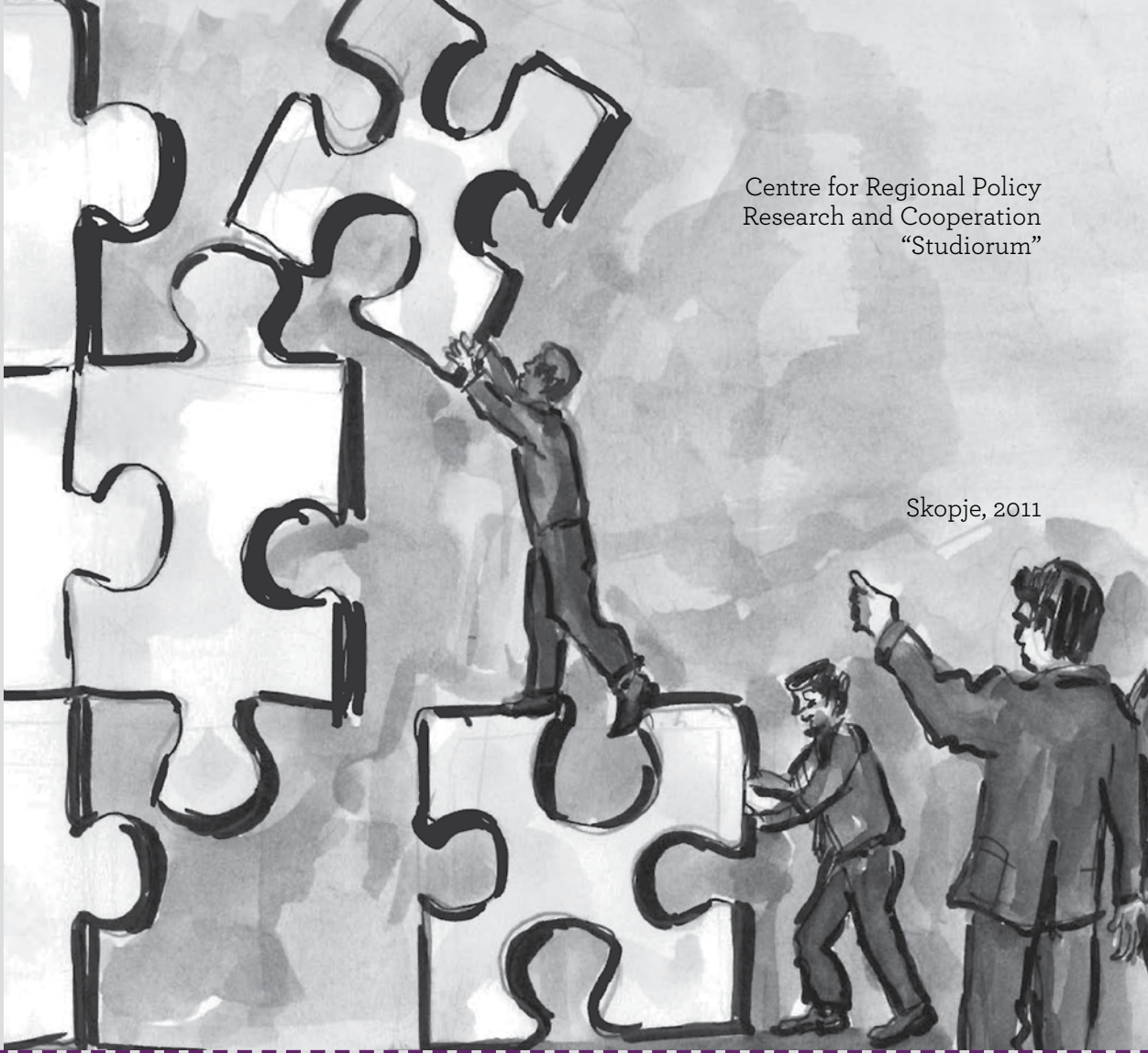


Centre for Regional Policy
Research and Cooperation
“Studiorum”

Skopje, 2011



**EFFECTIVE POLITICAL PARTICIPATION OF THE
SMALL(ER) ETHNIC COMMUNITIES IN LOCAL
SELF-GOVERNMENT IN MACEDONIA AFTER THE
OHRID FRAMEWORK AGREEMENT:**

*Policy Implications
and Policy Recommendations*

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Effective Political Participation of the Small(er) Ethnic Communities in
the Local Self-Government in in Macedonia after the Ohrid Framework
Agreement: Policy Implications and Policy Recommendations

Publisher: Centre for Regional Policy Research and Cooperation
“Studiorum”, Skopje
For the publisher: Neda Milevska-Kostova, MSc, MPPM, Executive
Director

Translation into English language: Oliver Efremov
Proofreading: Sara Nikolic
Technical layout and design: KOMA, Skopje
Print: Media-Connect, Skopje

CIP - Каталогизација во публикација
Национална и универзитетска библиотека “Св. Климент Охридски”, Скопје

352:342.57-054.57(497.7)

KOTEVSKA, Biljana

Effective political participation on the small(er) ethnic
communities in local self-government in Macedonia after the Ohrid
framework agreement : policy implications and policy recommendations

/ [Kotevska Biljana and Novakova Kumjana]. - Skopje : Studiorum,

2011. - 16 стр. ; 23 см

Фусноти кон текстот. - Библиографија: стр. 15

ISBN 978-608-65392-2-1

1. Novakova, Kumjana [автор]

а) Локална самоуправа - Малцинска партиципација - Македонија

COBISS.MK-ID 90112266

INTRODUCTION

The effective political participation of small(er) ethnic communities in the decision-making processes in Macedonia, both at the central level in matters directly affecting them, and at the local one, generally in public affairs, has been an issue of concern and frequent topic of discussion for the international organizations, local experts and CSOs, and academics and analysts.

In the context of the right to political participation, international human rights standards suggest that political participation (the access to, and the full participation of minorities in decision-making), is a key element for the protection of rights of the members of minorities, as well as for the preservation of their distinct cultural and/or any other identity. Power-sharing arrangements developed after the 2001 conflict, through the legal and policy reform processes induced by the Ohrid Framework Agreement (OFA), do very little in that respect - the power is *de facto* shared between the two biggest ethnic groups, ethnic Macedonians and ethnic Albanians, excluding the small(er) ethnic communities from the political process. The most commonly cited source of exclusion, and therefore indirect discrimination, is the 20% threshold as a minimum precondition for the ethnic communities' entitlement to some of its key provisions leading to effective participation - the use of language, the right to higher education in mother tongue, or simply the inclusion in various forms of consultation processes are including mechanisms for participation in the public administration and judicial or other bodies at the local level. This constitutional/legal obstacle goes hand in hand with more refined and less obvious, sometimes delicate and certainly highly complex forms of exclusion, such as democratic deficit, low democratic political culture, absence of political will and slow pace of democratic reforms, to name some. In addition, there is still a general lack of understanding on the part of both political elites and society in general that a fully inclusive political process and participation of minority groups in the political life and public affairs is not only for the benefits of minority groups, but of the society as a whole.

To what extent do the OFA and its implementation facilitate effective political participation of small(er) ethnic groups at the local level of governance in Macedonia?

This policy brief has been prepared based on the empirical study *'Effective Political Participation of the Small(er) Ethnic Communities in Local Self-Government in the Republic of Macedonia: The Impact of the Ohrid Framework Agreement'* (hereinafter the Background Study), examining the impact of OFA and the constitutional and legal provisions arising from it on the effective political participation of the small(er) ethnic groups at municipal level in Macedonia.¹ It presents the state of affairs in the fields of discrimination, equitable representation and decentralization as most affected by the OFA, and subsequently suggests policy recommendations for consideration on part of the practitioners and for further discussion within the academic community.

1 The full text of the background study is available at: www.studiorum.org.mk.

I. BACKGROUND

Small(er) ethnic communities was a term carved up in the legislation of the country following the legal and political reforms resulting from the signing of the OFA which ended the 2001 conflict in Macedonia; the term is used to refer to communities which are numerically below 20% of the total population of the country. According to the census of 2002, besides the two large ethnic communities, the Macedonians and Albanians, there are five (5) more small(er) ethnic groups and “others”, and namely Turks (3.85%), Roma (2.66%), Serbs (1.78%), Bosniaks (0.84%), Vlachs (0.48%) and 1.04% in the category “other”.²

Amending the Constitution of the country and its laws secure the implementation of the provisions of OFA which introduce special rights for the ethnic and linguistic minorities exceeding 20% of the population of the country at the central level, or of the respective units of local self-government; and include specific provisions that regulate the rights of minorities making less than 20% of the population of the country or of the respective municipality. This makes ownership on their part in these processes questionable.

Despite these pitfalls, the game is not lost if the process of implementation of OFA respects the existing principles of empowerment of minority groups, one of which is the right to (effective) political participation, especially in the case of the small(er) ethnic minorities. This policy report sets out a few recommendations that might work in this direction.

II. RIGHT TO EFFECTIVE POLITICAL PARTICIPATION IN MACEDONIA

On the Right to Effective Political Participation

The core pillars on which the international protection of minority groups rests upon are the principle of non-discrimination and the principle of protection and promotion of the separate identity of the minority groups.

The right to participation securing effective political participation at collective level is a relatively new legal and political category. Generally, the right to participation, with emphasis on effective political participation, i.e. participation that makes an influence on the outcomes of the decision-making process, in public international affairs is stipulated in the 1990ies. The concept includes not only representation in the legislative bodies, but also participation in public affairs.³

2 1,297,981 Macedonians, 509,083 Albanians, 77,959 Turks, 53,879 Roma, 35,939 Serbs, 17,018 Bosniaks, 9,695 Vlachs and 20,993 “other”. The Census of Population, Households and Dwellings in the Republic of Macedonia, 2002. Book X. Total Population According to the Ethnic Affiliation, Mother Tongue and Religion. *Website of the Republic of Macedonia State Statistical Office*. [Попис 2002 - Книга X: вкупно население според етничка припадност, мајчин јазик и религија. Државен завод за статистика. *Официјална веблокација на Државниот завод за статистика*]. <<http://www.stat.gov.mk/publikacii/knigaX.pdf>>. Last accessed 29 April 2011.

3 For more see the full text of the Background Study, available at: www.studiorum.org.mk.

At the centre of the right to effective participation as stipulated by the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities [Article 2(2) and 3], the Framework Convention for the Protection of National Minorities (Article 15), and the CSCE Copenhagen Document (para 35), is to provide access for the minority groups to political decision-making of all forms, at all levels of governance, without discrimination. Thus, the right to political participation of minorities has as an *end goal to protect, affirm and promote minority identity*, and the principle of non-discrimination is a key principle for universal human rights safeguards degree.

The Right to Effective Political Participation of the Small(er) Ethnic Communities in Local Self-Government in Macedonia

The Advisory Committee of the Framework Convention for Protection of the National Minorities indicates major differences between, on the one hand, the Albanian community, who take a central position in the public life of the country and have a significant role in the process of decision-making, and, on the other hand, the small(er) ethnic groups, who have limited mechanisms for access in the decision-making process, creating among them a feeling of exclusion both from public life, but also from the OFA and the process of its implementation.⁴ In addition, the body underlines that the implementation of OFA should not lead to limitations of the rights of the small(er) ethnic groups, thus making recommendations not only on the need for their involvement in the intercultural dialogue and the application of the principle of proportional representation, but also the fair distribution of resources, access to media, right to education in the languages of the minorities, representation in the legal bodies and courts, etc.

Overall, the recommendations suggest that the government needs to increase its efforts in order to ensure equitable representation of the small(er) ethnic communities in the public sphere and especially in the public administration. The Advisory Committee recommends special measures to be taken in order to fight social exclusion and marginalization of the Roma community, so to ensure their participation in public sphere. EU follows the same line of recommendations, as the 2010 European Commission Progress Report states that the representation of the small(er) communities, and especially the Turkish and the Roma community, in the civil service, remains low.

Since the very independence, in Macedonia itself there is a tendency of creating an idyllic representation of the legal frame for minority protection and therefore the position of minorities. Although the terms 'minority' and 'minority rights' are not widely accepted in the

4 In 2002, from a total number of 58,927 employees in the public administration - 14,7% were Albanians, 1,4% were Turks, 0,5% Vlach, 2,1% Serbians, 0,6% Roma, 0,3% Bosnian. According to the statistics, in December 2004, the number of employees in public administration was 56.871, of which 18,1% are Albanians, 1,6% Turks, 0,6% Vlach, 2,1% Serbians, 0,7% Roma, 0,3% Bosnian and others are represented with 1,2%. Source: Ragaru, N. The Former Yugoslav Republic of Macedonia: Between Ohrid and Brussels. in Batt, Judy. (ed.). Is There an Albanian Question. Chaillot Paper, 107, 2008: 41 - 56.

political and legal discourse, the standards in the field were evaluated and represented by the national political elites as highly progressive even during the 2001. This discourse marks the first state report on the Framework Convention (2003), according to which Macedonia is a country with the highest level of application of international and European standards for the protection and promotion of minority rights, and based on deeply rooted tolerance.

As our empirical findings show, academic community in Macedonia considers that in fact, at normative level, Macedonia has achieved high standards of protection of minority rights and well developed institutional system for the latter, particularly after the amendments to the Constitution in 2001. However, it has also been noted that the standards are result of the ethnic conflict and yet, that not all ethnic groups are treated equally. Thus, according to some, OFA in fact offers a very liberal and civil framework, providing possibilities for inclusive decision-making process through its individual approach, as right holders are citizens, and therefore citizens belonging to ethnic communities cannot be excluded from the decision-making process. However, the threshold of 20%, by some is considered as affecting the full realization of the rights of the ethnic communities to participate effectively in the governance. Finally, one of the crucial issues still having a negative impact is the exclusion of the small(er) ethnic groups from being signatories to OFA.

In contrast to the legal and normative frame is the implementation of the OFA, which according to both the local scholars and practitioners is evaluated as problematic.

At the local level of self-government, most of the respondents share the opinion that the state failed in the implementation of the OFA provisions related to minority rights. Some of the local governance administration respondents show even resistance to the explicit mention of minority right. Such resistance exists among some of the respondents from civil society as well, expressed through the common argument that while minority issues are important, more important is the employment of citizens – clearly confirming the necessity for mainstreaming minority rights and developing projects that would facilitate changes in the political culture. Unhidden resistance to the use of the term ‘minority’ exists also on the part of Albanians who hold key positions in some municipalities.

On the general improvements in the field of minority rights and the position of small(er) communities after OFA, the majority of CSOs representatives see no significant improvement of the position of the small(er) ethnic communities, while some qualify them as losers in the whole story. Furthermore, CSOs employees have serious objections to the very nature of OFA (the most common feature attached to it is either bi-national agreement promoting bi-national state, or agreement between Macedonians and Albanians), to the threshold of 20%, to its uneven implementation, to its negligence of the small(er) ethnic communities at the expense of its focus on one ethnic group, etc.

However, some of the respondents outlined the benefits of OFA for the small(er) communities, as the increased number of representatives at central and local level, increased number of employees in the public sector, and specifically the benefits for the Roma community as a subject to continuous and pertaining discrimination and marginalization (instead of the

traditional employment of Roma members as cleaners, now there is a growing number of employments at civil service positions).

Non-discrimination

Political elites in Macedonia have long overlooked the measures and actions to be taken so to ensure full application of the principle of equality, despite of its crucial importance.

The legal framework for protection from discrimination in Macedonia is established through the Constitution and the laws, while the ratification of OFA made no significant changes in this area. The Constitution contains a provision on equality for all citizens regardless of gender, race, colour, national or social origin, political or religious beliefs, property or social status (Article 9). The Ombudsperson safeguards the protection of the constitutional and legal rights of citizens when violated by state administration bodies and other organizations that have public authority (Article 77, and Amendment XI to article 77). The first Law on the Ombudsperson was adopted in 1997, but it had no focus on non-discrimination, nor on protection of minority rights. The Law on the Ombudsperson that is currently in force was adopted in 2003, and with subsequent changes it now has a special focus on non-discrimination and equitable representation. The cases falling within this competence represent the category with lowest reporting rates.

The changes in the legal framework for the protection from discrimination in 2010 led to the adoption of the first specific law on prevention and protection from discrimination. In accordance to this law, a Commission for Protection against Discrimination was formed, becoming the first equality body in Macedonia. Despite of the many criticisms and shortcomings of this law, the majority of representatives from the state institutions and civil society have accepted the text as a first step towards building a sound basis for the protection against discrimination.

However, in general, Macedonia has no policy strategy for non-discrimination and equality, on the top of the lack of holistic and strategic approach to promotion and protection of human rights in general. Despite of the apparent importance and need for adoption of a National Action Plan for Human Rights (including non-discrimination), such a document is not even on the table of discussion.

The analysis of the data show that the majority of respondents from the state institutions, municipalities and CSOs, as well as from both majority and minority communities - are on the position that in Macedonia and/or in their respective municipalities there is no discrimination. Some of the respondents have opinion that exclusion is often a result of inadequate qualifications, and not discrimination, while others share the opinion that discrimination as a subject is imposed by the donors, and it is not something that is a real problem in Macedonia. Few of the respondents who confirmed that there are cases of discrimination are associating it with members of the Roma community. The most common grounds for the cases of direct discrimination is considered to be on ethnic and political party affiliation grounds, while the indirect discrimination is associated with the threshold of 20%.

Proportional Representation

The proportional mechanism instrument is a key measure not only for small(er) ethnic communities adequate representation, but also generally as a measure for prevention from discrimination. The proportional representation mechanism was of central importance during the OFA negotiations, as statistics show that during the 1990ies the number of Albanians [but also the number of small(er) ethnic communities] employed in the public administration was very low, and therefore much of the grievances on part of the Albanians were caused by their exclusion from public services.⁵ As a result, the OFA introduced this mechanism for the first time, and its implementation was made possible through a complex change of the legal system as a consequence of the Amendment VI in of the Constitution, and precisely through the changes of several laws.⁶

As the Background Study shows, few of the respondents consider that OFA is respected in terms of equitable representation, and many of them think not enough progress has been done in the process of implementation of this principle, especially in the bodies of municipalities and the state and public enterprises. Many of the respondents noted inconsistent application of the principle mostly in the case of the small(er) ethnic communities, and usually supported with the argument of inadequate professional background of the representatives employed. In addition, many of the respondents underlined political bargaining and/or employment based on partisan criteria, not only at central, but also at the local level as highly threatening to the successful implementation of it. Some, however, as a key reason behind the slow progress in reaching proportional representation both at local, as well as at central level see the bad economic situation in the country, and less political will or nonexistence of consensus on the need for it.

Decentralization

OFA, on the opposite of the peace agreements in the other ex-Yugoslavia countries setting up the joint rule of the different ethnic groups (Bosnia and Herzegovina, and Kosovo), did not grant neither territorial nor cultural autonomy to its ethnic groups. Instead, OFA stipulates that the provision for proportional representation and sovereignty over issues directly affecting the groups are to be achieved through decentralization, or through higher competencies of the local level governance mechanisms.

As a result, the laws adopted as part of the OFA require transfer of competencies pertaining to the fundamental character of the municipality and those affecting the communities, such as culture, use of languages, coat of arms and flag require a double majority of the majority councillors and those representing the small(er) communities together. (Bieber, p. 34) This type of regulation secures both small(er) ethnic groups, and Macedonian population if in a minority position in a certain local unit, the possibility to veto certain decisions.

5 For more, see the Background Study, available at: www.studiorum.org.mk

6 Law on Courts, the Law on the Public Prosecutor, the Law on Labor Relations, the Law on Public Enterprises, the Law on Primary Education, the Law on Secondary Education the Law on Pupils' and Students' Standards, the Law on the Public Attorney, and the Law on Civil Servants.

The process of decentralization in relation to the territorial organization of the country proved to be one of the most painful reforms deriving from the OFA, with many scholars evaluating it even as the biggest threat to the stabilization of the country after the conflict of 2001. Several issues sticking out in this process relate to the fact that the negotiations were fully closed to both citizens and small(er) communities were involved in the process despite of the fact that their municipality borders are redrawn and therefore the decision are directly affecting their lives, and to experts; international community legitimized political bargaining as a tool for decision-making failing to pressure for transparency and accountability of the process thus legitimizing party and ethnic deals.

The later was another step backwards in the position and feeling of inclusion for the small(er) ethnic communities, as despite of the party negotiations character of the talks, the parties were in fact representing the two big ethnic groups: the ethnic Macedonians and the ethnic Albanians.

It has been noted by many scholars that the redrawing of municipal boundaries and the outnumbering of both small(er) ethnic communities and the Macedonian majority in some municipalities created a feeling of “losing” the country and therefore resulted in obscure nation-building projects at local level, over-representation of community symbols and ethnic identity boosting campaigns on the part of the leaders. (Bieber, p. 35)

The formation of the Inter-Community Relations Commission founded on the basis of the Law on Local Self-Government from 2002 (Article 55), in municipalities, in which more than 20% of the population belongs to an ethnic community that is not in a majority, generally can have positive role regarding the representation of the interests of the citizens from the ethnic communities, if well governed.⁷ The fact that some of the municipalities which are not legally held responsible to form one have done so is a positive development.⁸

Finally, and in direct relation to the reforms and processes in decentralization are the direct democracy instruments. Macedonia does not have sufficiently developed forms and instruments for inclusion of the citizens, and particularly of the members of minorities, thus negatively affecting effective political participation. The high thresholds for direct civic initiatives, as well as the inertia of the administration towards the same, make the

7 “Inter-Community Relations Commission shall be founded in the municipality where at least 20% of the total number of citizens, determined on the last census of the population, are members of certain community.” See: *Article 55*, paragraph 1. Law on Local Self-Government of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia No. 5/2002*. [Закон за локална самоуправа. Службен весник на Република Македонија. бр.5/2002.]. <http://www.cilevics.eu/minelres/NationalLegislation/Macedonia/Macedonia_Municip2002_excerpts_English.htm>. Last accessed 01 October 2011.

8 Municipalities that are not obligated to found ICRC, but they still did are Resen, Valandovo, Vrapchishte, Drugovo, Dojran, Kratovo, Ilinden, Lipkovo, Lozovo, Makedonski Brod, Saraj, Staro Nagorichane, Gostivar, Gevgelija and Tearce. See Ademi’s expose: Commission for Inter-Ethnic Relations. Parliament of the Republic of Macedonia. Minutes, 18 November 2009. [Комитет за односи меѓу заедниците, Собрание на Република Македонија. Сџенографски белешки од Седницата на Комитетот за односи меѓу заедниците, 18.11.2009 година.].

Community Forums a sole, yet insufficient, mechanism for civic participation in the political life, including issues directly affecting the local communities. Moreover, the nonexistence of forms of direct participation has an unfavourable effect on the other mechanisms for effective political participation of the small(er) ethnic communities.

III. RECOMMENDATIONS

1. In more general terms, there is an urgent need for adopting a more strategic approach to both human rights in general and minority rights in particular. Thus, it is highly desirable on part of the state to open a broad consultative process on the possible adoption of a Human Rights Action Plan, ensuring extensive involvement to the small(er) ethnic communities to participate and articulate the problems their communities are facing, and the violations of the rights of their members.
2. An establishment of a research and data-gathering oriented body in the field of human rights would thus generate data based policy analysis, reports and even more important, recommendations. A Human Rights Center establishment associated with the academic community, but also involving international human rights experts and practitioners can thus act as a generator of informed-based analysis.
3. In more specific terms, awareness raising campaigns oriented towards both the two dominating ethnic groups, as well as the small(er) ethnic communities on the benefits of effective political participation of the later both in issues directly affecting them, but also generally in public affairs should be undertaken so to contribute to the mainstreaming of minority rights.
4. More inclusive and innovative ways of involvement of citizens, and especially of citizens who belong to small(er) ethnic groups, at the local level of communication should be discussed, so to raise awareness on the possibilities they have to get involved in the decision-making process within their communities.
5. State administration and especially local level state administration should be professional and not politically active, in order the public administration to be perceived in service of the citizens and of the communities, and not political parties. The latter will enhance political participation.
6. State administration, especially on local-level, should strengthen human resource planning, as well as develop, implement and monitor the implementation of recruitment criteria. New employments with the aim of ethnically balanced composition of state administration should follow professional recruitment strategy and criteria, as well.

7. The issues on which small(er) ethnic groups are consulted and involved need to be extensive and to go further than local use of language rights and local administration, and encompass decision-making more generally both at local level, and especially at central level.
8. Small(er) ethnic communities leaders should involve more with their own ethnic communities and organize campaign for raising awareness among their members on the right to political participation they have.
9. Small(er) ethnic communities' leaders should involve more with their own ethnic communities and partner with the state institutions in order to organize awareness raising campaigns on the need for further development of group members' professional capacities.

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