

Minority Consultative Bodies in Kosovo: A Quest for Effective Emancipation or Elusive Participation?

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This paper examines the extent to which effective political participation can be achieved through minority consultative bodies, and what obstacles and shortcomings can potentially occur in practice. It explores the Kosovo case, where a variety of minority consultative bodies were established in recent years to ensure effective minority participation and representation at the highest decision-making levels. It will be argued that despite the prospects of the established legal and institutional framework, these bodies have fallen short in providing meaningful representation of minority interests and needs in Kosovo. This is largely affected by the intermeshed interests of elites among the majority and minority communities that prioritize their narrow interests to the expense of the developmental and emancipatory needs of marginalized minorities in Kosovo. Hence, higher commitment and cooperation between governmental authorities and minority representatives, together with adequate resources, are critical for ensuring effective minority participation in the public sphere.

Keywords: the right to effective participation, minority consultative bodies, Kosovo.

Accommodating the interests and rights of minorities has been one of the major

challenges in Kosovo, before and after the declaration of independence in 2008.

Indeed, international support for Kosovo's statehood is rooted in Kosovo's

constitutional commitment and promise to respect and promote the highest standards

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of minority rights.¹ The institutional framework of minority consultative bodies consists of a Communities Consultative Council, based in the Office of the President of Kosovo; the Committee on Rights and Interests of Communities, based in the Kosovo Assembly; and the Office for Community Affairs, established within the Office of the Prime Minister of Kosovo. Initiated by the international community, the establishment and functioning of minority consultative bodies in Kosovo is seen as an appropriate mechanism for ensuring that constitutional commitments on minority rights are effectively implemented through direct engagement with minority representatives in consultative, decision-making and coordination processes.

Theoretical debates and policy prescriptions suggest that beyond fuzzy constitutional commitments, minority consultative bodies could be a promising mechanism to ensure the effective political participation of minority groups. They are seen as a space in which minority political groups, civil society representatives and governmental bodies can interact, and where the views, concerns and interests of minorities can be effectively incorporated within the process of policy planning, implementation and evaluation (Weller, 2010). To explore how these theoretical prescriptions apply in practice we will examine case of Kosovo, where the international community has invested extensively in developing an ambitious institutional and policy framework for empowering minority communities. In particular, we will assess how these mechanisms work in practice, by analysing their performance and achievements two years after their establishment.

This is the first academic paper to explore the performance of these institutions in practice, and it will focus on the Roma, Ashkali and Egyptian (further, RAE) communities, as the most vulnerable and non-dominant communities. After a short theoretical and legal discussion of the changing nature of minority rights, with a

focus on the right to effective political participation, the paper will then briefly discuss the extensive legal and policy framework for minority participation before and after Kosovo's independence. After this, we will provide a critical assessment of the performance and achievements of these minority consultative bodies, which are part of the main political institutions in Kosovo. Their performance will be assessed against a set of conditions prescribed in the legal documents that established them, and the broader political criteria evident in academic and policy discussions. Although this study falls between fact gathering and theory testing, the focus on a single case enables us to draw "middle-range contingent generalizations"² as to whether minority consultative bodies are becoming promising mechanisms for promoting effective minority participation.

In general, the study suggests that the establishment of minority consultative bodies in Kosovo is a positive development, especially in their provision of a deliberative forum for marginalized minorities. However, it also indicates that their performance over the last two years has not been as satisfactory as expected. There seems to be a lack of sufficient institutional cooperation and coordination among these bodies, the government of Kosovo and the international community. From an internal perspective the members of these bodies lack initiative, as well as the resources, experience and capacity needed to utilize the institutional space effectively and thus deliver properly on their mandate of improving the political and socioeconomic conditions of the Roma, Ashkali and Egyptian populations in Kosovo. To a large extent, the weaknesses of minority consultative bodies identified in this study are also result of divided RAE political communities and their disorganized civil society. Notwithstanding, the extensive attention given to the Serb community

and political interference by the government has negatively affected the performance of these bodies.

Recognizing these shortcomings, we argue that the effectiveness of minority consultative bodies is conditional, on the one hand, on a commitment by governmental authorities to provide sufficient consideration, resources and independence for minority representatives and, on the other hand, on the meaningful representation of minority interests through the election of skilled and experienced minority representatives who are committed to working for the needs and interests of their respective communities. Overcoming internal identity and interest-related disputes among the Roma, Ashkali and Egyptian communities would increase their bargaining capabilities within the consultative bodies and ensure wider accommodation of their communities' interests. As the mandate and scope of work of these bodies is intertwined and mutually dependent, inter-institutional cooperation and coordination of activities it is of critical importance in ensuring effective performance.

The right to effective participation: from recognition to effective implementation?

Over the last two decades, minority issues have attracted considerable international attention and recognition. The international community has realized that violation of minority rights by host states has the potential to trigger internal conflicts with regional and international implications, and that minority issues are thus a legitimate international concern. Protracted and intractable conflicts are often rooted on the violation of minority groups, which are manifested through ethnic division, grievance, violent confrontation and secession attempts (Coleman, 2003: 1-37). Consequently, the protection of national minorities is becoming a recognized standard of consolidated democracies, particularly in the wider Europe, and a precondition for

accession to the Euro-Atlantic institutions (Weller *et. al.*, 2008). Over the past two decades, minority issues have received special attention in cases of peace settlements, foreign aid conditionality, state recognition and legitimacy, and membership in international institutions. This recognition and ‘internationalization’ of minority rights, as Will Kymlicka (2008: 14) asserts, represents a “complex mixture of humanitarian, self-interested and ideological reasons”.

The recognition of minority rights in international and regional human rights covenants marks an important step forward, but it is not sufficient when it comes to the effective implementation of minority rights in practice. As witnessed in certain cases, the recognition of minority rights by national governments in their constitutional design does not necessarily guarantee effective minority participation. On a related point, Resnick argues that “ethnic minorities as holders of civic rights and political freedoms under a clearly prescribed set of constitutional and institutional norms, citizens, whatever their linguistic or cultural background, ought to be able to transcend the more particularistic loyalties that retrograde nationalists seek to foster” (Resnick, 2004: 45). In this regard, the creation of distinct institutional and policy mechanisms that ensure the direct representation of minorities and their interests has recently become a promising tool for minority emancipation in multiethnic, post-conflict and divided societies. Although the nature of internal disputes in these types of societies might be different, the salience of minority issues remains largely the same.

Political participation in different contexts has been crucial for promoting democratic values across populations, in generating trust in political institutions, and in promoting free, competitive political behaviour (McAllister and White, 2009: 186). Specifically, in post-conflict and divided societies creating conditions for

accommodating and integrating the rights and interests of minority groups is seen as a critical condition for transforming the conflict, regaining trust, and reconciling and normalizing social relations between different ethnic groups. According to Kymlicka, the right to effective participation in the minimal reading means “simply that the members of national minorities should not face discrimination in the exercise of their standard political rights to vote, to engage in advocacy and to run for office”, whereas by a maximal reading “effective participation requires, not just that members of minorities can vote or run for office, but that they actually achieve some degree of representation in the legislature” (Kymlicka, 2008: 29). In a step forward from this maximalist conception, Marc Weller notes that “full and effective participation of national minorities in public life has established itself as a right in international documents concerning the protection of national minorities” (Weller, 2010: 482).

Indeed, the effective participation of minorities in decision-making processes is promoted by several regional and international organizations and codified in various political and legal documents. The Framework Convention for the Protection of National Minorities (FCNM) of the Council of Europe outlines that states parties should create “conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them” (CoE, 1995).³ Increasingly, the participation of minorities through consultative mechanisms is become an important way of addressing minority issues. For instance, the OSCE 1999 Lund Recommendations for the Effective Participation of National Minorities in Public Life outlines that:

States should establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and national minorities. Such bodies might also include special purpose committees for addressing such issues as housing, land, education, language, and culture. The

composition of such bodies should reflect their purpose and contribute to more effective communication and advancement of minority interests.⁴

On a broader level, the right to effective political participation is closely related to debates on deliberative democracy and power-sharing in divided societies. According to John Ferejohn deliberative democracy would “require that public decisions be chosen based on actual public deliberations, that everyone have effective access to the deliberative forum, that every citizen be capable of giving and being moved by good reasons, and that everyone accept the obligations that follow from the deliberate choice of a public action” (Ferejohn, 2000: 79). While this remains an ideal aspiration of a participatory and inclusive democracy, ethnic power-sharing is favoured in many post-conflict and divided societies.⁵ According to Lijphart, “power sharing denotes the participation of representatives of all significant communal groups in political decision-making, especially at the executive level” (Lijphart, 2008: 3). As a result of power-sharing arrangements following peace settlement or regime change, minority ethnic groups gain privileged representation in central decision-making bodies, and enjoy special procedural and institutional mechanisms to protect their ethnic interests (Roeder and Rothchild, 2005). Both alternatives are problematic for achieving the effective political participation of minorities. In practice it is doubtful whether minorities are able to access the deliberative forum due to the economic, educational and cultural barriers they face, and similarly elite representation in power-sharing arrangements often results in the entrenchment of clan interests, misuse of power and internal marginalization of minority population (Valadez, 2001).

Concerning ethnic power-sharing, Roeder and Rothchild (2005) argue that in some cases these arrangements empower ethnic elites, which risks escalating the conflict and delaying prospects for self-sustaining peace. Contrary to the power-sharing propositions, Roeder and Rothchild advocate a power-dividing strategy that

incorporates three elements: civil liberties, multiple majorities, and checks and balances. They envisage that divided-power democracies allocate state powers between government and civil society with strong, enforceable civil liberties that take daily responsibilities out of the hands of government. They distribute the remaining responsibilities to government among separate, independent organs which represent alternative, crosscutting majorities (Roeder and Rothchild, 2005: 15). The power-dividing strategy is similar to the Gutmann and Thompson (1996) principles for deliberative processes, which consist of reciprocity, publicity and accountability. These principles advocate for mutually acceptable and consensual decisions, open and transparent deliberation process, and accountable and justifiable decision-making processes. To achieve this, Gutmann and Thompson assert that it is necessary to ensure basic liberty, basic opportunity, and equal opportunity, including the right to free speech and assembly, education opportunities and equal access to resources and public positions.

One attempt to overcome the limits of ethnic power-sharing and to embed a 'light footprint' of deliberative democracy involves the creation of special minority institutional bodies, varying from consultative and coordination mechanisms to co-decision and self-governance mechanisms. Marc Weller has developed a comprehensive legal typology of different special minority bodies where he sets out their distinct functions. Similarly, the Council of Europe Advisory Committee to the FCNM has grouped together four comprehensive functions of special minority bodies:

- a) organization, mobilization and coordination among minority representative organizations;
- b) contribution to the drafting of legislation;
- c) contribution to governmental programming;
- and d) participation in reporting to international

mechanisms (CoE, 2006: 11). Of particular relevance are consultative and co-decision bodies, which we will discuss in the following section.

In most cases, minority consultative bodies provide a platform for interaction between minority political and civil society representatives and governmental bodies, and aim to incorporate the views, concerns and interests of minority communities within the process of governmental policy planning, implementation and evaluation. The conditions of membership, types of activities and division of tasks are proscribed in national legislation or in special government decrees. Minority consultative bodies are also tasked with maintaining public visibility, communicating with their respective communities, and sharing information with the general public (CoE, 2006: 11). While the organization, mobilization and coordination of tasks to help enhance the effectiveness of these consultative mechanisms, Weller argues that “another benefit arising from this function is the facilitation of inter-ethnic dialogue that is particularly useful in states where ethnic tensions persist” (Weller, 2010: 491). Consultative bodies in some cases have the potential to engage with donors to set priorities and collaborate in implementing programmes dedicated to minorities. They can also contribute to enhancing minority rights through reporting to international human and minority rights monitoring bodies (CoE, 2006: 13).

On the other hand, the co-decision mechanisms enable minority groups to hold certain legislative and executive powers when it comes to protecting their rights and interests in the policy making and policy implementation processes. Weller distinguishes two sub-types of co-decision mechanisms: soft and hard forms of co-decision (Weller, 2010: 483). While the former is applicable when legislative or policy initiatives cannot be approved without considering the views of minorities, the latter applies in cases where minority groups have a direct right to undertake

legislative initiatives, as well as hold the right to block legislative and policy initiatives affecting their communities' rights and interests. The co-decision mechanism applies to a wide range of functions, such as: initiating a legislative process, reviewing and commenting on legislative initiatives to observe compliance with minority rights standards, campaigning to support drafting or revising legislation relevant to minority communities, and raising awareness on the implementation of legislation and policy relevant to minority interests (CoE, 2006: 12). In principle, this function of drafting legislation is often an attribute of co-decision and consultative mechanisms.

In addition, coordination mechanisms, according to Weller are not “genuine minority consultative bodies”, but rather coordination points between different governmental sectors that address minority affairs. Nonetheless, minority representatives may be consulted by these coordination mechanisms to improve their understanding of the developmental priorities that concern different minority groups. Coordination mechanisms and consultative mechanism participate in assessing community needs, setting policy priorities, disseminating information, fund-raising, and monitoring and evaluating the performance of programmes (Weller, 2010: 492). Finally, although these minorities special bodies take on different functions in different contexts, it is asserted that their effective performance is widely conditional on dissent representation, active participation and commitment among the minority representatives, sufficient resources and operation free from political interference (*ibid.*: 499). Equally, the effective participation of minorities and the successful functioning of minority consultative bodies are dependent on the commitment and dedication of government and minority representatives. In addition, the effective functioning of minority consultative bodies also requires adequate resources (OSCE,

1999: 10). Often, the funding of these bodies comes from the government public budget. Such funding must be politically unconditional and not influence the process and outcomes of these bodies. Weller argues that some decisions on the allocation of funds should be given to the minority bodies (Weller, 2010: 499). Indeed, the work of these bodies should be visible and inclusive for members of minorities and the general public.

Minority participation before and after Kosovo's independence

Following the NATO intervention in Kosovo and the establishment of the UN Interim Administration Mission in Kosovo (UNMIK), a non-majoritarian democracy was established based on power-sharing arrangements that aimed to reconcile different ethnic groups through a proportional electoral system and broad mechanisms for representation in Kosovo.⁶ The 2001 Constitutional Framework created a comfortable environment for minority participation, guaranteeing minority communities 20 out of 120 seats in the Kosovo Assembly, of which ten were reserved for Serbs, four for RAE, three for Bosniaks, two for Turks, and one for Gorani.⁷ Within the Assembly of Kosovo, a Committee on Rights and Interests of Communities (CRIC) with co-decision powers was established. CRIC was granted hard co-decision authority and tasked to review laws and make recommendations on draft laws, to ensure that community rights and interests were adequately addressed. Regarding representation in the executive branch, the Constitutional Framework ruled that at least one of the ministers in the Kosovo government should be from the Kosovo Serb community and one from another community. At the municipal level, minority communities in Kosovo also enjoyed a number of mechanisms to protect their rights and interests,

such as a Communities Committee, and a Municipal Office for Communities and Returns (MOCR).

The expanded legal framework after Kosovo's independence in 2008 guarantees minority communities, among other rights, the right to political representation. The Constitution of Kosovo and the Law on the Protection and Promotion of the Rights of Communities constitute the core legal framework for community representation in Kosovo. However, their implementation remains problematic. Monitoring this minority legal framework, in 2009 the Council of Europe Commissioner for Human Rights observed that "the Constitution provides a good legal framework for human rights protection", but underlines that "it is now incumbent on the authorities, including the local authorities, to put these commitments into practice" (CoE, 2009: 5). Parallel to the completion of the legal framework on minority rights and participation, several conditions are considered as fundamental for the integration of minorities in post-independence Kosovo, including public participation which would ensure adequate representation and association rights in the public sphere; integration in public institutions, especially in the sectors of governance, rule of law and human rights protection; the establishment of appropriate inclusive education and health facilities; promotion of independent media; physical security and equal human rights protection; and community identity development (KIPRED, 2006).

Although the Kosovo institutions have created a comprehensive legal framework with regard to community rights and their political representation, RAE communities⁸ remain the most vulnerable communities in Kosovo.⁹ While the concerns of the Serb community continue to attract the interest and funding of the international community, members of Kosovo's RAE communities receive less

attention (Kosovo government, 2009: 10). Indeed, the overall political emancipation of these communities in Kosovo is held hostage to several factors, including social and political status, low levels of education, high population growth, poor health conditions, lack of civil registration and basic legal documentation, discrimination, their status as “political pawns” between Albanian and Serb communities, their lack of a kin state, and an untrained and self-appointed leadership (Visoka, 2008: 154). These are strong obstacles to social cohesion, which contributes to the low level of RAE involvement and participation in political, civil, educational and health institutions.

The internal political tensions among Roma, Ashkali and Egyptian parties affect the quality of representation and the appropriate utilization of the institutional space offered to them. As is also the case with the majority Albanian political structure, Roma, Ashkali and Egyptian political parties in Kosovo continue to be organized along ethnic, community and geographical lines. As the monoethnic parties tend to appeal to a single community, “their program, membership and voters thus largely hail from only one group, be it the majority or minority [...] often with conservative or nationalist parties, the inclusion of other groups is purely tokenistic and minimal” (Bieber, 2008: 14). Parallel to this, cooperation and coordination among Roma, Ashkali and Egyptian parties is low and their political agenda is quite exclusive. Instead of creating a common political platform to articulate and advocate for those issues that are of greatest importance to the Roma, Ashkali and Egyptian communities, most of these parties have joined parliamentary groups dominated by Albanian and Serb political parties. In some cases, even parliamentary members who come from the same political party pursue different political agenda and do not share

the same parliamentary group. Similarly, civil society groups representing RAE communities are criticized for being ineffective and divided (Redjepi *et. al.*, 2009: 8).

In December 2008, the Kosovo government developed its Strategy for the Integration of Roma, Ashkali and Egyptian Communities, which sought to address crucial issues such as anti-discrimination; education; employment and economic empowerment; health and social issues; housing and informal settlements; return and reintegration; registration and documents; gender; culture, media and information; participation and representation; and security and policing (Kosovo government, 2008:7). Even though the strategy was adopted in late 2008, after a process of consultation that lasted almost two years, so far no component of the strategy has been implemented. Despite the unsupportive social environment that faces these marginalized communities, the presence of social capital and a synergized network between Roma, Ashkali and Egyptian civil society organizations might contribute significantly to regressive implementation of the strategy. In other words internal fragmentation means that RAE political parties remain unaccountable, and delay equipping the minority consultative bodies with appropriate and qualified staff who would be able to adequately address the concerns of these communities.

Minority consultative bodies in Kosovo

Within the framework of the Kosovo Constitution, RAE communities in Kosovo, among others, are represented by the Community Consultative Council (the Council) in the Office of the President, the Office for Community Affairs (OCA) in the Office of the Prime Minister, and the Parliamentary Committee on Community Rights and Interests and the Returns (CRIC) in the Assembly. These representative bodies aim to provide RAE communities (as well as other community groups in Kosovo) with the

opportunity to represent their political interests directly at the highest levels of governance and decision-making in Kosovo.

Established by Presidential Decree on 15 September 2008, the Communities Consultative Council is a consultative body with no formal veto powers on legislation or policy and consisting mainly of representative from political parties and civil society organizations—a body that aims to give a voice to community civil society and grant their representatives access to governmental policy affairs. The Council is tasked with providing communities with an opportunity to participate in assessing their needs, and designing, monitoring and evaluating programmes dedicated to their members. It is also tasked with recommending how funds should be allocated by international donors and the Kosovo institutions, to ensure that projects meet the needs and interests of minority communities.¹⁰ The Council is composed of civil society representatives from all communities in Kosovo, and a small number of representatives from the Kosovo government who work on minority issues.

The second body, the Committee on Rights and Interests of Communities is a hard co-decision mechanism based in the Kosovo Assembly that provides legislative oversight on issues relating community rights and interests, as envisaged by Article 78 of the Kosovo Constitution. Parallel to this, CRIC plays a significant role in protecting the so-called “vital interests” of minority communities in Kosovo, highlighted in Article 81 of the Constitution. CRIC’s mandate is a continuation of the previous Constitutional Framework of 2001. The overall mission of CRIC is to act as a legislative catalyst for minority rights in Kosovo. By performing this mandate, CRIC is in an ideal position to enhance and protect community rights through “its own initiative, propose laws and other measures within the responsibilities of the Assembly as it deems appropriate to address the concerns of Communities” (Kosovo

Constitution, 2008). Concerning its structure, the Kosovo Constitution entrenches CRIC as a permanent committee within the Kosovo Assembly, which is composed of one third of members who represent the group of deputies of the Assembly holding seats reserved or guaranteed for the Serbian Community, one third of members who represent the group of MPs from communities that are not in the majority, and one third of members from the majority community represented in the Assembly.

The third body, the Office for Community Affairs in the Office of the Prime Minister was established in May 2008 to advise the Prime Minister of Kosovo on all communities' related issues, and coordinate policy and practical issues related to all communities in Kosovo. As an office within the Prime Minister's Office, the OCA has the opportunity to contribute to, analyse and advise on the government's policy affecting communities' rights and interests; to develop and monitor implementation of government strategies related to minority communities; and to monitor the implementation of laws and policies affecting communities.¹¹

Earlier in this paper we described the general mandate and function of minority consultative bodies, which presented an accumulation of theoretical and cross-case comparative knowledge. Deriving from them were four crucial aspects that can help evaluate the performance and effectiveness of minority consultative bodies: organization, mobilization and coordination; contributing to the drafting and reviewing of legislation; contributing to governmental programming; and participating in reporting to international mechanisms. Setting a framework for assessing the performance of minority consultative bodies in Kosovo requires a set of evaluation criteria that follow the general standards and normative obligations that prescribe the conduct of minority mechanisms, but that also recognize the context and local conditions, thus inferring realistic and relativist expectation. With this in mind

the remainder of this article will evaluate these four performance aspects of minority consultative bodies in Kosovo against three criteria: internal consolidation and representation, tangible and mandate-related results, and wider external support or obstacles.

Organization, mobilization and coordination

One of the primary functions of minority consultative bodies is to organize and mobilize minority communities by building up the capacity of minority representative groups and coordinating activities between different groups. We discovered that so far there seems to be insufficient cooperation and coordination between RAE political representatives and civil society organizations. In general, there is a negative dynamic of competition and clashes between these two sides in terms of allocating development and humanitarian assistance to the RAE populations, in supporting political parties and platforms, and in terms of identity politics and cultural affiliation.

Despite extensive support from the European Centre for Minority Issues (ECMI) to establish a sustainable representation system, the Council still lacks an established practice of organizing, mobilizing and coordinating activities with representative non-governmental organizations (NGOs) and local RAE populations. Though most current members are affiliated with NGOs, there are still challenges in communicating and coordinating the work of local NGOs and using the Council to bring communal problems to higher decision-making levels.¹² Initially, it was agreed that for each of the communities represented in the Council, an umbrella NGO is assigned to coordinate communication with other local NGOs. However, due to disagreements in the internal selection process, it was agreed that CSO would serve as technical nominating mechanisms only. An exception to this was the Bosniak community who managed to establish an umbrella organization. Until recently, the

Council has operated with an informal budget allocated on annually basis by the Office of the President, and other supplementary aid from foreign donors. Indeed these budgetary issues have constrained their scope of activities and the quality of performance.

A major weakness of these consultative bodies is the lack of inter-institutional cooperation and coordination. Insufficient inter-institutional cooperation seems to be a result of perceived competition and an overlap in the mandate of political leaders and civil society representatives. An OCA representative regularly attends the meetings of the Council, but beyond that there is no coordination of efforts and activities.¹³ Similarly, representatives of different ministries seem to attend meetings in the Council but there is no subsequent coordination and cooperation. On several occasions members of the Council have invited ministers to discuss specific policy issues but random officers were sent who did not know the area of work and did not take follow-up accordingly.¹⁴ On this matter, a former Council member stated that “whenever governmental representatives were invited to the meetings they recorded the Councils inquiries but did not proceed afterwards in practice”.¹⁵

The first-hand accounts from the key actors in these mechanisms reveal the sources and nature of tensions that impact on the internal consolidation and representation. Apart from few meetings called by external instances, there seems to be insufficient formalized contact between these bodies. An Ashkali member of CRIC declared that “non-cooperation between OCA and CRIC began when a Roma member of OCA was allocating the majority of funding to the Roma community, excluding two other sister communities”.¹⁶ An Ashkali who is well aware of the political circumstances declared that the OCA has not collaborated with CRIC, and there have been cases when individual members of CRIC have approached the OCA attempting

to find funds for projects for their narrow interests.¹⁷ Another Ashkali member of parliament (MP) affiliated with CRIC declared that “they have not met with the Council so far and it is them who should come and approach CRIC”.¹⁸ The same MP goes further to argue that “we are not united [...] Members of the Council seek to address their communities (local community) interests and needs, and we try to channel our own community’s interests”.¹⁹ However, there do seem to be few cases where MPs from the same community coordinate and cooperate with civil society representatives in the Council. For example, an Egyptian MP and member of CRIC asserted that he cooperates with the Egyptian representatives in the Council, and they coordinate what issues to raise.²⁰

In general, it appears that RAE representatives in these three bodies are aware of the need to collaborate, but their narrow interests and fragmented positions regarding the allocation of resources and political support for certain policies create tension. Certainly, this lack of cooperation and coordination suggests that the RAE communities are not yet ready to make use of the mechanisms that exist to support their effective participation. Furthermore, it seems that the narrow-minded and fragmented relationship within and between these communities also reflects the vulnerable social and civic position of the Roma, Ashkali and Egyptian communities, who are unable to hold their representatives accountable or use different lobbying techniques to advance communal interests.

Contribution to drafting and reviewing legislation

Minority consultative bodies are also entitled to initiate legislative processes, review and comment on legislative initiatives, and observe compliance with minority rights standards and interests. Since the Council’s establishment in 2008, its RAE

representatives have commented on a very small number of laws and government policies that affect RAE communities, for example on legislation related to RAE education and employment. However, the results of such efforts are still pending. Based on our findings, there is a generally a lack of initiative among RAE representatives in the Council, which is mainly affected by their lack of capacity, political weakness, and the lack of financial incentives to comment on and advocate for legislative initiatives beyond the scope of regular meetings. Here the quality of members plays an important role in ensuring the effective performance and implementation of the Council mandate.

Despite some attempts to select particular laws that directly affect the rights and interests of communities in Kosovo, the Council has spent over a year struggling to consolidate itself internally. A review of meeting agendas and the issues discussed in the Council, shows that most of the time was spent on drafting a statute, internal operational rules and a working plan. Furthermore, during the first year it appears to have been difficult to execute the mandate of the Council due to a shortage of budget and staff. Apart from that, the Council has established four working groups, which review issues related to minority education and legislation, monitor the implementation of the Strategy for Integration of RAE Communities in Kosovo, and monitor the implementation of Council's own Work Plan. These working groups are seen as instrumental in ensuring that all members contribute to reviewing legislation and addressing certain policy issues affecting communities. However, the lack of financial support and general initiative among members seems to obstruct the effective performance of these working groups.

In terms of CRIC's performance, the RAE representatives in the Kosovo Assembly have one of the lowest participation rates in parliamentary discussions.

Within CRIC, RAE representatives seem to be overshadowed by the political and financial priority accorded to the Serb community. Most of the RAE MPs pursue a ‘political servitude strategy’, whereby in exchange for small donations they do not criticize the government, and in most cases follow the voting patterns of the majority. In general, the performance and the effectiveness of parliamentary committees within the Kosovo Assembly is considered weak due to a lack of capacity, expertise and political activism when handling draft laws in their field (KDI, 2009: 27). Similarly, the EU 2010 Progress Report for Kosovo also notes that the Kosovo Assembly needs to improve its “capacity to scrutinise draft legislation and monitor its implementation after adoption” as well as to “enhance the parliamentary oversight of government work” (EC, 2010: 7). CRIC is no exception to this general parliamentary trend. The Kosovo Democratic Institute is a local NGO in Kosovo that assesses the activism of MPs by measuring how often they participate in discussions, initiate urgent issues, propose agenda items and raise parliamentary questions.²¹ A table compiled by the authors (below) indicates that Roma, Ashkali and Egyptian MPs have had a very low level of parliamentary activism over the last two years.

The percentage of fulfilment of parliamentary mandate among RAE members of Kosovo Assembly 2008-2009		Jan-June 2008	July-Dec 2008	Jan-June 2009	July-Dec 2009	July-Oct 2010
<i>Members of parliament</i>	<i>Political Party</i> ²²	%	%	%	%	%
Xhevdet Neziraj	IRDK	0.32	2.68	5.78	12.1	0.3
Zylfi Merxha	PREBK	0.24	4.76	0.79	3	0.6
Danush Ademi	PDAK	/	/	0.95	1.6	0.4
Etem Arifi	PDAK	0.00	1.21	0.00	1.5	0.0
Hafize Hajdini	PDAK	0.00	0.00	0.00	1.5	0.1

Source: Table compiled by authors to summarize KDI Scorecard, 2008-2010, Available at: <http://www.kdi-kosova.org/alb/publications.php>

The most active MP is the Egyptian political representative Xhevdet Neziraj from the New Democratic Initiative of Kosova (IRDK) with 12%. The worst cases are of Ashkali representatives where we can observe no participation at all in fulfilling the parliamentary mandate. Some of the Roma, Ashkali and Egyptian MPs with the lowest parliamentary participation have intentionally chosen a strategy of silence and compliance. By remaining silent in parliamentary sessions, they hope to ensure that their respective community and region is prioritized when it comes to governmental investment and donations.²³ A CRIC member of the Ashkali community also suggested that they refrained from raising parliamentary questions due to their political affiliation with the governing party.²⁴

However, the same Ashkali MPs also mentioned a more obvious motivation behind this 'parliamentary silence', namely that as a result of such parliamentary behaviour they had succeeded in convincing the Ministry for Communities and Returns to allocate €200,000 to build houses for the Ashkali community in Dubrava, a village in the centre of Kosovo. The Office of the Prime Minister dedicated €200,000 and the Ministry of Labour and Social Welfare €40,000 to the same housing project.²⁵ This clearly reflects how parliamentary mechanisms and community participation is exchanged for the reallocation of reconstruction funding, although it is clearly an unconditional obligation of the respective governmental agencies to help these communities regardless of the actions of their representatives in parliament. Although one could perceive this as an effective strategy for exchanging political power (votes, coalitions) for funds towards community projects, this strategy certainly affects their democratic mandate and undermines long-term parliamentary practices and the overall political empowerment of these minority communities.

The other factor that obstructs RAE parliamentary activism is the prioritization of the Serb community within Kosovo institutions and by international actors, which results from the political situation in Kosovo, and notably pressure from Serbia. It is evident that in all institutional mechanisms dedicated to communities in Kosovo, Serb community members are elected as chairs and control the agenda of activities and the allocation of funds. An Egyptian MP expressed dissatisfaction that the chair of CRIC is always a member of the Serb community, claiming that such a situation creates obstacles for other, smaller communities when raising issues related to the protection of their rights and interests (public investment and employment, allocation of funds, and so on).²⁶ However, despite these external constrictions, if non-Serb communities showed greater commitment to working together they would be able to make far better use of the consultative bodies.

Contribution to governmental programming

Minority consultative mechanisms are also entitled to engage in developing, implementing and evaluating governmental programmes dedicated to minority communities. This includes participating in assessing community needs, setting policy priorities, disseminating information, fund-raising, and monitoring and evaluating the performance of programmes. In the Kosovo context, the Office for Community Affairs is considered the suitable forum for performance of these tasks. However, so far it appears that the OCA has been negatively affected by political interference in the allocation of resources and setting of priorities, internal overlapping of activities, and disproportionate attention to the Serb minority. Although it is difficult to provide tangible evidence of political interference, first-hand accounts from our field research indicate that this may well be the case. For instance, a minority activist noted that there is continuous political interference from the government and the international

donors.²⁷ The same person, speaking in confidence, declared that “within OCA there is nepotism, favouring of certain people, and political trade-offs”.²⁸ Further detailed investigation would be necessary to examine whether there is political interference in the work the OCA.

It should be noted that the OCA is also tasked with monitoring implementation of the RAE Strategy. However, since the resignation of a Roma staff member from the OCA there seems to have been reduced attention and support for implementation of the strategy. This is further exacerbated by confusion in the respective mandates of the OCA and the Office of Good Governance. The latter is also located within the Office of the Prime Minister and was initially tasked with implementing the RAE Strategy.

Participation in reporting to international mechanisms

While international best practice suggests that minority consultative bodies should contribute to enhancing minority rights through regular reporting to international human and minority rights monitoring bodies, in Kosovo the consultative mechanisms do not explicitly exercise this task. In principle multiple international organizations, together with local NGOs, monitor the situation of minority rights. According to Ahtisaari’s Comprehensive Status Settlement, the International Civilian Office and Representative (ICO/ICR) is charged with responsibility for supervising the implementation of provisions on minority affairs, including decentralization (UN Security Council, 2007).

Despite the fact that ICO has engaged in lobbying on issues such as the need for a separate budget line and inclusion of the Croatian community in the Council, there are voices among communities who criticize the ICR for ignoring queries from RAE representatives in the Council and in the CRIC. An Ashkali MP declared that “in

several cases we have sent requests to the ICO on communal issues (eg. Lipjan), but they did not provide any response”; he believes “they are interested only in Serb interests”.²⁹ On another occasion, an Egyptian MP and member of CRIC declared that he had approached ICO on matters of discrimination in employment in public institutions, but the ICO did not agree to meet with him. Indeed, these cases create doubts as to whether the international presence in post-independence Kosovo is focused only on enhancing Serb minority rights and interests, and leaving aside other smaller and marginalized minorities.

Conclusion

This paper examined the practical implications and contextual difficulties that have obstructed the right to effective participation among minority communities in Kosovo. It has highlighted that RAE representatives, as members of non-dominant minorities, have achieved limited results through the co-decision, consultation and coordination mechanisms in Kosovo. This is largely the result of a number of factors, including a lack of inter-institutional cooperation and coordination, the lack of meaningful engagement when reviewing and commenting on legislative and policy initiatives; political interference; and a governmental and international focus on the Serb community, to the detriment of other communities. Above all, these shortcomings are the result of a lack of capacity and of qualified members, insufficient resources, and a lack of commitment among the Roma, Ashkali, and Egyptian representatives themselves to make effective use of these mechanisms. The overall weakness of RAE representation in these consultative mechanisms is also affected by the broader disfunctionality of RAE political community and civil society, which is generally the result of internal tension within these communities.

The criteria against which we have examined the performance of minority consultative bodies in Kosovo—namely their internal consolidation and representation, tangible and mandate-related results, and wider external support or obstacles—shows that these mechanisms are at present only in the early stages of development, and as such require more commitment and coordination from all parties involved.

Nevertheless, searching for further causal factors, one could also argue that the limited achievements of minority consultative bodies in ensuring effective minority participation, to a large extent reflect broader structural problems in Kosovo. While this was not the focus of this paper, perhaps the partial willingness of the Kosovo authorities to make these bodies work shows that externally imposed institutional design risks producing limited results when there is insufficient local support and commitment. Hence one could argue that these mechanisms are more reflective of a symbolic commitment by Kosovo authorities to guarantee minority protection and effective minority participation, rather than a meaningful platform for producing tangible results and improving the lives of minority communities in Kosovo, especially of those minorities that are most vulnerable, namely the Roma, Ashkali and Egyptian communities. On the other hand, the limited space provided for effective minority participation by Kosovo's dominant political elites reflects also a fear from antagonising the majority population, who equally suffer from unemployment, limited social assistance, and meaningful emancipation.

To conclude, the fact-gathering nature of this paper provides useful empirical evidence that can contribute to ongoing theoretical discussions and policy prescriptions on effective minority participation. In particular it highlights the need for minority consultative bodies to serve primarily as a platform for the effective

emancipation of non-dominant minorities, rather than as an elusive participatory space which fails to accurately reflect the needs and interests of the communities it was designed to serve.

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Notes

- 1 For the justification invoked to recognize Kosovo's independence see: G. Bolton and G. Visoka, 'Recognizing Kosovo's independence: Remedial secession or earned sovereignty?'. Occasional Paper, No. 11/10, SESSOX, University of Oxford, October 2010.
- 2 George, A.L. and A. Bennett. *Case Studies and Theory Development in the Social Sciences*. Cambridge MA: MIT Press, 2005. George and Bennett argue that case study methods are suitable for accumulating theoretical knowledge across all schools of thought, including those studies that give primacy to material or ideational aspects of the social world.
- 3 Council of Europe, *Framework Convention for the Protection of National Minorities*, 1995, Art. 15; Similarly the United Nations and the OSCE have emphasized the right of minorities to participate effectively in decision-making on national, regional and local levels.
- 4 OSCE, *Lund Recommendations for the Effective Participation of National Minorities in Public Life*, 1999, para. 12.
- 5 See: Mason, D. and J.D. Meernik. *Conflict Prevention and Peacebuilding in Post-War Societies: Sustaining the peace*. Oxford & New York: Routledge, 2006; I. O'Flynn. *Deliberative Democracy and Divided Societies*. Edinburgh: Edinburgh University Press, 2006; A.K. Jarstad and T.D. Sisk. *From War to Democracy: Dilemmas of Peacebuilding*. Cambridge: Cambridge University Press, 2008.
- 6 See: King, I. and W. Mason. *Peace at Any Price: How the World Failed Kosovo*. London: Hurst and Company, 2006; Weller, M. *Contested Statehood: Kosovo's Struggle for Independence*. Oxford: Oxford University Press, 2008; B. Reka. *UNMIK as an International Governance in Post-War Kosovo: NATO's Intervention, UN Administration and Kosovar Aspiration*. Shkup: LogosA, 2003; and A. Beha and G. Visoka, 'Human security as ethnic security in Kosovo'. *Human Security Perspectives* 7(1) (2010), 83-101.
- 7 UNMIK Regulation 2001/9, *On a Constitutional Framework for Provisional Self-Government in Kosovo*, 15 May 2001.
- 8 For an overview of the history and identity of the Roma, Ashkali, and Egyptian communities see: N. Malcolm, *Kosovo, A Short History*. Oxford: Oxford University Press, 2002, 205-9; A. Fraser, *The Gypsies (The Peoples of Europe)*. London: Wiley-Blackwell, 1995, 45-56; C. Baldwin, *Minority Rights in Kosovo under International Rule*. London: MRGI, 2006; J. Briza. *Minority Rights in Yugoslavia*. London: MRGI, 2000.
- 9 Humanitarian Law Centre (HLC). *Ethnic Communities in Kosovo in 2007 and 2008*. Prishtina: HLC, 2008; Council of Europe, *Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo*, CommDH(2009)23, 23

- 27 March 2009, p.23 For a brief overview of the Roma, Ashkali and Egyptian History see: Visoka, Gezim. ‘Political Parties and Minority Participation: Case of Roma, Ashkalia and Egyptians in Kosovo’. In *Political Parties and Minority Participation*, ed. Florian Bieber. Skopje: FES, 2008.
- 10 The Constitution of the Republic of Kosovo, 15 June 2008, Art. 60. Text available at <<http://www.kushtetutakosoves.info/?cid=2,258>>. The Statute and Regulation of the Council provide a detailed outline of the functions.
- 11 Prime Minister’s Office for Community Affairs Briefing Document, August 2008, Prishtina.
- 12 Interview with an Ashkali civil society representative in the Council, June 2010.
- 13 Interview with a Roma civil society activist who decided to remain confidential, June 2010.
- 14 Interview with an Egyptian Civil Society Representative in the Council, 23 June 2010.
- 15 Interview with an Ashkali Civil Society Representative in the Council, 22 June 2010.
- 16 Interview with an Ashkali MP in Kosovo Assembly, Member of CRIC, June 2010.
- 17 Interview with an Ashkali civil society activist who chose to remain anonymous, June 2010.
- 18 Interview with an Ashkali MP who chose to remain anonymous, June 2010.
- 19 *Ibid.*
- 20 Interview with an Egyptian MP in Kosovo Assembly, June 2010.
- 21 See: KDI Scorecard measuring system.
- 22 IRDK (New Democratic Initiative of Kosovo); PREBK (New United Roma Party of Kosovo); PDAK (Democratic Party of Kosovo Ashkali).
- 23 Interview with an Ashkali MP in Kosovo Assembly, Member of CRIC, June 2010.
- 24 *Ibid.*
- 25 Interview with an Ashkali MP in Kosovo Assembly, Member of CRIC, June 2010.
- 26 Interview with an Egyptian MP in Kosovo Assembly, June 2010.
- 27 Interviewees requested to remain anonymous to this point.
- 28 *Ibid.*
- 29 Interview with an Ashkali MP in Kosovo Assembly, Member of CRIC, June 2010.

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