

MINORITY INCLUSION IN POLICYMAKING IN KOSOVO: THE CREATION AND ROLE OF THE CONSULTATIVE COUNCIL FOR COMMUNITIES

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ABSTRACT

Consultative mechanisms are often heralded as a way for civil society and representatives from minority populations and other vulnerable groups to protect and promote their interests through access to government decision-making processes. Others however express more skeptical views of such mechanisms. This paper explores the recent creation of the Consultative Council for Communities in Kosovo to determine the level of voice it gives to minority communities in government decision-making. It also analyzes the role of transnational advocacy networks and the extent to which discourse in academic and international circles on the values of consultative mechanisms translated into the design of Kosovo's minority protection framework.

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CHAPTER ONE INTRODUCTION

In the last decade governments in Central and Eastern Europe have placed an increased emphasis on the inclusion of minorities in the policy process, with many countries creating special minority consultative bodies for this purpose. This move follows on the new governance approach to public administration, which encourages the greater involvement of non-state actors in government work, as well as on arguments for the specific inclusion of vulnerable groups in the political process (Kelly 1998, Box et. al. 2001, Salamon 2002, Bingham et. al. 2005). Governments of the region have also been under pressure by international institutions such as the European Union and Organization for Security and Cooperation in Europe to show progress in the area of minority inclusion. Despite the rise in the number of such bodies for minority consultation, they have received little scholarly attention with no academic studies on any of the councils.

Such consultative mechanisms are often heralded as a way for civil society and representatives from minority populations and other vulnerable groups to protection and promote their interests through access to government decision-making processes. However, scholars analyzing state agencies to promote gender equality expressed concern finding that such bodies were often created due to political motivations with little genuine intention for follow-through (Goetz 2003, 91 and Weldon 2002).

This thesis examines the process of the creation of one such minority consultative body, the Consultative Council for Communities in Kosovo, which was recently

mandated in Kosovo's 2008 constitution. This paper seeks to identify the process through which the Council was created, with a special examination of the role of transnational advocacy networks, as well as the extent to which discourse in academic and international circles on the values of consultative mechanisms translated into the creation of Kosovo's system.

I have selected to focus my research on the case of Kosovo due to the significant concerns for minority protection there, and the comprehensiveness of the system that has been legislated, the involvement of the international community and transnational advocacy networks and the timeliness of its recent creation.

It should be noted that in Kosovo non-Albanian populations are often referred to as communities rather than minority groups. The Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, hereafter referred to as the Law on Communities, defines communities as "national, ethnic, cultural, linguistic, or religious groups traditionally present in Kosovo that are not in the majority. The groups are Serbs, Turkish, Bosnian, Roma, Ashkali, Egyptian, Gorani and other communities" (Law on Communities, art 1.4).

The paper begins with a theoretical framework discussing literature on the participation of minority groups and consultative mechanisms and a review of the methodology used in this paper. It then provides an overview of Kosovo's minority protection framework with an emphasis on the structure and competencies of the Consultative Council for Communities. The final chapter before concluding remarks examines the process of the Council's creation identifying the role of different actors

in the process and traces the influence of academic and international discourse on Kosovo's Council.

CHAPTER TWO THEORETICAL FRAMEWORK

This chapter contains a review of literature that provides a rationale for the creation of minority consultative mechanisms and theories on what makes such mechanisms successful. It first examines the rise of the new governance approach to public administration, which stresses the need for greater public consultation and participation, and explores theories on the value of the participation of vulnerable groups in decision-making. Next, the chapter covers how this theory has been reflected in international standards and institutions for minority protection. It then moves on to provide an overview of studies on government machinery for vulnerable groups, relying on existing research on women's policy agencies, as well as an overview of practices of minority consultative mechanisms in Europe. The chapter concludes with discussion on the rising role of transnational advocacy networks.

2.1 New Governance and Increased Emphasis on Participation

Over the last decade there has been an increasing emphasis placed on the need for more inclusive government decision-making processes. Such reforms, as part of the new governance movement, evolved from the new public management (NPM) reforms of the late 1970s. NPM aimed to lower the costs and improve the efficiency of government by putting a greater emphasis on output measures, dismantling government hierarchies in favor of more decentralized decision-making and accountability, introducing competition into the public sector, and introducing management strategies inspired by the private sector (Hood 1991, 3-19). However, NPM was criticized for being overly focused on efficiency and market-based

measures and opponents claimed that there should be a greater emphasis placed on ensuring the representation of diverse groups within the bureaucracy and increased public accountability (Kelly 1998, 201-208 and Box 2001, 608-619).

In line with these criticisms of NPM, the new governance approach emphasized governance over government, underlining the importance of the collaborative nature of addressing pressing problems. The approach marks a shift from hierarchy to networks, from an attitude of public versus private, to one of public plus private and from an approach of command and control to negotiation and persuasion (Salamon 2002, 9). Tools of new governance to promote citizen participation in government processes include such measures as network structures, deliberative democracy, public conversations and participatory budgeting (Bingham et. al 2005, 547). An example of greater inclusion in the policy process can be found in the European Union's open method of coordination, which is increasingly bringing non-governmental actors to the table to help develop and monitor the implementation of policies in such areas as social inclusion and employment (Borras and Jacobsson 2004, 185-208).

2.2 Rationale for the Participation of Minorities and Vulnerable Groups

Building on the promotion of greater public participation in government, there has also been a growing emphasis on the need for increased minority political participation as a measure to protect and promote minority rights and interests. Rationales include that increased inclusion leads to greater stability and that the protection of minority rights can only be ensured if minorities are involved in

governmental decision-making processes (Bieber 2003, 3). This argument serves as part of the basis of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistics Minorities which states that “the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live” as well as that such rights are “an integral part of the development of society as a whole”(UN General Assembly Resolution 47/135 1992, preamble).

A further rationale is that in most democratic systems the majority population is able to elect the government and develop governing systems without concern for or input from minority communities. This creates an environment that has the possibility to lead to structural exclusion for non-majority communities. To counter this propensity for exclusion, governments often develop mechanisms to solicit minority participation in decision-making (Weller 1997, 477-478).

In her book *Inclusion and Democracy*, Iris Marion Young makes a case that greater inclusion serves not only as a means to promote the interests of excluded groups and hold governments accountable, but also that “inclusive democratic practice is likely to promote the most just results.” (Young 2000, 6). However, Young cautions that mechanisms to promote inclusion do not always achieve this aim, and that if ill-designed can actually have the affect of excluding those that need to be included (Young 2000).

In examining the role of vulnerable groups in the political process, participation has

been defined more broadly than simply running for elected office and voting. In her work on gender equality, Judith Squires identifies three strategies currently in use to achieve greater political parity: presence, process, and voice. Presence refers to the use of quotas to build representation, process to the practice of mainstreaming, and voice to policy agencies and government machinery that seek to represent the concerns of women (Squires 2007, 2). In an examination of women's involvement in domestic violence policies in 36 democratic countries, S. Laurel Weldon found that this third aspect of voice, through women's policy agencies and women's movements, may be a better way to represent women's positions than through elected representation (Weldon 2002, 1153).

2.3 The Right to Minority Participation in Public Life in International Law

These arguments on the need for minority participation have been promoted through international organizations such as the Council of Europe and the Organization and Security and Cooperation in Europe (OSCE). In line with arguments that participation should reach beyond elected representation, documents such as the OSCE's Lund Recommendations not only promote the ability for minorities to gain elected office, but for them to participate in public life and government decision-making through a variety of other means. While the Council of Europe's Framework Convention for the Protection of National Minorities is the only legal binding document mentioning the right to the participation of minorities in public life, court cases and general practice have moved minority rights beyond government commitments to "an uncontested part of the body of international human rights law" (Weller 2007, vii).

At the global level, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities provides a broad promotion of minority participation stating that “persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life” as well as “the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation” (UN General Assembly Resolution 47/135 1992, Article 2.2-2.3). The United Nations’ International Convention on the Elimination of All Forms of Racial Discrimination has similar language noting that minorities have “the rights to participate in election—to vote and stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service” (International Convention on the Elimination of All Forms of Racial Discrimination 1969, art 5c).

On the European level, the Council of Europe’s Framework Convention for the Protection of National Minorities follows along the line of the UN declaration, proclaiming that “the Parties shall create the 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” (FCPNM 1998, article 15). The explanatory notes go into more detail, suggesting ways that states can ensure real equality for minorities and provide conditions to encourage there participation. Such measures include consultation with minority representatives on legislation, government plans and programs, their inclusion in decision-making processes and elected bodies, decentralization, and the commissioning of impact

assessments (FCPNM Explanatory Report 1995, par 80).

The OSCE has also been active in promoting the full participation of minorities in public life. The Organization's Copenhagen Document of the Conference on the Human Dimension of 1990 states that "the participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities" (OSCE Copenhagen Document 1990, par. 35). In 1999, the OSCE High Commission for National Minorities, working with the Foundation on Inter-Ethnic Relations and the Raoul Walenberg Institute of Human Rights and Humanitarian Law assembled a group of internationally renowned experts in field of minority rights to produce the Lund Recommendations, which give concrete suggestions on how governments can further the participation of minorities in public life. While the recommendations are not binding, nonetheless they have become very influential in practice (Weller 2007, 480).

The recommendations address an array of avenues for participation including different forms of guaranteed representation on the central government level through such means as reserved parliamentary seats and special measures to increase minorities in the civil service; amendments to electoral systems that can be used to increase the number of minority representatives elected; and the creation of advisory and consultative bodies for minority issues (Lund Recommendations 1999 par. 6,9 and 12). The document is particularly strong in advocating for use of consultative bodies stating that "states should establish advisory or consultative bodies within appropriate frameworks to serve as channels for dialogue between governmental

authorities and national minorities” (Lund Recommendations 1999, par. 12).

2.4 Approaches to Equality Policy and Practices

Views on the principle of equality and equality-related policy have developed and strengthened over time. In her book *Discrimination Law*, Sandra Fredman identifies three main phases in this development: the removal of formal legal barriers to equality, such as the abolition of slavery; the use of anti-discrimination legislation to legally prohibit discrimination; and more recently moving beyond banning discrimination to taking positive action to promote equality through means such as affirmative action (Fredman 2002, 6).

Recent practice in equality laws, sometimes referred to as “fourth generation laws” goes further in promoting the participation of vulnerable groups in government decision-making (Fredman 2002, 123). The philosophy behind such thinking is that such participation is part of the process of defining problems, developing policies to address them and monitoring their evaluation and implementation and that with such participation “it is likely that strategies will be more successful, [and] the very process of achieving equality becomes a democratic one” (Fredman 2002, 123). The recent increase of government consultative bodies to include vulnerable groups in government decision-making follows along this line of reasoning.

2.5 Literature on Government Machinery for Vulnerable Groups

In line with the recommendations put forth in Lund, governments in Central and Eastern Europe, as well as other part of the globe have created a number of new mechanisms to facilitate the participation of vulnerable groups in decision-making processes. To date, there has been no examination of the impact of government mechanisms for the inclusion of minorities. However, in feminist literature there is a rich discourse analyzing the issue of voice through government machinery to promote gender equality.

In their book *Comparative State Feminism*, Dorothy McBride Stetson and Amy Mazur examined “women’s policy machinery” in 14 different countries to determine whether such machinery influenced feminist policy and the extent to which it helped women’s representatives access the policy process. McBride Stetson and Mazur based their definition of women’s policy machinery from that used by the UN Commission on the Status of Women to mean “any structure established by government with its main purpose being the betterment of women’s social status” (McBride Stetson and Mazur 1995, 3). In their study they found that such machinery widely promoted feminism and generally achieved either high influence, high access to the decision making process or both (McBride Stetson and Mazure 1995).

Research of government gender policy agencies has indentified a number of factors affecting the success of such bodies including resource levels, the broader political environment, the state of relationships between women’s civil society organizations and the government agency and the ways in which policy issues are framed (Outshoorn and Kantola 2007, 8). In their study Stetson McBride and Mazur found that women’s state machinery will most likely achieve feminist aims “on the one

hand, when the state is defined as a site of social justice and has the structural capacity to institutionalize new demands for equality and, on the other, when society sustains widely supported feminist organizations that challenge sex hierarchies through both radical politics from outside and reform politics in unions and parties” (McBride Stetson and Mazure, 1995, 290). Shirin Rai, in the book she edited and published in association with the United Nations, *Mainstreaming Gender, Democratizing the State? Institutional Mechanisms for the Advancement of Women*, identifies five factors that are critical for the success of national-level gender policy machineries. These are a location high enough in the decision-making hierarchy to effect policy; a clearly defined mandate and set of competencies; bonds with women’s civil society; human and financial resources; and accountability (Rai 2003, 26).

In their book *Changing State Feminism* Joyce Outshoorn and Johanna Kantola build on the research in *Comparative State Feminism* to determine how such trends have evolved since the 1980s and 90s in light of globalization, new public management reforms, and the increased emphasis on gender mainstreaming and gender diversity. Their study of 12 Western democracies found that the growing influence of the United Nations, and the European Union—for those states in Europe—played a positive role in strengthening the influence of such agencies by giving them leverage through treaties such as the Convention on the Elimination of Discrimination Against Women (CEDAW) in the case of the UN, and binding EU directives and in some cases direct EU financial assistance (Outshoorn and Kantola 2007, 270). Kantola and Outshoorn found that of the 12 countries in their study, gender policy agencies had strengthened in six cases, had consolidated in two and had lost influence in four

countries. In analyzing these changes the authors concluded that most of the cases where agencies were strengthened, countries had gone through either regional or structural decentralization and that women used this opportunity to strengthen local and regional bodies to promote gender equality. In cases where such decentralization did not take place, the authors found that right-wing governments were a strong explanatory factor in the decrease of influence of such gender policy bodies (Kantola and Outshoorn 2007, 276).

Within feminist literature on gender or women's policy agencies there are authors that express doubt about the effectiveness of such machinery and in particular if it really represents the concerns of the women's movement. Of central concern are issues of accountability and if such bodies are accountable to the women's movement or solely to the government (Outshoorn and Kantola 2007, 5). Also in question is the motivation for countries to create such agencies and if their creation is due to genuine intentions to include women in the decision-making processes or a simple political move in which leaders create such bodies to please national and international actors but never endow them with the resources, financial and otherwise, to carry out their work (Goetz 2003, 90-91). In her study of women's political machinery across the world, Anne Marie Goetz found that in most cases such bodies are not created due to indigenous political will—either by government or political actors, or the national women's movement—but due to pressure from foreign governments and donors or by the international women's movement through the United Nations (Goetz 2003, 70). Such bodies may also work counter to the aims of the women's movement pursuing non-feminist aims, thereby weakening the power of the women's movement rather than strengthening it (Outshoorn and Kantola 2007,

4). Such concerns have led authors such as Weldon to emphasize the need for interaction between autonomous women's civil society organizations and policy agencies in order for them to be effective (Weldon 2002, 1160).

Speaking to the need for interaction between the women's movement and state machinery, Alison Woodward introduces the concept of the "velvet triangle." She defines velvet triangles as informal networks of feminist bureaucrats, activists from the women's movement and academics who come together to advance a common policy agenda. It is largely through these informal structures that the ideas of civil society are incorporated into policy. Such a structure applies not only to the women's movement, but to a broader range of issues-based groups working on such areas as the environment and global development to promote their causes (Woodward 2004, 76).

While there are no studies on the efficiency of minority policy agencies, Marc Weller, the director of the European Centre for Minority Issues prepared the *Handbook on Minority Consultative Mechanisms* on behalf of the Committee of Experts on Issues Relating to the Protection of National Minorities of the Council of Europe. The handbook is based on the results of questionnaires given to governments on their minority consultative mechanisms and aims to showcase an array of approaches to minority consultation to help states further develop their consultation with minority groups (Weller 2006, 2). The Handbook distinguishes between four different types of bodies: mechanisms of co-decision; mechanisms for consultation; mechanisms for coordination and mechanisms for self-governance. While one type of mechanism is not advocated for above others, Weller suggests that whichever type of mechanism,

that provisions should be comprehensive and made at all levels of government. In addition to participation in parliament, the handbook advocates for the following: a national-level consultative council, which includes all representation from minorities present in the country; minority contact points within ministries; special mechanisms for minorities facing particularly severe exclusion; and local or regional bodies for consultation (Weller 2006, 10).

The Handbook offers a variety of other suggestions. Concerning the establishment of such mechanisms, Weller advocates that the presence and competencies of such bodies be mandated by ordinary, or preferably superior legislation (Weller 2006, 10). On the issue of mandate, bodies should be responsible for the following functions: supporting and mobilizing minority representative organizations; contributing to the development of legislation; contributing to government programming; and participating; and influencing the content of reports to international bodies relevant to minorities (Weller 2006, 11). The Lund Recommendations also provide guidance on the competencies of consultative bodies stating that they should “be able to raise issues with decision-makers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities” (OSCE High Commissioner on National Minorities Lund Recommendations 1999, par 13).

While different designs of mechanisms will affect their membership, the Handbook follows the recommendations of the Advisory Committee for the Framework Convention for the Protection of National Minorities that governments should ensure the representation of all communities and that it is best if the minority groups

themselves choose the individual representatives through community representative organizations or other methods that build consensus. Where this is not possible, the criteria for selection and the decision-making process should be as transparent as possible (Weller 2006, 14). In mechanisms bringing together government and minority representatives, at least half if not more of the membership of the council should be minority representatives (Weller 2006, 15).

Weller notes that an important aspect if a council is to be successful is for it to have the financial and human resources necessary carry out daily activities, fund projects and provide support to minority representative organizations (Weller 2006, 16).

2.6 *Transnational Advocacy Networks*

Increasingly non-state actors are playing a role in shaping domestic policies and programs. Such actors often work in the form of transnational advocacy networks. Such networks can be distinguished because of the “centrality of principled ideas or values motivating their formation” (Keck and Sikkink 1998, 1). In their work, transnational advocacy networks aim to mobilize the exchange information on theory and practice across the globe and to place new issues on the policy agenda and frame the way in which issues are discussed. Through campaigns and the strategic use of such information, advocacy networks “persuade, pressure and gain leverage over much more powerful organizations and governments” (Keck and Sikkink 1998, 2).

To date, transnational advocacy networks have been strongest in the fields of

women's and human rights, along with the environment. The network working on issues of human rights is largely composed of sections of international organizations, NGOs and foundations and in some cases parts of governments (Keck and Sikkink 1998, 80). Research by Goetz on the women's rights movement, noted earlier in this chapter, found that international actors did indeed play a strong role in promoting change with the formation of new government machinery for gender equality (Goetz 2003).

CHAPTER THREE METHODOLOGY

Minority community members, minority rights experts within the international community, and academics often herald consultative mechanisms as a way for minority populations and other vulnerable groups to promote and protect their interests through access to government decision-making processes. However, in some cases the question exists as to the motivation behind the creation of such bodies. Scholars analyzing the participation of vulnerable groups in the political process have voiced concerns over the prevalence of the creation of such mechanisms due to mere political moves to gather support with little intention for genuine follow-through (Goetz 2003, 91 and Weldon 2002).

This paper will explore the creation of the Consultative Council for Communities, a body under the auspices of the President of the Republic of Kosovo created with the stated aim of including minorities in the policy process. The body is frequently cited by the Kosovar government and the international community as evidence of Kosovo's commitment to the full inclusion of minority communities into society. This paper will explore the process of the creation of the Council to see which actors played a leading role in the creation and the structuring of the body, how they interacted and extent to which discourse in academic and international circles on the values of consultative policy machinery translated into the creation of Kosovo's system.

To do this, I will use the method of process-tracing to draw conclusions about the factors influencing the creation of the Council in Kosovo. In the words of Andrew

George and Andrew Bennett, pioneers in the use of this methodology, “the process-tracing method attempts to identify the intervening causal process—the causal chain and causal mechanism—between an independent variable (or variables) and the outcome of the dependent variable (George and Bennett 2005, 206).

I will examine the process of the Council's creation from its early beginning as an informal advisor during Kosovo final status negotiations to its institutionalization in Kosovo's constitution in 2008. I will seek to determine how various actors in international organizations and NGOs, minority communities in Kosovo and Kosovar government and political officials interacted to develop the Council, and the ideas that guided its creation. I will also examine the period since the Council was officially constituted by presidential degree in December 2008 to analyze the level of voice given to community members in the early stages of the Council's operations.

To conduct this analysis, a variety of sources will be examined. An important component will be primary source documents such as transcripts of speeches and press releases by Kosovar officials such as the president and prime minister, senior international officials and experts active in Kosovo, and members of Kosovo's minority communities. In addition to these primary sources are interviews conducted by the author in May 2009 with individuals deeply involved in the creation of the Council including the Chairman on the Council Bojan Stojanovic, the Head of the Secretariat of the Council in the President's Office Nafiye Gal, Egyptian member of the Council and Member of Parliament Xhedet Neziraj, Deputy Head of the Community Affairs Office Bashkim Ibishi and Program Manager at the European Centre for Minority Issues Kelley Thompson. The report will also draw on reports by

international organizations such as the Humanitarian Law Center on the status on the implementation of the law establishing the Council.

To determine influence in the creation of the Council, I will also compare the text of Kosovo's Constitution and the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, the two pieces of legislation establishing the Council, with documents produced prior to the creation of the Council by those who were known to be heavily involved in the process and to academic literature on the subject.

While in my research I had good access to some key actors in the Council's creation and development, my research is not without limitations. As with many political decisions, discussions about the creation of this body were done behind closed doors with no public record or transcript. The Council was created as part of the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, which was one of a large number of laws put forward in the Ahtisaari Plan which were passed by parliament in a number of days with little or no debate or modification. As a result, in constructing an account of the creation of the Council, I am forced to rely on reports and interviews that may carry with them the bias of author or interviewee.

While there are a number of such bodies to promote and protect the interests of minority communities, particularly in Central and Southeast Europe, I have selected the case of Kosovo due to the significant concerns for minority protection there, and the comprehensiveness of the system that has been legislated, the involvement of

the international community and transnational advocacy networks and the timeliness of its recent creation.

CHAPTER FOUR MINORITY PROTECTION IN KOSOVO AND THE CONSULTATIVE COUNCIL FOR COMMUNITIES

This section will detail Kosovo's extensive set of institutions for minority protection, and in particular the competencies and structure of the Consultative Council for Communities. Many of the provisions outlined below were legislated in 2008 as a result of recommendations laid out in the Ahtisaari plan and adopted in their entirety.

4.1 The Minority Protection Landscape in Kosovo

4.1.1 The Constitution

The Constitution of Kosovo and the Law on Communities provide for a series of institutions for the protection of communities in Kosovo. The Constitution, which entered into force on June 15, 2008 provides special rights for communities and their members stating that “communities shall have special rights...in addition to the human rights and fundamental freedoms provided in chapter II of this constitution” (Constitution of the Republic of Kosovo 2008, art 57.1).

Article 58 of the Constitution lays out the responsibilities of the state in protecting and promoting the rights and interests of communities in Kosovo. The section addresses a series of areas in which the state must take a proactive role towards communities and their members. These duties require that the state do the following:

“ensure appropriate conditions enabling communities, and their members to preserve, protect, and develop their identities...promote a spirit of tolerance, dialogue and support reconciliation among communities...take all necessary measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their national, ethnic, cultural or religious identity...adopt adequate measures as may be necessary to promote, in all areas of economic, social, political and cultural life, full and effective equality among members of communities...promote the preservation of the cultural and religious heritage of all communities as an integral part of the heritage of Kosovo...[and] take effective actions against all those undermining the enjoyment of the rights of members of communities” (Constitution of the Republic of Kosovo 2008, art. 58.1-.6).

These provisions move beyond the non-discrimination approach to equality to provide measures for the achievement of substantive equality among communities. In laying out these positive action measures, the constitution explicitly states these measures “shall not be considered to be an act of discrimination” (Constitution of the Republic of Kosovo 2008, art. 58.4).

In addition to defining a number of rights of communities and their members, such as to maintain their culture, use their language freely and have access to and special representation in public media, the constitution also provides for special mechanisms to ensure community representatives are provided a voice in the policy process. The first of these is the Consultative Council for Communities, which will be examined later in this chapter in more detail. The Constitution also requires that communities are “entitled to equitable representation in employment in public bodies and publicly owned enterprises” (Constitution of the Republic of Kosovo 2008, art. 61) and are guaranteed a post of vice president of the municipal assembly in localities where they are at least 10 percent of the population and not in the majority. This vice president has special powers to review claims from community members who believe the actions of the municipal council violate their rights, and to refer such complaints to the council with requests for a reconsideration of its actions. If the council takes no action the vice president has the ability to refer the matter directly to

the constitutional court (Constitution of the Republic of Kosovo 2008, arts. 60-62).

The Constitution also mandates the parliamentary Committee on the Rights and Interests of Communities (CRIC) and guaranteed representation of Kosovo's communities in parliament. Of Kosovo's 120 parliamentary deputies, a minimum of 10 must represent the Serb community, while another 10 seats are guaranteed for Kosovo's other communities: One each for the Roma, Ashkali and Egyptian communities, plus one additional seat for the group that receives the most votes; three seats for the Bosnian community; two seats for the Turkish community; and one seat for the Gorani community (Constitution of the Republic of Kosovo 2008, art. 64). The CRIC is a permanent committee of the assembly and is composed of one-third Serb representatives, one-third other community representatives, and one-third of non-community member MPs. The Committee has the right to submit recommendations to any other committee or to the assembly; can review any proposed law if it is requested by a member of the Presidency of the Assembly; and can propose laws (Constitution of the Republic of Kosovo 2008, art. 78). In addition laws deemed to be of vital interest require a double majority vote to pass. In addition to receiving a majority of assembly votes, such laws must receive a majority of votes among those MPs holding reserved seats for community members. The Constitution lists such laws as those that address the boundaries or competencies of municipalities, the rights of communities and their members, language use, local elections, the protection of cultural heritage, religious freedom, education and symbols and public holidays (Constitution of the Republic of Kosovo 2008, art. 81).

4.1.2 The Law on the Protection and Promotion of the Rights of Communities

The Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, frequently referred to as the Law on Communities, passed in March 2008, further elaborates on the state's duties toward minority groups. The Law largely echoes the protections laid out in the Constitution, requiring the state to take measures to protect the identity, language, culture, religion, education, media access, and health of communities. It also allows for and in some cases mandates affirmative measures to ensure full and effective equality. Such clauses are strongest in the areas of economic and social opportunities, education, and political participation. The Law requires that special public employment programs be created (Law on Communities 2008, art. 9.2), that the Communities Consultative Council be established (Law on Communities 2008, art. 12) that that special measures be taken to increase the number of community members in senior public service positions (Law on Communities 2008 art. 9.7) and institutes of higher education (Law on Communities 2008, art. 8.12). The law also touches on the issue of intersectionality, calling for regular monitoring of the equality of women and men in employment to ensure that women are not suffering from double discrimination, and stating that in economic development programs that groups such as the poor, elderly, and disabled should be given special consideration (Law on Communities 2008, art. 9.3-9.4).

4.1.3 The Law on Local Self-Government

The Law on Local Self-Government, passed in February 2002, lays out mechanisms to involve community members in municipal level decision-making. Mirroring the

national-level Communities Consultative Committee, the law mandates that every municipality create municipal communities committees. Each community in the municipality must be represented on the committee, along with government representatives. Similar to the national Council, the committees are tasked with reviewing the municipalities' compliance with minority protection standards and recommending policies to promote minority interests (Law on Local Self-Government 2008, art. 53). The law also mandates the deputy president for communities of the municipal assembly, which was later included in the Constitution, and a deputy mayor for communities in municipalities where minorities compose more than 10 percent of the population but are not in the majority (Law on Local Self-Government 2008, art. 54 and 61).

4.1.4 The Ministry of Communities and Returns

One of the major bodies for the promotion and protection of minority rights is the Ministry of Communities and Returns, established in 2005 by UNMIK regulation 2005/15. The Ministry is tasked with a broad mandate, which includes developing policies in the interest of communities, coordinating with and monitoring other ministries and municipalities to ensure minority rights are being protected and applicable laws implemented, promoting reconciliation among communities and developing and managing government programs to pursue integration and encourage the return of community members to Kosovo (*Amending UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo* 2005, Annex XII). Despite its extensive purview, to date the ministry has focused its work largely on returns, and has done little in the area of

promoting community rights or reconciliation, in part due to being severely understaffed (European Centre for Minority Issues Kosovo 2009a, 27).

4.1.5 The Office for Community Affairs

While not mandated by law, the Office for Communities Affairs (OCA) is a developing office created in 2008 by and under the auspices of the Prime Minister of Kosovo. The aim of the office is to advise the Prime Minister on community issues, coordinate with international organizations working in Kosovo to facilitate the most effective assistance, provide policy analysis and ideas, implement small scale programming and assist in resolving high profile cases (European Centre for Minority Issues 2009a, 37). However as of May 2009, more than a year after its creation, the Office was still not operational with only half of its envisioned staff hired (author interview with OCA Deputy Head Bashkim Ibishi, 2009).

4.1.6 Human Rights Protections

In addition to these specific bodies, minority rights are also understood to be part of human rights and also fall under the preview of a number mechanisms and institutions to protect human rights with community rights often specifically listed under their competencies. These include the Advisory Office on Good Governance, Human Rights, Equal Opportunities and Gender in the Office of the Prime Minister, the human rights units within each ministry, the government's human rights coordinator and the ombudsperson. Prior to Kosovo's independence and the recommendations in the Ahtisaari Plan, community rights were to a large part

subsumed by the wider human rights agenda and legal protections for communities were often not fully implemented, or were dealt with on an ad-hoc basis as opposed to a comprehensive approach to minority protection (European Centre for Minority Issues Kosovo 2009a, 16-17).

4.2 *The Consultative Council for Communities*

The Consultative Council for Communities, in its current form, was created in 2008 first in the Law on Communities. It was later enshrined in the Constitution. However, the Council was first created in 2005 as an informal body to advise the Kosovo delegation at the negotiations on Kosovo's final status. According to actors involved in the development of Kosovo's minority protection framework, the Council, as well as the Office for Community Affairs, was created to address previous inadequacies in the promotion of community rights (European Centre for Minority Issues 2009a, 10).

4.2.1 Competencies

Article 60 of the Constitution establishing the Consultative Council for Communities mandates that the Council act under the authority of the President of the Republic of Kosovo and that it be composed of members of associations representing communities among others. The article also defines the mandate of Council, directly using the text in annex two of the Ahtisaari Plan recommending such a body. The aims of the Council are the following:

- “ (1) provide a mechanism for regular exchange between the Communities and the Government of Kosovo.
(2) afford to the Communities the opportunity to comment at an early stage on legislative or policy initiatives that may be prepared by the Government, to suggest such initiatives, and to seek to have their views incorporated in the relevant projects and programs;
(3) have any other responsibilities and functions as provided in accordance with law”
(Constitution of the Republic of Kosovo 2008, art. 60.3).

The Law on Communities lays out the requirements and competencies of the Council in greater detail. In addition to the aims stated in the Constitution, the mandate of the Council is more detailed including that the Council should provide a forum for cooperation and coordination among communities. The Law also enables the Council to be able to comment on needs assessments, funding decisions, reporting to international human rights mechanisms and to fulfill requests for mandatory consultations required of the government by law (Law on Communities 2008, 12.1).

4.2.2 Composition

The Council is composed of community representatives coming from both civil society and parliament, as well as government officials. The Law on Communities provides guidance on the number of representatives on the Council. Each of the following communities is assigned two representatives: the Ashkali, Egyptians, Roma, and Gorani. No more than one of each community's representatives may be a member of the Assembly of Kosovo. The Serb community is allocated five representatives, two of which may be MPs. The Bosniak and Turk communities have three representatives each, one of whom may be an MP (Law on Communities 2008, art. 12.6). While not included in the original law, the Montenegrin community was also given one representative on the Council (Author interview with head of the

Council secretariat Nafiye Gal, 2009) in accordance with the Council's statute which states that the President of Kosovo can grant other communities one representative upon request (Consultative Council for Communities Statutes, art. 3.6). According to the Law on Communities, Community members must make up at least 2/3 of the members of the Council (Law on Communities 2008, art. 12.9).

The law states that those community members who are not also MPs should "normally" be the chairperson and vice chairs of the Council. However, in its first session the Council voted to name Bojan Stojanovic, a Serb MP and chair of the Parliamentary Committee on the Rights and Interests of Communities, to serve as the Chairman of the Consultative Council for Communities, deciding that the wording of the law was non-binding (European Centre for Minority Issues 2009b, 1).

The Law on Communities states that all community representatives shall be selected through community representative organizations, while the statute of the Council provides a more detailed outline of this process. The community representative organizations may be one NGO or a legal association of NGOs that are recognized by their community to be representative and accredited by the President. The statute states that if such organizations do not exist the Council or its secretariat can help in their creation (Consultative Council for Communities 2008, art. 4). To date, there are no such accredited representative organizations, and the ECMI and head of the secretariat of the Council are designing activities to aid in their creation (author interviews with ECMI Program Manager Kelley Thompson and Council Secretariat Head Nafiye Gal, 2009). If such an organization can not be created, or the organization can not reach consensus on a candidate, the President of Kosovo has

the right to appoint the member following criteria laid out in the Council's statute (Consultative Council for Communities 2008, art. 4).

As there are currently not any community representative organizations, nor the time to create them, the first set of community representatives were selected through a consultation process with the different community groups facilitated by the European Centre for Minority Issues in partnership with the President's office. Through these community meetings most communities were able to reach consensus on their representatives, while some could not, sending more names than open positions to the President leaving him to decide on community's representation. Due to this atypical selection process, representatives will only serve a one-year term instead of the two-year term prescribed in the Law on Communities and the Council's statute (author interview with ECMI Program Manager Kelley Thompson, 2009 and Humanitarian Law Centre Kosovo 2008, 85).

Non-community representatives on the Council and the process for their selection is only vaguely described in the Law on Communities, which states that representatives of "the government, the Office of the President and relevant agencies" (Law on Communities 2008, art. 12.6) shall sit on the Council. The Council's statute provides more specificity that there be one permanent government representatives on the Council from each of the following offices: Office of the President, the Office of the Prime Minister, the Ministry of Communities and Returns and the Office of the Kosovo Assembly Speaker. Each of these representatives, or their substitute, is required to attend each meeting. Representatives from various ministries may also be invited to attend when issues under their purview are being

discussed. The Council may also invite other topical experts, civil society representatives or international organizations as they see fit. The statute also provides the possibility for the Council to invite a ministry representative to permanently join the Council (Consultative Council for Communities Statutes 2009, art. 3). The Council has already considered issuing invitations to representatives from the ministries of education, public administration and culture, youth and sports (author interview with Head of Council Secretariat Nafiye Gal, 2009).

4.2.3 Operations

The Law on Communities dictates that the Council shall meet every month, and shall have biannual review meetings to be chaired by the President of the Republic of Kosovo. It should be supported by a Secretariat within the President's Office and shall have a budget that enables it to conduct its meetings, pay its staff, build the capacity of its members, commission studies and expert analysis, and publicize its work and may also receive additional funds to conduct community-related programming and to support the community representative organizations (Law on Communities 2008, art. 12). The budget should be requested as a separate item in the President's annual budget request to the Assembly of Kosovo (Consultative Council for Communities 2008, art. 17).

The Council is responsible for creating an annual workplan and producing annual reports on its work. Following its mandate the Council can also make recommendations to government institutions. For recommendations to public institutions they must receive a response within one month detailing actions taken on

the recommendation, and if no action was taken the rationale for why not. The Council also has the right to participate in parliamentary debate of laws at the committee stage and provide written submissions. If the Council's suggestions are not incorporated it must receive written rationale within one month (Law on Communities 2008, 12.12).

4.2.4 The Status of the Council's Work to Date

While the Council was legislated with the passage of the Law on Communities on March 13, 2008 its process of becoming operational has been slow. The Council was established by presidential decree on September 15, 2008, but did not have its inaugural meeting until March 13, 2009, a full year after the Council was mandated. This delay can be partly attributed to the consultation process undertaken to select representatives and other administrative steps that had to be taken such as the drafting of the Council's statute, which was adopted as part of the presidential decree establishing the Council. While the Council has begun meeting, it still has not been endowed with the financial or human resources necessary to conduct its work. The secretariat, which is tasked with managing the operations of the Council, currently has only one employee, the Head of the Secretariat Nafiye Gal. The Secretariat is envisioned to have at least four other employees—two legal experts, an assistant, and a webmaster—however as of May 2009 the secretariat had not yet been authorized to fill these positions, purportedly due to a lack of office space in the President's Office (author interview with Head of the Council's Secretariat Nafiye Gal 2009). Such staffing problems are not unique to the Council. The Office for Community Affairs within the Office of the Prime Minister of Kosovo has also been in

existence for more than a year, yet still is far from being fully-staffed or operational (author interview with Deputy Head of the Office of Community Affairs Bashkim Ibishi 2009).

In addition to a lack of human resources the Council still did not have an operating budget as of May 2009. The head of the Council's secretariat Nafiye Gal spoke of imminent plans to develop a budget to submit to the President to then submit to the Assembly (author interview with the Head of the Council's Secretariat Nafiye Gal). However due to bureaucratic procedures it appears that the Council is months away from having a budget to support activities. Gal also acknowledged that the representatives on the Council are in need of training to be able to fulfill their envisioned role, but that the budget will not be adequate for such capacity building, forcing the Council to rely on foreign donors. To date the European Centre for Minority Issues has provided some training for Council members and helped the Council conduct strategic planning at a weekend seminar (author interview with the Head of the Council's Secretariat Nafiye Gal).

CHAPTER FIVE IDENTIFYING INFLUENCE IN THE CREATION OF THE CONSULTATIVE COUNCIL FOR COMMUNITIES

This chapter uses the process-tracing methodology outlined previously to explore how Kosovo's Consultative Council for Communities came to be and to which extent it reflects discourse in academic and international circles on the values of consultative policy machinery. The analysis will trace the Council's creation as an informal body designed to advise the Kosovo delegation at the negotiations on Kosovo's final status, to it being enshrined in Constitution of the Republic of Kosovo, to work in early 2009 to make the Council operational.

In this analysis I will examine the roles of representatives of communities in Kosovo, the international community, and Kosovo government officials and analyze the extent to which transnational policy networks influenced the Council's creation.

5.1 *The Process of the Council's Creation*

The Council first began as an advisory body to Kosovo's delegation to the final status negotiations. During the negotiations the Council was led by Veton Surroi, a non-Albanian member of parliament and head of the small center-left party Civil List Ora. Surroi, a parliamentarian only since 2004 had previously worked as the founder and editor-in-chief of one of Kosovo's main newspapers (OSCE 2004, 18). Surroi, who had previous relationships with international experts in minority rights such as ECMI's Marc Weller, (author interview with Baskim Ibishi 2009) was one of the few ethnic-Albanian political or government officials actively involved with the creation or

work of the Council.

While the government ultimately created this body and allowed it to participate and submit recommendations, it did so only under pressure from the international community. From the beginning of the status negotiations the Contact Group, an informal, but influential grouping of the United States, the United Kingdom, Germany, France, Italy and Russia, set an expectation that minorities should be consulted in the negotiation process. Among their guiding principles for the status negotiations was that “the process should provide for the effective participation of the Kosovo Serbs and other Kosovo citizens and communities” (Contact Group 2006). The United States and others had also urged the Kosovo delegation to negotiate generously, particularly in the areas of minority rights and protections, if it wanted to see its wishes for independence granted (Weller 2008, 23). An interview with a community representative involved in the Kosovo final status negotiations says that at this point it was the director of the European Centre for Minority Rights Marc Weller that came up with the idea for the Council (author interview with Bashkim Ibishi 2009). After its creation, the UN and other international bodies continued to urge for the inclusion of the Consultative Council in the negotiation process and that its recommendations be folded into the settlement package (Rohan 2005).

After the creation of the Council during the status negotiations, it received much assistance from transnational actors with expertise in minority rights. In January 2006, The European Centre for Minority Issues signed a memorandum of understanding (MoU) with the Council to provide expert technical assistance on

minority rights issues. Even at this time, there was an idea that this body should be made permanent with an ECMI publication stating that “the CCC will enhance the role of communities in the status negotiations, and will eventually be transformed into a permanent body to facilitate inter-community discussion and input into the policy-making process (ECMI, 2006).

Under this MoU the ECMI organized three workshops that brought together the Council members to provide them with information on minority protection issues, and to create a document for the Kosovo delegation with recommendations on future community protection and participation mechanisms, including making the Consultative Council for Communities permanent (ECMI 2006).

The Council’s recommendations were accepted whole-scale and presented at the Vienna conference of the status negotiations and later included in the Ahtisaari Plan (Weller 2006, 28). Knowing that adherence to the Ahtisaari Plan was the key to being recognized by many states, in its declaration of independence Kosovo pledged to fully abide by “the obligations for Kosovo contained in the Ahtisaari Plan, and welcome the framework it proposes to guide Kosovo in the years ahead” (Republic of Kosovo Declaration of Independence 2008, art. 3). The Consultative Council for Communities was then included as part of the Law on Communities, which was based largely on the document presented by the Council to the Kosovo delegation during status talks (ECMI Kosovo, www.ecmikosovo.org).

Interviews with community representatives active in the Council revealed mixed feelings as to whether their voices were heard in this process. Some representatives

thought that they were given a chance to participate substantially in the process. As put by Xhevdet Neziraj, an Egyptian member of parliament and member of the Council during the status negotiations, “our input was very big. We provided a lot of information” (author interview with Neziraj 2009). However others were less satisfied. Bashkim Ibishi, a Roma representative, soon left the Council because he felt “the issues raised by the communities were not taken seriously” (author interview with Ibishi 2009). Ibishi also noted that “lots of influence was presented by the internationals and there was blind acceptance by the mainstream leaders. The Council was created aiming to say to the international community, look we produced a law and have a Consultative Council for Communities. Secondly it was an attempt to control minority initiatives in a way.” (author interview with Ibishi 2009).

The Consultative Council for Communities was legislated in the Law on Communities, which was passed by parliament in March 2008, a month after the declaration of independence, with a number of other laws contained in the Ahtisaari Plan. Later that year it was enshrined in the Constitution. The body was officially established by presidential decree in December 2008, and held its inaugural meeting chaired by President Sedjui in March 2009, a year after it was first legislated.

After the status negotiations and the release of the Ahtisaari Plan, international NGOs, and most notably the ECMI, continued to be highly involved in its shaping and subsequent operation. Working with money from the British Government’s Department for International Development (DFID) and Foreign and Commonwealth Office (FCO) ECMI is running a program with three aims: “establishing the legal framework for the Council; developing the institutional framework for the operations

of the CCC; and supporting minority representative organisations that will be nominate members and inform and communicate the work of the CCC” (ECMI, www.ecmikosovo.org). ECMI took part in drafting the section on the Rights of Communities and their Members in the Kosovo constitution, which mandates the creation of the Council, as well as the Law on Communities further detailing its mandate (ECMI, www.ecmikosovo.org).

Moving beyond an advisory role, ECMI, in cooperation with the Office of the President of the Republic of Kosovo, led the consultation process with communities and their representatives aimed at identifying representatives to sit on the Council. ECMI organized at least one meeting with representatives from each community, where the role of the Council was explained and communities were asked to come to a consensus on whom to nominate to sit on the Council. For those that could not agree on a representative, they sent multiple names to the President for him to select their representatives. During this time, ECMI helped the office of the president to design the secretariat of the Council, draft its statute, and write the presidential decree establishing the body (Humanitarian Law Centre Kosovo 2009, 88). ECMI also helped create the Council’s budgeting guidelines and the rules of accreditation of community representative organizations (ECMI, www.ecmikosovo.org).

5.2 Transnational Advocacy Networks and the Case of Kosovo

An examination of the process of the creation of the Council and other minority

protection mechanisms in Kosovo shows that cooperation among the international community and Kosovo's community representatives allowed these actors to push ideas and values forward. Kosovar officials were significantly less involved in this process, but under international pressure readily accepted recommendations made by the communities and minority rights experts.

The creation of the Consultative Council for Communities in Kosovo is an example of transnational actors and domestic activists working together through an advocacy network to bring about policy change. In this case experts such as Marc Weller from the European Centre for Minority Issues were able to supply community representatives in Kosovo with valuable and practical information on a variety of different minority protection mechanisms across Europe and the world. Representatives active in the process remember examining mechanisms in such countries as Slovenia, Slovakia, Hungary and Croatia, and now that they have used some of this information to create the Council, look forward to further exchanges on operational issues (author interviews with Xhevdet Ibishi and Nafiye Gal 2009).

In many ways this transnational cooperation is evident in the structure of the Consultative Council for Communities and even Kosovo's minority protection framework more broadly. In 2006 ECMI Director Marc Weller drafted the *Handbook on Minority Consultative Mechanisms* (Weller 2006), which using surveys completed by governments of the countries in the Council of Europe, outlined current and advised practice regarding minority consultative mechanisms. Almost all of the recommendations contained in this handbook are reflected in Kosovo's system, likely due to ECMI's activeness and influence during the creation of the Council. One

example is that Weller recommends a minority protection framework have the following elements, in addition to guaranteed parliamentary and governmental decision-making:

- “An overall minority consultative council operating at the national level, and including all minorities within the respective state;
- Specialist contact points, or consultation structures, within key ministries covering issue areas of interest to minorities;
- Particular mechanisms addressing an individual minority that faces unique and special exclusion (e.g) Roma;
- Regional or local consultative mechanisms that may also, in turn, include particular or specialist consultation procedures” (Weller 2006, 10).

When examining Kosovo’s structure for minority protection, one can observe an almost identical system. In addition to reserved seats in parliament, the Consultative Council for Communities serves as Kosovo’s central consultative body, while its mandated municipal communities consultative committees provide local level mechanisms. Kosovo also has human rights coordinators within every ministry, as well as the Office for Community Affairs in the Prime Minister’s Office whose responsibilities include coordinating the community-related work of relevant ministries. Finally, Kosovo has adopted a special action plan for the Roma, Ashkali and Egyptian communities, which face special challenges. Other examples can be found of similarities between best practice and Kosovo’s system in areas such as the legislative establishment of consultative mechanisms, their mandate and who should be represented on such bodies (Weller 2006 and Law on Communities 2008).

In the case of Kosovo, actors such as the United Nations and the governments of the

Contact Group were able to put pressure on Kosovo officials to do more to address minority rights and thereby provide leverage to community representatives in their requests for greater minority protection mechanisms. The ECMI has continued to stay involved with the work of the Council providing it will valuable technical support and continued leverage with governmental and political actors.

5.3 *The Role of the Consultative Council in Giving Communities Voice*

Many of the ideas in academic discourse on the political participation of vulnerable groups and more specifically on government policy machinery for such groups are reflected in Kosovo's minority protection framework and its Consultative Council for Communities. As discussed in the theoretical framework section of this paper, scholar Judith Squires (Squires 2007, 2) identifies three strategies currently in use to achieve greater political parity: presence, process, and voice. With the development of Kosovo's new system, it has all three. Presence, or elected representation, is ensured by quotas in the national parliament and by positions of municipal council vice-presidents. Process, or the mainstreaming of the issues of vulnerable groups, is addressed through the human rights units in each of the ministries. Finally, voice, achieved through policy agencies and government machinery is given with the Consultative Council for Communities as well as local level Communities Consultative Committees.

As it is designed on paper, the Council gives communities voice by allowing them to select their own representatives—with President approval—who are able to meet government officials to discuss new legislative initiatives, contribute to the design of

government programs and have a say in such areas as the government's reports for international institutions measuring its progress on human rights issues. While without veto or decision-making power, they do have a right for their voice to be heard and for the government to reply in writing to their requests or recommendations within 30 days. Government officials on the Council are required to attend meetings or send a designated substitute, and only compose up to one-third of all voting members on the Council to limit their influence. In addition, MPs representing communities do have such a veto power on legislation of vital interest to minorities. The Law on Communities also states that the Council shall have a budget that allows it to commission studies and seek expert opinion, as well as support projects and community representative organizations, further enabling community groups to gather information and improve their voice in government decision-making.

While it is too early to evaluate the work or success of the Council, there is some reason to believe that the warnings of some scholars on government machinery for vulnerable groups may be relevant. One of the concerns laid out by Johanna Kantola and Joyce Outshoorn in their *Changing State Feminism* is the issue of accountability and if such bodies are truly representative and accountable to the women's movement or if they are more accountable to the government. The design of the Communities Consultative Council attempts to draw lines of accountability back to the communities themselves through assigning community representative organizations with the role of nominating candidates and limiting the number of government representatives with a vote on the Council. However, in the process of selecting the first group of representatives to the Council, questions were raised over

the representativeness and legitimacy of those selected. Many people, particularly members of the Serb, Turkish and Bosniak communities believe that the process of selecting representatives for the council lacked adequate transparency and some relevant civil society groups were excluded from the process. The Serbs in particular noted that active and well-respected NGOs from North Mitrovica were not invited to the meetings in which representative were selected (Humanitarian Law Centre Kosovo 2009, 84).

Authors also site the importance of interaction between autonomous civil society organizations and government bodies for them to be effective (Weldon 2002, 1160). In Kosovo's Council, the number of community representatives coming from parliament is intentionally limited thereby ensuring the representative of civil society representatives. However, in addition to questions over how those representatives were selected, it appears that within the Council, civil society members may not have the full influence that was envisioned. In the Council's first meeting the group voted to make Bojan Stojanovic, a Serb MP chair of the Council. This decision was made despite the wording of the Council's statute that the chair should "normally" be a representative from civil society, thereby setting a precedent for future Councils. In addition to chairing the Council, Stojanovic also chairs the parliamentary committee on the rights and interests of communities, raising doubts as to whether he can effectively fill both roles (author interview with Xhevdet Neziraj 2009) in addition to the concern of putting much of the power to represent communities to the government under one man's control. Further raising concerns, in an interview with the author, Stojanovic at times discredited NGOs. When asked if he thought they were adequately consulted during the creation of the Council he replied that they

were not but that “many communities are not yet ready to be consulted” and later stated that “the role of civil society is to serve as an advisor to the government and to help them implement policies, not to have political mechanisms on their hands. We need to make sure that the council does not turn into a body for personal wish list” (author interview with Bojan Stojanovic 2009).

Questions have also been raised in academic circles about the motivation behind the creation of government mechanisms for vulnerable groups. Ann Marie Goetz highlights that in many countries leaders create such bodies to please national and international actors but never endow them with the resources, financial and otherwise, to carry out their work (Goetz 2003, 90-91). As mentioned previously, the Kosovar government readily accepted the idea of the Council and other minority protection mechanisms during status negotiations, folding them into their proposals. However, it took the government a year from when the Council was legislated to hold its inaugural meeting in March 2009. And work from there was also slow with the first meeting on a substantive policy issue, education, held in June 2009. However, such delays may be attributed to procedures necessary to set up a new government institution or to the consultation process to select its first group of members. More concerning is that a year and a half after being legislated only one staff member has been hired to administer the Council, the head of its secretariat. Efforts of the head of the secretariat to hire the additional four envisioned staff members have been stalled due to a lack of office space. She can not receive permission from civil service administrations to hire new employees with no space to put them, but she fears that she will not be allocated space without the people hired (Author interview with head of the Council’s secretariat Nafiye Gal 2009).

In addition to a lack of human capacity, the Council is still operating without a budget. While in June 2009 the Council was to begin making budget recommendations for the President to include in his request to parliament, this will likely take additional months. The head of the Council's secretariat has also raised fears that even once the Council has a budget it will not be sufficient to cover all the necessary costs, particularly those of capacity building for the members of the Council (author interview with head of the Council's secretariat Nafiye Gal 2009). This lack of action is building on feelings of frustration and leading to a growing lack of motivation among community representatives (author interviews with Xhevdet Neziraj and Bashkim Ibishi 2009).

CHAPTER SIX CONCLUSION

In its design, the Consultative Council for Communities in Kosovo is an institution that gives a voice in the policy-development process to minority groups and their members. Such a design, featuring many aspects of international good practice in the area of minority consultative mechanisms was made possible due to the work of transnational actors that were able to supply minority rights activists in Kosovo with information and support. This partnership, working in the form of a transnational advocacy network, gave communities in Kosovo leverage in their negotiations with the government, which enabled them to significantly influence government policy and legislation.

However, the Council has experienced some problems in its early implementation in the areas of accountability and representativeness and a lack of adequate resources that are warned of in academic discourse on consultative mechanisms. These problems have the potential to weaken the voice supplied to civil society through the Council if not addressed. However, actors such as the European Centre for Minority Issues who were active in the body's creation remain engaged working with the Council and its members to help them fulfill their envisioned roles.

Scholars analyzing government bodies to promote the interests of women have created a rich discourse on such bodies, factors influencing their creation and their influence on government policy. However, no systematic comparative studies have been done on minority consultative mechanisms and their efficiency and influence. As such bodies become more common, such studies would provide valuable

information that could be used to shape future bodies and help improve those already in existence.

CHAPTER SEVEN REFERENCES

Amending UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo. 2005. United Nations Mission in Kosovo, Reg. No. 2005/15, adopted March 16, 2005.

Bieber, Florian. 2003. *Balancing Political Participation and Minority Political Rights: The Experience of the Former Yugoslavia*, Budapest: Central European University Center for Policy Studies.

Bingham, Lisa Blombren, Nabatchi, Tina and O'Leary, Rosemary. 2005. "The New Governance: Practices and Processes for Stakeholder and Citizen Participation in the Work of Government" *Public Administration Review AR* Vol. 65.

Borras, Susana and Jacobsson, Kerstin, "The Open Method of Co-ordination and New Governance Patterns in the EU", *Journal of European Public Policy*, Vol. 11 Issue 2, April 2004, pgs 185-208.

Box, Richard C. et.al. 2001. "New Public Management and Substantive Democracy", *Public Administration Review*, Vol. 61, Issue 5, September/October 2001, pgs. 608-619.

Constitution of the Republic of Kosovo. Government of Kosovo, entered into force June 15, 2008.

Consultative Council for Communities. *Statute for the Establishment of the Communities Consultative Council in Kosovo*, adopted September 15 2008 by presidential decree.

Contact Group. 2006. *Guiding Principles of the Contact Group for a settlement of the status of Kosovo*. Available at <http://www.unosek.org/docref/Contact%20Group%20-%20Ten%20Guiding%20principles%20for%20Ahtisaari.pdf> [last accessed June 25, 2009]

Declaration of Independence of the Republic of Kosovo. Adopted by the Republic of Kosovo on June 15, 2008.

European Centre for Minority Issues. 2009b. *The Election of the Chairperson and Vice Chairperson of the Communities Consultative Council*, Pristina: ECMI-Kosovo, March 13, 2009.

European Centre for Minority Issues. 2006. *ECMI and the Kosovo Community Consultative Council Develop a Framework Document for the Protection of Rights of Communities in Kosovo*. ECMI Newsletter. Vol 3. Issue 2. October 2006. Available at http://www.ecmi.de/download/ecmi_NLvol3_2_Oct_2006.pdf [last accessed June 29, 2009].

European Center for Minority Issues Kosovo. 2009. *ECMI Kosovo Website: Institutionalization of the Consultative Council for Communities*. Available at

<http://www.ecmikosovo.org/fileadmin/ecmikosovo.tpl/projects-current.html> [last accessed June 29, 2009].

European Center for Minority Issues Kosovo. 2008. *Strengthening the Institutional System for Communities in Post-Independence Kosovo*. Pristina: ECMI-Kosovo.

Framework Convention on the Protection of National Minorities. Council of Europe. ETS No. 157. Adopted February 1, 1998.

Fredman, Sandra. 2002. *Discrimination Law*, Oxford: Oxford University Press.

Gas, Nafiye (Head of the Secretariat of the Communities Consultative Council and former MP representing the Turkish community). 2009. Interview by author. Pristina, May 26.

George, Alexander L., and Bennett, Andrew. 2005. *Case Studies and Theory Development in the Social Sciences*, Cambridge, Massachusetts: MIT Press.

Goetz, Anne Marie. 2003. "National Women's Machinery: State-based Institutions to Advocate for Gender Equality" in *Mainstreaming Gender, Democratizing the State? Institutional Mechanisms for the Advancement of Women*, edited by Shirin M. Rai, Manchester: Manchester University Press, published for and behalf of the United Nations.

Hood, Christopher. 1991. "A Public Management for All Seasons?" *Public Administration*, Vol. 67, issue 1, Spring 1991.

Humanitarian Law Centre Kosovo. 2008. *The Beginning of the Implementation of the Law on the Promotion and Protection of Rights of Communities and their Members in the Republic of Kosovo*, Pristina: HLCK, December 2008.

Ibishi, Bashkim (Member of the informal Communities Consultative Council during status negotiations and current deputy head of the Office for Community Affairs in the Office of the Prime Minister of Kosovo). 2009. Interview by author. Pristina, Kosovo May 27.

International Convention on the Elimination of All Forms of Racial Discrimination. 1969. United Nations 993 UNTS 195, entered into force January 4 1969.

Kelly, Rita Mae. 1998. "An Inclusive Democratic Polity, Representative Bureaucracies and New Public Management", *Public Administration Review*, Vol. 58, Issue 3, May/June 1998, pg 201-208.

Keck, Margaret, E. and Sikkink, Kathryn. 1998. *Activists Beyond Borders*, Ithaca, New York: Cornell University Press.

Hyseni, Skender. 2009. *Speech to Chatham House*. Pristina: Government of Kosovo, Given in London on March 3. Available at <http://www.ks.gov.net/MPJ/Ministry/Minister/Speeches/tabid/149/ctl/Details/mid/479/ItemID/231/Def>

[ault.aspx](#) [last accessed June 29, 2009].

Law on Local Self-Government. Republic of Kosovo, Law No. 03/L-40, adopted on February 20, 2008.

Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo. Republic of Kosovo, Law No. 03/L-047, adopted on March 13, 2008.

McBride Stetson, Dorothy and Mazure, Amy G. eds. 1995. *Comparative State Feminism*, Thousand Oaks: Sage Publications.

Nagel, Tomas. 1977. "Introduction" in *Equality and Preferential Treatment* edited by Cohen, Nagel and Scanlon. Princeton, New Jersey: Princeton University Press.

Neziraj, Xhevdar (Member of the Communities Consultative Council representing the Egyptian Community). 2009. Interview by author. Pristina Kosovo. Pristina, Kosovo May 27.

Outshoorn, Joyce, and Kantola Johanna. 2007. *Changing State Feminism*, Hampshire, United Kingdom: Palgrave Macmillan.

OSCE High Commissioner on National Minorities, 1999. *Lund Recommendations on Effective Participation of National Minorities in Public Life*, The Hague: Foundation on Inter-Ethnic Relations.

OSCE. 1990. *Copenhagen Document of the Conference on the Human Dimension of 1990*.

President of the Republic of Kosovo. 2008. *Decree Establishing the Communities Consultative Committee*. September 15 2008.

Rai, Shirin, M. 2003. *Mainstreaming Gender, Democratizing the State? Institutional Mechanisms for the Advancement of Women*, Manchester: Manchester University Press, published for and on behalf of the United Nations.

Rees, Teresa. 1998. *Mainstreaming Equality in the European Union: Education, Training and Labour Market Policies*, London: Routledge.

Rohan, Albert. 2005. Press Briefing by UN Deputy Special Envoy for the Future Status Process for Kosovo. Pristina, December 15, 2005. Available at http://www.unosek.org/docref/fevrier/2005-12-14-Albert_Rohan_press_conference.pdf [last accessed June 24, 2009].

Salamon, Lester. 2002. *The Tools of Government Action: A Guide to the New Governance*. New York: OUP.

Sejdiu, Fatmir. 2007. Remarks at the Vienna Conference on Kosovo's Final Status. March 10. Vienna Austria: Office of the President of Kosovo Webpage <http://www.president-ksgov.net/?id=5,82,0.83,e,162> [last accessed June 29, 2009].

Sejdiu, Fatmir. 2008a. *Speech at the Celebration of the Entry into Force of the Constitution of the Republic of Kosovo*. Pristina: Office of the President of Kosovo, June 15. Available at <http://www.president-ksgov.net/?id=5,82,0,83,e,887> [last accessed June 29, 2009].

Sejdiu, Fatmir. 2008b. *Annual Address to the Assembly of Kosovo*. Pristina: Office of the President of Kosovo, April 18. Available at <http://www.president-ksgov.net/?id=5,82,0,83,e,1256> [last accessed June 29, 2009].

Squires, Judith. 2007. *The New Politics of Gender Equality*, London: Palgrave MacMillan.

Stojanovic, Bojan (Chair of the Communities Consultative Council and Member of Parliament representing the Serbian Community). 2009. Interview by author. Pristina, Kosovo May 26.

Thaci, Hashim. 2008. *Speech at the Launch of the Return and Reintegration in Kosovo Project*. Pristina: Office of the Prime Minister, November 11. Available at <http://www.kryeministri-ks.net/?page=2,104,49> [last accessed June 29, 2009].

Thompson, Kelley (ECMI Project Manager for CCC project). 2009. Interview by author. Pristina, May 26.

United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistics Minorities. 1992. United Nations General Assembly Resolution 47/135.

United Nations Mission in Kosovo, OSCE Mission in Kosovo and the Provisional Institutions of Self-Governance, *Assessment of Municipal Community Committees*, 2004. http://www.osce.org/documents/mik/2004/03/2335_en.pdf (accessed March 9, 2009).

Weldon, S. Laurel. 2002. "Beyond Bodies: Institutional Sources of Representation for Women in Democratic Policymaking", *Journal of Politics*, vol 64, issue 4, 1153-74.

Weller, Marc. 2006. *Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN) Handbook on Minority Consultative Mechanisms*, Council of Europe DH-MIN (2006)012.

Weller, Marc ed. 2007. *Universal Minority Rights*, Oxford: Oxford University Press.

Weller, Marc. 2008. *Chaillot Paper no. 114 Negotiating the Final Status of Kosovo*. Paris: European Union Institute for Security Studies.

Woodward, Alison E. 2004. "Building Velvet Triangles: Gender and Informal Governance" in *Informal Governance and the European Union* edited by Simona Piattoni and Thomas Christiansen, London: Edward Elgar, pg 76-93.

Young, Iris Marion. 2000. *Inclusion and Democracy*, Oxford: Oxford University Press.