevë/Malisevo) on 9 January 2011.”³⁹⁵

4.11. After E-Day: Findings of the Count and Result Center

With the first reports on electoral manipulation and fraud, the CRC staff faced an intensification of focus on processes inside the Center. After the closing of the polling stations the focus shifted to the tabulation of results and the reported irregularities.

On December 15th the CRC corrected the turnout numbers in Skenderaj/Srbica to 94% (instead of 95,3%), and in Glogovac/Glogovac to 87% (instead of 107% initially, later 90,4%). Observers and electoral contestants alike alleged fraud in the above-mentioned municipalities and other PSC around Kosovo.

The original Result and Reconciliation Forms (RRFs) from Skenderaj/Srbica and Glogovac/Glogovac showed an ample number of problems: mismatches between the draft RRF and the original, certain key control parameters revealed discrepancies, amendments or forms of “corrections” to the figures on the original RRFs and discrepancies between the original RRFs and the tabulated results at the MEC.

The improbable voter turnout, approximately twice that across Kosovo, hinted at intended fraud, in both cases advantageous for PDK. Such electoral malpractice results in the undermining of public trust in the elections and is an apparent sign of the lack of political will to conduct elections in line with international standards.

³⁹³ *ibid*, p.14

³⁹⁴ EP, Election Observation Delegation to the General Election in Kosovo, p.5

³⁹⁵ *ibid*.

During the intake of election material there were a small number of polling stations ‘quarantined’ due to improper packing, missing items, missing security seals, and other reasons, which warranted further investigation.

After the Intake and the ongoing Data Entry process, it soon became very clear that not only were the “known” cases of irregularities worrisome, but the newly implemented crosschecks flagged an astonishing great number of result forms, which did not pass the initial audit.

The most common types of problems experienced:

- A. The total amount of votes for candidates was more than five times higher than the votes for the party
- B. Party has no votes, candidate(s) do(es)
- C. One candidate has more votes than the party
- D. RRF has problems irreconcilable through audit efforts

As of midnight on 15th December 2010, the following was noted:³⁹⁶

Out of the 2043 Polling Stations processed, 849 PS (41% of the total) needed Auditing

- Number of PS originally placed in Audit: 808 (41% of total PS processed)
- Resolved in Audit: 287 (35% of the total cases coming to Audit)
- Sent to investigation: 521 (65% of the total cases coming to Audit)

Outcome of problems identified:

- A. The sum of votes for candidates is more than 5 times higher than the votes for the party: 84% of the total cases coming to Investigation
- B. The party has no votes but candidate(s) do(es): 2% of the total cases led to Investigation
- C. The candidate has more votes than the party: 10.5% of the total cases led to Investigation
- D. RRF has problems irreconcilable through Audit: 3.5% of the total cases led to Investigation

³⁹⁶ IFES/CRC, Audit and Investigation Report, Dec 15 2010 (numbers account for the ongoing process in the CRC and does not represent the totality of all PS in Kosovo)

Matthew Jenkins, IFES Advisor to the CRC Coordinator summarized the findings:

“The CRC determined originally that 60% of all PS commissions failed to correctly complete the results forms. A number of these had mathematical, transposition or other obvious errors that were resolved by the auditors. However, the 40% of all PS that could not be reconciled and consequently could not be included in the results for the General Assembly. The overwhelming majority of these stations were irreconcilable due to issues with the allocation of votes to candidates. The CRC presented various options to the CEC, among them annulling these PS, counting only the party vote allocation (and not the candidates), and recounting the PS in order to try and reconcile the material. The CEC voted in favor of a complete recount of these PS.”

The problems identified were widespread and had additional implications. Each voter has the option to choose one political party and up to five candidates within the same political party, the total ratio of party votes to candidate votes had to be around 1:5. The 40% of all PS with identified problems were mathematically discovered. In cases where the ratio was lower, the crosschecks were unable to detect this kind of irregularity, and therefore might failing to account for a voter’s intention.

Based on recommendations and a report by the Count Center, the CEC “ordered a recount of the ballots of 866 polling stations across Kosovo, almost 40% of all polling stations. The number of polling stations was reduced to 762 when the polling stations to be included in the 9 January partial repeat election were subtracted, and to 760 after the CEC decided on 18 December to increase the tolerance level of discrepancy between ballots in the box and voters’ signatures from three to six.”³⁹⁷

Recount

As a consequence of the significant size of the re-count, CRC local personnel needed to be re-deployed and trained in the count procedures, and the audit and investigation unit enhanced by competent staff.

The initial re-count process proved to be rather difficult and inaccurate, possibly due to the limited time available to train staff appropriately, the differences in count and re-count procedures, and to a certain extent the lack of suitably skilled staff.

³⁹⁷ EU EEM to Kosovo 2010, Final Report, 2011, p.50

After the first day of counting, the quality of the recount increased dramatically, eliminating the vast majority of type A, B and C problems.³⁹⁸ The systematic errors during the original counts in the polling stations were rectified in most cases.

Additionally, the CEC voted for an increase of the tolerance³⁹⁹ level of the RRF and CRF forms, which avoided additional re-counts and investigations for many polling stations.

Repeat Election

As stated earlier, the CEC ordered to repeat the elections in their entirety in the municipalities of Skenderaj/Srbica, Decane/Decan and Glogovac/Glocovac, “as well as in one polling center each in Lipjan/Lipljan and Malisheve/Malisevo on 9 January, following a decision of the ECAP to repeat elections in some 70 polling stations in these municipalities.”⁴⁰⁰

In order to avoid the irregularities from the 12 December vote, all the polling station and polling center election officials were replaced for the re-run. The respective MECs however remained the same.

The malfunction of UV lamps and indelible ink were additional reasons given by the Supreme Court of Kosovo during their ruling on another repeat election, in twenty-four polling centers in the Mitrovice/Mitrovica municipality. Thereafter the CEC decided to repeat the election for the entire municipality. The faulty UV lamps and indelible ink were reported to be double checked by the CEC, but on inspection of the EU EEM, the tested equipment failed as originally described.⁴⁰¹

4.12. Measuring free and fair in the CRC

The notion of free and fair elections was elaborately discussed in the previous chapter, as one of the main features of democracy, including the accurate depiction of the voters will. In order for ‘fair’ to assume the equality of the vote⁴⁰², the correct

³⁹⁸

A. The total amount of votes for candidates is more than five times higher than the votes for the party

B. Party has no votes, candidate(s) do(es)

C. One candidate has more votes than the party

³⁹⁹ The tolerance level was increased from 3 to 6 on the RRF, and 0 to 6 on the CRF

⁴⁰⁰ EU EEM to Kosovo 2010, Final Report, 2011, p.51

⁴⁰¹ *ibid.*

⁴⁰² Goodwill-Gill (2006), p.73

count and accurate tabulation of these votes is mandatory for the body responsible for this process. Going back to the introductory quote “Its Not the Voting that’s Democracy, Its the Counting.”⁴⁰³, the CRC played an extraordinarily important role in accounting for the will of every voter, as delivered through their vote.

Having been discussed above, 40% of all polling stations across Kosovo were included in a recount of their results from Election Day. Elections in four municipalities and additional polling centers were repeated in their entirety due to serious irregularities having been identified.

While some problems became clear with the publishing of the preliminary results, others surfaced only because of mathematical crosschecks in the Count and Result Center. The CRC in its function is able to reconcile the result forms from all polling stations and therefore “check” on the results delivered by MECs.

This is a crucial element of the electoral process in Kosovo, as it is not common to have a central count location, once the vote count has taken place at the polling station level.

Central count locations are often used in precarious security situations, where it is easier to guard one location rather than a multitude of polling stations, or when the ballot or the count process are too complicated to be carried out in a single voting place. Additionally, the administration of certain types of ballots can be facilitated in a counting center. “This includes absentee votes, mail votes from armed forces, diplomatic missions, refugees, incarcerated persons or persons residing outside their electoral district which may come from various voting stations, local or abroad, or directly from the voters (by mail).”⁴⁰⁴ As Kosovo’s voting system still allows conditional ballots, and conducts an Out-of Kosovo and SNV voting programs, the CRC remains the central count and audit location for all PS.

In contrast to a central count location, counting of ballots in polling stations has many benefits. “The main advantages of vote counting in polling stations are speed, cost effectiveness and transparency.”⁴⁰⁵ The quantity of personnel, training and logistics⁴⁰⁶

⁴⁰³ Tom Stoppard, *Jumpers*, Act I, (Grove Press 1971)

⁴⁰⁴ ACE Project, Differences in terms of Where the Counting is Held, <http://aceproject.org/ace-en/topics/vc/vcb/vcb01/?searchterm=central%20count>, [access: 12/12/2011]

⁴⁰⁵ ACE Project, Differences in terms of Where the Counting is Held

is greatly reduced; furthermore, counting in PSs enhances public confidence towards the electoral process as it “indirectly promotes participation of the population since the process is closer to their home, making the results more tangible. The process then tends to be regarded as open, accessible, and legitimate.”⁴⁰⁷

Public confidence towards the election process is fundamentally important and it might be severely affected by the perception of fraud, tampered ballot boxes and delays in announcing election results.

Returning to the key principles of fairness in the count process, we need to analyze the transparency, accuracy, integrity, secrecy and accountability in Kosovo and the CRC:

Transparency⁴⁰⁸

A large number of domestic and international observers (32.135) were accredited to observe polling and counting on 12 Dec, with most of these observers being nominated by political parties.⁴⁰⁹

The transparency of the process was generally assumed. “Domestic observers were noted in 93% of the polling stations but in 10% of the stations the observers did not have full view of the counting process.”⁴¹⁰ The apparent poor quality of the performance by PS personnel was not enhanced through the presence of observers.

The CRC was open to observers and media and tried to accommodate a transparent process. One point of criticism was the computerized handling of Conditional Ballots, which is inscrutable to observers in all aspects (e.g. not all computer screens are visible for a public view, computerized status query if a CB is confirmed or denied).

⁴⁰⁶ There is no need to identify a central count location, transport ballot boxes and it is more cost efficient (no additional procurement of additional stationary material, etc.).

⁴⁰⁷ ACE Project, Differences in terms of Where the Counting is Held

⁴⁰⁸ See: ACE Project, Guiding Principles of Vote Counting, <http://aceproject.org/ace-en/topics/vc/vc20>, [access: 12/12/2011]

Transparency:

“For the counting process to be open and transparent, representatives of political parties and candidates should be allowed to witness and/or participate in the process, and be permitted to copy the statement of the results of the counting process. National and international electoral observers should also be allowed to witness the process and be permitted to copy the statement of the results of the counting process. In some countries, ordinary citizens are encouraged to watch the counting process.

Jurisdictions will often require that the observers to the counting process do not have access to people outside the counting location and are unable to communicate via mobile telephones or through other methods, until the vote counting is concluded. Manual counting is by its nature more transparent than computerized counting. If vote counting is computerized, new mechanisms for ensuring transparency, such as external audits, need to be introduced.”

⁴⁰⁹ ENEMO (2010), p.13, EU EEM to Kosovo 2010, Final Report, 2011, p.57

⁴¹⁰ ENEMO (2010), p.14

Accuracy⁴¹¹

The accuracy of the count process in the polling stations was extremely low, evidenced by the result forms (RRFs and CRFs) that did not successfully pass the audit process in the CRC. The reasons for this outcome could include inadequate staff training, late hours for PS personnel, lacking commitment to the electoral process, or attempted manipulation of votes.

The overwhelming number of PS with errors and possible fraud left the public with reasonable doubts towards the electoral process and its integrity. But also the CRC faced problems concerning the accuracy of data entered into the software application. “The software had ‘not flagged for audit’ all polling stations results where the margins of error, established by the CEC, were exceeded.”⁴¹² This further delayed the announcement of the re-count results. Another point of concern for the CRC staff was the low quality of re-counts on the first day. Through audit checks the mistakes were spotted and corrected, however resources and time were lost. Lastly all results were tabulated and audited.

Secrecy⁴¹³

The secrecy of the vote is facilitated by certain provisions such as the handling of ballots in a polling station, procedures for voting and counting, etc.

Although Kosovo’s LGE is designed to enable the secrecy of the vote, it is often disregarded by the PSC. ENEMO stated in their report that “in almost 5% of polling stations visited the observers noted persons instructed voters whom to vote for. [...]

⁴¹¹ See: ACE Project, Guiding Principles of Vote Counting:

Accuracy

“Accuracy is directly related to the integrity of the count, and of the elections themselves. Later discovery of errors and correction of mistakes can lead to accusations of manipulation or fraud. The accuracy of the count will depend on clear procedures and manuals, adequate staff training, and their commitment to the process. Clear audit trails of ballots and ballot boxes, as well as checking and rechecking mechanisms, will contribute to the accuracy of the results. Whilst mechanical voting or computerization may enhance accuracy, this must be balanced against the resulting apparent loss of transparency.”

⁴¹² EU EEM to Kosovo (2010), p.50

⁴¹³ See: ACE Project, Guiding Principles of Vote Counting:

“Secrecy of the vote is important because it ensures that voters cannot be victimized for the way they vote, or intimidated into voting a particular way. To preserve the secrecy of the vote, voters' identification must be protected during the count. If their identity and choice on the ballot is determined as a result of counting procedures, it must be kept confidential and never revealed by any of the people involved in the electoral process. If the secrecy of the vote of individuals or a community is a concern, measures such as counting at counting centers, rather than at individual voting stations, or mixing ballots from different elections, can be considered. Numbered ballot papers corresponding to matching stubs with the voter details, while facilitating accountability and clear audit trails, compromise secrecy and are best avoided.”

The secrecy of the vote was not always respected and in particular, in a stunning 36% of polling stations visited cases of group or family voting was observed.”⁴¹⁴ Other cases where disabled voters were assisted by poll workers or observers in contradiction to the LGE⁴¹⁵ were reported as well.

The secrecy of the vote was adhered to in the CRC. In the event of a small number of ballots being cast by-Mail or conditionally in a PS, these ballots were batched into a bigger sized unit and accounted for in a separate Batch result form.

Timeliness⁴¹⁶

The LGE stipulates that “the results of the counts at the PS shall be posted in the polling center by its Chair person”⁴¹⁷ and furthermore “the CEC shall certify the election results after the completion of all polling station and counting center procedures and when all outstanding complaints concerning polling and counting have been adjudicated by the ECA[P] and by the Constitutional Court.”⁴¹⁸ The time required for recounts or repeated elections is additionally taken into consideration by the LGE: “Prior to certification of the election results, the CEC may order a recount of ballots in any polling station, or counting center, or a repeat of the voting in a polling center or municipality.”⁴¹⁹

There is no clear time line for the counting and tabulation of the votes at all levels, and for the announcement of preliminary and final results by the EMB. In order to fulfill the requirement of giving all political entities the possibility to file a possible complaint, election results must be made available in an appropriate format and distributed to all parties immediately.⁴²⁰

⁴¹⁴ ENEMO (2010), p.14

⁴¹⁵ LGE Art. 89.5

A voter who is disabled in such a way so as it is not able to mark or cast the ballot and/or illiterate may be assisted to vote by another person chosen by the voter if the so request assistance. Such person shall only assist one voter and shall not be a member of the PSC or an accredited observer.

⁴¹⁶ See: ACE Project, Guiding Principles of Vote Counting:

Timeliness

“Delays in completing the count and in the release of unofficial preliminary results can negatively affect the level of integrity and confidence in the voting process. The responsible electoral management body should carefully plan all stages of the counting process to facilitate the early announcement of results, or at least to realistically assess when results can be announced, taking into consideration the communications and transport infrastructure. It is best practice to inform the public if there are time delays in the announcement of the results. If the process is slow updates should be given regularly to reassure the public that the integrity of the count is being maintained.”

⁴¹⁷ LGE, Art. 102.3

⁴¹⁸ LGE, Art. 106.1

⁴¹⁹ LGE, Art. 106.2

⁴²⁰ EU EEM Kosovo 2010, p.65

Delays of announcing election results can have a highly negative effect for the overall process. Tension between political parties regarding the delayed election results arose, and the credibility of the election process was undermined.

The CEC announced the final results for the 12 December 2010 elections on 30 January 2011 in the evening, fifty days after the elections took place.

Accountability⁴²¹

Considering the poor performance at polling station level, the repeated elections in four municipalities, as well as some other polling centers, the level of accountability for the counting process and the apparent irregularities was very limited. The Municipal Election Commissions should have been held accountable for the electoral malpractice in addition to all PS Commissions concerned.

The lack of accountability by political parties regarding allegations of fraud and manipulation is an interesting point brought up by a KIPRED publication of Kosovo's national elections 2010. It stated, "Complaints were mostly shifted to single persons or groups of people thus alleviating the pressure on the majority of the party. This practice needs to change in order to put parties in a position to educate their supporters in the tradition of free and fair elections and make them accountable for problems."⁴²²

⁴²¹ See: ACE Project, Guiding Principles of Vote Counting: Accountability

"Clear responsibility and accountability for each stage of the counting process are important. At the national level, the electoral management body should be accountable. At the electoral district level, it may be a senior election officer or commission official.

At voting stations, specified voting station officers may be responsible for voting and counting. Clearly defined complaints and appeals processes are also important. There should be structures in place with the authority and competency to address complaints and appeals. These may include political party liaison committees, conflict management and resolution bodies and legal structures.

Counting rules, including criteria for rejecting ballots, should be clear, agreed upon and known in advance, and understood by everyone involved in the election, including election officials, the general public, political parties, candidates, non-governmental organizations, and national and international electoral observers. Clear audit trails are essential in ensuring accountability.

The final stage of vote counting is the aggregation of figures for electoral districts. Electoral districts are the territorial units for which representatives, in a first-past-the-post system, are elected and where votes are added before the electoral formula is to be applied to determine who is elected. If the counting centre is smaller than the electoral district, the figures included in the statements of votes for each counting unit must be aggregated for all the counting units in the electoral district.

This operation involves gathering the results from each counting centre, checking whether all statements are in, and aggregating the figures included in each statement. Only once the totals are available for the electoral district is vote counting over. The next step is applying the electoral formula to determine who is elected."

⁴²² KIPRED, Kosovo National Elections 2010: Overview and Trends, Friedrich Ebert Stiftung, Pristina, 2011, p.26

4.12.1. Analytical framework by Elklit and Reynolds

Returning to the analytical framework by Elklit and Reynolds, a more standardized model for analyzing free and fair is given. The answers to the questions are taken from various official reports available.

8. Polling

8.1. What is turnout as a percentage of total registration?

47,5%

8.2. What is turnout as a percentage of the voting age population?

Unknown

8.3. Is there a low level of serious election-related violence?

No

8.4. In how many polling stations did polling happen according to rules and regulations.

Unable to retrace this information.

8.5. Are there systems in place to preclude and/or rectify fraudulent voting?

Yes

8.6. Is polling accessible, secure, and secret?

Mostly yes

8.7. If there is substantial desire for election observation, is the desire satisfied?

Yes

8.8. If there is substantial desire for political party election observation, is the desire satisfied?

Yes

8.9. Are there systems in place to preclude vote buying?

Reports on offering votes exist.

8.9. Is the level of intimidation sufficiently low that voters can express their free will?

Mostly yes

9. Counting and tabulating the vote

9.1. Is the count conducted with integrity and accuracy?

No

9.2. Is the tabulation transparent and an accurate reflection of the polling booth count?

No

9.3. Are results easily available to interested members of the general public?

No

9.4. Does counting take place with no undue delay?

Yes

9.5. Are parties and candidates allowed to observe the count?

Mostly yes

10. Resolving election related complaints. Verification of final result and certification

10.1. Are serious complaints accepted for adjudication?

Yes

10.2. Is there an appropriate dispute resolution mechanism which operates in an impartial and non-partisan manner?

Yes

10.3. Are court disputes settled without undue delay?

Yes

10.4. Do election observation organizations confirm that the elections were without serious problems?

No

10.5. If legislation prescribes a timeframe for the constitution of parliament, is this timeframe met?

Yes

10.6. Is a person with a reasonable case able to pursue that case without unreasonable personal and financial risk?

Unknown.

10.7. Are seats taken only by those properly elected?

Yes

Summarizing the findings based on Elklit & Reynolds' framework, the polling was found to be within international standards, whereas the process of counting and tabulating the results was not. However, as there are mechanisms to verify the election results and appropriate dispute resolution, the irregularities were resolved according to the law.

By extracting a single process out of the electoral cycle, elections cannot be labeled 'free and fair', but it can act as a good indication as to the overall process. In the context of Kosovo's election in 2010 the notion of 'free' remained largely untouched whereas 'fair' and the integrity of the vote was in question.

4.13. Problems and recommendations

A small public opinion poll in spring 2011 captured the ambiguity over the electoral process in Kosovo.⁴²³ It showed the dissatisfaction with the current electoral administration and “indicated that 60% of the respondents believe that the electoral process is not credible, citizens do not trust the voting system, and some respondents believe that votes are manipulated.”⁴²⁴ The findings are alarming. Sarah Birch rightly states that “electoral processes have not only to be free and fair, they have to be perceived as being free and fair, as this helps to ensure that they are accepted as a legitimate and efficacious tool for exercising popular control.”⁴²⁵ This point is extremely important towards the further assessment of the election process, audit criteria and the balance between the integrity of the vote and the time to announce results.

Preferential Voting

The perceived epidemic of abuses with regards to the five preference votes for candidates per political entity requires further consideration. It showed a worrying trend towards manipulation and a decline in a political culture, as tampering with candidate votes in Kosovo’s open list system means violating the integrity of the vote. Although the open list system was a renewal of Kosovo’s post-conflict electoral system aimed at enhancing a voters choice in choosing candidates directly, the political will towards democracy would need to further mature to ensure process quality in maintained.

As such, a more limited version of the open list system is recommended whereby each voter is given one (1) preferential vote instead of five (5). This would allow for the simplification of the process, and ensure the limitation of possible manipulation..

The transposition between the RRF and the CRF per polling station needs improvement. The votes for a specific political entity on the RRF need to be transmitted on the CRF before the preference votes are counted and the number entered on the CRF.

⁴²³ Osmani, Besnik, Electoral Reform in Kosovo (2010-2015), AUK American University of Kosovo, 2011

⁴²⁴ *ibid*, p.9

⁴²⁵ Birch, Sarah, Conceptualizing Electoral Malpractice, Project on Electoral Malpractice in New and Semi-Democracies, University of Essex, UK, p.3, <http://www.essex.ac.uk/government/electoralmalpractice/>, [access: 01/11/2010]

Clearly defined procedures must be established for correcting possible technical errors on result forms.

Better training must be established in the counting process and filling in result forms.

Conditional Voting and Voters list

Conditional balloting is “costly, time consuming and causes delays in the counting process.”⁴²⁶

Twelve years after the conflict, the need for conditional voting is obsolete, as most refugees have already returned. Even after numerous election rounds and a complex updating process based on the Civil Registry, the list is “known to contain deceased persons or persons that have been erroneously included”⁴²⁷, hence leading to a poor quality of the Voters list.

In order to rectify this situation, the appropriate authorities need to update the Voter lists according to the last census. Based on the census of April 2011 the resident population of Kosovo was estimated to be 1.7 million.⁴²⁸ 88% of the population is Kosovo Albanian, Kosovo Serbs are the biggest minority community representing 7% of the population, and the remaining 5% are divided between other constitutionally recognized minority communities (Bosniaks, Gorani, Roma, Ashkali, Egyptians and Turks).⁴²⁹

For the assembly election in 2010 the Voters list included 1,630,636 eligible voters⁴³⁰. This brings the Voters list further into question considering that Kosovo is home to one of Europe’s youngest populations, with an average age of 25,9 years.⁴³¹

Election Administration

The timeframe of 45 days to prepare for the 2010 elections was deemed by all election professionals as extremely short, and identified as one of the greatest obstacles towards the efficient running of the election. Nevertheless, it is the EMB’s

⁴²⁶ ENEMO (2010), p.2

⁴²⁷ *ibid.*

⁴²⁸ Statistical Office Kosovo, *Rekos 2011*, The total population in Kosovo is 1.733.872. The census results include data from 34 municipalities. Due to objective reasons the enumeration could not be carried out in the Northern municipalities.

<http://esk.rks-gov.net/rekos2011/?cid=2,1> [access: 11/24/2011]

⁴²⁹ US Dep.t of State, <http://www.state.gov/r/pa/ei/bgn/100931.htm> [access: 11/23/2011]

⁴³⁰ EUSR, Kosovo 2010 Election Watch, <http://www.eusrinkosovo.eu/election/more1.html>, [access: 12/12/2011]

⁴³¹ Kosovo, the young Europeans, <http://www.kosovo-young.com/#>, [access: 12/12/2011]

task and responsibility to ensure a transparent and qualitative election process. The quality of elections is represented in manifold ways: the professionalism of election personnel, official statements by the EMB, announcement of preliminary results, transparent and timely procedures and processes, etc.

The problems concerning the lack of publication of credible preliminary and timely final results are not solely the responsibility of the CEC. The poor performance of PSC, the large number of irregularities and different legal aspects require review and improvement. The lack of political will to adhere to procedures and the prevalent manipulation of votes is deeply concerning.

The CEC must take serious steps to ensure an improvement of counting at the polling station level, including deterrence measures against PS staff violating procedures and enhance training, integrity and impartiality of personnel.

In order to combat fraud, the CEC needs to establish a “genuine electoral fraud control plan” to be “publically available for review [and] will allow election administrators to credibly and pro-actively detect, deter, and mitigate electoral fraud.”⁴³²

Additionally, the EMB needs to enhance their communications strategy allowing for citizens to be kept informed of election status and developments. When the voters are given detailed explanations why there are delays, chances are higher to retain the integrity of the process. “The implementation of an electoral fraud control plan is a clear indicator that the EMB is willing and prepared to honestly assess threats to the integrity of the electoral process and ready to take actions to defend its credibility.”⁴³³

Involvement and Pressure

The international community provided essential resources to Kosovo and its elections. The donors should communicate clearly and with a single voice demanding that the EMB to improve the conditions for a fair electoral process and to establish rules for misconduct by electoral staff.

The EU EEM report additionally recommends (not only for elections but also other areas).⁴³⁴

⁴³² Darndolf, Staffan, Assessing Electoral Fraud in New Democracies, IFES White Paper, 2011, p.4

⁴³³ *ibid.*

⁴³⁴ EU EEM Kosovo, p.62

- a) urging the relevant underperforming institutions to implement properly their legal obligations or
- b) creating technical fixes either to make deviation more difficult or compensate for the likelihood that institutions will default on their obligations.

NGOs and civil society should stay engaged in the political process and demand accountability by their institutions. Local media is an important mouthpiece to demand reform and improvement of the status quo.

4.14. Conclusion

Kosovo remains an unfinished state despite the efforts of the international community and the vast amounts of financial and human resources invested. The economic and social situation is desperate, high unemployment rates and poverty are dominant and the success of EULEX in establishing a solid rule of law, fighting corruption and organized crime has been limited. The once aspiring goals set out in the UN Resolution 1244 has faced a lack of strategy by the IC and the lack of political culture in Kosovo.

Prospects for further democratization and accession into the European Union remain dim, especially with the ongoing global economic crisis and the standstill of EU's position towards Kosovo's independence.

Kosovo's first parliamentary elections as an independent state were marred by a series of irregularities and fraud. The audit criteria in the CRC were enhanced and demonstrated a great absence of political culture by the third tier of the election administration towards a democratic election process. The lack of commitment by the polling station commissions to adhere to the electoral laws and procedures was the biggest obstacle for this election. Additionally, though necessary to maintain the accuracy of the vote, the decision on re-counts and re-elections delayed the announcement of results, which further damaged the public confidence in the electoral process.

The public needs to be kept informed of delays and the reasons for such. Sarah Birch states, "the concept of 'free and fair' elections is one we are all familiar with, but

analysis of the comparative literature on electoral processes reveals that there is a lack of consensus as to the details of what constitutes a good practice in electoral administration or what is to be designated poor practice.”⁴³⁵ Based on Kosovo’s example, the counting process was poorly conducted and the fraud observed concerning. First OSCE, and later IFES, assisted the CRC throughout the ten years since the first post-conflict election in Kosovo. The responsibility of local authorities has increased, however the development of local capacities remained insufficient. The lack of qualified staff remains a key challenge, as well as the ‘brain-drain’ of trained personnel looking for better-paid and permanent positions. Traditional patriarchal structures impact voting behavior, as family voting can be found throughout Kosovo and therefore restrains the free vote of an individual.

Elections are politically and technically challenging undertakings, especially in an environment lacking a democratic culture. The origins of poor performance of PSC suggest either a lack of integrity or a lack of training and understanding of the procedures. While opportunities for fraud will always exist in elections, further safeguards need to be established to reduce their probability of occurring. A first step should be the establishment of a genuine electoral fraud control plan by a working group consisting of members of the CEC, CRC Coordinator, MEC and international advisors with experience in fraud deterrence techniques. Preferential voting should be limited to one preference vote to enable the system and PSC to further mature democratically, while conditional voting should be substituted in its entirety by an updated Voter list. Additionally, the EMB must ensure an unbiased staff recruitment process, followed by an improved training program and a clearer communication strategy with all relevant internal and external groups. Kosovo’s CEC has to prioritize the count process as it is one of the key areas where deceptive practices might be found. To minimize the possibility of fraud, CEC members and electoral staff alike need to commit to the principles of integrity, impartiality and independence. In the event of proven misconduct, clear penalties and deterrence mechanisms must be established to leave no doubt to the public that systems are in place to hold the responsible person accountable, and maintain the overall integrity of the vote.

⁴³⁵ Birch, p.24

Chapter V: Conclusion

Elections are a prerequisite towards democratization, however they do not equal democracy. Rather, without elections there is no democracy. Analyzing newly established democracies and democracies in transition will in many cases be indecisive due to the nature of their weak democratic political processes, low quality of democratic politics and the lack of democratic political culture. Nonetheless, an imperfect democracy is a better alternative to war, conflict and a return to an authoritarian regime.

The phrase ‘ballots, not bullets’ suggests the importance of elections after a conflict. Although elections are key to post-conflict environments, security and the establishment of institutions must be prioritized. “Efforts to foster democracy must also support an ongoing process of reconciliation among former enemies, security sector reforms, law-enforcement and judicial reforms, human-rights monitoring and enforcement, strengthening civil society, and a complementary dedication to economic development and job creation.”⁴³⁶ Elections and democracy create and legitimize political power and make governments accountable for their actions – at least for the time elected.⁴³⁷ Samuel Huntington correctly points out that “Governments produced by elections may be inefficient, corrupt, shortsighted, irresponsible, dominated by special interests, and incapable of adopting policies demanded by the public good. These qualities may make such governments undesirable but they do not make them undemocratic.”⁴³⁸

A parallel might be drawn to free and fair elections. Elections can experience a number of difficulties and irregularities, but these alone does not make them unfree or unfair, as the notion of free and fair acts just as a reference to international standards and is not a definition per se. While no electoral process is perfect, free from fraud and no electoral system ideal, the international electoral assistance providers have nevertheless collected a plethora of experience and an expertise on best practices to assist in conducting democratic elections in accordance with international standards.

⁴³⁶ Atwood (1998), p.vii

⁴³⁷ Linz (2004), p.128

⁴³⁸ Huntington (1991), p.10

Electoral Assistance programs have become an important instrument for democracy promotion and in the broader sense state-building efforts of the development community. Electoral Assistance programs designed by Western states might often have a simplistic and superficial nature as already noted by Thomas Carothers (1999) and Marina Ottoway (2003), just seeking to make technical improvements to electoral processes without seeking to understand the structure of power relations that regulates elections and accounts for their peculiarities⁴³⁹, but the goal is to improve this approach for a specific country and adapt programs accordingly.

In the case of Kosovo, the integration of additional audit checks was a technical enhancement that had two diverging effects. The positive effect was the possibility to safeguard the integrity of the vote and retain a voter's "voice", and the correctness/accuracy of results. The downside of implementing the crosschecks was to delay the process of counting and tabulating the results, which had a negative effect on the announcement of final results and therefore the confidence of the public.

Elections are both – politically and technically challenging and require efficient management and devoted staff. Elections to the executive office have very high stakes. Political parties and candidates might be willing to go far to ensure that their party or candidate wins or remains in power.

The political and time pressure for Kosovo's general elections in 2010 was very high. The international community wanted a continuation of talks with Belgrade but due to the non-confidence vote in the Kosovo Assembly, the minority government called snap-elections within 45 days. The Central Election Commission faced a very short time frame to meet the expectations by the EU and other international donors to conduct credible elections. Unfortunately the expectations of the development community were not met due to the many irregularities and allegations of electoral fraud observed in many municipalities.

⁴³⁹ Birch, p.7

Hypotheses 1:

Although elections are a core element of democracy promotion and institution building efforts of external aid programs in Kosovo, its long-term outcome depends heavily on local actors and conditions.

In the course of this study, it was shown that international donors assisted greatly in the establishment and organization of the elections from 2000 onwards. Albeit the massive support for all aspects of the electoral cycle (from drafting the electoral law, establishing an election commission, training of polling station staff, drafting training manuals and procedures for voting and counting, preparing the Voter lists, setting up the Count and Result Center, establishing political party centers, helping the voter information and media related issues, facilitate Serb voting in the north of Kosovo, advising on all logistical matters, dispute resolution activities etc.) the past elections in Kosovo saw a significant number of irregularities and electoral malpractice, which suggests the continuous need for international support.

Credible elections consist of the accurate execution of electoral procedures and relevant skilled staff that is committed to the principles “integrity, impartiality, independence, transparency, efficiency and service-mindedness.”⁴⁴⁰ Unless local actors are willing to integrate these ethics into all electoral activities, the electoral process will remain insufficiently credible and transparent, risking destabilizing the democracy that was established. The conditions for conducting free and fair elections are set by electoral rules and regulations, which need to be adhered to and in case of changes to the electoral system adapted accordingly. The urgency to work and revise certain processes and procedures remains the responsibility of the EMB, the main local institution for organizing, planning and holding elections. The Kosovo Election Commission and other relevant institutions need to be directly involved in decision-making processes and need to understand the implications of their decisions. Otherwise the quality of further elections in Kosovo might irrecoverably deteriorate.

⁴⁴⁰ ACE Project, Professional Development, <http://aceproject.org/electoral-advice/professional-development>, [access: 12/12/2011]

Hypotheses 2:

Despite the fraud identified by Kosovo's Count and Result Center and the partial election boycott by the Serbian minority, the Kosovo Parliamentary Elections of 2010 can be deemed free and fair as the integrity of the vote remained intact through the recount of ballots and re-election in certain municipalities.

The framework of free and fair elections is wide ranging and allows for a number of different approaches and patterns. The necessity to conduct a transparent and accurate count in the polling stations is evident best practice.

Taking into consideration that 40% of all polling stations in Kosovo were recounted and four municipalities and some additional polling centers were re-polled, the election process would deem free but only partly fair. As all new results were taken into account for calculation of the final voter outcome, the voter's integrity remained intact. Therefore the elections can be deemed fair. The process itself however, although accounting for the ballots cast by a voter, became non-credible and less transparent for observers and citizens.

Kosovo's example clearly demonstrates how difficult it is to label elections. Despite with the process being free (disregarding single occurrences where voters faced intimidation), the notion of fair is highly disputable. Even when the electoral fraud was non-outcome determinative, the trust in the process and the results were undermined.

The low participation and the partial boycott of the Serbian population in the North is another factor to include when judging the last election as being free and fair. An absolutely justifiable argument might be, that as long as most of the Serbian electorate in Kosovo does not participate in nation-wide elections, free and fair elections are impossible and Kosovo's goal of being democratic far away.

The answer is open for speculation. As there is no compulsory voting in Kosovo and electors are not obliged to vote, the decision of boycotting or deciding in partaking in the elections is free. A situation where people are hindered and threatened to go to the poll is somehow different. But then again the overall process might be called free, as the majority was able to cast a ballot on Election Day.

Hypotheses 3:

Without substantial change to Kosovo's political culture, the development towards democracy will not be possible.

The question of Kosovo's final status has been the main objective for the government and Kosovo's political parties for a number of years. The focus on the future status was seen as precondition for real democracy. The UN Resolution 1244 was based on a compromise with Russia and China, without a clear goal or strategy towards an independent Kosovo. "This obfuscation hampered the development of a mature political elite, deterred foreign investment and inhibited efforts to start interaction between Kosovo Albanians and Kosovo Serbs."⁴⁴¹

Returning to democracy theory, Dahl's classical work *Polyarchy* in which he defines a model of democracy by his two dimensions 'participation and contestation' seems too narrow to examine Kosovo's "democracy" comprehensively, as many other factors including economy, political culture, state formation, etc. need to be taken into account. The question of state boundaries and nation building remains fundamental. Berg-Schlosser argues, "If democracy, in a broad and simple sense, means "rule of the people", it first has to decide *who* the people are and which boundaries should be respected. In this sense, state formation and nation building must be considered as prerequisites of any meaningful democratization."⁴⁴² Held likewise analyses the importance of the sovereignty of a nation-state that has not been questioned and was taken for granted in democracy theory for a long time. "It has been assumed that the state has control over its own fate, subject only to compromises it must make and limits imposed by actors, agencies and forces operating within its territorial boundaries, and by agents and representatives of other governments and states."⁴⁴³ Kosovo's current status as an 'unfinished' state, in addition to the complex government structure containing an array of governing (local and international) authorities lacks direct accountability to its citizens. While these are important factors for democracy, , the practical day-to-day problems for many Kosovars remain unemployment and challenging financial conditions. Many families rely on financial

⁴⁴¹ Schleicher (2010), p.331

⁴⁴² Berg-Schlosser (2004), p.14

⁴⁴³ Held, (2002, 2nd ed.), p.336

help from relatives abroad. The traditional societal and clan structures remain embedded into the society, making a democratic transition both institutionally as well as socially challenging. Kramer and Dzihic concluded, that participatory democracy and a further development of political structures could not be established only by duly executed elections. An environment needs to be developed which promotes direct involvement in political decision- making. Traditional societal values and an authoritarian policy of political leaders is one of the greater obstacles for Kosovo's democratization process.⁴⁴⁴

The international intervention in Kosovo has left many footprints and still maintains a large presence through EULEX, UNMIK and other organizations. Their success is scarce compared to the enormous resources (mis)used in this peacekeeping operation. I want to conclude this thesis with the thoughts of David Held, "the fate of a national community is largely in its own hands and [...] a satisfactory theory of democracy can be developed by examining the interplay between 'actors' and 'structures' in the nation-state."⁴⁴⁵

⁴⁴⁴ Kramer/Dzihic (2006), p.59

⁴⁴⁵ Held (1996), p.335

Abstracts

English Abstract

Elections are a key element of the recognition of human rights and are a vital and important step in the democratization process by giving the opportunity for political participation and representation. This thesis discusses the role of elections in democracy and democratization theory, aiming to study the overlap between the operational realities in post-conflict elections and a theoretical political science framework. Post-conflict and transitional elections can require various forms of external support of which electoral assistance is one. Due to the importance of conducting free and fair elections, it forms a pivotal component of peace accords and marks simultaneously a step towards democracy. Electoral assistance, which enables countries to hold free and fair elections, is a valuable source of promoting democracy in a broader sense.

Following the Kosovo military intervention in 1999, the UN Security Council Resolution 1244 established the UN Interim Administrative Mission in Kosovo (UNMIK). One year later, the OSCE Mission in Kosovo (OMIK) initiated the election operation as an important tool for the democratization of Kosovo. In subsequent years, different areas of responsibility were handed over from the electoral assistance providers to local Electoral Management Bodies (EMB). There were two main international players involved in Kosovo's electoral process: OSCE and the International Foundation for Electoral Systems (IFES). Both organizations were involved in assisting the central Count and Result Center (CRC), where the results of all polling stations are audited and tabulated. Throughout the ten years since the first post-war elections in Kosovo, the international community has played a continuous role within the CRC – either by entirely supervising and managing the operation, or by acting in an advisory function. Despite the eventual recounting/ re-polling to ensure the integrity of the vote, the fraud observed during the 2010 Parliamentary Elections proved the difficulty in achieving a sustainable and credible electoral process, and specifically “free and fair” elections without the commitment of all actors involved.

German Abstract

Wahlen sind für die Ausübung der Menschenrechte besonders bedeutungsvoll, da sie die Möglichkeit politischer Teilnahme und Repräsentanz bieten, und somit ein grundlegender Schritt in einem Demokratisierungsprozess darstellen. Die hier vorliegende Arbeit analysiert die Rolle von Wahlen für Demokratie und Demokratieförderung hinsichtlich Demokratietheorien, und versucht die operative Realität internationaler Wahlassistenz in Nachkriegsregionen in einen politikwissenschaftlichen Kontext einzubringen. Nachkriegs- und Übergangswahlen können verschiedene Arten von Unterstützung erfordern, wobei technische Wahlassistenz eine der Möglichkeiten darstellt. Deren Wichtigkeit liegt in der Erreichung und Sicherstellung freier und fairer Wahlen, die oft einen Bestandteil von Friedensabkommen darstellen und somit einen Schritt in Richtung Demokratie markieren. Wahlassistenz, die ein Land unterstützt, freie und faire Wahlen abzuhalten, ist ein wertvoller Ausgangspunkt zur Demokratieförderung im weiteren Sinne.

Nach der militärischen Intervention im Jahre 1999 erhielt die Mission der Vereinten Nationen in Kosovo (UNMIK) das Mandat zur Schaffung einer zivilen Übergangsverwaltung durch die Sicherheitsresolution 1244. Ein Jahr später begann die OSZE Mission in Kosovo (OMIK) mit der Organisation und Durchführung der Wahlen als einen wichtigen Bestandteil der Demokratisierung Kosovos. In den darauffolgenden Jahren wurden die Verantwortlichkeiten Schritt für Schritt von der OSZE an die lokalen Wahlführungsgremien übergeben. Die internationalen Hauptakteure im Wahlbereich waren die OSZE und die International Foundation for Electoral Systems (IFES). Beide Organisationen waren im zentralen Count and Result Center (CRC) eingebunden. Im CRC werden die Resultate aller Wahlstationen zusammengefasst und auf ihre mathematische Richtigkeit geprüft. Seit den ersten Wahlen in Kosovo vor zehn Jahren, war die internationale Gemeinschaft durchgehend im CRC eingebunden, entweder in einer leitenden oder zumindest beratenden Funktion. Die Parlamentswahlen in 2010 waren gespickt von Unregelmäßigkeiten und Wahlbetrug. Obwohl es aufgrund dessen zu einer Neuauszählung von Stimmen und Nachwahlen gekommen ist um die Integrität der Wahlstimme zu wahren, hat dies deutlich gezeigt, wie schwer es ist, einen nachhaltigen und glaubhaften Wahlprozess

zu erzielen. Ohne der Verpflichtung zu einem demokratischen Prozess aller beteiligten Akteure, sind freie und faire Wahlen nicht möglich.

Annex

Declaration on Criteria for Free and Fair Elections⁴⁴⁶

Unanimously adopted by the Inter-Parliamentary Council at its 154th session (Paris, 26 March 1994)

The Inter-Parliamentary Council,

Reaffirming the significance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which establish that the authority to govern shall be based on the will of the people as expressed in periodic and genuine elections,

Acknowledging and endorsing the fundamental principles relating to periodic free and fair elections that have been recognized by States in universal and regional human rights instruments, including the right of everyone to take part in the government of his or her country directly or indirectly through freely chosen representatives, to vote in such elections by secret ballot, to have an equal opportunity to become a candidate for election, and to put forward his or her political views, individually or in association with others,

Conscious of the fact that each State has the sovereign right, in accordance with the will of its people, freely to choose and develop its own political, social, economic and cultural systems without interference by other States in strict conformity with the United Nations Charter,

Wishing to promote the establishment of democratic, pluralist systems of representative government throughout the world,

Recognizing that the establishment and strengthening of democratic processes and institutions is the common responsibility of governments, the electorate and organized political forces, that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of human rights and fundamental freedoms,

Welcoming the expanding role of the United Nations, the Inter-Parliamentary Union, regional organizations and parliamentary assemblies, and international and national non-governmental organizations in providing electoral assistance at the request of governments,

Therefore adopts the following Declaration on Free and fair Elections, and urges Governments and Parliaments throughout the world to be guided by the principles and standards set out therein:

⁴⁴⁶ <http://www.ipu.org/cnl-e/154-free.htm> [access: 02/02/2011]

1. Free and Fair Elections

In any State the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage.

2. Voting and Elections Rights

(1) Every adult citizen has the right to vote in elections, on a non-discriminatory basis.

(2) Every adult citizen has the right to access to an effective, impartial and non-discriminatory procedure for the registration of voters.

(3) No eligible citizen shall be denied the right to vote or disqualified from registration as a voter, otherwise than in accordance with objectively verifiable criteria prescribed by law, and provided that such measures are consistent with the State's obligations under international law.

(4) Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.

(5) Every voter has the right to equal and effective access to a polling station in order to exercise his or her right to vote.

(6) Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others.

(7) The right to vote in secret is absolute and shall not be restricted in any manner whatsoever.

3. Candidature, Party and Campaign Rights and Responsibilities

(1) Everyone has the right to take part in the government of their country and shall have an equal opportunity to become a candidate for election. The criteria for participation in government shall be determined in accordance with national constitutions and laws and shall not be inconsistent with the State's international obligations.

(2) Everyone has the right to join, or together with others to establish, a political party or organization for the purpose of competing in an election.

(3) Everyone individually and together with others has the right :

- To express political opinions without interference;
- To seek, receive and impart information and to make an informed choice;
- To move freely within the country in order to campaign for election;
- To campaign on an equal basis with other political parties, including the party forming the existing government.

(4) Every candidate for election and every political party shall have an equal opportunity of access to the media, particularly the mass communications media, in order to put forward their political views.

(5) The right of candidates to security with respect to their lives and property shall be recognized and protected.

(6) Every individual and every political party has the right to the protection of the law and to a remedy for violation of political and electoral rights.

(7) The above rights may only be subject to such restrictions of an exceptional nature which are in accordance with law and reasonably necessary in a democratic society in the interests of national security or public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others and provided they are consistent with States' obligations under international law.

Permissible restrictions on candidature, the creation and activity of political parties and campaign rights shall not be applied so as to violate the principle of non-discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(8) Every individual or political party whose candidature, party or campaign rights are denied or restricted shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.

(9) Candidature, party and campaign rights carry responsibilities to the community. In particular, no candidate or political party shall engage in violence.

(10) Every candidate and political party competing in an election shall respect the rights and freedoms of others.

(11) Every candidate and political party competing in an election shall accept the outcome of a free and fair election.

4. The Rights and Responsibilities of States

(1) States should take the necessary legislative steps and other measures, in accordance with their constitutional processes, to guarantee the rights and institutional framework for periodic and genuine, free and fair elections, in accordance with their obligations under international law. In particular, States should:

- Establish an effective, impartial and non-discriminatory procedure for the registration of voters;
- Establish clear criteria for the registration of voters, such as age, citizenship and residence, and ensure that such provisions are applied without distinction of any kind;
- Provide for the formation and free functioning of political parties, possibly regulate the funding of political parties and electoral campaigns, ensure the separation of party and State, and establish the conditions for competition in legislative elections on an equitable basis;
- Initiate or facilitate national programmes of civic education, to ensure that the population are familiar with election procedures and issues;

(2) In addition, States should take the necessary policy and institutional steps to

ensure the progressive achievement and consolidation of democratic goals, including through the establishment of a neutral, impartial or balanced mechanism for the management of elections. In so doing, they should, among other matters:

- Ensure that those responsible for the various aspects of the election are trained and act impartially, and that coherent voting procedures are established and made known to the voting public;
- Ensure the registration of voters, updating of electoral rolls and balloting procedures, with the assistance of national and international observers as appropriate;
- Encourage parties, candidates and the media to accept and adopt a Code of Conduct to govern the election campaign and the polling period;
- Ensure the integrity of the ballot through appropriate measures to prevent multiple voting or voting by those not entitled thereto;
- Ensure the integrity of the process for counting votes.

(3) States shall respect and ensure the human rights of all individuals within their territory and subject to their jurisdiction. In time of elections, the State and its organs should therefore ensure:

- That freedom of movement, assembly, association and expression are respected, particularly in the context of political rallies and meetings;
- That parties and candidates are free to communicate their views to the electorate, and that they enjoy equality of access to State and public-service media;
- That the necessary steps are taken to guarantee non- partisan coverage in State and public-service media.

(4) In order that elections shall be fair, States should take the necessary measures to ensure that parties and candidates enjoy reasonable opportunities to present their electoral platform.

(5) States should take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected, and that voters are able to cast their ballots freely, without fear or intimidation.

(6) Furthermore, State authorities should ensure that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification.

(7) States should take all necessary and appropriate measures to ensure the transparency of the entire electoral process including, for example, through the presence of party agents and duly accredited observers.

(8) States should take the necessary measures to ensure that parties, candidates and supporters enjoy equal security, and that State authorities take the necessary steps to prevent electoral violence.

(9) States should ensure that violations of human rights and complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts.

Table 1: Areas of international electoral assistance⁴⁴⁷

Area	Description
Support for first-time elections	This is a central element of most international electoral assistance programs. Support for free and fair elections can take many forms, although typically assistance is focused on issues of election planning, monitoring and budgeting. An increasing focus is on the use of low-cost, sustainable practices which will not require ongoing international assistance into the future.
Assistance for constitutional and legal reforms	This kind of assistance often involves issues of political institutions and institutional reform, e.g. through design and reform of electoral systems, legislative structures, promoting links of accountability between the government and the governed, and so on.
Assistance to electoral management bodies	Assistance to electoral management bodies can be focussed on a range of areas, including voter registration, boundary delimitation, computerisation, dispute resolution and so on. A recent focus has been on the need to build independent and permanent electoral management bodies.
Voter registration	Concerns about the quality and usability of the voter register are a perennial issue of concern in post-conflict elections. Assistance with voter registration is often focused on the need for a permanent and continuous electoral register that is constantly updated to reflect population movements, new voters, births and deaths, and so on.
Civic and voter education programmes	Activities whose main goal is to expand democratic participation, particularly for women, the poor, indigenous groups and other under-represented segments of society. This includes awareness-raising activities to highlight the rights and responsibilities of citizens inherent in a democratic society.
International monitoring and observation	Includes election observation, monitoring and supervision. After placing huge resources on electoral observation for most of the 1990s, there is now more focus on the need to professionalize the process of international electoral observation and to place more emphasis on building domestic capacity in this area.
Strengthening of political parties	Activities that focus on strengthening a country's emerging party system, building parties' internal capacity, and training parties to function effectively in the legislature. This is an emerging area in electoral assistance which is likely to take on increasing importance in the future.

⁴⁴⁷ Reilly, ACE Project, p.8

Election Stages of Election Administration (Robert A. Pastor)⁴⁴⁸

A. Pre-Election Stage

- (1) Designing a system to appoint registration and election officials and then training them;
- (2) Delineation of the boundaries of voting areas;
- (3) Designing a voter registration system, establishing voting sites, and notifying the voters;
- (4) Registering voters on-site or at home and aggregating a voter's list at the national and local levels;
- (5) Publishing and distributing a preliminary list to allow voters and parties an opportunity to review and correct the list, adding, deleting, or modifying data or the voting sites;
- (6) Collecting information on voters and processing the data into voter identification cards;
- (7) Finalizing the registration list and sending a copies to the regions and the voting sites;
- (8) Distributing voter identification cards (sometimes at the same place as registration and voting) and assuring that they are received by the rights people;
- (9) Registering and qualifying political parties and candidates;
- (10) Establishing and enforcing rules on campaigning, access to the media, and financing;
- (11) Ensuring security of the voters, the candidates, and the polling stations;
- (12) Developing rules for the proper observation of elections by domestic and international modalities and giving credentials to them;
- (13) Production of election materials; printing and securing the ballot; delivery of the election materials to designated sites;

B. Election Day

- (14) Polling officials should set up their booth and verify receipt of the materials in the presence of monitors before the polling officially begins;
- (15) Polling officials should open the ballot boxes in the presence of voters, then close, and seal them, and begin the voting;
- (16) Polling officials should certify that voters are on the registration list and that they vote privately and in accordance with the procedures (often including dipping one's finger in ink to preclude multiple voting);
- (17) Election officials should monitor the voting of all sites during the day and have a quick-reaction teams ready to distribute election materials and resolve problems during the day;
- (18) Ballots should be counted in the open, preferably at each site and in the presence of monitors for all major political parties or the public; other procedures for identifying, counting, and organizing blank or invalid ballots should be followed;

⁴⁴⁸ Pastor, Robert A., The Role of Electoral Administration in Democratic Transitions: Implications for Policy and Research, in: Democratization, Vol.6, No.4, 1999, pp.1-27, p.8ff

- (19) Tally sheet should be jointly signed by all the poll-watchers, and results should be delivered to sub-regional offices and the national election commission as expeditiously as possible;
- (20) At the national election commission, results should be announced as they arrive, but precautions are needed to avoid double-counting;

C. Post-Election Verification and Dispute Settlement

- (21) Electoral Tribunal or appropriate body should investigate and adjudicate complaints;
- (22) Electoral Commission, or designated body, should verify the final count and certify the final results.

Table 2: Election assessment steps and performance indicators (Elklit & Reynolds)

Step	Performance indicators	How to measure
1. Legal framework	1.1. Is a consolidated legal foundation easily available ? 1.2. Is a comprehensive electoral time table available ? 1.3. Were the elections held without extra-legislative delay ? 1.4. Can the electoral legislation be implemented ? 1.5. Is the electoral framework broadly perceived to be legitimate ?	Expert panel assessment
2. Electoral management	2.1. What is the perceived degree of legitimacy/acceptance of the Electoral Management Body (EMB) by parties and voters ? 2.2. What is the perceived degree of the EMB's impartiality ? 2.3. What is the perceived quality of the EMB's delivery of service in these elections ? 2.4. What is the perceived degree of the EMB's transparency ?	Polling evidence for perceptions Expert panel assessment for de jure and de facto analysis of EMB impartiality Survey of stakeholders for EMB quality and transparency
3. Constituency and polling district demarcation	3.1. Is the constituency structure reasonable and broadly accepted ? 3.2. Is information about constituencies and lower level districts (demarcation, sizes, seats) easily available ? 3.3. Are fair and effective systems for boundary limitation and seat allocation in place and used according to the rules ?	Expert panel assessment Stakeholder surveys
4. Voter education	4.1. What percentage of voters in need of voter education is exposed to voter education which facilitates their effective participation ? 4.2. Have at-risk groups been recognized and their identified needs addressed ? 4.3. What percentage of ballots cast is valid ? 4.4. In terms of voting age population, what percentage of those eligible to vote for the first time in this election actually voted ?	'In need' is here operationalized as first time voters. 'At-risk' are historically marginalized groups. Voter education outreach assessed through surveys Other data from register, polling, and election results
5. Voter registration	5.1. What proportion of the voting age population is registered to vote ? 5.2. Is the register free from serious bias based on gender, age, ethnic or religious affiliation, or region ? 5.3. Are qualified people able to be registered with a minimum of inconvenience ? 5.4. Are there appropriate mechanisms for ensuring that the information in the register is accurate ? 5.5. Are there appropriate mechanisms for ensuring that the public can have confidence in the register ? 5.6. Are the criteria for registration fair and reasonable and compliant with accepted international standards ?	Data from register Expert panel analysis

Step	Performance indicators	How to measure
6. Access to and design of ballot paper. Party and candidate nomination and registration	6.1. Are parties allowed, and can parties and candidates that fulfil the requirements of registration be registered without bias ? 6.2. Are independent candidates allowed and registered if they fulfil legal requirements ? 6.3. Is the method of voting or the design of the ballot paper non-discriminatory ?	Expert panel assessment
7. Campaign regulation	7.1. If there is a system to provide access to state-owned media, is it implemented equitably ? 7.2. If a system for allocation of public funds to political parties is in place, is it implemented ? 7.3. Is there an independent mechanism for identifying bias in the state media and is identified bias subject to swift correction ? 7.4. Are state resources by and large used properly by the political parties and candidates ?	Expert panel assessment
8. Polling	8.1. What is turnout as a percentage of total registration ? 8.2. What is turnout as a percentage of the voting age population ? 8.3. Is there a low level of serious election-related violence ? 8.4. In how many polling stations did polling happen according to rules and regulations ? 8.5. Are there systems in place to preclude and/or rectify fraudulent voting ? 8.6. Is polling accessible, secure, and secret ? 8.7. If there is substantial desire for election observation, is the desire satisfied ? 8.8. If there is substantial desire for political party election observation, is the desire satisfied ? 8.9. Are there systems in place to preclude vote buying ? 8.10. Is the level of intimidation sufficiently low that voters can express their free will ?	Data from elections results and observer reports Expert panel assessments based on data
9. Counting and tabulating the vote	9.1. Is the count conducted with integrity and accuracy ? 9.2. Is the tabulation transparent and an accurate reflection of the polling booth count ? 9.3. Are results easily available to interested members of the general public ? 9.4. Does counting take place with no undue delay ? 9.5. Are parties and candidates allowed to observe the count ?	Expert panel assessments based on data from observer reports

Step	Performance indicators	How to measure
10. Resolving election related complaints. Verification of final result and certification	10.1. Are serious complaints accepted for adjudication ? 10.2. Is there an appropriate dispute resolution mechanism which operates in an impartial and non-partisan manner ? 10.3. Are court disputes settled without undue delay ? 10.4. Do election observation organizations confirm that the elections were without serious problems ? 10.5. If legislation prescribes a timeframe for the constitution of parliament, is this timeframe met ? 10.6. Is a person with a reasonable case able to pursue that case without unreasonable personal or financial risk ? 10.7. Are seats taken only by those properly elected ?	Expert panel assessments Reports Legislation Expert panel assessments
11. Post-election procedures	11.1. Are properly documented election statistics easily available without serious delay ? 11.2. Are EMBs audited and the results publicly available ? 11.3. Is there capacity for election review ?	Expert panel assessments

Table 3: Count and Result Center Audit Crosschecks (RRF, CRF, BRF, BCRF)

Audit Crosschecks

RRF Internal Checks

Box	Logic	Tolerance	Notes
9	Box 9 = Box 5 – Box 8	+/- 3	Box 5 is the Number of FVL Signatures; Box 8 is the Number of Regular Ballots
9d	Box 9d = Box 5d – Box 8d	+/- 3	Box 5d is the Number of CVL Signatures; Box 8d is the Number of Conditional Ballot Envelopes
10	SUM(Party Votes) = Box 10	0	Box 10 is SUM of Valid Ballots for all Parties
13	Box 13 = Box 10	0	Box 13 is the Number of Valid Ballots
14	Box 14 = Box 11 + Box 12 + Box 13	0	Box 11 is the Number of Blank Ballots; Box 12 is the Number of Invalid Ballots; Box 13 is the Number of Valid Ballots
15	Box 15 = Box 8 – Box 14	+/- 3	Box 15 is Box 8 minus Box 14; Box 8 is the Number of Regular Ballots; Box 14 is the SUM of Boxes 11, 12, and 13 (detailed above)
16	Box 16 = Box 6	0	Box 6 is the Number of Unused Ballots
17	Box 17 = Box 7	0	Box 7 is the Number of Spoiled Ballots;
18	Box 18 = Box 8	0	Box 8 is the Number of Regular Ballots
19	Box 19 = Box 8d	0	Box 8d is the Number of Conditional Ballot Envelopes
20	Box 20 = Box 16 + Box 17 + Box 18 + Box 19	+/- 3	Box 20 is the SUM of Boxes 16, 17, 18, and 19
21	Box 21 = Box 3 – Box 20	+/- 3	Box 3 is the number of Received Ballots; Box 20 is the SUM of Boxes 16, 17, 18, and 19

CRF/BCRF Internal Checks

Box	Logic	Tolerance	Notes
	SUM(Candidate Votes) ≤ Candidate's Party	0	No candidate can have more votes than their party.
	SUM(All Candidate Votes) ≤ ((Candidate's Party) x 5)	0	Per party, the total sum of all candidate votes cannot exceed their party's votes times five.

RRF and CRF/BCRF Cross Checks

The following checks can only be ran after both the RRF and CRF are entered. The CRF and RRF will travel together and the RRF should (but will not always be) entered before the CRF.

Box	Logic	Tolerance	Notes
	RRF(Party Totals) = CRF(Party Totals)	0	No candidate can have more votes than their party.
	SUM(All Candidate Votes) ≤ ((Candidate's Party) x 5)	0	Per party, the total sum of all candidate votes cannot exceed their party's votes times five.
	When a Party has votes on the RRF, but no Candidate from that Party has votes on the corresponding CRF, a flag should be set.	N/A	A page/report listing all Polling Stations, and the specific Party, where this occurs needs to be added to the Auditors screens. This should not set/trigger an Audit but will be used for informational purposes so that CRC can size the problem and CRC can advise CEC as to the magnitude of the problem. CEC may then choose to audit/investigate some or all of these.

Note: CRC administrators will need the ability to adjust tolerance levels from 0 to having a tolerance, from having a tolerance to having a 0 tolerance, and from having a tolerance to having a different tolerance. Preferably, this should be done via an administrative screen instead of manually. When tolerances are adjusted, the internal and crosschecks will need to be re-ran and audit flags (green, orange, red) should be set accordingly.

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Curriculum Vitae

Career History

Senior Count and Result Center Advisor - Presidential Elections 2010

IFES International Foundation for Electoral Systems, Pristina, Kosovo, Oct/Dec 2010-Feb2011

- ♦ Worked with CRC management team to optimize operational processes including HR, training, center layout and shift-patterns for run-off elections
- ♦ Trained national Trainers and Shift Managers
- ♦ Design of Data Entry and Audit Procedures

Country Advisor Austria/ Out of Country Voting for Iraq 2010

IFES International Foundation for Electoral Systems, Vienna, Austria, Jan/Mar 2010

- ♦ Advised Iraqi Country Manager of the Independent High Electoral Commission in Austria on the Out of Country Voting program.
- ♦ Established Country Office, Polling Centers and recruited over 100 staff
- ♦ Worked closely with Public Outreach and advised on various PO activities, new technology information distribution, wrote press releases and established contacts with media and press.
- ♦ Advised on the accreditation of media and press observers, political party agents and international and national organization observers.
- ♦ Involved in all logistical and operational aspects of the process and on training related issues

Shift Manager Advisor/Data Entry Area Advisor - CRC/ Kosovo Municipal Assembly and Mayoral Elections 2009

IFES International Foundation for Electoral Systems, Pristina, Kosovo, Oct/Dec 2009-April 2010

- ♦ Advised national Shift and Data Entry Area Managers on roles & responsibilities throughout the election process with the goal of building capacity for future elections
- ♦ Worked closely with CRC staff to finalize layout of Data Entry, Intake & Archive Areas
- ♦ Reviewed CRC general procedures and provided recommendations regarding the flow of materials, staff responsibilities and work allocation of supervisors
- ♦ Implemented critical reports for CRC coordinators and Data Entry Area Managers to allow for improved processing of sensitive materials within the CRC
- ♦ Worked with CRC management team to optimize operational processes including HR, training, center layout and shift-patterns for run-off elections

Shift Manager - CRC/ Out-of-Country Elections for Iraq 2005

IOM International Organization for Migration, Amman, Jordan, Dec 2004/Feb 2005

- ♦ Recruited and trained 100 national CRC employees ensuring that all procedural requirements were met
- ♦ Designed an effective counting procedure with the management team that enabled a fair and accurate counting of ballots
- ♦ Set up the counting area logistics, ensuring smooth flow of sensitive materials
- ♦ Coordinated a multi-divisional group (operations, logistics, security, UN headquarter in Amman, Jordanian field offices, voter's registration), in order to maintain a high degree of transparency, as required by the political sensitivity surrounding the elections

Team Leader Data Entry Area – CRC/Kosovo Assembly Elections 2004

OSCE, Pristina, Kosovo, Oct/Nov 2004

- ♦ Managed the Data Entry Area with national counterpart to ensure the political requirements of the elections were met and the handing over to national staff initiated

- ◆ Trained international area supervisors and national data entry staff
- ◆ Supported the shift-manager and audit team during the process set-up, dry-runs and live counting, leading to an accurate and efficient running of the CRC
- ◆ Worked in close conjunction with IT staff members to ensure the correct performance of the data entry process

Recruitment Consultant

Neumann Partners, Vienna, Austria, 2003-2004

- ◆ Supported senior consultants in global research activities, leading to the recruitment of highly experienced professionals matching customer requirements
- ◆ Prepared newspaper ads for advertised positions, as well as documentation for customer acquisition
- ◆ Pre-selected promising candidates and wrote candidate reports

Counting Supervisor - CRC/Kosovo Municipal Elections 2002

OSCE Organization for Security and Cooperation in Europe, Pristina, Kosovo, Oct/Nov 2002

- ◆ Managed and supervised a team of national CRC employees during the counting process
- ◆ Trained a national counting team on the counting process
- ◆ Supported the Counting Area Manager in facilitating a fast and accurate counting of ballots

Sales Assistant for Central and Eastern Europe

TOPCALL Int. AG, Vienna, Austria, 1999-2001

- ◆ Supported the CEE sales manager in handling of partners in Eastern Europe, Greece and Turkey, to ensure continued business growth in these rapidly developing markets
- ◆ Prepared and presented monthly forecasts in cooperation with partners, tracking sales progress and troubleshooting minor technical problems.

Flight Attendant

Lauda Air, Vienna, Austria, 1997-1998

Education

- ◆ Magister phil. (Political Science), Vienna University, Austria
Thesis: Democratization, Post-conflict Elections and Electoral Assistance "Counting the Vote: A Case Study on Kosovo's 2010 Parliamentary Elections"
- ◆ Political Science Coursework, McGill University, Montreal, Canada, 2005
- ◆ Matura, Gymnasium Henriettenplatz, Vienna, Austria, 2001
- ◆ Wirtschaftsseminar, WIFI, Vienna, Austria, 1996-1997
Coursework in business management studies.

Professional Training Courses

- ◆ *Course on Effective Electoral Assistance*, Joint EC-UNDP Task Force on Electoral Assistance, International Institute for Democracy and Electoral Assistance, 2011
- ◆ *Different Needs – Equal Opportunities*, IASC Inter-Agency Standing Committee, 2010
Increasing Effectiveness of Humanitarian Action for Women, Girls, Boys and Men
- ◆ *Holden Sales Training*, Marrakech, Morocco, 2000
Intensive workshop focused on achievement of strategic business objectives

Personal

- ◆ Married, two children
- ◆ Language skills: German (fluent), English (fluent), Polish (fluent), French (basic)

Persönliche Erklärung

Ich erkläre hiermit, dass ich die vorliegende schriftliche Arbeit selbstständig verfertigt habe und dass die verwendete Literatur bzw. die verwendeten Quellen von mir korrekt und in nachprüfbarer Weise zitiert worden sind. Mir ist bewusst, dass ich bei einem Verstoß gegen diese Regeln mit Konsequenzen zu rechnen habe.

Nachname, Vorname (in Blockschrift)

Datum

Unterschrift