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**REFORMING THE ELECTORAL  
SYSTEM OF KOSOVA**

**Discussion Paper**

Pristina, June 2005  
2<sup>nd</sup> Edition

**KIPRED**





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The opinions expressed in this paper are those of the authors and do not necessarily express those of KIPRED or of the Forum.

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*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.<sup>1</sup>*

## 1. INTRODUCTION<sup>2</sup>

The democratization of Kosova can only be as satisfactory as the compromise struck at the Security Council with the Resolution 1244 that defines the legal backbone of what Kosova can and cannot be. An unambiguous status of Kosova would be the most expedient way of solving some important issues. Due to political reasons, however, this cannot be broached at the present time. This is not to say that Kosova has reached the limit of its possible democratization without changing its status. It has been four years since the end of the war and the humanitarian crisis has long since been addressed. The authorities in Kosova should therefore be working toward improving local democratic principles in parallel to dealing with the lingering question of Kosova's final status.

Although there are numerous obstacles to the further democratization of Kosova, this paper argues that the current electoral system is one of the main barriers to its development. Improving the electoral system can provide for further improvement in individual and group rights as well as improve overall democratic accountability and legitimacy. As Kosova will pay for its own elections in 2004, the temporary system that Kosova has today must give way to an electoral system that is owned, paid for and managed by Kosovars.

Many in Kosova say that it is no use to talk about an electoral system unless the persons elected to these positions have real power to change realities on the ground. The power of the Assembly to be elected is directly related with the perceived meaningfulness of elections and to the power of the voters. As the ICG claims, "If the heavy hand of the SRSG is felt too often, Kosovo politicians will never gain the sense of responsibility that can only come with real authority" (2001: 18). In other words, many are pointing to the UN administration as part of the problem. While Kosovars have accepted the international mission with gratitude, even accepting its extra-ordinary powers, there is a need to start to create the foundations of a locally propelled democracy that is accountable to its own citizens, especially when greater powers have been transferred to them.

Overall, the electoral system so far has: (a) blurred the lines between ethnic Albanian parties and provided no stimulus to generate ideological profiling and to target specific voters according to the program; (b) indirectly encouraged ethnic parties and ethnic compromises, (c) eliminated the possibility for a sizable opposition, (d) increased party hierarchy, (e) left a number of municipalities without any representatives, thus weakening the voter-MP link, (f) offered unclear accountability channels due to the closed lists, (g) as it was enacted by decree, it did not enjoy a sense of ownership by its constituency, hence its legitimacy is limited.

This paper does not wish to discredit the electoral system that was adopted in 2000, as it might have been the best compromise taking into account a number of circumstances. Instead, this paper tries suggests that after three rounds of elections and four years of international administration and governance, there is a need to reconsider the political dynamism that will take Kosovo to post-UNMIK era. At the first stages of the process, the OSCE saw it essential “to find a system that voters will understand and accept and that can be made operational in time for elections.” However, the OSCE had also identified the need and the possibility to change the system later on: “It must also be remembered that these elections will be for a provisional assembly, and that the electoral system can be modified as voters, political parties, and electoral administrators gain experience” (2001: 4). By the same token, Reilly and Reynolds have observed that the “...the electoral system that is most appropriate for initially ending internal conflict may not be the best one for longer-term conflict management” (1999: 1).

### ***Recommendation for Public Debate***

There is a need in Kosovo for a public debate over the political culture, the normative values and system that its citizens seek to develop, regardless of the overall political solution over its status. Reynolds identifies four ways in which most electoral systems are adopted: via colonial inheritance, through conscious design, by external imposition, and by accident. The ideal way to choose an electoral system is by conscious design; hence, it needs to embark in a deliberative and transparent process of revising its electoral system. The debate should not center on technical issues of the electoral system, but rather on the democratic values and normative preferences than the electoral system should seek to promote. As Donald Horowitz claims, “No electoral system simply reflects voter preferences or the existing pattern of cleavages in a society or the prevailing political party configuration. Every electoral system shapes and reshapes these features of the environment, and each does so in different ways” (1). After Kosovars establish a consensus over a vision, a more technical discussion could take then place to shape the electoral system that would bring about the desired goal. Various initiatives so far have produced little results in getting this discussion, even in limited circles, started. New efforts must therefore be made, at the institutional levels, to ensure that this dialogue takes place. Lastly, this discussion must not be viewed as a way for one interest group to win over the other, but about establishing a debate over the future values that need to be nurtured.

## **2. AIM OF THE PAPER**

In the true spirit of a discussion paper that aims to raise an open-ended discussion, this work attempts to raise questions and often attempts to give more than one answer to these questions with the sole aim of eliciting feedback:

(a) Analyze the operation and political consequences of the present electoral system

and evaluate its short-term and long-term political effects, some which may only be observed later on;

(b) Analyze the relations between the electoral system and the political dynamics that it has produced;

(c) Analyze the issues that inform plans for creating an electoral system;

(d) Try to identify a preliminary vision of the political system and democratic values that Kosovo should aspire to develop (even under the assumption that Kosovo continues to be defined by Resolution 1244);

(e) Analyze what electoral system would be both realistic and conducive to contribute to bring about improvements in the political system;

(f) This paper is not meant to be a comprehensive analysis of all relative issues, but solely meant to stimulate debate. The paper discusses only the electoral system while it leaves out aspects of elections organization.<sup>3</sup>

(g) Finally, being fully aware that the electoral system only exists in a political context, this paper makes an attempt to identify several variations of an electoral system that is most conducive to individual accountability, inter-group relations, good governance, transparent decision-making and internal democratic structures.

### **3. DO IT ONCE, DO IT RIGHT AND BE INCLUSIVE!**

According to Arend Lijphart, the electoral system represents “a set of essentially unchanged election rules under which one or more successive elections are conducted in a particular democracy” (1994, 13). Among the many other definitions, perhaps the most basic and widely used is that the electoral system is the set of methods that defines the translation of votes into representatives’ seats.

For the process of electoral design to be successful, it needs to be very analytic as systems “tend to be very stable and resists change” (Lijphart 1994: 52). Although the nineties in the Balkans have seen electoral systems change relatively frequently in a general trend of moving away from majoritarian to proportional systems, it is important that in addressing the issue of representation in Kosovo, a great deal of attention should be paid to its application from the beginning.

If the system is to be seriously reviewed, it needs to involve all stakeholders in a true deliberative process. According to Roth, the importance of this process serves the additional purpose of helping people achieve their right to participate in government by ensuring a freer and more efficient electoral process, which in turn, will produce a fairer reflection of the wishes of the electorate, and therefore enhance the elected authority’s claim to legitimacy (Roth/DFID 5).

In 2000, the international community decided upon an electoral system that was deemed the best solution at the time, bearing in mind a number of local circumstances. Today, various political and civic entities have expressed their dissatisfaction with the

electoral system or with other issues related to the elections. 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 that all communities agree to a viable system of political representation that is conducive to accountable governance and interethnic cooperation.

Likewise, its technical nature poses many opportunities for manipulation by various interest groups that can potentially create an atmosphere of conflict (an example of this was the misunderstanding regarding the set-aside seats in the parliamentary elections in 2001). As Ilirjani summarizes Lijphart (1990), the electoral system is the most easily manipulated element of a political system. Also, while electoral laws alone are insufficient to ensure stability and good governance, poorly designed laws can entrench societal divisions and exacerbate conflicts (Ilirjani). Similarly, Reilly and Reynolds claim that the “The optimal choice for peacefully managing conflict depends on several identifiable factors specific to the country, including the way and degree to which ethnicity is politicized, the intensity of the conflict, and the demographic and geographic distribution of ethnic groups (Reilly and Reynolds 1).

The reform of the electoral law was also one of the conclusions that came out of a conference organized by the NDI, “to reform the electoral law in order to provide for direct accountability of the elected to citizens and for a more democratic representation (open lists, district division)” (2003: 2). Finally, it is important to revise the electoral system, to analyze various options well, and to involve all the stakeholders: political parties, civil society, minority groups and the international community.

#### 4. DEMOCRATIC TRADITION IN KOSOVA

For historic and circumstantial reasons, post-war Kosova remains democratically challenged. Indeed, studying democracy in Kosova can be a depressing endeavor. Kosovars have *never* fully decided their own fates or been responsible for their own affairs. They have continuously found themselves at the receiving end of colonial policies and have been handed over to an international trusteeship/tutorship, which in its own right, is not democratically run. Understandably, Kosova has never created a constitution that it could implement and genuinely identify with. The only period of relative political rights was between 1974 and 1989 when Kosova enjoyed a form of self-governing autonomy, although this was not democratic and there was a high degree of control maintained through the Communist Party. The other experience of quasi-state structures was the organization of elections by the resistance movement in the early nineties when Kosova declared independence (offering a mixed system with seats reserved for minorities).

Due to conflicts that have lasted for a century now, Kosova inherits extreme ethnic divisions. As a result of the polarization between and within communities, Kosovar

Albanians and Serbs have hardened positions on key recent historic matters. The definition of political loyalties along narrowly defined ethnic lines results in a lack of sway-ing votes that can be targeted by specific party programs. As a result, party affiliations are decided depending on the leaders of the major parties, or on who has sided with whom in the recent war. Consequently, there is little variation among parties and party programs that target specific sectors of the voters. Furthermore, party affiliations as a rule follow ethnic, sectarian and linguistic divisions. At this stage many key issues are still too sensitive to be broached. A possible solution there may be to create an electoral system with which all Kosovars can identify.

## 5. THE PRESENT ELECTORAL SYSTEM

The present electoral system goes to the Office of the Special Representative of the Secretary-General (SRSG) from the Central Election Commission as a Draft Regulation. After being returned from the Legal Office in New York, the SRSG promulgates it. The Central Election Commission is “responsible for the conduct of elections in Kosovo”. The CEC is appointed by the SRSG, but its work is said to be “technical and professional” (OMiK). The current electoral system takes Kosova as one electoral district for the Assembly Election with seats allocated on a proportional basis. The Sainte-Lague formula is used to calculate the translation of votes into seats. The size of the Assembly is 120 seats with 20 seats being reserved for non-Albanian communities. “These include ten for the Serb community, four for the Roma, Ashkali and Egyptian communities, three for the Bosniak community, two for the Turkish community, and one for the Gorani community. These seats will be added to any other seats that these communities may win out of the remaining 100 seats, for which all voters will vote (OMiK “Summary...” 4). The candidates’ list is closed, meaning that a voter votes for a political party and not for an individual candidate. Also, the system provides for a gender requirement where women must make up one third of the candidates’ list. There is no threshold for representation in the Assembly for any political entities. In the last parliamentary elections in 2001, the OSCE Mission in Kosovo, which ran the elections, set up approximately 1700 polling stations, 550 polling centers and an average of 750 voters were slotted for each station in 2001.

Date	Type of Election	System	Reserved Seats	Thres-hold	Magnitude (voters /representative)
28 October 2000	Local Elections	PR, Open Lists	None, minority officials were later appointed.	None	700-2200*
17 November 2001	General (Assembly) Elections	PR, Closed Lists, Single District	10 for Serbs; 10 for other minorities	None	Approx.: 8300
26 October 2002	Local Elections	PR, Closed Lists	None	None	160-3044 (average for minorities: 465)

*Elections in Kosova 2000-2002*

\*The magnitude from the elections in 2000 does not count municipalities where Serbs form a majority since most of the population had not registered, therefore no results can be extracted.

***The role of the international community and the set-aside seats***

The present electoral system was designed to facilitate the entry of minority political representatives in the legislation and not necessarily to bring about a genuine building of democratic institutions. These two need not be mutually exclusive, but compromises made to identify “groups” have so far prevented the development of the latter. The mere entry of minorities gave an additional boost to the credibility of the international community in Kosova but it did not necessarily reflect democratic values.

The participation of minorities was as much a result of pressure and direct concessions to the international community as the reflection of the generous attitude of the majority. The International Crisis Group concludes that “The Western preoccupation with securing Serb participation was both unnecessary and counterproductive” (2001: 13). Moreover, the minorities co-opted in municipal assemblies in 2000 never received the stamp of legitimacy from voters.

The additional ten seats reserved for Serbs never produced the outcome it was intended to create. It is worth adding that a number of Kosovar politicians did not understand that these would be additional seats and not a quota to be filled. Later, Kosovars agreed to ten seats for Serbs because this number was not enough to play a key role in any important decisions. Similarly to the experience of set-aside seats in other countries, they might have even had a more adverse effect on the public opinion than strengthening the Serb community. A previous paper by KIPRED concludes that since the Kosova Government lacked jurisdiction over the police, judiciary, macro economy and other key fields, the primary role of local decision-makers in interethnic relations was to create a favorable climate (KIPRED 2003: 31). As a privilege to a minority that used to lead an apartheid-like system before 1999, the set-aside seats have decreased the political space for Kosovar politicians to positively influence interethnic relations due to a perception of injustice towards the Albanian community.

***Kosovarize the Elections***

In April 2003, an MP initiated that the Elections pass under the jurisdiction of the Kosova authorities and called on for an Electoral Law to be adopted by the Kosova Assembly. Various political figures declared that Kosova is ready to pay for its own elections and that the international community need not spend a lot of its resources each time there are elections in Kosova, hence the process needs to be ‘kosovarized’ by drafting a new law (Gashi 2002: 3; Camaj 2002: 1). Not all parties agreed on how this process should turn out. Smaller parties agreed that the process needed to be koso-

varized, but due to disagreements among parties, some preferred that the OSCE run the next elections as well.

In 2002, the SRSG authorized the creation of an Elections Working Group (EWG), a non-statutory (informal) body appointed by and serving for the SRSG. The group is composed of various members of the main political parties and from the civil society. Various members of EWG have expressed their dissatisfaction with the pace of their work, the lack of commitment shown by a number of the participants, and the difficulty of reaching consensus.

Despite attempts by Kosovars to transfer the administration of the elections to local legislative bodies, the SRSG announced that the elections were to remain under the jurisdiction of the UN administration. As a result, some suspect that the EWG was designed to fail. Some among them have expressed fears that the SRSG wants to portray Kosovars' contribution as a failure and to make the argument that the electoral system should not change.

One paper submitted at the OSCE seminar on the electoral system for Kosova claims that the massive international presence is only justified if this helps the Serb community see this process as legitimate. However, no technical reasons could serve as the basis to argue that Kosovars cannot organize their own elections. This paper claimed that "If countries in post-conflict situations, plagued with illiteracy, and without an electoral tradition – as it was the case of both Haiti and Mozambique – could organize acceptable elections with external technical support, it would be difficult to argue that it is not possible – for technical reasons – to have elections managed by Kosovars, provided that the necessary technical support is made available" (OSCE "The choice ..." 15-16).

The Head of Legal Transitions with the OSCE, Andrew Caldwell, has stated that the international community should retain a very strong presence, but that their authority should be to assist and advise rather than assume executive authority (Caldwell 2003). Its primary role should be to hand over as much of the process to the local system. In this light, this paper recommends that in order to find the best solution and to share responsibility, the UN administration should devolve the matter to the Assembly of Kosova, although retain a strong presence in drafting the electoral law (it should condition this with consensus among all major political forces) and in overseeing the whole process of elections.

## **6. CRITERIA FOR EVALUATING AN ELECTORAL SYSTEM**

"Electoral systems need to be tailored closely to what those who design them want them to do. Of course, most of the time, those who design such systems want them to produce results that favour the interests they prefer. My point is that there are other ways to evaluate electoral systems and the specific arrangements made pursuant to

them. And very likely, no matter what the intentions of the designers, there will be some unanticipated consequences (Horowitz 200: 22).

The organizer of the elections, the OSCE Mission in Kosovo, positively evaluated the closed List-PR (national) as simple for reasons of transparency, practicality and sustainability. However, these are not the only criteria to a successful election. The following should also measure whether the electoral system has served the purpose:

- (a) How much has it strengthened democratic institutions? Has it provided for centripetal forces that pull towards compromise?
- (b) What was the nature of the political process that it is supposed to restore?
- (c) Has it encouraged greater political participation?
- (d) How much legitimacy has it given to the government? Has it made the government more accountable to its constituents?
- (e) Has it brought a perception of political stability, provided incentives for interethnic reconciliation (internally and externally) and crosscutting parties?
- (f) How much has it translated seats to votes proportionally? (Representativeness)
- (g) Clear legal framework, and understood by all stakeholders? (Accessibility)

Hence, the evaluation of any given system should not focus on a small set of criteria only, as it will always be a combination of factors to be measured against the goals set by all the stakeholders at the outset of the process.

## 7. AN ANALYSIS OF THE EFFECTS IN THE POLITICAL SYSTEM

Due to the unresolved status of Kosova, one problem is that people do not focus on local problems, but on major problems only, like independence or relations with Serbia. That said, there has been a positive trend in this regard, in that local problems have been more stressed in the last local elections than in the previous local elections in 2000 (Stein 2002). As three elections have already been held, campaigning has become more disciplined. A system of checks and balances has been introduced with financial auditing of the party and of the candidates, which proves a positive development in some aspects.

The following list delineates the major merits of the system, List-PR (proportional) that has been used so far:

- (a) Simple system with little irregularities (practical and transparent);
- (b) Faithfully translated casted votes into seats;
- (c) Few wasted votes
- (d) Made power-sharing more visible
- (e) Relatively low cost (hence deemed sustainable);
- (f) High minority representation (double representation);
- (g) Gender rule (Kosova is 12<sup>th</sup> in women's representation in the world).

Overall advantages of PR can be summarized as follows:

*First*, Lardayret argues that PR tends to allow the representation of extremist groups which then breed even more political extremism. For Reynolds, PR only helps to fulfill minority parties desire for representation instead of increasing their electoral base.

*Second*, PR systems tend to encourage conversion of non-political divisions into political cleavages and perpetuate them. The evidence from African countries suggest that PR has exerted pressure on parties to be less rather than more ethnically exclusive.

*Third*, PR systems usually produce multiparty governments, which run the risks of instability and inability to implement coherent policies. Lijphart, however, has shown that government elected through PR is no less effective than those elected by other systems.

*Fourth*, PR not only allows extremist parties into parliament but also gives them too much leverage as they often become the pivotal actor in government coalition formation. To this Reynolds responds that it is far better to co-opt extremist parties in the government rather than forcing them to the fringes of the system.

*Fifth*, Lardeyret says that plurality systems are more likely than PR to give rise to moderate parties for under such a system parties are forced to compete constantly for undecided centrist voters. To this Reynolds answers that the example of Thatcher-led government in Britain suggests that this may not be the case. (However, I think this argument is about the median voter who is not necessarily at the center of a political spectrum. This means that Thatcher's government could be closer to the median voter than to the voter in the center of an ideological spectrum) (Ilijani).

Clearly, one ought to spend some more time analyzing the positive and negative effects in greater detail before jumping to improving any parts of the system. It is interesting to observe that other positive features that List-PR usually produces did not occur in Kosovo:

- (a) Stimulate parties to present diverse lists of candidates;
- (b) Encourage the election of minority representatives;
- (c) Make it more likely that women are elected (women did get elected, but not due to the closed-list, but due to the 1/3 rule);
- (d) Restrict the growth of "regional fiefdoms";
- (e) Lead to more efficient government.

Features of open lists and of majoritarian systems are discussed further down in the paper. The rest of this section analyzes in more detail the effects that this system has

produced in Kosovo in four years under the international administration.

The list of outcomes below is certainly not an outcome of the electoral system alone. Electoral outcomes are not just produced by systems, but by the preexisting pattern of social cleavages, single or multiple, bipolar or multipolar (Horowitz 2003: 21). However, the issues listed below are deemed to have been largely influenced by the electoral system.

### ***Irresponsive and weak governments are likely***

The proportional system has prevented the largest Kosovar Albanian party, the Democratic League of Kosovo (LDK), to win an outright majority, which they would have done in a majoritarian system. The twenty set-aside seats granted to the minorities by the Constitutional Framework, also decreased the relative superiority of LDK and its ability to form a government with less political forces in a coalition. As a result, it was forced to form a government with the two next biggest Albanian parties, the Democratic Party of Kosovo (PDK) and the Alliance for the Future of Kosovo (AAK). Due to the necessity to mediate and to obtain consensus from many political entities, the government is vulnerable to collapse. Personal differences between diametrically opposed leaders make this more all the more difficult.

This government can thus be strong only if the three biggest parties can agree on dividing the spoils well, and if they can overcome fundamental differences. However, a wide coalition formed on this basis creates a legislature with no opposition and is likely to produce irresponsible governments and decrease their legitimacy in the long run. It is also important to analyze the lack of inducements to form a campaigning coalition ahead of the elections. Since Kosovar politics is often determined by local and regional aspects, this is not necessarily the case in all municipalities. According to Horowitz, "Coalitions that are created after elections merely to form a government of 50 percent plus one of the seats in parliament may prove to be fragile when divisive ethnic issues arise. So, for interethnic conciliation, the question is how the electoral system affects the pre-electoral calculations of parties and politicians (2003: 9). This electoral system provides no incentive for pre-electoral coalitions. The parties need not moderate their campaign rhetoric, which enables extremist parties to easily bring radical views into the Assembly without worrying ahead of the elections if they need to enter any coalition or not.

### ***No effective opposition***

While Kosovars are happy with the image of unity that the three biggest parties are in the government, this occurs at the expense of lack of an opposition. An opposition is only effective if it presents an alternative to the present government. In Kosovo, the five largest parliamentary groups are in the government, leaving only three one-seat parties in the opposition, severely weakening democratic governance. Three seats cannot serve as an alternative to the government backed by 117 seats, hence there is no

opposition to speak of in Kosova. Understandably, the lack of opposition is not solely created by the electoral system, though, as argued above, the electoral system and the set-aside seats specifically have had a major impact.

The lack of opposition also enables the parties in the government to share the spoils of governance, and it is only left to the good will if they choose not to do so. This might have reduced inter-party tension, but this stability occurs at the expense of mutual monitoring. The extent to how much this has happened in Kosova will become apparent in the years to come. Due to the set-aside seats, minorities saw their representation swell to almost one quarter of the Assembly. As argued above, due to ethnic tensions, LDK was left to form a government with the remaining three quarters. Mathematically, there was room for a coalition that maintained a sizable opposition, and one might claim that a wide coalition was more the result of the parties' positions than of the system. However, it is interesting to observe that due to essential differences with the Serb community regarding the status of Kosova, LDK had to pair up with the second largest party, PDK, to reach the required majority of 61 seats, despite great differences. Although the third Albanian party, AAK declared itself against forming a government with the LDK without the PDK, this would have been theoretically possible had all other non-Serb minorities entered the government, hence creating a very unstable government. As LDK was unable to form a government with the third Albanian party, AAK, which claims to be positioned in the center, it was only natural that AAK also joined this coalition, hence forming an extremely wide coalition.

### ***Disillusionment with the political class***

Arguably, it is the political circumstances and the ability to deliver the much-promised independence, which will evaluate whether the present political class succeeds or fails. If the promised delivery does not come in its full form, or if it does not arrive in a timely fashion, Kosova might face a continuously decreasing turnout and might see all its leaders discredited. This argument is related with the trust that the voters have towards the institutions, political parties and individuals who run them. A poll in April 2003 reported that the three most popular persons in Kosova were the President of the Parliament, the Head of the Kosovo Protection Corps and the Prime Minister, while the three party leaders lagged behind. It is worth noting that the Institution of the President of Kosova does not enjoy this type of popularity, hence the conclusion that the trust towards the other two is due to the two leaders. It is interesting to observe how the public makes the distinction between the political parties and these two institutions, despite the fact that these institutions serve to the will of the political parties.

### ***Closed lists and greater hierarchy within parties***

Many elected members do not necessarily thank the voters for their election, but the party itself. This may be justifiable in the sense that it strengthened the parties and gave them a chance to discipline their ranks, which was a necessity at the outset. However, in the long run, such a process decreases the personal relations of MPs with the voters

and does not motivate parties to respond directly to voters' needs. At the same time, it inhibits greater decentralization within parties and strengthens the fact that there are no effective alternative options within parties. Some elected members (central or municipal levels) are eternally grateful to the central leadership of the party for making them respectable and powerful politicians who can wield power in their small fiefdoms and hand jobs to friends, party members and family. Municipal runners are responsible to the party and this leads to corruption (Makolli 2002). "National list-system PR usually reposes great power in party leaders to decide which candidates will have favourable positions on the parties' lists and thus have better chances of being elected. When central party leaders have such power, the sovereignty of the voter to choose the candidates, rather than just to choose among candidates, is thought to be impaired. (Horowitz 2003: 6).

Parties in Kosovo are fairly rigid and hierarchic as they have been modeled after the LDK (which has in turn been modeled similarly to the Yugoslav Communist Party); the "closed list" makes it even more difficult for internal reform and democratic decision-making. For example, many reformist LDK members were dismayed when after hours of voting in the General Congress of LDK, President Rugova with a stroke of a pen decided to increase the size of the Central Council to include all the candidates who had not made it in the internal elections, thus violating the status of the party. There are similar cases, though less striking, in other parties as well. One MP declared that if "you would like to become an MP you need to be loyal to the central leadership."

Some other statistics also point to the hierarchy within parties. According to KACI, most people switched party loyalties ahead of the 2001 elections due to "disagreements with the way the party is led" (38.9%) (2002, Appendix). Fairly contradictory, 71.5% of the voters were happier with the party leader than they were with the party platform and the candidate list for the assembly (54.7%), which points to a high degree of dependency on party leaders despite disagreement with their performance.

### ***Lack of geographic representation and personal accountability***

Many countries stress the importance of geographic representativeness as location often determines specific interests for various dispersed communities. Closed lists enable a disproportionate representation of the capital in national politics. This is especially a case in Kosovo where a number of municipalities are not even represented in the Assembly, although on average, each municipality should take up four seats. Due to the closed lists, the parties disproportionately favored candidates based in Prishtina and candidates whose party lost largely in places where these particular MPs come from. Some MPs might have even moved to the capital in the meantime, hence weakening the geographic link between the voters and the candidate even further. The limitation to vote for a political party and not for a candidate also takes away the direct accountability and dilutes the accountability from the elected representative to the citizen.

## **Violation of “one person=one vote” rule**

Overall, an extremely generous electoral system for minorities intended to balance the power with the majority. Despite the doubling of minority MPs, due to the great number disparity compared to the majority (Serbs number less than 10% of the total population), its practical effect remains limited and offers no extra powers to the minority anyway. The extreme measure never succeeded in addressing the need of the largest minority, Serbs. As claimed above, instead of strengthening their position, doubling their seats forced Albanian political forces into forming a wide coalition. If the designers of the system thought that this would force them into a coalition with minority groups, this was unrealistic to expect. The position of Serbs has been far more protected by extra-ordinary powers of the SRSB than by their doubling of strength in the Assembly. Overall, short-term ethnic compromises damaged the understanding of the concept of democracy as a process as well as an end-state. Horowitz claims that, in principle, “the best electoral system is the one that straightforwardly and most accurately reflects the preferences of voters” (Horowitz 2).

Overrepresentation of minorities is an increasingly accepted concept in literature and practice, however, a serious criticism questions the way that overrepresentation entered into practice. Firstly, there was no public participation and no public discourse over the first electoral system. As many decisions made by the UN administration are outside public view, this was greeted with major public outcry. Second, it is widely believed that most politicians that engaged in negotiations initially were led to believe that the twenty set-aside seats for minorities was a quota to be filled in case they do not reach the proportional share of seats. Third, similarly to many post-colonial societies, previously privileged minorities who find themselves on the receiving end of discrimination are then again privileged as a minority. There have been very loud voices condemning these tools as similar to those of the Serbian state during Milošević’s regime. Some go as far as claiming that this was the minority that ran the apartheid-like system for ten years, and now they are being awarded with super-powers that can condition the will of the majority. Fourth, this leads to a renewed sense of mobilization of the majority with the immediate effect of increasing patriotism and decreasing cross-ethnic votes even further. This blurs the lines between ethnic Albanian parties and eliminates the stimuli to generate ideological profiling and to target specific voters according to the program. Practically, the system today indirectly encourages ethnic parties and ethnic compromises.

*Continuously decreasing voter turnout*, arguably due to:

- (a) The end of the initial post-war enthusiasm and euphoria. According to Caldwell, the 2000 elections should not be taken as a point of reference. Firstly, Kosova was free of Yugoslav rule for the first time and these were the first free elections held in the post-war period.
- (b) Dissatisfaction with the whole political class due to the (i) inability to solve the final status, (ii) widespread corruption.

- (c) The impotence of elected Kosovar institutions due to slow transfer of competences from the international administration, which decreases the perceived relevance of voting.
- (d) The inability to deliver provides no record on what basis to judge the performance of the parties. “While the three main parties assert their commitment to sound, democratic government, the rule of law, a market economy and so forth, given that none has any record of government there is no basis on which to assess their claims” (ICG 2001: 8).

In the end, the participation of Serbs, although rising in the local elections in 2002, was not to the same degree as that of the majority, hence only partially legitimizing the internationally mandated political process in post-war Kosovo.

Reviewing this paper, Horowitz agreed that the features above are “exactly what would be expected from such a system in a society with conditions such as Kosovo’s” (Horowitz 2003).

## 8. WHERE SHOULD KOSOVA SEEK TO BE?

In every analysis, the way to proceed is to ask what goals should be fostered, which goals are preferred over others, and what are the likely effects of various alternatives. No one can answer these questions without an extended analysis that links electoral reasoning to the party system and the pattern of social cleavages (Horowitz 2003: 23). Furthermore, he adds that choosing an electoral system inherently involves trading off “one value against another; and, even then, there are always unanticipated consequences” (Horowitz 2003).

### **The challenge of a debate on the electoral system is to balance between:**

- What is fair?
- What will work?
- What is not costly?

### ***The values that ought to be upheld and promoted by the electoral system:***

- (a) An electoral system that people can identify with (local ownership of an electoral process that takes into account the local culture);
- (b) Foster the integration, rather than the separation of communities;
- (c) Identification with the elected and individual accountability;
- (d) Responsive and accountable institutions;
- (e) Cross-ethnic votes;
- (f) An electoral system that is easily understood (Roth);
- (g) Relatively low-cost system;
- (h) Democratic institutions for all instead of short-term ethnic compromise.

### **The Four Relevant Factors that could be subject of discussion:**

- The electoral formula (the different forms of proportional representation);
- The district magnitude (the number of representatives elected per district);
- The electoral threshold (the minimum support that a party needs to obtain in order to be represented);
- The size of the representative body.

## **9. WHAT SHOULD THE PUBLIC AND ITS POLITICAL LEADERS DEBATE ABOUT?**

It is best to start with a list of issues that need to be addressed, what needs to be avoided and with creating a vision to what Kosova should aspire. A number of value-laden issues should be debated within the Kosovar public and political elite as a precursor to discussing the electoral system. Instead of jumping to discussions over open and closed lists, Kosovars need to clarify the vision and discuss among themselves the features of the political system they would see worth working towards or important to avoid. Some of these debates have been delineated below:

- (a) **Strength of government** - A coalition government: weak government and weak opposition vs. strong government with a loud opposition. How useful is the necessity and possibility of forming alliances in an immature democracy? What has been the role of the opposition in Kosova? Why does the Serb coalition tend to walk out of the Assembly?
- (b) **Accountability** - individual, party. Do we want people to hold individuals accountable or parties? What has proved successful so far? Who do people vote for: parties or individuals, or both?
- (c) **Geographic representation** (a number of municipalities ended up without any representatives in the Assembly). Do we want the electorate to feel that their specific regional interest is represented in the Assembly? Can a member of AAK from Gjilan represent the AAK voters from Gjakovë better than an LDK member from Gjakovë would? Should Kosova be a one single electoral district or should we create electoral districts to ensure geographic representation? If yes, is it wise to embark on designing brand new electoral districts or should it stick to municipal borders as electoral districts to avoid excessive politicization of this potentially dangerous process?
- (d) **How to ensure that campaigns are made over concrete issues?** Ideological and programmatic voting vs. ethnic? Due to the legacy of the war, people have been voting along ethnic lines or along the line of the war or resistance. Ethnic background is a concrete issue as well, but this only occurs since the recent war of the Yugoslav state had an ethnically specified target,

and similarly, a number of Albanians took revenge on Serbs after the war. The society should attempt to reorient citizens' interests towards specific needs. This is not to diminish the importance of ethnicity, as this can be a specific need, however, this mainly occurs at times of crisis. In order for the electoral system to have a reconciliatory impact, it should address ethnic issues in way that does not undermine the relationship between the majority and the minority. In the long run, ethnic issues should no longer be part of specific campaigning. Lijphart argues that in order to diminish the saliency of one division line by increasing other lines of division. However, in order to pressure politicians into peacetime effective and efficient performances, the parties ought to begin to develop ideological profiles and meet the demands of specific voter groups. Can this best be achieved through strong opposition? Granting more competencies? Clear accountability?

- (e) **Representation of minorities** - strict proportionality, overrepresentation (at the expense of interethnic relations?) or special allowances at lower levels; special constitutional mechanisms for the defense of key minority interests (culture, language, education)? Do the set aside seats really empower the minority? What if the conflict continues? If the perception is that a specific ethnic group is a threat to the rule, the majority will mobilize and overcome differences in this regard. In some countries, setting aside seats is considered only for smaller minorities that are not threatening to the majority. As the set-aside seats irritate the majority since it violates "one-person = one vote" rule, various legal tools might be more appropriate instead of overrepresentation. The set-aside seats should enable small minorities to get represented, but not to change the political landscape and political balance in intra-majority relations. Hence, adequate proportionality might be more appropriate if coupled with other constitutional mechanisms, and respecting one person = one vote rule. The sense of continued extra-democratic privileges might preserve the "cold war" mentality and prevent a non-ethnic outlook and practical issues to dominate the electoral campaigning. Any possibilities for cross-ethnic votes? Florian Bieber claims that "the fact that parties have to identify as minority parties before the elections makes the creation of cross-ethnic parties nearly impossible."
- (f) **Internal party formation and cohesion.** Do Kosovars want strong parties, strong leaders with a weak base or weak central leaders with a strong base? Who should propose the list of candidates? The central leadership with approval by the branch? Proposed by the branch and approved by the center?
- (g) **Voter turnout trends** - belief in the system? Belief in the power to change? Maybe the 2000 marker was too high to begin with due the liberation euphoria. What is a sufficient amount of participation that legitimizes any elections? Should voting be mandatory? 50%? None?

- (h) **Displaced and Diaspora** - in their original districts or create new districts? Enfranchising: The criteria for UNMIK civil registration as such enfranchise any Serb refugees from Croatia that choose to become Kosova residents. The condition of having at least one parent from Kosova might enfranchise from one to two million citizens of Turkey of Kosovar origin if they choose to vote.
- (i) **Average District magnitude** - Divide the total number of seats in the legislature by the number of districts. What is the ideal fraction of how many people should be represented with one MP? Consider small particular communities and minorities. In municipal assemblies, one MP from Prishtina represents (average of elections in 2000 and 2002) 2,604 citizens, while in Novo Brdo/Artanë approximately 108 citizens. “The district magnitude should be discussed in the context of achieving the most proportional result. Lijphart says that a district magnitude over 10 is enough. Other authors say a district magnitude of 5 and above and bring equally proportional results” (Ilirjani).
- (j) **Threshold of representation** - (the minimum percentage of the vote that can earn a party a seat under the most favorable circumstances) (Lijphart 1994). Threshold of exclusion: the maximum percentage of the vote that, under the most favorable conditions may be insufficient for a party to win a seat. The lower and upper threshold: winning the lower = possible to win a seat; if it passes the upper = guaranteed to win a seat.

Finally, every electoral system is biased in one way or another. As Horowitz argues, “The fact that each electoral system contains a different array of biases from every other electoral system means that those who decide among such systems can choose, in effect, to prefer one set of biases over another. And to prefer one over another is to make a policy choice” (Horowitz 3). The key is not to eliminate all the bias, but to choose the positive bias that will produce the values that we identify as desirable. Hence, the biases ought to be planned and made consciously in consensus.

## 10. THE PROTECTION OF MINORITIES

One of the key issues in this debate is the protection of minorities. An electoral system that is not embraced by all major political forces does not enjoy sufficient consensus. One international official said that “an election in 2004 which does not seriously involve the Serbs will not be recognized by the international community” (Caldwell). There is recognition by Kosovar leaders of this issue. Despite a widespread outcry towards the set-aside seats, the advisor to the President of the Parliament, Ramush Tahiri, claimed that “positive discrimination should be no worry to the inter-party consensus, as this never crosses 20% and we are not interested in losing interest of Serbs

to participate in the Assembly.” International officials have often repeated that accommodation towards Serbs is the best recipe to avoid the partitioning of northern Kosovo.

It is worth noting that Kosovo does not have a broad polarized society, but rather faces a deep rift between two communities with coinciding ethnic, linguistic, religious cleavages. As Horowitz notes, “If many social groups are organized into separate parties, each of which can gain a small fraction of the total seats, the likelihood is that political differences will be magnified rather than compressed” (2003: 15). As a result, the set aside seats that pushes parties to identify themselves with an ethnic identifier translates this deep rift to the Assembly. This is good in so far that the Assembly serves as a true picture of the present situation. However, the reconciliatory chance of the electoral system has been missed. “As in deeply divided societies most political choices are anyhow limited within groups rather than between groups, this system is unlikely to bring about a dramatic improvement of interethnic relations as long as the overwhelming majority of group members vote for mono-ethnic parties” (Bieber 2003: 8). This means that the electoral system induces no moderation during the campaigning and vote pooling remains a distant ideal. As Horowitz cites Sartori, “Governments may be formed only with difficulty, their composition may be unpredictable, and their durability may be doubtful. This situation has been called by Giovanni Sartori ‘polarized pluralism,’ a situation fostered by PR and conducive to immobilism. Parties cultivate only their own supporters, and compromise is hard to come by” (15-16).

### ***Set aside seats***

The set aside seats were introduced as a temporary method of making minorities feel better represented, especially in the case that they do not participate in large numbers. However, as noted above, this did not produce any meaningful guarantees for them. Minorities do not need a system that provides them with symbolic power, but with real influence, which may make their votes potentially “valuable to majority candidates, rather than token seats” (Horowitz 2003). If one of the main motivations to introduce set-aside seats was to address the fear of low turnout by Serbs, in the last elections, Serbs participated in almost the same numbers as Albanians did, though only in municipalities where they are a majority. Throughout the western world, strict proportionality is considered the ultimate goal for any minorities. As Kosovo’s minorities are fairly small, no increase of number could protect the vital interests of any community. Although the most politically correct attitude is to defend the set-aside seats, this paper argues that they have had a greater counter-effect. Distinguishing set-aside seats from other electoral mechanisms to defend minorities, Bieber concludes that “Generally, reserved seats are the least subtle means of including groups in elected bodies. Not only can this result in majority-hostility, as outlined above, but it also establishes a particular context for the participation of minorities in the political life of the country (2003: 10).

Also, demographic trends have an adverse effect on minorities. Every year, there are around 50.000-60.000 new voters of primarily ethnic Albanian origin that will dilute the

relative power granted by the overrepresentation in the years to come.

### ***Minimize wasted votes***

If the set-aside is an idea to do away with, there should at least be an attempt to minimize the number of wasted votes of the geographically dispersed population. There are two ways to ensure this: (a) ensure overall proportion through top-up seats (a number of seats could be granted through closed lists if others are granted on district basis) or (b) create non-territorial districts where dispersed minorities can constitute a separate district (see the description of the system below). For example, if Serbs south of Ibër/Ibar river form 2.2% of the voter population, they could form a two-seat district. Otherwise, their votes would be lost due to their subordinate number in dominated Albanian areas. These votes would not get lost as they would be compensated through the seats granted from the closed lists, but these would probably go to the political entities from the north who do not necessarily represent the interests of the dispersed community of Serbs throughout Kosova south of Ibër river. Since Serbs south of Ibër might have different interests than those in the north, they should ideally be able to choose their own representatives regardless of the north. Hence, dispersed districts would somewhat empower Serbs south of Ibër river at the expense of those in the north. As ICG claims, “Those in the isolated enclaves within Kosovo feel more vulnerable to Albanian violence and other forms of pressure, and broadly have stronger incentives to find a modus vivendi with Kosovo’s Albanians” (ICG 2001: 16). Depending on the number of Albanians north of Ibër/Ibar river, and/or of the Diaspora population, these could constitute a basis for other non-territorial districts as well. Again, the votes of the third and fourth member otherwise wasted, would be distributed to the party and counted for overall proportionality. These districts would also produce greater pluralism among minorities without causing them to lose seats. As Horowitz claims, this “nonterritorial solution for dispersed minorities does take them out of the pool of voters whom majority politicians might otherwise wish to attract at the margin in close contests.” However, as claimed above, the major cleavage that divides Albanians and Serbs leaves no hopes for this to occur. While the system should ideally provide for incentives for majority parties to appeal to minority voters, due to the deep rift, Kosova today must search for accommodation models, instead of cooperation. However, this certainly remains an option for the future as tension subsidies.

### ***Retain the set-aside seats for non-threatening minorities***

The reserved seats could still be useful for non-threatening minorities which would not be represented in parliament otherwise, thus a number of reserved seats for minorities that would otherwise not get represented should probably be kept, following a similar system in Croatia, Slovenia, Montenegro and Romania.

## ***Constitutional guarantees and other tools that could be made available to minorities***

As the electoral system can never be enough to protect the vital interests of the minority in times of crisis or their everyday discrimination, Kosovars should debate other constitutional, judicial, or legislative mechanisms that can put minority specific issues under their control. This is outside of the scope of this paper, but a law on non-discrimination might be far more useful than any increase of the number of minority MPs that irritates the majority and indirectly worsens the interethnic climate.

- (a) Constitutional guarantees
- (b) Veto powers on minority concerns at municipal level (culture, religion, language, education)
- (c) Strict proportionality
- (d) No wasted votes
- (e) Communities' Committee
- (f) Low threshold on initiating a motion against laws that affect rights of communities (then consensus is needed among Members of the Presidency of the Parliament, or a panel, in both minorities have a sizable representation);
- (g) Competence of the SRSB

## **11. CHALLENGES TO GEOGRAPHIC REPRESENTATION AND MULTI-MEMBER DISTRICTS**

Party and ethnic affiliations are not the sole determinants of the interests of the citizens. Geographic representation is often a major component, especially in a society based on agriculture and family ties such as Kosovo. Hence, quality of representation and geographic ties with the electorate present a challenge that the electoral system of Kosovo should bridge.

When the OSCE Mission in Kosovo opted out for a single electoral district in 2001, this was made for reasons of simplicity. However, then “all of the three big Albanian parties expressed a preference for a system of multiple districts, with individual Assembly members representing constituents in a given area” (ICG 2001, 5).

Establishing districts is a complicated task, and their design needs to follow the following criteria: same distribution of voters, geographically compact districts, capture cohesive communities, and contiguous territory. In Kosovo, this was rejected ahead of the parliamentary elections in 2001, due to the “absence of up-to-date population data” (ICG 2001, 5). OMiK also cautioned against drawing single-member electoral districts: “Without more demographic data, districts in Kosovo may lead to serious disparities in the weight of votes. Some voters and groups will be advantaged at the expense of others” (2001). Equally populated districts are also very difficult and politically sensitive to design. However, no justification has been produced for why a mixed system based

on Kosovo's existing 30 municipalities was rejected in 2001. Since the majoritarian system, associated with single-member districts, is not deemed appropriate for Kosovo, there is no need to discuss it in this paper.

Geographic representation could thus be solved with multi-member districts where districts coincide with municipalities and each municipality/district is granted a proportional number of seats depending on size of the voting population. This helps prevent gerrymandering and a complicated and costly process in the process of designing electoral districts. In Bosnia, MMDs comprise several municipalities, and if this lowers the cost, it might be an option for contiguous small municipalities in Kosovo as well.

If decided to create single member electoral districts, these should respect demographic, geographic, cultural and ethnic factors. It is also important to agree about who can decide on redistricting in order to prevent gerrymandering. It is very important to discuss whose powers are districts seeking to increase and whether they are being created to be homogeneous or heterogeneous. If homogeneous, will empower and create minority-majorities there? Kosovo is not a large country with many geographically dispersed interests. While this is desirable, it does not go the extent of fragmenting it to the degree to desire single-member districts.

## 12. THE CHALLENGE OF OPEN LISTS AND GENDER RULE

The closed lists are said to ensure a better representation of women. Kosovo is 12<sup>th</sup> in the world for gender representation in the Assembly, however, this was more due to the 1/3 rule, rather than to the effects of the closed list alone. Similar rules can also be enforced in an open list, though with higher political cost.

In any case, if gender representation alone is one of the few advantages of the closed list, this comes at the expense of the public opinion. According to a poll conducted in early 2001, 91.6% of the interviewed officials thought that voters prefer to vote for an individual and not for a party (Thiel/IFES 10). IFES then recommended to "give a serious thought in keeping the open list system as it was in 2000" (IFES/Thiel 32). The open list is key to ensuring that officials are more accountable to those who cast their votes for them. The open list, thus, serves to compensate for the main disadvantage of the List-PR, the lack of direct accountability. As majority parties in Kosovo do not put minorities in their lists anyway, the criticism that open lists may damage potential minority runners does not stand.

The disadvantages of the SMD are:

- (a) Minority parties are receiving little or no representation
- (b) Larger parties are gaining "seat bonuses" over and above their share of popular vote;
- (c) Government with 100 percent of executive power come into office with less than 50 percent of the popular vote;

- (d) Governments based on a simple majority of popular vote are rewarded super-majorities. (Reynolds 1995).

While SDM provides better quality of representation, PR provides proportional representation. To solve the problem of vertical accountability of PR systems, Reynolds proposes a modified version of PR with smaller multimember districts designed according to traditional geographic and societal boundaries, and open party lists. Such a system would correct some of the problems of PR; provide further incentives for parties to be ethnically inclusive while maintaining the overall benefits that PR offers to diverse societies.

An open lists increases individual accountability, however, the drawback is that it is much more difficult to ensure that women and minorities are elected at this level. However, by 2004, it will be five years since the end of the war, and the 1/3 rule so far will have strengthened a number of women. Hence, some women will already be able to run and win on a meritorious basis. Practical effects of gender representation in the Assembly have started to be noticed by male senior officials too. The advisor of the President of the Assembly claimed that women are “less extremist and have calmed tensions” (Tahiri 2002). Open lists can increase the activities of women in seeking their votes and contribute to their political credibility and not just to symbolic representation.

There are also other mechanisms to ensure that women are elected. A portion of the seats can be distributed on a two-tier level (closed top-up lists, where a fiercer gender rule can be enforced). E.g. If a 1/3 rule has been enforced on the overall list at the present, a 50% rule could be enforced on 1/3 of the seats distributed from a closed list on the national level. A combination of democratic maturity and a milder gender rule should be able to produce a sizable women representation in the legislative bodies. Instead of guarantying unquestionable seats to women who will have very limited popularity and influence, these are granted on a slightly more meritorious basis with almost the same effects as the closed lists so far.

Arguably, the 1/3 rule can be enforced in an open lists as well, however, this is very difficult to justify as the election of women with far less votes could move up the list ahead of men with more votes, which will create an antagonistic political climate in party branches.

Other issues include: the timeline, voters' lists (problematic and unsortable data from the civil registry), legal framework (reserved power or not).

### **13. WHAT SYSTEM SHOULD KOSOVA SEEK IN PRINCIPLE?**

Before this paper narrows the options down to one major principle, it is worth paying

attention to an overall breakdown of electoral systems available to policymakers in divided societies.

In broad lines, there are three major electoral systems:<sup>4</sup>

- a) Strict proportional (no set-aside seats)
- b) Mixed (with or without set-aside seats)
- c) Strict majoritarian (with or without set-aside seats)

Bieber (2003: 2) presented “the approaches to electoral systems in divided societies”:

Translating Votes	Framing Territory	Changing Hurdles
Majority-Plurality Systems	Single-member Constituencies	Thresholds
Semi-Proportional Systems	Multi-member Constituencies	Reserved Seats
Proportional Systems	One Constituency	Banning Ethnic Parties

Considering the point of departure at the present, strict proportionality with set-aside seats, this paper, does not attempt to change the political landscape between political entities, but rather the political culture under which they compete with each other, hence, it does not attempt a drastic change, but an incremental one instead. For example, this paper took issue with the size of the Assembly (120) as a given and made no attempt to analyze whether this should be changed. “No one should expect more than incremental changes in behavioural patterns once the configuration of electoral incentives is altered. But sometimes increments of change can be surpassingly important” (Horowitz 3). Hence, the model advocated here does not aim to change the political landscape, but to produce the same results as in the past, though with a different dynamics of interaction with the citizens and other public institutions.

Similarly to the German system, this paper tries to maximize more than one goal. “The German system, for example, is a constituency-based system, but with a proportional overlay, so that legislators have reasons to respond to their constituents but parties receive an overall number of seats that is more or less proportional to the votes they have won nationally. There is an increasing trend toward hybrid systems to achieve multiple goals, as New Zealand, Italy, and Japan have modified their former systems” (Horowitz 2003: 12-13).

As in other countries in Southeastern Europe, Kosovars prefer proportional representation. Only 13% of interviewees thought that the political entity that wins the majority of the votes should take all the seats in the municipality, while 46% did not agree and 20% entirely disagreed (IFES/Thiel 36). By the same token, 90.8% thought that political entities should assume seats in proportion with the votes won (Thiel/IFES 10).

Finally, Kosova needs a combination of overall proportional representation while seeking to build a better link with the electorate through specific constituencies. Since sin-

gle member districts are deemed harmful, Kosovar electoral designers should narrow down the search to: PR, open list, MMDs.

## 14. THE RECOMMENDED VARIATIONS

While this paper recommends a general option, there are plenty of variations that can be discussed to build consensus among all stakeholders.

The size of the body: 120 (more seats/greater proportionality).

Two-tier:	70-80 seats distributed from open proportional municipal lists and 30-40 compensation seats from closed party lists on national level; possibility to vote for a party or for an individual. (Depending on the number of set aside seats – no set aside seats: 80/40; 10: 75/35; 20: 70/30).
Overall proportionality:	Overall result of strict proportional representation. Top-up seats (30-40 from closed lists) are designed to compensate majority-biased imbalances produced from open lists and ensure overall proportionality.
Accountability:	Open lists to ensure individual voter-MP relationship. The possibility of ensuring some representation of small municipalities should be analyzed (either a minimum quota of one MP for each municipality or joining neighboring small municipalities into the same electoral districts).
Districting:	Multi-member districts (MMD) coinciding with municipalities and with proportional translation of the number of voters to seats at the Assembly. The possibility of merging some municipalities into one electoral district.
Variation:	Non-territorial districts for dispersed minorities and the Diaspora: (i) Serbs/Albanians from the municipalities where they are in a minority, (ii) Turks, (iii) RAE (Roma/Ashkali/Egyptian) communities, (iv) Bosniaks, (v) Diaspora. Districts for just parts of a community is not a well-tested tool, so it should be analyzed and planned well. Also, separate districts for the Diaspora has not proved successful in other countries, such as

- Croatia for example, Bieber claimed.
- Gender rule: Two options:
- (a) No gender rule in open lists. A gender rule (1/3-1/2) on the top-up seats. Forecasted result: 8-9 on meritorious basis, 9-14 from the top-up seats and 7 (1/3) from the set-aside seats. The total of 21-30 would still keep Kosova within the top countries in the world in terms of gender representation.
  - (b) Enforcing a 1/3 gender rule in an open list. This would be tricky, as many women with far less votes would get elected despite men with far more votes.
- Threshold: (a) The natural threshold, 0.5-1% (equivalent of 4-8,000 votes) up to 1.5% that would eliminate 2-3 small Albanian parties.
- Ethnic balance: Similarly to the Croatian example, a 1.5-2% threshold would eliminate small Albanian parties as well as most non-Serb minority parties. Set aside seats could then be granted to those parties that declare to represent a minority group, but not to those that cross the threshold. The set-aside seats would then be only instituted for ethnic groups that otherwise would not be regularly represented.
- (a) As in the current system: 20 set-aside seats (10 for Serbs and 10 for non-Serb minorities)
  - (b) Similarly to the Croatian model: a number of set-aside seats for non-Serb minorities that do not cross the threshold
  - (c) No set aside seats (see section 10 above) and no threshold
- Extras: Aside of IDPs, no absentee voting. Consider cheaper methods of by-mail votes.

## Disadvantages

*Like the present system:*

- (a) It is expected to lead to coalition governments if the set-aside seats are kept.

*Unlike the present system:*

(a) It is slightly more complicated and voters and politicians need better voter education programs to become familiar with the system. Arguably, after three elections, Kosovars have learned how to vote and (invalid votes have fallen from 5% in 2000 to 1.7% in 2002). In Croatia, even the figure of 12% was not considered disturbing (Danas 2002). The number of invalid votes would be expected rise slightly.

(b) More expensive than the previous system, though probably less expensive if administered primarily by local institutions.

## Advantages

*Like the present system:*

- (a) Faithful representation (strict proportional results)
- (b) Few wasted votes (due to top-up seats)
- (c) Minority access

*Unlike the present system:*

- (a) Direct accountability (due to geographic representation and open lists)
- (b) Inclusive and socially diverse lists (due to geographic representation and open lists)
- (c) Geographic representation
- (d) Decreases the fiefdom of Prishtina as a monopolous source of power;
- (e) Increases internal party democracy.

## 15. HOW MUCH WILL IT COST?

The elections that have been run in the past three years have been relatively inexpensive. However, one should bear in mind that because these were run by the OSCE, with a very high number of international staff, they were very expensive compared to the system. Although this paper proposes a slightly more complicated system, the price of will slightly swell due to the open lists, it can be brought down to a far lower price tag than OSCE has had so far by:

- (a) Employing only essential international staff;
- (b) Local staff require less money than locals employed by international organizations (salaries by the Kosovo Consolidated Budget);
- (c) Very few staff hired specifically for the elections (to make use of existing staff from existing administration temporarily); the majority of interviewed officials from political parties, municipal elections committees and the civil societies thought that the positions of municipal elections committees need not be full-time (IFES/Thiel 25).
- (d) Price/voter should remain around 4-5 USD;
- (e) No color posters (one or two color posters);
- (f) Extensive voter education can ease long lines on the election day.

## 16. POLICY RECOMMENDATIONS

### *(a) Recommendation for Public Debate.*

There is a need in Kosovo for a public debate over the political culture and system that its citizens seek to accomplish, regardless of the overall political solution over its status. The debate should not center on technical issues of the electoral system, but rather on the democratic values that it seeks to promote. This discussion must not be viewed as a way for one interest group to win over the other, but about establishing a debate over the future values that need to be nurtured.

### *(b) Devolve the decision to the Assembly of Kosovo*

In order to make the best solution and to share ownership of responsibility, the UN administration should devolve the matter to the Assembly of Kosovo, although retain strong presence in drafting the law (it should condition this with consensus among all major political forces: LDK, PDK, KP, non-Serb minority parliamentary group, AAK) and in overseeing the whole process of elections afterwards.

### *(c) Replace set aside seats of Serbs with better constitutional mechanisms*

As a sizable minority, the Serb community does not face the prospect of not being represented at all. A number of countries have instituted set aside seats only for minorities that would otherwise be without any representatives. For example, a law on non-discrimination could easily have a greater effect than ten extra set-aside seats.

### *(d) Retain set aside seats for non-Serb minorities*

Some reserved seats could still be useful for non-threatening minorities that would not be represented in parliament otherwise.

### *(e) Further Research Needed*

The research above relies on some quantitative and qualitative research, however, its

scope and depth remains limited. In order for several variations of the electoral system to be fully studied and to be able to fathom the merits and problems of each variation, the policymakers need to have the following research projects in their hands:

(i) Analysis of participation and trends of voting broken down by:  
Gender, age, rural/urban, ethnic breakdown, social/economic well-being, size of the Diaspora, registered in each municipality, size of the municipality, level of education.

(ii) Who are the most vulnerable groups?  
Illiterate or poorly educated people, women, migrant workers, some minorities, displaced and refugees in foreign countries

(iii) An analysis on electoral costs to estimate how much does each variation of the system cost

(iv) Psychological effects

What long-term effects will this system instill among the voters? How much time will the citizens need to learn to vote smart in this system?

## APPENDIX

### A. Stakeholders:

#### Governmental Institutions

The Assembly of Kosova  
 The President of Kosova  
 The Government of Kosova

#### International Administration

UNMIK, Office of the SRSG  
 OSCE, Elections Department, Elections Working Group

#### Political Parties

All political parties

#### The civil society:

KMDLNJ, KIPRED, the Forum, KACI, CeSID

#### Media

Key journalists

#### The International Community

USAID, NDI, IFES

#### Local Government

Association of Municipalities of Kosova

### B. Abbreviations

AAK	Aleanca për Ardhmërinë e Kosovës (The Alliance for the Future of Kosova)
KMDLNJ (CDHRF)	Këshilli mbi të Drejtat dhe Liritë e Njeriut Council for the Defense of Human Rights and Freedoms)
CEC	Central Elections Councils
ECAC	Election Complaints and Appeals Subcommission (Elect. Rule 6/2002)
EWG	Elections Working Group
LDK	Lidhja Demokratike e Kosovës (Democratic League of Kosova)
MEC	Municipal Election Commission
MMD	Multi-member districts
NDI	National Democratic Institute
PDK	Partia Demokratike e Kosovës (Democratic Party of Kosova)
SRSG	Special Representative of the Secretary General (UN)

## C. Kosova Specific Documents:

UN SC Res 1244 adopted on 10 June 1999

### UNMIK Regulations

UNMIK Regulation 2002/11 (on the Municipal Elections in Kosovo) 10 June 2002  
2001/9 constitutional framework for provisional self-government

UNMIK Regulation 2002/9

UNMIK Regulation 2000/21 (on the Establishment of the Central Election Commission)

UNMIK Regulation 2000/65 (expanding the authority of the Central Election Commission)

UNMIK Regulation 2000/39 (on the Municipal Elections in Kosovo) 8 July 2000

UNMIK Regulation 2001/33 15 November 2001

OMiK Electoral Rules; Organization for Security and Co-Operation in Europe  
Mission in Kosovo, Central Election Commission,

Electoral Rule 1/2002 The Code of Conduct for Political Parties, Coalitions, Citizens' Initiatives, Independent Candidates, their Supporters and Candidates

Electoral Rule 2/2002 Municipal Election Commissions

Electoral Rule 3/2002 Election Observers

Electoral Rule 4/2002 Certification of Political Parties, Coalitions, Citizens' Initiatives and Independent Candidates

Electoral Rule 5/2002 Campaign Finance Disclosure and Spending Limits

Electoral Rule 6/2002 The Election Complaints and Appeals Sub-Commission

Electoral Rule 7/2002 Voter Information

Electoral Rule 8/2002 Registration of Candidates

Electoral Rule 9/2002 Polling Station Committees

Electoral Rule 10/2002 Media During the Electoral Campaign

Electoral Rule 11/2002 Polling Stations, Polling Station Committees

Electoral Rule 12/2002 The Count Process

Electoral Rule 1/2001 The Code of Conduct for Political Parties, Coalitions, Citizens' Initiatives, Independent Candidates, their Supporters and Candidates

Electoral Rule 2/2001 The Election Complaints and Appeals Sub-Commission

Electoral Rule 3/2001 Certification of Political Parties, Coalitions, Citizens' Initiatives and Independent Candidates

Electoral Rule 4/2001 Municipal Election Commissions

Electoral Rule 5/2001 Election Observers

Electoral Rule 6/2001 Voter Information

Electoral Rule 7/2001 Media During the Electoral Campaign

Electoral Rule 8/2001 The Registration of Candidates

Electoral Rule 9/2001 Polling Station Committees

Electoral Rule 10/2001 Campaign Finance Disclosure and Spending Limits

Electoral Rule 11/2001 Polling Stations, Polling Station Committees and Voting

Electoral Rule 12/2001 The Count Process

OSCE Administrative Procedures

Administrative Procedures for Polling Station Committees and International Polling Station Supervisors.

**D. Web Resources**

International Foundation for Electoral Systems: [www.ifes.org](http://www.ifes.org)

Institute for Democracy and Electoral Assistance: [www.idea.int](http://www.idea.int)

OSCE Mission in Kosovo: [www.osce.org/kosovo](http://www.osce.org/kosovo)

Administration and Cost of Elections (ACE Project):

<http://www.aceproject.org/main/english/es/esa.htm>

Political Parties and the Election System in Turkey:

[http://www.turkey.org/politics/p\\_electi.htm](http://www.turkey.org/politics/p_electi.htm)

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## Notes

1. Reynolds, Andrew <http://www.aceproject.org/main/english/es/esa.htm>
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3. Due to the limited scope of this study, the following important issues pertaining to aspects of elections organization, have been left out of the present version of this paper: voter registration, finance regulations, neutrality of the election body, government interference, unchecked intimidation, extent and quality of access to the media, objectivity and media coverage, voter education, access to funds for campaign, the access of candidates to the electorate, quality and distribution of election literature, nomination process of candidates.
4. Due to the Kosova focus of this paper, it does not elaborate in greater detail the advantages and the disadvantages of other systems. For more information in this regard, consult the IDEA Manual on Designing Electoral Systems.

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The Kosovar Institute for Policy Research and Development aims to support and promote democratic values in Kosovo through training and independent policy research.

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The research pillar focuses on producing independent policy analysis on issues such as good governance, administration, political party development, regional cooperation, political economy, and local government.

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