



Democracy for Development
Demokraci për Zhvillim
Demokratija za razvoj

An Impression of Reform How to Restore Trust on Elections?

**Analysis of the Work of the Committee for Electoral Amendments
and Examination of the First Set of Amendments**

Prishtina
March 2012

TABLE OF CONTENTS

INTRODUCTION	4
AN IMPRESSION OF REFORM	4
THE POLITICAL AGREEMENT AND THE RESOLUTION	5
THE MODEST AMBITION	6
SUB-CONTRACTING OF DEMOCRACY	7
ELECTORAL CODE INSTEAD OF PATCHING UP	8
150 SECONDARY RECOMMENDATIONS	8
RESPONSE TO PROBLEMS	10
CONCLUSIONS AND SUGGESTIONS	20

www.d4d-ks.org

Copyright © 2012. Democracy for Development/Demokraci për Zhvillim (D4D).

All rights are reserved. Apart from the citation of short parts aimed at critiques, no part of this publication can be reproduced, saved on reproductive systems, or transmitted in any form or electronic, mechanical, copying or registering means etc., without the written permission of D4D.

This publication was made possible with the support of the Federal Department of Foreign Affairs of Switzerland.



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA

The opinions expressed in this publication are D4D.

Introduction

After a year of work, the Parliamentary Committee for Electoral Reforms is expected to come out with a draft-law on general elections in the coming weeks. Democracy for Development (D4D) Institute has conducted an analysis of the recommendations brought forth by the Committee and the Working Group for Electoral Reform. D4D has analysed the degree to which the assessments of international organisations from the last elections have been taken into account. Based on the work that has been done so far and the available time ahead, we should lower our expectations from the new draft-law which is unlikely to narrow the room for abuse.

The establishment of an external working group complicated the process of electoral reform. The decision-making was transferred from the Committee comprised of only Members of Parliament, to a wider group, which has significantly reduced the importance of the Assembly that Kosovars elect. While the international community harmonized positions, it was left to the Committee to basically stamp the ready recommendations that were forwarded to them.

The Committee boasts that its main successes were the reduction of campaign days from 30 to 20 and the mandatory removal of posters. The main success has been to enable observers to stand/sit behind the commissioners, so they can see voters' ID cards. Insufficient efforts have been made on the voters' list, commissioners' discipline, or on electoral amendments that increase the possibilities to identify and punish manipulators.

With this analysis, D4D insists on a process that restores the credibility of elections. If the Committee finishes its work without closing the space for abuse, it can safely be said that this process only gives the impression of reform, and falls short of it.

An Impression of Reform

The aim of this publication is to offer a general analysis of the electoral reform undertaken in Kosovo following elections in 2010. The Committee for electoral reform has entered the final stage of its work and has prepared a package of recommendations, which have been sent on to the a smaller group responsible for drafting the new law. The analysis examines the process, the work of the Committee and the other institutions involved, as well as the amendments resulting from this process.

A whopping 150 amendments have been prepared, but few of them bring about real improvements. If the remaining weeks are not utilised to make essential changes to regulating the electoral process, there are no reasons to expect fraud reduction. As it stands right now, the reform is but 'make-up' that hides but does not treat electoral 'wrinkles'. Moreover, if several sets of elections are held in one day, as some intend, then the level of election fraud will be record high.

- ⇒ **Has this Committee fulfilled its mandate?**
- ⇒ **Do the recommendations offered by the Committee guarantee a better process?**
- ⇒ **Have the topics that impact directly upon the electoral process been treated seriously?**
- ⇒ **What role did the international community play?**
- ⇒ **How did the reform begin and where are we now?**

The research questions for this paper were: has this Committee fulfilled its mandate? Do the recommendations offered by the Committee guarantee a better process? Have the topics that

impact directly upon the electoral process been treated seriously? What role did the international community play? How did the reform begin and where are we now?

The main problems of past elections have not been addressed adequately, including the main topics which keep the whole process in suspense. Three categories of issues which have not been dealt with properly are:

- (a) Systemic topics, if unresolved, will make it difficult to tackle technical issues;
- (b) Appeals/complaints, fines and penalties;
- (c) Electoral process that has allowed massive fraud to take place.

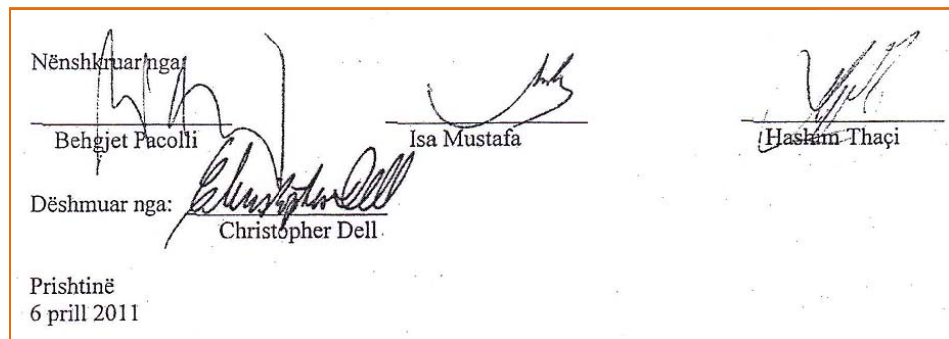
Postponing the decision-making on the electoral system has raised concerns from the smaller political parties and the civil society. It is often claimed that the deferral may have been made for two reasons:

- (a) To allow less time to repair the process and prevent fraud; and
- (b) Enable the parties to avoid the criticism for having chosen an unpopular system.

Electoral justice and administration are extremely important because they are essential to preventing abuse. It is important to highlight that the public perceived the reform as means to prevent electoral fraud and avoid the type of institutional impasse that occurred after the 2010 elections.

The Political Agreement and the Resolution

Following the decision of the Constitutional Court (28 March 2011) that stated the voting for President at the Assembly was unconstitutional, Kosovo entered an institutional crisis. International mediation led to an agreement among three party leaders (PDK, LDK and AKR) for overcoming this crisis, reached on 6 April 2011. One day after, the agreement was voted as a resolution by the Assembly of the Republic of Kosovo.



The agreement and resolution of the Assembly supported the following:

- ⇒ The election of Atifete Jahjaga as President;
- ⇒ The formation of a Committee for the Reform of Presidential Elections¹;
- ⇒ The formation of a Committee for the Reform of the Law on General Elections²;
- ⇒ Organizing national elections no later than 18 months from the entry into force of the electoral and constitutional amendments³.

¹ At the Assembly this Committee was referred to as 'the Committee for Amending the Constitution of the Republic of Kosovo'.

² At the Assembly this Committee was referred to as 'the Committee for Amending the Law for General Elections in the Republic of Kosovo'.

³ The Assembly of the Republic of Kosovo, 7 April 2011. Resolution in support of the Memorandum of Agreement between Mr. Behgjet Pacolli, Mr. Isa Mustafa and Mr. Hashim Thaçi, p. 1.

The Committee for constitutional amendments was mandated with compiling the necessary constitutional changes to usher direct elections for the President, and to harmonize other laws if impacted by the constitutional reform. The Committee for amending the electoral law was mandated, amongst others, with undertaking the necessary changes so as to ensure the creation of electoral districts. The chairing of the first Committee was entrusted to a Member of Parliament from the governing coalition, to complete the work within 6 to 9 months. The other Committee was entrusted to an MP from the opposition to complete the draft-law within 8-12 months.

Judging from the text of the agreement and the resolution, the reform commenced not because of the many cases of abuse, but in order to deblock the political impasse.

The Institute for Democracy (D4D) has continually followed the work of both committees, particularly that of the electoral reform. Together with other NGOs under the umbrella Forumi 'Reforma', D4D has offered its recommendations in regards to some of the main issues that were reviewed by both committees.

The Modest Ambition

Frequent changes of electoral legislation are not recommended, nevertheless, Kosovo has changed the election law ahead of almost each election cycle. Unfortunately, these reforms were never comprehensive and have not addressed the most important aspects. The bitter taste and the damaged image created after the 2010 elections seemed to have alarmed the opposition and other stakeholders for a profound electoral reform. Nevertheless, despite the optimism, from the beginning it was obvious that the reform was not going to be sincere.

Judging from the text of the agreement and the resolution, the reform did not start to prevent electoral abuse, but to unblock the political impasse. Neither the political agreement or the Resolution refer to the damaged electoral process. Besides exhausting the will of citizens, three parts of elections have also damaged severely Kosovo's image abroad. These documents explicitly mention only the creation of districts, and to find fraud one needs to read between the lines and creatively interpret the reference to 'among others'.

It is important to distinguish as two separate topics what the public discourse in Kosovo often does not, between the electoral system and the administration. The creation of electoral districts is a long-standing request of civil society, but irregularities have not occurred due to the absence of districts and they will not be resolved with their creation. The perception is often created that the electoral system is the main culprit for the irregularities

"The Assembly of the Republic of Kosovo endorses the commitment... for amending... the Law on General Elections... which among others will support the creation of more electoral districts in Kosovo".

of past elections, which is not true. This fear spreads far creating the perception that political parties may use this as a scapegoat to close the lists.

Geographic representation and electoral districts are important, but should not dominate the public discourse at the expense of battling fraud. Sometimes the impression is created that this is the main problem that needs to be discussed and there are few other problems. If created, districts will improve representation but will not address fraud.

Manipulation has become easier due to shortcomings in the administration of elections (either because of the law or because of its implementation), as well as due to the lack of political will to prevent them. The Resolution of the Assembly of Kosovo should have primarily:

- ⇒ Address electoral fraud as a matter of priority by the courts, and ensure that manipulators receive the deserved sentences;

- ⇒ Express commitment that the new law will narrow the legal vacuum that enables abuse; and
- ⇒ Introduce changes of two main features of the electoral law, the creation of electoral districts and the voting for one single candidate.

The creation of electoral districts is a long-standing request of civil society, but irregularities have not occurred due to the absence of districts, and they will not be resolved with their creation.

None of the first two points above are mentioned in the resolution. As a result of inefficiency of courts, the Central Election Commission (CEC) has not closed the last electoral cycle, which will damage the smooth entry into the next one. The CEC cannot destroy most electoral material from the elections of 2009 and 2010, due to remaining judicial contests.

The committee has not only failed in addressing fraud, but it also failed to reach consensus in districts, although this was the only specific task entrusted by the resolution. The Committee expressed the lack of political weight to decide and left geographic representation to more senior political leaders, who have not met to discuss until now.

A decision about the system (districts, threshold, lists) should be made in principle because it paves the way to discuss adequate formulae for election administration. For example, it is impossible to discuss whether the counting should be centralized without prior deciding on districts or for the elimination of the preferential vote. It is often even suggested a decision may have already been taken, but it is not made public in order to minimise the potential for reactions and criticism. Overall conclusions lead to a closed process and proves that major decision in Kosovo are held tightly by a small number of individuals, local and international.

Sub-contracting of Democracy

Before the formation of the Parliamentary committee in Spring 2011, the international community had already formed a working group composed of international stakeholders only, in search of the electoral system that Kosovo needed. Following the tripartite political agreement, the Committee for electoral reform was formed. The Committee began its work with several months delay, because the PDK parliamentary group had not decided on its representative.⁴ After the formation of the Committee, international community changed its strategy and convinced the Committee that due to its lack of expertise, an outside working group should be established.

The Working Group was established on 5 July 2011, and has since done significant work in identifying problems from the past, visited various countries with experience in organising elections. More work was overall completed outside than inside the country. Coordinated by the OSCE and with occasional support by IFES and other international organisations, the Working Group has dealt with various important and technical issues. However, the Working Group has not addressed ways to narrow the gap to electoral abuse. The consequent recommendations do not offer any more security against the manipulations of the electoral process.

The inclusion of other actors in a comprehensive process is positive, but the process has marginalized the Parliament.

Alongside the members of the Committee for Electoral Reform, the group brought together participants from: the Central Election Commission (CEC), Presidency, Electoral Complaints

⁴ Kosova Sot. 11 May 2011. Konstituohet Komisioni për reformën zgjedhore [The Committee for Electoral Reform is constituted]. Available on : <http://www.kosova-sot.info/politike/kosove/konstituohet-komisioni-per-reformen-zgjedhore> (accessed lastly on 06 March 2012).

and Appeals Panel (ECAP), US Embassy, British Embassy, European Commission Liaison Office, International Civilian Office, National Democratic Institute, the heads of informal women and youth caucuses, as well as two non-governmental organisations, the Kosova Democratic Institute (of behalf of the Democracy in Action) and KIPRED. The Group was coordinated by the Organization for Security and Co-operation in Europe (OSCE) and co-chaired by the Head of the Central Election Commission (CEC).

The inclusion of other actors in a wider process is positive, but this has marginalized the Parliament. The main consequence of the working group to shift decision-making, whereby members of the Committee lost control over the process and decisions began to be taken elsewhere. Expert organisations could have offered their expertise in the framework of the Committee, but instead they took control of the steering wheel, and MPs were relegated to mere passengers.

The chairing of this group by CEC's Chairperson was in contravention with a recent EU report. While the report criticized the CEC for its heavy role in drafting secondary legislation, it was now given a role to draft primary legislation. A representative of ECLC also became a member of this working group. Moreover, while the Chairperson of the CEC took a leading role, the rest of the CEC members were sidelined without access even to data that should be public.⁵

The process where the positions are harmonized, where disagreements clash and the compromise is reached is much more important than the location where they are signed.

Proponents of the Working Group often justify that they do not take decisions but only discuss, whereas the decisions are made at the Committee. The process where the positions are harmonized, where disagreements clash and the compromise is reached is much more important than the location where they are signed. The decisions were practically reached at the working group while the Committee only voted them formally. Except the shifting of decision-making to external agendas, this created confusion, conflict of interest, dispersed accountability – ultimately resulting with subcontracting our democracy.

Electoral Code Instead of Patching Up

The very name of the Committee reveals that the starting point was not to create a new law, but to amend the old one. The drafting of amendments was taken over by a drafting group, comprised of three internationals and only one national legal expert. The instructions for the drafting group were too generalised, which first and foremost reflected the group's poor ambitions for reform and secondly the low level of agreement reached among its members. As a result of unclear recommendations, the drafting team ended up giving direction to the contentious points that members of the working group disagreed upon.

It was not until the Committee received the first version of the draft-law from the drafting team that it realized that amendments exceed 40% of the current law which qualifies it as a new law. But the law would need many more changes to prevent and prosecute fraud, and as per the advice of the EU EEM report, it would need to include most electoral regulations issued by the CEC. All these amendments lead to the conclusion that a comprehensive Electoral Code is needed, and that it is better late than never to have an in-depth reform and to avoid patching up.

150 secondary recommendations

After a long time of work by the Working Group, in February 2012 the Committee approved 150 recommendations for amending the Law on General Elections. In principle, the

⁵ CEC. 29 February 2012. From the fifth CEC meeting of the in 2012.

recommendations of such a group reflect the lowest common denominator of a wide array of political and international stakeholders.

The main progress achieved was the possibility for observers to stand/sit behind commissioners, which improves the ability to observe voter identification. The Committee and the Working Group have spent little time in amending the articles that could close the space for manipulation. Insufficient time was spent on the voters' list, voters' identification, the discipline of commissioners, or on electoral amendments that improve the possibility to identify and prosecute manipulators. The way the committee coordinated with the Committee for constitutional changes should also be done with regard to changes to the Criminal Code to ensure harsher sentences for electoral fraudsters. There were backward steps, for example the abolition of collective fines, which is likely to coas political parties to encourage their supporters to damage the process, especially during the electoral campaign.

Response to problems

In order to assess proposed amendments, D4D has used as a barometer the degree that amendments took into account suggestions offered by NDI, ENEMO, EU EEM, which highlight the shortcomings of the electoral process. At the outset, the working group reviewed these comments during the identification of problems as a separate part of their working agenda. In the tables below, D4D assesses the degree of implementation of these suggestions – in the left column are the suggestions as were originally made, whereas in the right column is our assessment and comment.

Electoral system

Comments and suggestions	Response by the Working Group/Committee and assessment by D4D
<p>Replacement of the Kosovo-side electoral district by several multi-seat electoral districts has the potential to enhance the link between of the assembly and the electorate (EU EEM, NDI)</p>	<p>While the electoral system was one of the first topics discussed by the Committee, the discussion has reached a dead end. The political agreement and the resolution of the Assembly mandated the Committee to reach a compromise on districting, but the Committee too easily removed shirked this responsibility and left the responsibility on more senior leaders. This indecision hampered other important decisions on administration.</p> <p>Status: Unfinished</p> <p>There is a risk that districts may not be created at all and there is a tendency to close the lists altogether. This issue needs a wider debate and societal consensus, but the lack of positions by the political parties limit the possibility for public debate. Various proposals have been put forward by the civil society, including the proposal of D4D and Forum ‘Reforma’ for seven electoral districts with compensatory seats in a proportional system.</p>
<p>The electoral system should be simplified (EU EEM)</p>	<p>The level of simplicity depends on the amendments to the system, which are yet to be completed. The number of districts, number of preferential votes, open lists and the threshold are decisive in this regard.</p> <p>Status: Unfinished, with a tendency to remain as it is.</p> <p>The most simple idea how to simplify the system is to close the lists, which would constitute a degradation of the electoral system. D4D suggests simplification which removes the preferential vote and other features as discussed in the next point).</p>
<p>The voter should vote for only <u>one candidate</u></p>	<p>The elimination of the preferential vote would have a significant impact on lowering abuse, particularly fraud within political entities. Entities which prefer one electoral district request to</p>

<p>(EU EEM)</p>	<p>preserve the preferential vote.</p> <p>Status: Unfinished</p> <p>D4D Institute and Forum 'Reforma' have supported the recommendation for removing the preferential vote dhe reducing the vote to only one tick (☑)for the preferred candidate.</p>
<p>The lowering of the <u>electoral threshold</u> of 5% should be considered, in order to increase the comprehensive representation at the Assembly of Kosovo. In relation to this, a threshold of 2% or 3% seems more reasonable. (EU EEM)</p>	<p>The majority of Committee members have agreed that the threshold should be lowered (with proposals ranging from 1% to 5%) but a consensus has not been reached. As part of a system, this has been left to the party leaders to decide.</p> <p>Status: Unfinished</p> <p>D4D and Forum 'Reforma' have supported the lowering of the threshold on 3%, with the condition that it does not apply to independent candidates.</p>
<p>The gender quota requirements may not guarantee that the will of the voter is directly reflected. (ENEMO)</p> <p>Return to closed candidate list and ensure that <u>approximately 30% of the elected candidates are women</u>; this would require an amendment to Return to closed candidate list and ensure that approximately 30% of the elected candidates are women; this would require an amendment to (EU EEM)</p> <p><u>Mechanisms for preserving the quota within the system</u> can be placed in many electoral districts, which are mechanisms that ought to be researched (NDI)</p>	<p>According to EU EEM, the gender quota is in direct contradiction with open lists, insinuating that Kosovars must choose one one or the other. This was not supported by the Committee because both of these features were considered as major accomplishments of the electoral system in Kosovo. The Committee has expressed its good will to preserve the gender quota even if Kosovo creates several electoral districts, as recommended by NDI.</p> <p>Status: Rightly unaddressed.</p> <p>D4D agrees with the Committee to ignore this comment as inadequate for the circumstances. D4D supports the unconditional preservation of the gender quota (with or without districts), but refuses the argument that the open lists should be sacrificed as incompatible with the quote. There are models that can reach both objectives but are more complicated and may not even violate the criteria of simplicity. A more detailed explanation how to preserve the gender quota and open lists with districts has been recommended by D4D and Forum 'Reforma'.</p>

Community Representation

Comments and suggestions	Response by the Working Group/Committee and assessment by D4D
<p>The removal of the <u>declaration on ethnic belonging</u> should be considered (EU EEM)</p>	<p>This issue has not been discussed by the Committee for electoral reform. Kosovo's Constitution guarantees minority representation in the Assembly, which necessitates to declare ethnic belonging.</p>

	Status: Rightly unaddressed.
<p>Consideration should be given in clarifying the coalition possibilities between <u>parties of majority and nonmajority community</u> (EU EEM)</p>	<p>ENEMO’s request to clarify this clause is well placed. The electoral race may see situations whereby inter-ethnic coalitions run for reserved seats. This anomaly may see ethnic Albanian MPs win seats reserved for ethnic minorities.</p> <p>Status: Unaddressed.</p> <p>The ethnic distinction is problematic because it lowers incentives for cross-ethnic cooperation, but nevertheless, the reserved/guaranteed seats must serve only the interest of communities otherwise they may lose their meaning and result in violation of the Constitution.</p>

Central Election Commission (CEC)

Comments and suggestions	Response by the Working Group/Committee and assessment by D4D
<p><u>The composition of CEC</u> can be enriched with the inclusion of several judges as its members (ENEMO)</p>	<p>The Committee has not considered the possibility of including judges in the CEC, which would tone partly down the politicisation of the CEC. The Committee has submitted two proposals on the composition of the CEC, but none of the decisions foresee the inclusion of more judges.</p> <p>Status: Unaddressed.</p> <p>Institute D4D has proposed increasing the number of CEC members so as to balance the composition between government and opposition, and has recommended adding one judge as a deputy chair when the CEC chair is absent.</p>
<p>The Law has to change in order to include some main provisions which currently are regulated by <u>CEC regulations</u> (EU EEM & ENEMO)</p> <p>Granting <u>special powers the CEC</u> to regulate the electoral process is controversial, having in mind the politicised composition of the CEC (ENEMO)</p>	<p>Including CEC electoral rules into the law has been taken into account, and some of them have indeed been included in the draft-amendments. But the Committee should review all the CEC rules and include as many of them in the law as possible.</p> <p>Status: Partly completed.</p> <p>D4D supports drafting a comprehensive electoral code which includes most rules into the law. Having in mind the politicisation of the CEC, a detailed law is necessary.</p>
<p>The politicized composition of the CEC can be seen as problematic when we consider the responsibility of the CEC to <u>order election re-</u></p>	<p>With regard to ordering re-runs, the Committee for electoral reform has taken the right decision. Decision-making for re-runs has been left to the Supreme Court only. It was also clarified that if 35% of polling stations in a given municipality have been tampered with, this should lead to the</p>

<p><u>runs in a polling station</u> or in whole municipalities (ENEMO)</p>	<p>annulment of results. Status: Addressed adequately.</p>
<p>General procedures for members of the <u>election management bodies</u>, recruited by political parties, should be included in legislation (ENEMO)</p>	<p>The Committee has not specified the responsibilities for members of municipal election committees (MECs) and polling station committees (PSCs) who have been recruited among political parties, but has touched upon superficially those of MECs. Leaving the development of tasks for MECs and PSCs to the CEC means that the Committee has refused ENEMO's advice to regulate this matter with law. Status: Unreasonably refused D4D supports ENEMO's recommendation as this would boost the legal responsibility of individual commissioners. CEC could easily avoid responsibility in 2010 arguing that it did not have responsibility over the commissioners' actions. This also proves that the content of the law is very important and that not all depends on the political will.</p>
<p>More details are needed about the rules of <u>decision-making at the CEC</u> (for example 2/3 of quorum) (ENEMO) Explanation: this has to do with two issues: 1. how many votes make 2/3 of CEC, and</p>	<p>After numerous altercations at the CEC, the number of CEC members that constitute qualified majority of 2/3 was explained. Following the request of the Committee for Electoral Reform addressed to the CEC, the latter responded to the Committee that 2/3 of decision-making is 8. The Committee decided that the quorum is 2/3 (interpreted as 8 members), and the qualified decision-making of 2/3 is also to be interpreted as 8 members. Status: Explained. Reaching the conclusion that 2/3 of 11 members are eight is simple but political tendencies have long prevented this outcome. Qualified majority requires the vote of at least 2/3 and consequently $11 \times 2/3 = 7.33$, which can only be interpreted as 8.</p>
<p>2. to explain on what issues require 2/3 majority at the CEC</p>	<p>In the list of decisions that require two thirds of the CEC have also been added the Certification of Electoral Results, Certification of Voters' Lists and the Approval of the Working Rules of the CEC. Status: Explained and proposals adopted. As a principle, D4D supports that a higher number of issues to be voted through with qualified majority, to prevent out-voting of the opposition and challenging the process in sensitive moments.</p>
<p>Further insulate the CEC Secretariat from political pressure (NDI).</p>	<p>Until recently, it was disputable whether the appointment of the CEO of the CEC Secretariat required 2/3 of the vote of the CEC. The voting on this issue with simple majority at the CEC led to opposition boycott. The Committee decided that the CEO should be nominated as any civil servant</p>

	<p>and not by the CEC.</p> <p>Status: Completed, but does not ensure independence of the Secretariat.</p> <p>D4D sees the role of the CEO of the CECS as particularly important. The implementation of elections depends primarily on the Secretariat that is led by the CEO. The fear of a political CEO can and has reduced the political entities' trust in the process.</p> <p>Kosovo has to aim to gradually shift towards a professional CEC, and the minimisation of the role of its political members. To move in this direction, the empowerment of the CEO should go hand in hand with strengthening the Secretariat, so as to enjoy a status similar to that of the general secretaries of ministries, who are the highest officials in civil service in public institutions. But the fear is that if s/he is nominated just like any general secretary, s/he can be a political figure, like the majority of secretaries. The damage caused by a <i>de facto</i> political CEO is great, and the safest bet currently may be to maximize the role of the opposition in selecting the CEO.</p>
--	--

Municipal Election Committees and Polling Station Councils

Comments and suggestions	Response by the Working Group/Committee and assessment by D4D
<p>The level of <u>professionalism and training of election managing bodies</u> should be increased (ENEMO)</p> <p>The improvement of trainings in order to ensure the protection of the process, is required (ENEMO)</p> <p><u>PSC members</u> need to be recruited from political entities, but higher professional criteria need to be in place and these requests need to be regulated by law (ENEMO)</p> <p>More efforts should be made to train polling station officials, in order to ensure protective measures and their implementation against the practices of fraud in elections, as well as against most frequent violations of electoral procedures such as group voting, proxy voting,</p>	<p>Considering that commissioners represent the weakest link in election administration, the Committee for Electoral Reform has dedicated little attention to this issue. Commissioners will continue to be appointed by political parties, and the only criteria they need to meet is to be able to read and write in one of the official languages of the municipality. The only amendment by the Committee was the introduction of the criteria to have completed secondary education.</p> <p>The diplomatic formulation by ENEMO should be taken as a recommendation to minimise the space for mismanagement. The Committee has discussed on the issue but, apart from some very general conclusions, has not managed to treat the problem. Apart of the requirement to write in the polling station book when family voting occurs, no other serious recommendations have been taken.</p> <p>That the introduction of high school education is insufficient is clear by the insistence of ENEMO for additional training for relevant officials in charge of administering elections in all polling stations.</p> <p>Status: addressed but without specific recommendations.</p> <p>D4D believes that most of violations have occurred due to motivational for abuse and not because of the lack of commissioners' knowledge. Adding the criterion for secondary education is insufficient</p>

<p>falsification of signatures in voting lists, ballot stuffing etc. The indelible ink, UV lamps should always be tested beforehand, to ensure the prevention of manipulation with them.</p>	<p>even to prevent the damage caused due to negligence. D4D recommends that the members of MECs and PSCs should undergo training and be certified for administering elections. After the certification, each official acquires legal responsibility for management, including faults caused by negligence.</p>
<p>Explore approaches to provide checks on the perceived partisanship in the election administration, particularly at the polling station level. Such solutions could include deploying poll workers outside of their municipalities and further insulating the CEC secretariat from political pressure or the perception of it.(NDI).</p>	<p>The Committee has discussed the possibility of placing polling station councilors in municipalities other than their own, but has not mentioned it as a possible option. The Committee has even proposed the opposite, that each commissioner should always be from the municipality where s/he is registered as a voter. It is precisely the local solidarity in smaller places where recognition and proximity has enabled agreements for abuse even beyond party divisions.</p> <p>Status: refused with a serious detriment for the electoral process.</p> <p>The placement of commissioners was the main recommendation of the Institute D4D for the prevention of electoral irregularities, but unfortunately this was refused by the parliamentary Committee. Following a superficial discussion, the committee refused the idea mentioning the difficult logistics as a reason.</p>

Process

Comments and suggestions	Response by the Working Group/Committee and assessment by D4D
<p>Organise wide and transparent discussions, by including political entities and civil society, with regard to using <u>information technology in the electoral process</u> (NDI).</p>	<p>There have been discussions on using IT during certain stages of voting, starting from the biometric identification of voters, voting and counting.</p> <p><u>Biometric identification.</u> The Committee has recommended biometric identification of voters and has foreseen that the programme is regulated so as to detect whether the voter is designated for a specific polling station, which would enable the equipment to function without an internet connection. Since there were uncertainties about its functioning, the final recommendation in the draft law was to leave the classical option as viable. The CEC has the discretion to choose which system to use.</p> <p><u>Voting.</u> Several initiatives also proposed options for electronic voting which would take into account the Kosovar conditions of lack of electricity or similar problems. None of them were accepted.</p> <p>Status: Incomplete. The recommendations were reviewed, but the possibility of any of the options to be used is minimal.</p> <p>International experts have stressed difficulties and reservations in implementing this system, and it</p>

	might be necessary to preserve a traditional system, which again opens the system for abuse.
Article 90 of the Law on General Elections on <u>validity of ID documents</u> , needs to be clarified (ENEMO)	<p>The Committee was not able to decide definitively on the sole use of documents issued by the Republic of Kosovo, for identification purposes during elections. The interpretation of the International Civilian Office (ICO) was requested, to ascertain whether the voting can be limited only for those with documents of the Republic of Kosovo.</p> <p>Status: Unfinished.</p> <p>D4D sees this as a sensitive issue which can exclude many displaced persons from the voting process, which is a right guaranteed by the Constitution. The right to vote with UNMIK documents should be taken away, but the validity of refugee and displaced persons' ID cards should be recognised.</p>
Ending the practice of conditional voting should be considered (NDI)	<p>It is good news that the parliamentary Committee has recommended the removal of the conditional voting. However, the proposed amendments on repairing the voters list warrant very little improvement on addresses and p-codes, which could bring back the conditional voting as the only option, in order not to violate the right to vote. Nevertheless, the elimination of the option of conditional voting from the law is positive because it obliges the Ministry of Internal Affairs (MIA) and the CEC to work hard on the voters list.</p> <p>Status: Addressed in principle, but additional mobilisation is required.</p>

Counting

Comments and suggestions	Response by the Working Group/Committee and assessment by D4D
<u>Centralizing the counting</u> in few locations, e.g. <u>at district level</u> , can ease the counting and can improve the observation of counting, but can also create complications on maintaining the integrity of materials during transport (NDI)	<p>The recommendation for counting votes in regional centres was given by the Committee for electoral reform precisely because this kind of counting eases its oversight. We should have in mind that the counting in regional counting centres adds to the transport of electoral materials, which creates other opportunities for abuse if transport is not monitored well. The Committee has left two options, for counting at polling stations and for centralised counting at several regional centres.</p> <p>Status: Unfinished.</p> <p>It is clear that this discussion cannot be completed without completing the discussion on electoral districts.</p>
<u>The use of scanners</u> for ballot papers can	The use of scanners for counting has been proposed by several stakeholders, especially if the

<p>simplify the safety of counting and can also enable their verification (ENEMO)</p>	<p>counting is centralized in several regional centres. This possibility was discussed and the Committee has recommended that the use of scanners should be considered. But this recommendation was not included in the draft amendments.</p> <p>Status: Unfinished.</p> <p>The cost of scanners means that this option is only meaningful in case of centralised counting. Information technology probably has the best potential for use in the counting process. D4D recommends that this issue be discussed in greater detail, because it can increase the trust and transparency in elections. If counting is regionalized or centralized, cameras should be considered too.</p>
---	--

Complaints, Appeals and Sanctions

Comments and suggestions	Response by the Working Group/Committee and assessment by D4D
<p>The possibility for the <u>CEC</u> to have <u>competencies over ECAC decisions</u> can complicate the resolution of electoral disputes (EU EEM)</p>	<p>The amendments of the new law contribute towards the improvement of this situation. In the future it is foreseen that ECAC decisions are not subject to deliberation by the CEC which is to implement them forthwith.</p> <p>Status: Addressed.</p>
<p>Consider to prolong the period of submitting <u>appeals and complaints</u> from 24 to 48 hours (EU EEM, NDI)</p>	<p>The timeframe for accepting appeals and complaints has been recommended for extension to 48 hours, and is expected to be voted as such.</p> <p>Status: Addressed.</p>
<p>Eliminate any possibility for collective fines (EU EEM)</p>	<p>The parliamentary Committee has recommended the elimination of collective penalties for political entities when irregularities have been identified or vandalism has been committed during the electoral campaign. Collective penalty has been preserved only for the non-removal of posters. Despite opposition from ECAC and Vetëvendosje, collective fines were dropped.</p> <p>Status: Addressed, but this is a degradation of the electoral process.</p> <p>The elimination of collective fines leads to a situation where political entities face no penalties for violations during the campaign. D4D Institute assesses that this decision represents a degradation because political parties will not make any attempt to discourage their supporters from violations – they may even encourage them to destroy say posters of other parties. This is particularly relevant because ECAC will need to investigate for individual responsibility, which is beyond its resources.</p>

	D4D draws the example of sports matches where clubs are effectively fined for the behaviour of their fans.
The legislation should guide to ensure that court <u>decisions are proportional with the committed acts</u> , in accordance with the Constitution and the criminal code (EU EEM)	<p>The Committee has completely neglected this important aspect by not offering any recommendation or instructions for courts to ensure their decisions are proportional to the committed violations. The Committee has not dealt with this point rationalizing this would be an intrusion into the sphere of judiciary.</p> <p>Status: Unaddressed.</p> <p>A legal interpretation should be included in the Elections Law, as well as in the Criminal Code and both should provide more detailed instructions for all types of violations. More specifically, ECAC should not have the competence to stop a candidate from running for unpaid fines.</p>
The law does not define <u>sanctions for political entities</u> that pay penalties late (ENEMO)	<p>A recommendation was put forward to eliminate the additional penalty, but increased the monthly interest rate of unpaid fines to 7 per cent (%) of the basic penalty. This change is positive, but it should be noted that a similar mechanism has not functioned in the past, and was usually removed or softened because only a few entities paid it.</p> <p>Status: Addressed partially.</p> <p>D4D insists that the penalties should be tougher and with strict deadline for payment soon after the end of elections.</p>

Political Party Registration and the Voters List

Comments and suggestions	Response by the Working Group/Committee and assessment by D4D
To draft a separate law for <u>party registration and their functioning</u> and candidates, should be considered (ENEMO)	<p>CEC administers most of the aspects of the registration of political parties and candidates, as well as their financial declarations. As is currently the case, the Committee retains the responsibility to register and certify political entities for the CEC, which is considered a conflict of interest because the CEC is comprised of political parties itself. The Committee has not even considered the option of drafting a separate law for registering political parties. Kosovo still does not have a law on political parties, which has a negative impact on the legal infrastructure of elections.</p> <p>Status: Unaddressed.</p> <p>D4D considers that a new law for the registration and the functioning of political parties should be drafted.</p>

The period for servicing the voters list is too short_(EU EEM)

The Committee has recommended prolonging the service for voters to two months, but this clashes with the recommendations of the Venice Commission which foresees a permanently transparent voters list. Extending the challenging period to 2-months is a modest progress compared to earlier, but does not meet international standards.

Status: Addressed insufficiently.

Taking into consideration the serious challenge that Kosovo faces with the voters list, relevant data from the civil registry should be made transparent all the time.

Conclusions and Suggestions

The mandate of the Committee for electoral reform has entered its last weeks, and the first draft is expected to be completed soon by the drafting group. The draft addresses few of the problems that have accompanied Kosovo's elections. The Committee should not end its work without addressing most of the problems and without closing the legal vacuum for manipulations.

D4D insists that the Committee reviews once more the recommendations and put more serious attempts to make the difficult decisions that are the only hope for restoring the trust on elections. The desire to complete the work in a timely fashion is understandable, but this 'reform' only guarantees the same violations. A non-election year is a unique opportunity that should not be missed to accomplish real reforms. Kosovo will rarely have the luxury of years without elections, and so this one needs to be utilised for in-depth reforms.

The opposition has an interest to prevent violations and should insist on the continuation of the mandate for reform. General elections can still be held in the Fall of 2013 as long as they do not coincide with municipal elections.

The decision on the system (districts, threshold, lists) must be reached quickly since it has a direct impact on regulating how to administer elections and delays the discussion how to prevent violations. The delay also leads one to believe there is a tendency to close the lists which represents a degradation that would mobilize wide opposition.

The superficial approach to abuse has to change. A more serious review needs to include the Criminal Code too. The legislation should guide and oblige courts to treat electoral violations with priority. The law should reduce the level of discretion that judges have and ensure that manipulators receive the sentences they deserve and proportionate to their violations. Such a systematic approach should bring about consensus and return the feeling that our elections are legitimate and well protected from abuse.

The drafting of a comprehensive electoral Code should be considered, to tackle the reform in-depth and ensure consistency. Demagogic arguments that there is no political will and that the content of the law does not matter should be dismissed.