

Equal Opportunities Provisions for Communities in the Comprehensive Proposal for the Kosovo Status Settlement

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Abstract

In light of 2007 being named the ‘European Year of Equal Opportunities for All’ and the aspiration that Kosovo may eventually integrate into the EU, this article shows how the current proposal for the new state of Kosovo represents, on the one hand, a legal framework that establishes equal opportunities for all in Kosovo but, on the other hand, risks segregating opportunities further and harming minority communities. Although this study is tentative and speculative in nature, it is vital to initiate debate at this crucial time on the question of equal opportunities in a territory/state that has been so deeply marred by ethnic conflict.

I. Introduction

Following UN-led status talks in Vienna throughout 2006–2007, UN Special Envoy Martti Ahtisaari presented the UN Secretary-General Ban Ki-moon with a report entitled “Report of the Special Envoy of the Secretary-General on Kosovo’s Future Status”¹ (hereinafter “the Report”) and a “Comprehensive Proposal for the Kosovo Status Settlement”² (hereinafter “the Comprehensive Proposal”) on the 26 March 2007. The Report recommends independence for Kosovo to initially be supervised by the international community in accordance with the provisions laid out in the Comprehensive Proposal. Whilst the Settlement envisages the international supervision of its implementation by including, for example, an International Military Presence (IMP)³ and an International Civilian Representative (ICR) that will retain broad final and corrective powers after transition, it also includes specific provisions to be transferred into the Kosovo Constitution and outlines general principles that aim to guide and constrain future legislation and policy developments.

Within the Settlement are provisions for the protection of human rights that are consistent with international standards and that offer specific protection for the

¹ United Nations, “Report of the Special Envoy of the Secretary-General on Kosovo’s Future Status”, S/2007/168, 26 March 2007, at <http://www.unosek.org/docref/report-english.pdf>.

² United Nations, “Comprehensive Proposal for the Kosovo Status Settlement”, S/2007/168/Add.1, 26 March 2007, at http://www.unosek.org/docref/Comprehensive_proposal-english.pdf. Together, the Report and the Comprehensive Proposal shall be referred to as the “Settlement”.

³ United Nations, “Comprehensive Proposal ...”, Annex IX, Article 2.

members of Communities. As Mr Ahtisaari's Report suggests, the protection of minority community rights and the participation of Communities—and, in particular, the participation of Kosovo Serbs—are crucial areas for the future of Kosovo's stability, security and development.⁴ As such, the report specifically notes that the international civilian and military presence in the transitional period should have strong and focused corrective powers in relation to key issues such as community rights, decentralization, the protection of Serbian Orthodox Churches and the rule of law.⁵ The Settlement can thus be seen as an attempt to engineer a new multiethnic state in which all Kosovo Communities—including non-dominant Communities—are equitably represented in state institutions and able to participate meaningfully in political processes at all levels, be they local or national.

While the fate of the Settlement is still unclear, as the diplomatic efforts at the UN Security Council for its adaptation are still ongoing, this article will assess the equal opportunity provisions contained in the Comprehensive Proposal and will examine these provisions under five principal points:⁶

- 1) The overall multiethnic construction of the state;
- 2) The representation of non-dominant Communities in the executive institutions and in the security sector;
- 3) The political empowerment of non-dominant Communities;
- 4) The full and effective participation of non-dominant Communities in the economic opportunities of the state; and
- 5) The positive measures to ensure full access and effective participation of non-dominant Communities, including language and education provisions.

To guarantee non-discrimination and equal opportunities for non-dominant Communities will be a key challenge for the new Kosovo. The success and viability

⁴ United Nations, "Report of the Special Envoy ...", 3.

⁵ *Ibid.*, 3.

⁶ Interview with Dr Marc Weller, ECMI Director. These criteria were suggested as five categories from which to assess any settlement dealing with areas marked by past ethnopolitical conflicts.

of an independent Kosovo will depend on the peaceful coexistence and cooperation of all Communities.

The Comprehensive Proposal defines Communities as: “[i]nhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of Kosovo”.⁷ This definition is a neutral one. It does not—*prima facie*—base itself on numerical dominance or ‘minority’ but rather uses explicit language, such as “Communities that are *not* in the majority”⁸ and “*non-majority* Community”.⁹ Nor are specific Communities identified and named within this definition. Accordingly, it is arguable that the notion of Community includes the majority Community and theoretically could encourage them to also exercise the rights contained in Annex II. However, the Comprehensive Proposal clearly considers Communities to be a special group and different to that of the general population. Such special rights, however, do not amount to privileging one group against another. Who exactly the “[i]nhabitants ... traditionally present on the territory of Kosovo”¹⁰ are is not specified, as all Communities are included within such a definition. Rather, these rights ensure that previously marginalized members of society are guaranteed the same opportunities to compete and participate within society equally whilst ensuring against future conflict between such groups. The Comprehensive Proposal also states that Communities are to be entitled to additional protections—a second layer of rights and protections above the general human rights and fundamental freedoms that are specified in the Settlement and in any future Constitution.¹¹ In light of Kosovo’s history and the context of the status negotiations, it can be argued that the intention of the Settlement is primarily to protect the special vulnerabilities of the *non-dominant* Communities and their members. For the purposes of this article, therefore, it is assumed that the protections provided in Annex II of the Comprehensive Proposal are primarily applied to the *minority* Communities of Kosovo.

It is interesting to note that the Comprehensive Proposal does not directly use the language of ‘equal opportunity’. Instead, it chooses to employ the language of ‘non-

⁷ United Nations, “Comprehensive Proposal ...”, Article 3.1 and Annex II, Article 1.1.

⁸ *Ibid.*, Article 6.2; Annex I, Articles 3.2, 6.1.2, 7.2 and 10; Annex II, Article 4.5; Annex IV, Articles 1.1–1.3; and Annex IV, Article 4.3, emphasis added.

⁹ *Ibid.*, Annex I, Articles 5.1–5.2; and Annex II, Article 1.2, emphasis added.

¹⁰ *Ibid.*, Article 3.1.

¹¹ *Ibid.*, Article 2; Article 3.1; Annex I, Article 2; and Annex II, Article 1.1.

discrimination'. These non-discrimination provisions are reinforced by specific threshold and quota systems eventually aimed at ensuring equal opportunity for minority Communities.

Also provided for by the Settlement is a plurality of human rights protections and fundamental freedoms, as well as rights to be enjoyed by members of Communities either individually or as a collective.¹² Furthermore, it incorporates an extensive list of international instruments deemed to have constitutional status and that are directly applicable to Kosovo. These include:

- The Universal Declaration of Human Rights;
- The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- The International Covenant on Civil and Political Rights and its Protocols;
- The Council of Europe Framework Convention for the Protection of National Minorities;
- The Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination Against Women;
- The Convention on the Rights of the Child; and
- The Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment.¹³

These international instruments, together with the explicit protection of human rights and fundamental freedoms offered in the Settlement, create a rights-based approach to the nation-building project in Kosovo. While the individual rights and protections afforded by such instruments are paramount, this article will only consider the

¹² *Ibid.*, Article 2; and Annex II, Article 3.

¹³ *Ibid.*, Annex I, Article 2.1.

provisions of the Settlement, rather than the incorporation of international instruments. Rather than focusing on the human rights of individuals *per se*, the article will assess the level of protection afforded to Communities and their members and will analyze the opportunities available to minority Communities in the future state of Kosovo.

II. Overall Multiethnic Construction of the State

The Comprehensive Proposal sets out the procedure by which functions and powers currently vested in UNMIK and the Kosovo Provisional Institutions of Self-Government (PISG) will transfer to the new Kosovo government. The Report does not specify a date for the assumption of full statehood by Kosovo and avoids the use of the word ‘state’. Under the Settlement Package, the ICR will retain final and corrective powers for an undefined period of time after the transition and the IMP will remain in Kosovo to supervise and supplement the Kosovo security forces.

The first provision of the Comprehensive Proposal states that:

Kosovo shall be a multi-ethnic society, which shall govern itself democratically, and with full respect for the rule of law, through its legislative, executive, and judicial institutions.¹⁴

As a general principle of the Settlement Package, this provision prevails over any contradictory Constitutional provisions.¹⁵ This Article is thus worded as a broad statement of principle and should guide all future nation-building initiatives in Kosovo, including all legislative and policy decisions. From this provision, it is also clear that the priority for Kosovo should be to ensure democratic governance through power-sharing mechanisms between the Communities. All branches of the government—the legislature, executive and judiciary—should work to achieve the goal of creating a multiethnic society. As stated, this first principle should be broadly applied to all aspects of governance. In addition, the Settlement is alert to the sensitivity of symbolic aspects of national identity and stipulates that Kosovo’s

¹⁴ *Ibid.*, Article 1.1.

¹⁵ *Ibid.*, Annex 1, Article 1.1.

national symbols—a flag, seal and anthem—must reflect the multiethnic character of the society.¹⁶

The remainder of the Comprehensive Proposal can be seen as a way in which this vision of a democratically governed multiethnic society subject to the rule of law is to be achieved. Among the proposed Constitutional and legislative protections, mechanisms and policy guidelines, the Comprehensive Proposal specifies several key institutions that must reflect the ethnic diversity of the society itself. These include, for example, the composition of the civil service,¹⁷ the justice system (including the judiciary and the prosecution service),¹⁸ the police force (particularly the units deployed to protect religious and cultural sites, which should have an appropriate representation of Serb police officers),¹⁹ the security force²⁰ and the domestic intelligence agency.²¹ It is important that the civil service, as a point of interface and contact between citizens and the state, maintain ethnic diversity. As institutions that may use coercive measures, the police and the security force should ensure that minority Communities are adequately represented. The law and order institutions, including the police and the justice system, both of which have the ability to impose coercive measures and possess powers of detention, should also fairly represent the ethnic diversity of the society. An equitable representation of all Communities in these institutions will both help to promote their legitimacy and also help to prevent abuse of institutional power by any one Community.

In order to ensure the equitable representation of all ethnicities, the Settlement sets out a system of reserve seats and quotas for representatives of minority Communities in key governmental bodies and institutions. These are: the Constitutional Commission (responsible for the drafting of the Kosovo Constitution),²² the Kosovo Assembly,²³ the Presidency of the Assembly,²⁴ the Assembly Committee,²⁵ the

¹⁶ *Ibid.*, Article 1.7.

¹⁷ *Ibid.*, Article 5.4.

¹⁸ *Ibid.*, Article 6.5; and Annex IV, Article 2.1.

¹⁹ *Ibid.*, Annex VIII, Article 2.3; and Annex V, Article 3.1.1.

²⁰ *Ibid.*, Annex VIII, Articles 5.1 and 5.5.

²¹ *Ibid.*, Annex VIII, Article 4.

²² *Ibid.*, Article 10.2.

²³ *Ibid.*, Annex I, Articles 3.2 and 3.3.

²⁴ *Ibid.*, Annex I, Article 3.4.

²⁵ *Ibid.*, Annex I, Article 3.5.

Committee on the Rights and Interests of the Communities,²⁶ the Cabinet—composed of the Ministers and Deputy Ministers²⁷—the Central Election Commission,²⁸ the Constitutional Court,²⁹ the Supreme Court,³⁰ the District Court,³¹ appointments of prosecutors and other judges,³² and the Kosovo Judicial Council.³³ In addition to this, changes to the Constitution require a majority of at least two thirds of Assembly members holding seats reserved for minority Communities.³⁴ Legislative activities in relation to specified areas must also gain a double majority: the majority approval of the Assembly members and also the majority approval of Assembly members that represent minority Communities.³⁵

By numerically defining seats and statistical thresholds, the Settlement attempts to ensure an adequate level of minority Community representation in the Kosovo institutions. The system of reserve seats and quotas provides measurable protection to minority Communities in addition to more general non-discrimination and equal opportunity provisions. The quotas and reserved seats are aimed at ensuring substantive equality for minority Communities in crucial institutions and do not amount to prohibited discrimination in themselves.³⁶ Similarly, the requirement for minority Community approval to alter laws related to areas pertinent to Communities' interests acts as a check against any derogation of protection.

Power-sharing mechanisms established by the Comprehensive Proposal between Communities ensure that a democratically governed multiethnic society subject to the rule of law can be created. By including Communities within the state apparatus, not only is a multiethnic state guaranteed but so is one in which true equal opportunities for all are indeed possible.

²⁶ *Ibid.*, Annex I, Article 3.6.

²⁷ *Ibid.*, Annex I, Articles 5.1–5.3.

²⁸ *Ibid.*, Annex I, Article 7.2.

²⁹ *Ibid.*, Annex I, Article 6.1.2: minority Communities must approve the appointment of at least two judges to the Supreme Court. However, the approved judges themselves do not have to be from a minority Community.

³⁰ *Ibid.*, Annex IV, Article 1.1.

³¹ *Ibid.*, Annex IV, Article 1.2.

³² *Ibid.*, Annex IV, Article 2.2.

³³ *Ibid.*, Annex IV, Article 4.2.2.

³⁴ *Ibid.*, Annex I, Article 10.

³⁵ *Ibid.*, Annex I, Article 3.7.

³⁶ *Ibid.*, Article 3.2.

III. Political Empowerment of Non-dominant Communities

The Settlement is alert to potential problems related to the marginalization of minority Communities in Kosovo. As such, the Comprehensive Proposal contains some strong guarantees and protections to minority Communities and also anticipates institutional mechanisms that will implement and reinforce the legislative protections. Clear power-sharing arrangements in the legislature are stipulated and special mechanisms and institutions for minority Communities to intervene in the legislative process are also required. At the municipal level, special provisions for a Vice President of the Municipal Assembly for Communities are made to ensure protection of the interests of Communities where the specified population threshold is reached³⁷ and additional competencies are given to certain dominantly Serb municipalities.³⁸

From 120 seats at the central level in the Kosovo Assembly, the Comprehensive Proposal provides for 20 reserved seats for the representation of minority Communities at the first two electoral mandates.

The reserved seats are to be allocated as follows: ten for the Kosovo Serb Community, three seats for the Bosniak Community, two seats for the Turkish Community, one for the Gorani Community and one seat each for the Roma, Ashkali and Egyptian Communities (RAE Communities), with an additional seat for the RAE Communities with the highest overall votes.³⁹ After the first two electoral mandates, the number of reserved seats for Kosovo Serbs and other minority Communities will remain as a minimum threshold but the number of seats won may increase.⁴⁰ The Kosovo Serb Community and the other minority Communities will each have at least one representative, chosen from Assembly members representing them, in the Presidency of the Assembly.⁴¹ For each Assembly Committee, at least one Vice-Chair should be from a different Community than the Chair.⁴²

In addition to these provisions to ensure equitable representation of minority Communities in the legislature, the Assembly also has restricted powers in relation to

³⁷ *Ibid.*, Annex II, Article 4.5.

³⁸ *Ibid.*, Annex III, Article 4.

³⁹ *Ibid.*, Annex I, Article 3.2.

⁴⁰ *Ibid.*, Annex I, Article 3.3.

⁴¹ *Ibid.*, Annex I, Article 3.4.

⁴² *Ibid.*, Annex I, Article 3.5.

certain laws. According to the Comprehensive Proposal, the Assembly cannot adopt, amend or repeal laws considered particularly pertinent to the interests of Communities unless the majority of Assembly members holding reserved seats for minority Communities approve, in addition to majority approval of the Assembly members present and voting.⁴³

The Settlement also envisages specific institutions that aim to ensure the effective participation of Communities during the legislative process. The Committee on Rights and Interests of Communities (CRIC) will be retained and up to one third of its members may be from the Kosovo Serb Community. Representatives from other minority Communities may constitute a further one third of its members.⁴⁴ Furthermore, the Settlement envisages a Community Consultative Council (CCC) under the auspices of the president, which will be mandated to provide opportunities for Communities to comment on legislative and policy initiatives at an early stage.⁴⁵ These two institutions are intended to enhance participation of minority Communities in the political process and to empower Communities in legislative and policy initiatives. In particular, the Settlement has left open the CCC's mandate, allowing for legislative activity to define the role of the CCC.⁴⁶ As such, it is possible for the CCC to take on a much wider role and to develop into a significant mechanism to empower the Communities in political processes.

The system of reserved seats in the Kosovo Assembly ensures that minority Communities have adequate representation at the central political level. Similarly, the stipulations as to the personnel of Assembly Committees ensure that minority Communities are engaged in all decision-making processes. Furthermore, mechanisms such as the CRIC and the CCC provide special opportunities for minority Communities to intervene and participate in the legislative process. Much of the responsibility will lie with the Assembly members who hold reserved seats for minority Communities to ensure that their constituents' voices are heard at the highest political level. In situations where minority Communities will only have one

⁴³ *Ibid.*, Annex I, Article 3.7. Note the initial adoption of laws falls within the exception from this provision. Furthermore, Annex I, Article 3.9 prevents circumvention of minority approval by prohibiting referendums on laws specified under Article 3.7.

⁴⁴ *Ibid.*, Annex I, Article 3.6.

⁴⁵ *Ibid.*, Annex II, Article 4.3.

⁴⁶ *Ibid.*, Annex II, Article 4.3.

representative among them (rather than have their own Community-specific representative) in the legislative process, it will be important for the Communities to come to a consensus on the representative and to agree on a position that best represents their common interests.

IV. Representation of Minority Communities in Executive Institutions and in the Security Sector

The Settlement provides for the representation of minority Communities in executive institutions at both the central and local levels. At the central level, the Comprehensive Proposal specifies quotas for a multiethnic cabinet: at least one minister will be from the Kosovo Serb Community, a second minister from the other minority Communities and, if the total number of ministers exceeds 12, a third minister will be appointed from the minority Communities (including from the Kosovo Serb Community).⁴⁷ Among deputy ministers, at least two should be from the Kosovo Serb Community and another two from the other minority Communities. If more than 12 deputy ministers are appointed, then the Kosovo Serb Community and the other minority Communities shall each have an additional deputy minister appointed from their ranks.⁴⁸ Moreover, the Settlement requires that the appointment of ministers and deputy ministers from minority Communities be determined after consultation with groups representing minority Communities.⁴⁹ The Comprehensive Proposal leaves open the possibility of appointing a minister or deputy minister from a minority Community who is not a member of the Kosovo Assembly. In such cases, however, the minister or deputy minister appointed must have the endorsement of the majority of Kosovo Assembly members who represent minority Communities.⁵⁰ In addition to these measures, the president of Kosovo has additional—though limited—powers to protect the interests of Communities. The Settlement provides that the president may return, once, any bill considered to be detrimental to the legitimate interests of any Communities to the Assembly for reconsideration.⁵¹

⁴⁷ *Ibid.*, Annex I, Article 5.1.

⁴⁸ *Ibid.*, Annex I, Article 5.2.

⁴⁹ *Ibid.*, Annex I, Article 5.3.

⁵⁰ *Ibid.*, Annex I, Article 5.3.

⁵¹ *Ibid.*, Annex I, Article 4.2.

In the central executive, minority Communities are protected by explicit quota systems to ensure that a sufficient number of ministers and deputy ministers are selected from their ranks. The Settlement does not specify which ministries should have a minister or deputy minister from a minority Community. However, in practice, it is likely that ministers and their deputies for portfolios that are particularly pertinent to the interests of minority Communities should be appointed from the ranks of minority Communities; for example, portfolios such as Communities and returns, cultural heritage, municipal government and education.⁵² In addition, the president of Kosovo, as the head of the executive, has specific powers to deter any laws that may be detrimental to the interests of minority Communities. According to the Comprehensive Proposal, the initiative of the president to return laws for reconsideration to the Assembly does not need to be founded in a request from a third party. However, in practice, it is likely that a group representing the aggrieved Communities will lobby the president for intervention—for example, the CCC or the CRIC, or members of the Kosovo Assembly holding reserved seats for minority Communities.

At the municipal level, the post of Vice President of the Municipal Assembly for Communities is reserved for a member of minority Communities where at least 10% of the residents in that municipality belong to the minority Community. The vice president shall promote inter-Community dialogue and serve as the focal point for addressing the concerns of the minority Communities. The Vice President of the Municipal Assembly for Communities can also review claims of rights violations by members of Communities and may refer such matters to the Municipal Assembly. If no redress is obtained, the Vice President of the Municipal Assembly for Communities may submit the matter directly to the Constitutional Court.⁵³

At the local level, the participation of minority Communities in the executive branch is assured by the post of the Vice President of the Municipal Assembly. The vice president is tasked specifically with addressing minority Community concerns and encouraging cooperation between Communities. In parallel with the president at the

⁵² Other areas that are deemed to be of special interest to minority Communities are contained in Annex 1, Article 3.7(a)–(h).

⁵³ *Ibid.*, Annex II, Article 4.5.

central level, the vice president has referral and intervention powers in order to deter any erosion of protections for minority Communities.

Moreover, the Comprehensive Proposal requires that, in all policy and practice, Kosovo authorities—both central and local—must be guided by the need to promote a spirit of peace, tolerance, and intercultural and inter-religious dialogue among all Communities.⁵⁴ This softly worded but widely applicable principle of policy and practice is designed to deter any activity that may not be explicitly prohibited by any law but that may be contrary to the spirit of the Settlement. Moreover, local government is bound by a specific directive to have particular regard for the specific needs and concerns of minority Communities.⁵⁵

The security sector in Kosovo includes law enforcement, security, justice, public safety, intelligence, civil emergency response and border control.⁵⁶ Kosovo’s security institutions must operate in accordance with internationally recognized democratic standards and human rights and ensure equitable representation of all Communities throughout their ranks.⁵⁷ These institutions must also abide by democratic standards and respect the rights of Communities and their members, including rights specifically vested with members of minority Communities.⁵⁸

The Settlement does not have a percentage quota for the minimum level of representation of minority Communities in the police force as a whole. Instead, the Comprehensive Proposal requires that, at the municipal level, to the extent possible, the ethnic composition of the police should reflect the ethnic composition of the population in the municipality.⁵⁹ In municipalities where there is a Kosovo Serb majority, the Station Commander is to be selected by the Ministry of Internal Affairs from the nominations made by the Municipal Assembly.⁶⁰ The Settlement specifies that the Kosovo Security Force (KSF) should be a multiethnic force and requires Kosovo and the International Military Presence to develop selection procedures in

⁵⁴ *Ibid.*, Article 3.3.

⁵⁵ *Ibid.*, Article 6.2.

⁵⁶ *Ibid.*, Article 9.1.

⁵⁷ *Ibid.*, Article 9.2.

⁵⁸ *Ibid.*, Annex VIII, Article 1.2.

⁵⁹ *Ibid.*, Annex VIII, Article 2.2.

⁶⁰ *Ibid.*, Annex VIII, Article 2.6.

order to recruit members of KSF from across society.⁶¹ Again, no specific quota is imposed and therefore there is no clearly measurable standard in relation to the composition of the police or the KSF. However, the recruitment, promotion and other personnel practices of the police and KSF would be subject to non-discrimination rules and are obliged to operate in the spirit of tolerance and mutual cooperation.⁶²

V. Full and Effective Participation in the Economic Opportunities of the State

The Comprehensive Proposal only contains a few provisions that deal expressly with an individual's economic opportunities in Kosovo. The Settlement requires that Kosovo be an open market economy with free competition⁶³ and offers general recognition and protection to an individual's rights to private movable and immovable property, these being enforced to established international norms and standards.⁶⁴ Moreover, as detailed earlier in Section II, key public institutions are subject to requirements on the equitable representation of the multiethnic society of Kosovo. These provisions, though not explicitly concerned with economic opportunities, have an indirect effect in allowing members of minority Communities to access employment opportunities in state institutions, including the justice system, security force and civil service. Additionally, the Comprehensive Proposal states that:

Communities and their members shall be entitled to equitable representation in employment in public bodies and publicly owned enterprises at all levels, including in particular the police service in areas inhabited by the respective Community, where respecting the rules concerning competence and integrity that govern public administration.⁶⁵

This provision is aimed at ensuring, at least in public bodies and publicly owned enterprises, that members of minority Communities should be equitably represented. Although phrased as equitable representation, this clause also has the collateral effect of requiring equal opportunities for members of Communities to be employed in

⁶¹ *Ibid.*, Annex VIII, Articles 5.1 and 5.5.

⁶² *Ibid.*, Article 3.3.

⁶³ *Ibid.*, Article 1.4.

⁶⁴ *Ibid.*, Article 8.6.

⁶⁵ *Ibid.*, Annex II, Article 4.4.

public bodies and publicly owned enterprises. In particular, the Settlement specifies that principles of non-discrimination and equal protection should be applied in areas of employment in public administration and public enterprises, as well as access to public funds.⁶⁶

With the exception of the above provisions, the Settlement does not specify other requirements in relation to employment or other economic opportunities. It is notable that the International Covenant on Social, Economic and Cultural Rights is conspicuously absent from the extensive list of international instruments that are deemed directly applicable to Kosovo.⁶⁷ However, the provisions contained in the applicable international instruments, together with the anti-discrimination provisions in the Settlement itself, prohibit any discriminatory practices in access to economic opportunities in public and private sectors.

VI. Positive Measures to Ensure Full Access and Effective Participation of Non-dominant Communities in Language and Education

The Settlement, as discussed above, prescribes several legal and institutional mechanisms designed to promote the political participation of minority Communities. In addition, the Settlement contains provisions aimed at lowering barriers to political participation for members of minority Communities, including language and education provisions aimed at creating a level playing field in terms of access in all areas of public and civil life for minority Communities.

The Comprehensive Proposal prescribes two official languages—Albanian and Serbian—for Kosovo; in addition, the Turkish, Bosnian and Romani languages will have the status of official languages at the municipal level or be designated as languages in official use.⁶⁸ The two-tiered approach to languages—designating additional official languages at the local level—attempts to recognize the fact that different Communities have concentrations of populations in different municipalities. The Comprehensive Proposal does not prescribe any particular population threshold for designating official status for languages in municipalities. Instead, the

⁶⁶ *Ibid.*, Article 2.3.

⁶⁷ *Ibid.*, Annex I, Article 2.

⁶⁸ *Ibid.*, Article 1.6.

Comprehensive Proposal defers such designation to the law.⁶⁹ The legislative initiatives in relation to language laws are subject to constraints contained in the Settlement.⁷⁰

These designations of official language status are different in character to language rights for members of minority Communities. The right to speak the language of a minority Community is directed towards the preservation of the essential elements of a Community's identity and culture.⁷¹ Ascribing official status to Community languages, however, obliges the Kosovo government to provide information, services, goods and perform other governmental functions (at the central and local levels) in designated Community languages. An indirect result of this provision would also be to encourage the employment of Community members in public offices and organizations to ensure that minority Communities may access public goods and services in their own language. Furthermore, the Comprehensive Proposal stipulates explicitly that, if a population threshold is reached in a municipality, members of Communities may use their language and alphabet in relations with the municipal authorities or local offices of central authorities; moreover, the authorities shall bear the costs of providing an interpreter or translator.⁷²

The Settlement states that members of Communities have the right to choose to receive public education in Albanian or Serbian at all levels.⁷³ In addition, members of Communities have the right to receive pre-school, primary and secondary public education in their own language, if the population of minority Communities reaches prescribed thresholds.⁷⁴ Alternatively, the Communities may establish their own private educational and training institutions; public financial assistance may be given for such purposes.⁷⁵ The effect of these provisions is to ensure that a range of education opportunities (private or public) are available to Communities in their own language but that they also have the option of public education at all levels in one of the two official languages.

⁶⁹ *Ibid.*, Article 1.6.

⁷⁰ *Ibid.*, Annex II, Article 3.7.

⁷¹ *Ibid.*, Annex II, Article 3.1(a).

⁷² *Ibid.*, Annex II, Article 3.1(f).

⁷³ *Ibid.*, Annex II, Article 3.1(b).

⁷⁴ *Ibid.*, Annex II, Article 3.1(c).

⁷⁵ *Ibid.*, Annex II, Article 3.1(d).

Special education provisions are prescribed for the Kosovo Serb Community. Moreover, schools that teach in the Serbian language may—upon notification to the Ministry of Education, Science and Technology (MEST)—use curricula or textbooks from Serbia.⁷⁶ If MEST objects to the curriculum or textbook, the matter will be reviewed by an independent commission comprising three Kosovo Assembly members holding reserved seats for Kosovo Serbs, three representatives selected by MEST and one international member representing the ICR.⁷⁷ Moreover, under provisions for enhanced municipal competences, Mitrovice/Mitrovica North will have competence for higher education and may establish their own Serbian language university.⁷⁸

The provisions contained in the Settlement thus operate on two levels: provisions for Serb Communities and provisions for other minority Communities. This, in part, reflects the historical process of the Settlement itself and of the peculiar position occupied by Kosovo Serbs. One criticism might be that the additional rights granted to the Kosovo Serb Community may be perceived to be unfairly advantageous. However, the Settlement contains no prohibition against any other Community establishing their own private higher education institution. Similarly, there is no express prohibition against any other Community using curricula from another state and freedom of association with persons in any other state is protected.⁷⁹ As such, although additional provisions are made for Kosovo Serbs, the Settlement does not, in fact, limit the opportunities of other Communities.

VII. Conclusion

The Comprehensive Proposal attempts to establish a rights-based approach to equal opportunities for the citizens of a post-status Kosovo through functionalist and institutional means, building legal and political guarantees for the protection of Community rights and safeguarding their fair representation within and throughout state institutions. If equal opportunities are about allowing people to compete equally, they need to be given the tools with which to do so and, in many instances, the Comprehensive Proposal promotes the segregation of Communities for the very

⁷⁶ *Ibid.*, Annex III, Article 7.2.

⁷⁷ *Ibid.*, Annex III, Articles 7.1.2–7.1.4.

⁷⁸ *Ibid.*, Annex III, Articles 4.1. and 7.2.

⁷⁹ *Ibid.*, Annex II, Article 3.1(l).

purpose of privileging equal opportunities and non-discrimination for all Communities.

However, there may eventually emerge a considerable discrepancy between the rights provided for by the Comprehensive Proposal and the experience of these rights in daily life, highlighting the potential dangers for the true universal success of implementing equal opportunities for all Kosovo Communities. While a rights-based approach embedded in the rule of law is important, the failure to include both formal institutional and functional equality *as well as* substantive or material equality could weaken the potential success of the equal opportunities suggested in the Comprehensive Proposal. The continued system of parallelism and *de facto* segregation in some areas may hinder the aims for a multiethnic society and the scarcity of resources may also work against sustaining regional and ethnic equity. There is also a danger that minority rights are seen as a concession rather than as recognition of the rights that guarantee social stability. However, improved representation may not translate into substantial integration or integration on the ground but the provisions *do* exist within the Comprehensive proposal and there remains a strong disposition towards the protection of minority rights and the offer of equal opportunity.

It becomes obvious that the provisions contained in the Settlement will therefore need to be implemented in *good faith* in order to avoid a return to the old policies of ethnic hatred and discrimination. It is therefore the duty of Kosovo's institutions *and* of its civil society, comprised of *both* the majority and minority, to implement the structures and equal opportunities offered by the Comprehensive Proposal.

This article has argued that the status proposal creates the *potential* for equal opportunities not only through provisions of equal rights and non-discrimination but also by offering ethnic Community groups rights as Communities rather than just individual rights and through all levels of state institutions. The state apparatus that is offered by the Comprehensive Proposal exemplifies and supports the notion of equal opportunities for Kosovo Communities. Although some may argue that what has been proposed may encourage segregated opportunities, the governance of diversity offered sets up a model of social harmony based on equal and horizontal rights for all. Diversity is guaranteed within the Comprehensive Proposal, where a democratic state

recognizes the pluralism of its citizens and no distinction is made between ‘majority’ or ‘minority’. Nor is a distinction made between the people of Kosovo, who can enjoy full equality and participation in all aspects of life. As such, the Comprehensive Proposal guarantees a multiethnic state and one that can be maintained. The Comprehensive Proposal has thus helped establish a secure and strong structure in a post-conflict society that maintains a process of marked political divisions based on an equal footing at all levels. In building upon Ahtisaari’s proposal, therefore, the opportunity for a fair, pluralistic and equal Kosovo is indeed possible.

Biographical Note

Adrian Zeqiri completed his degree at the University of Pristina, where he read Language and Literature. Following the successful completion of a two year academic training programme with the OSCE, he continued to work for a further two years at the OSCE, where he held a number of positions, including that of Political Officer in the Department of Democratization. Adrian Zeqiri is now ECMI Country Director in Pristina and has been responsible for the design, management and implementation of various projects in Pristina in the field of the political participation of minorities.