



STUCK IN THE MIDDLE:

WOMEN'S POLITICAL PARTICIPATION
AS LEGAL AMBIGUITY

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Executive summary

This policy paper offers a focused analysis on gender inequality in Kosovo. Specifically, it addresses the discrepancy between the Kosovo Law on Gender Equality (Nr. 05/L-20) and the Law on General Elections (Nr 003/L-073) in regard to dispositions pertaining to gender equality. Gender equality is recognised as a fundamental human right by internationally binding conventions as well as laws of states, including those of the Republic of Kosovo. As such, equal participation based on gender is considered pivotal to strong and consolidated democratic governance. However, women in Kosovo continue to face challenges in all spheres of society, remain highly underrepresented in leadership roles and are not sufficiently engaged in decision-making bodies.

The Law on Gender Equality guarantees equal gender representation based on the principle of parity (50 percent) for men and women in all decision-making and governing bodies. However, the implementation of the Law on Gender Equality remains significantly lacking. Political parties and state institutions have continually failed to implement legal provisions stemming from the legal framework, thus curtailing women's equal participation in decision-making processes.

Despite wanton improvements to integrate women in leadership positions, inequality persists as a result of structural barriers and dominant patriarchal social values and practices, including fledgling democratisation and male-centred politics within political parties. Political parties can, and are legally required, to address women's unequal participation in party politics. Kosovar women are safeguarded by a 30 percent gender quota, pertaining to their representation in parliamentary and municipal assemblies as regulated by the Law on General Elections and Law on Local Elections, which require that a minimum of 30 percent of all electoral candidates and elected deputies be women.

Whereas the legally sanctioned quota mechanisms serve to advance women's participation, said laws also create certain ambiguities. Provisions of the Law on General Elections and the Law on Local Elections foresee the replacement of elected candidates by a candidate of the same gender if and when said candidate leaves the Assembly for an executive position, whereby the laws on elections take precedence over provisions in the Law on Gender Equality. Additionally, the 30 percent quota minimum has in practice been used as a cap curtailing the possible increase of female candidates included in election lists.

An analysis on the impact and challenges of the Law on Gender Equality, harmonization with election laws and a general election system reform are needed in order to ensure and respect gender parity across political processes and structures. Political entities should be pressed to undergo strengthened and continuous democratization, particularly pertaining to increased inclusion of women in decision-making structures and across government branches. The media and civil society should also play a proactive role in promoting gender equality, via reports, campaigns or educational programs, to name a few.

List of abbreviations

AAK – Alliance for the Future of Kosovo

AGE – The Agency for Gender Equality

BCP – Basic Court in Prishtina

CEDAW – The Convention on the Elimination of All Forms of Discrimination against Women

CEC – Central Election Commission

LDK – Democratic League of Kosovo

LGE – Law on Gender Equality

LVV – Vetëvendosje Party

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNSCR – United Nations Security Council Resolution

PDK – Democratic Party of Kosovo

OI – Ombudsperson Institution

Introduction

Women's empowerment and their increased participation in leadership positions is crucial to democratic governance, including the rule of law, functioning of institutions, policy processes, and therefore, the overall consolidation of democratic social values. Equal representation is the foundation of democracy and goes beyond the fact of merely achieving, or considering gender equality, as a matter of numerical participation.¹ However, women in Kosovo are largely excluded from decision-making processes and leadership positions contributing to ongoing challenges at achieving gender equality in politics, despite progress that has been achieved in addressing a number of barriers — political and social — and inequalities.²

Whereas politics largely remain a male-dominated domain, institutions fail to adhere to the legal requirements as outlined by the Law on Gender Equality (LGE), namely, that in all branches of government, including decision-making and governing bodies, women are represented by a minimum of 50 percent.³ The election process is organized and implemented by the Central Election Commission (CEC), which also certifies the political party election lists. Elections are regulated by the Law on General Elections⁴ and the Law on Local Elections⁵, which foresee the 30 percent quota minimum as a guarantee of equal gender representation in national and local assemblies. However, in practice, the 30 percent quota is increasingly perceived — in both institutions and political parties — as a maximum rather than a minimum requirement for women's participation in decision-making structures. Therefore, due to the discrepancy between the Law on Gender Equality and Law on Elections (general and local), the latter practice is taking precedence in implementation.

This became particularly apparent in the 2019 general elections, and was a cause for the lawsuit filed by the Ombudsperson Institution (OI) against the CEC for failing to ensure that candidate lists submitted by political parties adhere to legal provisions requiring equal gender representation of candidates. Another discrepancy between the two laws, with potential of damaging the advancement of women in political institutions, relates to provisions of the election laws that foresee the replacement of an elected candidate as member of assembly (national or local), who moves to the executive branch, by an elected candidate of the same gender — as was the case in 2019 when a male elected candidate was replaced by another male candidate although the said candidate had fewer votes than another female⁶ candidate.⁷ In this case, the female candidate has also filed a lawsuit toward the CEC at the Supreme Court, which dismissed the case. The case currently stands with the Constitutional Court with a request to repeal the Supreme Court's decision.

Such an ambiguous legal context, with direct consequences on the scope of women's political participation, has raised the need to further analyze, understand and address opportunities for harmonization that could best serve gender parity in Kosovar politics.

1 Zungura, Mervis, Eve Nyemba, Florence Mutasa, and Muronza Caroline. 2013. "The Relationship Between Democracy And Women Participation In Politics." *Journal Of Public Administration And Governance* 3 (1). doi:10.5296/jpag.v3i1.3516.

2 Balkans Policy Research Group (BPRG). 2019. "Women In Politics | Gender (In) Equality In Politics And Decision-Making." https://balkansgroup.org/wp-content/uploads/2020/02/BPRG_ARTICLE_Gender-InEquality-in-Politics-and-Decision-making-english-WEB.pdf

3 Law no. 05/L -20 on Gender Equality, Article 6(8).

4 Law no. 003/L-073 on General Elections, Article 27.

5 Law no. 03/L-072 on Local Elections, Article 7.

6 There is also ambiguity caused by the terminology whereas "gender equality" is included as a provision however male and female is used to refer to gender.

7 Law no. 003/L-073 on General Elections, Article 27 (1).

Legal framework

The principle of non-discrimination and gender equality are fundamental human rights, enshrined in the Universal Declaration of Human Rights (UDHR), guaranteeing among others the right of women to full participation in electoral and political processes.⁸ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, stipulates requirements regarding women's empowerment and increased participation in leadership positions.⁹

However, considering the ongoing challenges to the efforts for eliminating discrimination against women in political processes globally, and with the aim of increasing equal participation and representation of women in leadership roles, the United Nations Security Council adopted, in 2000, Resolution 1325 on "Women, Peace and Security." UNSCR 1325 reaffirms the relevance of strengthening women's participation, particularly in decision-making processes in conflict resolution and prevention.¹⁰

Although Kosovo is not party to CEDAW and UNSCR 1325, both documents have served as guides for the "development of a legal framework for gender equality in the country."¹¹ Additionally, the Constitution of the Republic of Kosovo guarantees CEDAW's applicability and gives it priority over "provisions of laws and other acts of public institutions."¹² In this regard, Kosovo has aligned its highest legal act with international conventions committed to women's equal participation in political processes. Meanwhile, Kosovo has also adopted affirmative actions with the aim of increasing women's representation in decision-making structures. For example, since 2000, when the first post-war free, democratic elections in the country commenced, the affirmative action of 30 percent gender quota was introduced as part of both the Law on General Elections and Law on Local Elections, as a legal provision aimed at ensuring women's political participation and representation.

According to the Law on General Elections "in each political entity's candidate list, at least thirty (30%) percent shall be male and at least thirty (30%) percent shall be female, with one candidate from each gender included at least once in each group of three candidates, counting from the first candidate on the list."¹³ Even though this legal provision could be applied to both genders, in Kosovo it has exclusively been applied to ensure that women are included in political parties' deputy candidate lists, as well as elected to national and local assemblies.

8 ACE The Electoral Knowledge Network, [n.d]. "International human rights instruments on women's participation and gender equality in the electoral process." <https://aceproject.org/ace-en/topics/ge/ge2/ge21/ge211>

9 Kosovar Gender Studies (KGSC). 2017. "WOMEN'S PARTICIPATION IN DECISION-MAKING IN KOSOVO." Equal Rights for All Coalition.

10 Ibid


11 Foresti, Marta, and Adriana Gashi. 2013. "Evaluation Of UN Women's Contribution To Increasing Women's Leadership And Participation In Peace And Security And Humanitarian Response". *Shaping policy for development | odi.org*. <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8965.pdf>

12 Constitution of the Republic of Kosovo. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

13 Law no. 03/L-073 on General Elections, Article 27.

In 2015, Kosovo amended the LGE with the aim of facilitating further progress in equal gender representation across governance branches, as well as ensuring a balanced participation in decision-making roles. Article 6, point 8, of the LGE foresees “equal gender representation in all legislative, executive and judiciary bodies and other public institutions shall be achieved upon ensuring a minimum representation of fifty percent (50%) for each gender, including their governing and decision-making bodies”.¹⁴ The implementation of the LGE in certification of deputies elected would not apply to the women candidates who secure enough votes to be elected, but it would be applied starting from the first woman candidate on the list (within each political party) who do not have enough votes to be elected; as such, leading to an Assembly composition that would reflect 50 percent representation of both genders.¹⁵

However, the LGE remains largely unimplemented across government and other institutional bodies and structures, as women in Kosovo are still underrepresented in leadership positions. Additionally, the law is in contradiction with the laws on elections, which are currently taking precedence in implementation, thus leaving the LGE to exist more so in principle than in practice.



Women’s constricted participation in politics

The party, the government and the law

This section provides findings on women’s political participation and representation. It relies mainly on a desk review and interviews conducted with representatives of civil society organizations, researchers and women politicians.

Political parties carry a crucial responsibility in promoting women’s participation in the political sphere.¹⁶ Recently, two women have established their own political parties, including Vjosa Osmani, a former Democratic League of Kosovo (LDK) member and candidate for Prime-Minister in the 2019 general elections, who launched her own candidate list “Vjosa”, and Mimoza Kusari Lila, who heads the Alternativa Party since 2017. Both ran as part of a Lëvizja Vetëvendosje (LVV) pre-election coalition in the February 2021 parliamentary elections. But beyond this headway, political parties in Kosovo continue to be largely male-led and male-dominated, as reflected in party decision-making hierarchies and party programs.

Political parties also fail to guarantee equal gender representation within their own governing bodies. The majority of the largest political parties lack an internal party gender quota system, with only the Alliance for the Future of Kosovo (AAK) and the Social-Democratic Party (PSD) parties having included a gender quota provision in their statutes.¹⁷ The lack of women’s participation in party politics is also evident in the composition of the parties’ highest ranking structure, that is, the party presidencies. For example, at LDK only four out of 23 members of the Presidency are women;

14 Law no. 05/L -20 on Gender Equality, Article 6(8).
15 Republic of Kosovo Office of the Prime Minister Agency for Gender Equality. 2021. “Media Comuniqué- To respect the Law on Gender Equality for equal representation 50% on Parliamentary Election on 14 February 2021.” Prishtina.
16 Balkans Policy Research Group (BPRG). 2019. “Women In Politics | Gender (In) Equality In Politics And Decision-Making.”
17 Ibid

at the Democratic Party of Kosovo (PDK), there are only 13 women out of 50 members; at LVV only seven women are part of the 23-member Presidency.¹⁸

A similar trend is consequently reflected in the composition of political party lists of deputy candidates, be it for central or local assemblies. Generally, women have been included on party lists only to adhere to the 30 percent quota, which continued as a practice even after the amended 2015 LGE, requiring parity, came into force. Reasons already noted in explaining women’s underrepresentation in political parties include high resistance to change and power-sharing within political parties, women’s lack of power in political party decision-making processes, as well as lack of awareness as to the importance of inclusion and gender equality for the political parties themselves, larger social, political and economic implications notwithstanding.¹⁹

The table below depicts women’s inclusion in electoral lists by political party. While the 50 percent parity has never been met, political parties have generally maintained the exact 30 percent quota. The highest number of women included is from the 2021 LVV list, with 37 percent.

Inclusion of women in political party lists for parliamentary elections, with 110 candidates per party list. Includes percentage of women’s inclusion in the lists. ²⁰								
	LVV	%	LDK	%	PDK	%	AAK	%
2019	34	31%	34	31%	33	30%	34	31%
2021	41	37%	33	30%	33	30%	34	31%

The CEC itself prioritizes the Law on General Elections over the LGE. Additionally, since there are no penalties foreseen for situations when parties fail to comply with LGE, the CEC’s action to seek 30 percent or 50 percent quota representation remains in the scope of its political will, but not as its legal obligation as per the LGE.²¹ Although the CEC has been met with criticism for not holding political parties to account for failing to comply with the LGE, and ensure that electoral lists include more than 30 percent women, the head of the Commission has continuously reiterated that CEC as an institution is bound by the Law on Elections, stating they “have a very clear disposition, and there is no place for other interpretations.”²² In addition, the lack of will among political parties to respect the LGE, as well as CEC’s prioritization of the Law on Elections, has been explained as a consequence of their lack of willingness to undertake election reform, including clarifications as to the CEC’s legal obligations to implement the LGE.²³

18 Ibid
19 Interview with the 4th President of the Republic of Kosovo, Atifete Jahjaga, February 02, 2021.
20 Democracy for Development, 2021. “Krahasimi i pjesëmarrjes së grave në listat e subjekteve politike, në zgjedhjet e parakohshme parlamentare për vitin 2021 me vitin 2019.” (A 2021 and 2019 comparison of women’s participation in political party lists in snap elections). Facebook, January 18, 2021. <https://www.facebook.com/d4d.ks/posts/3773097836116274>
21 Interview with Merita Limani, Expert on Gender and Governance, January 29, 2021.
22 Halili, Dafina. 2020. “WOMEN’S POLITICAL EMPOWERMENT MEETS ITS LIMIT.” Kosovo 2.0, 2020. <https://kosovotwopointzero.com/en/womens-political-empowerment-meets-its-limit/>
23 Interview with Luljeta Demolli, Executive Director at Kosovar Gender Studies Center, February 08, 2021.

Despite the more limited inclusion of women in party lists, a more recent positive trend has been the increase of the number of women being elected independently of the 30 percent quota. In the 2017 parliamentary elections, women secured 38 out of 120 seats, of which 21 secured their seats by obtaining votes outside of the quota system and 17 through the quota system.²⁴ In the 2019 snap parliamentary elections, all 11 women from LVV secured their seats by obtaining votes outside of the quota system, from LDK nine women won their seats based on obtaining votes outside of the quota system and only two through the quota system, whereas from PDK eight women deputies won their seats by obtaining votes outside of the quota system and six based on the quota provision.²⁵

2019 SNAP PARLIAMENTARY ELECTIONS ²⁶		
Party	Through the quota system	Outside of the quota system
LVV	0	11
LDK	2	9
PDK	6	8

Many civil society organizations have noted this as an emerging trend and sign of progress, as well as an opportunity to move beyond the 30 percent quota. Although it is a successful affirmative measure, they argue, the consequent step should be to press for the implementation of the LGE in order to further advance women's participation and representation in politics.²⁷ Such assessments do not advocate for the removal of the quota provision itself; instead, for retaining the quota until full implementation of the LGE is reached.²⁸ Arguments for maintaining the quota requirement are also tied to the challenges women face in being included in electoral lists in the first place, and to the fact that without such a provision, based on existing evidence on approaches taken by political parties when drafting electoral lists, the inclusion of women could be made uncertain.²⁹ Therefore, while the quota is recognised for having guaranteed women's participation, including recent trends whence women received the necessary votes without the provision, the quota remains a burden only insofar as it contradicts the LGE and takes precedence in implementation.³⁰

A similar landscape is also evidenced at the local level and is not very different from the central level when it comes to the appointment of women in decision-making roles. In Kosovo, there are 38 municipalities but none have a woman mayor. There has been only one woman mayor, Mimoza Kusari Lila, currently from Alternativa, who ran Gjakova between 2013 and 2017. In the 2017 municipal elections, Valdete Idrizi from PDK was also a candidate for mayor, although she failed to get elected, and Kusari Lila was not re-elected. In addition, local municipal structures also fail to include more women in decision-making positions. For example, in the municipality of Prishtina, women run only four municipal departments out of the 12 in total.³¹

24 Balkans Policy Research Group (BPRG). 2019. "Women In Politics | Gender (In) Equality In Politics And Decision-Making."
25 Veseli, Luljeta Krasniqi. 2019. "Shumica E Grave Deputete Siguruan Ulëse Në Kuvend Pa Kuotë." Radio Evropa e Lirë, 2019. <https://www.evropaelire.org/a/grate-sigurojne-uleset-ne-kuvend/30258606.html>
26 Ibid
27 Interview with Luljeta Demolli, Executive Director at Kosovar Gender Studies Center, February 08, 2021.
28 Interview with the 4th President of the Republic of Kosovo, Atifete Jahjaga, February 02, 2021.
29 Interview with Merita Limani, Expert on Gender and Governance, January 29, 2021.
30 Interview with the 4th President of Kosovo, Atifete Jahjaga, February 02, 2021.
31 Balkans Policy Research Group (BPRG). 2019. "Women In Politics | Gender (In) Equality In Politics And Decision-Making."

Despite the slow but incremental inclusion and election of women at the level of central political institutions, a similar trend is not observed at the local level. In the 2017 local elections, from 6,887 deputy candidates throughout the country, only 34% were women. Moreover, 65 percent of women members of municipal assemblies have won as a result of the gender quota while 35 percent without the quota.³² As such, at the local level, women continue to strongly rely on the quota and be dependent upon the structures of the local party branches and decision-making structures and face continuing lack of support from within.³³

The table below shows that the number of women elected in municipal assemblies through the quota system outruns the number of women obtaining votes outside of the quota system. Apart from the LDK, which maintained the highest number of women without quota, the PDK and LVV achieved similar results.

WOMEN ELECTED IN 2017 ELECTIONS FOR MUNICIPAL ASSEMBLIES ³⁴		
PARTY	Through the quota system	Outside of the quota system
LDK	43	35
PDK	49	25
LVV	37	13
AAK	40	8

Similar, if not more unfavorable, trends prevail in other branches of government. The lack of women's representation in the executive branch has been particularly noticeable. There, the 30 percent quota inadvertently can account for the exclusion of female deputies during government forming negotiations and processes. Political parties appear to view female representation of 30 percent at the assemblies as sufficient, but more so, have not become bound by the requirements of the LGE and thus have infringed upon the legally mandated measures that require application of the principle of parity.³⁵

For example, in 2017 the government led by former Prime Minister Ramush Haradinaj was marked by the lowest number of female politicians in leadership positions with only one female minister out of 21 ministers in total. Also, as the largest government in post-independence Kosovo, with some 60 deputy-ministers and dozens of political advisors, Haradinaj's government was widely criticized for the blatant exclusion of women from such positions, including ministry cabinets, advisory bodies, and departments.³⁶ In 2019 during the former Prime Minister Albin Kurti's government, six women were appointed to cabinet posts including ministries of justice, education, local governance, culture, and economic development. As part of the coalition's power sharing arrangement, Vjosa Osmani,

32 Bakija, Jetmir, and Arta Sejdiu. 2019. "Give Women The Chance In Politics Through Leadership Positions." Democracy Plus | Konrad Adenauer Stiftung. <https://www.kas.de/documents/286052/0/Give+Women+the+Chance+in+Politics.pdf/c8d940a3-ada1-1d5f-d005-409996dfe587?version=1.0&t=1553077484689>
33 Ibid
34 Ibid, pg. 14
35 Interview with Luljeta Demolli, Executive Director at Kosovar Gender Studies Center, February 08, 2021.
36 Balkans Policy Research Group (BPRG). 2019. "Women In Politics | Gender (In) Equality In Politics And Decision-Making."

at the time from the LDK, was Speaker of Parliament.³⁷ Although this coalition government only lasted 51 days, it also had the highest percentage of women in leadership positions in government. Following the fall of Kurti's government in March 2020, a total of three women ministers (justice, economy, culture) were appointed to the now outgoing government of acting Prime Minister Avdullah Hoti from the LDK-led coalition, as well as one deputy prime minister.

Meanwhile, Kosovo is the first country in the region to have had a woman president.³⁸ Former President Atifete Jahjaga served as Head of State from 2011 to 2016, and was the only Kosovo President in the post-2008 independence period to complete a full mandate.³⁹ Despite controversies regarding her appointment — she was an unknown figure to the public although serving as Deputy Director of the Kosovo Police holding the rank of general lieutenant colonel — she was proposed as a bipartisan solution to a political impasse at the time. During her tenure, Jahjaga significantly focused her agenda on gender equality, women's rights and women's empowerment. The promotion of women in politics, as well as other spheres, such as economic empowerment and employment, and education of girls and women, as well as recognition of survivors of war-time sexual violence, increasingly became a part of the social and political debate.

During President Jahjaga's mandate, the number of women in advisory positions equaled that of men, compared to the cabinet composition of her successor, Hashim Thaçi, whose 11 cabinet political advisors were all men. Entrusting leadership positions to women, in addition to a gender inclusive and gender equality agenda, has been evidenced to have also contributed to women's leadership skills as well as policy successes.⁴⁰

Quota as ceiling

The discrepancy between the LGE and the Law on General Elections has attracted particular attention during the last two parliamentary elections (2019 and 2021). While lack of "political will" is commonly attributed to failures in upholding the parity clause,⁴¹ increased public and institutional reactions, and individual cases that have exposed the disjuncture between the laws, have further brought the issue to the forefront.

For example, in the recent 2021 parliamentary elections the OI called upon political parties to implement the LGE parity in deputy candidate lists.⁴² The Agency for Gender Equality (AGE) did so similarly by noting that equal gender representation in political and legislative decision-making is not only a reflection and implementation of the Constitution, but that based on the Law, Article 5, point 2, "[a]ny provision which is in contradiction to the principle of equal treatment under this Law shall be repealed."⁴³ However, such statements remained more in the form of public calls rather than of a legal obligation, particularly considering that there are no foreseen penalties for failure of compliance.⁴⁴

However, the 2019 parliamentary elections best showed and challenged the discrepancy between the two laws. Since none of the political parties respected the LGE gender parity requirement — women made up roughly the exact quota of 30 percent — the OI filed a lawsuit with the Basic Court in Prishtina (BCP) against CEC on the matter of gender discrimination in political entities candidates' list. In the lawsuit, the OI requested the application of temporary measures against CEC in a bid to ensure that the LGE would be respected. However, the BCP ruled against the lawsuit and the certification of lists continued based on the Law on General Elections, namely the 30 percent quota.⁴⁵

Some within civil society organizations have noted that the OI should have submitted the request earlier in order to allow more time for a proper review, as extraordinary elections are organized within a tight frame and cannot be easily paused.⁴⁶ However, in the subsequent 2021 parliamentary elections, no lawsuit was filed at all, and consequently some organizations have pointed out that ultimately a referral to the Constitutional Court might be a way through which it could be clarified which law takes precedence until a time when the laws on elections might be amended.⁴⁷

The same 2019 elections drew attention to yet another legal disposition with discriminatory repercussions, specifically the provisions of the Law on General Elections and Local Elections that define the terms for the replacement of elected candidates in instances when newly elected

37 Đorđević, Nikola. 2020. "Women Make Their Mark In Kosovo's New Government." *Emerging Europe*, , 2020. <https://emerging-europe.com/news/women-make-their-mark-in-kosovos-new-government/>

38 Balkans Policy Research Group (BPRG). 2019. "Women In Politics | Gender (In) Equality In Politics And Decision-Making."

39 "Atifete Jahjaga Biography". n.d. Council Of Women World Leaders. <http://www.councilwomenworldleaders.org/atifete-jahjaga.html>

40 Limani, Merita. 2019. "Women In Decision Making In Public Institutions In Kosovo." Institute for Development Policy INDEP.

41 Interview with Merita Limani, Expert on Gender and Governance, January 29, 2021.

42 Ombudsperson Institution, 2019 "The Ombudsperson filed a lawsuit against CEC related to gender discrimination in political entities candidates' list of for Parliamentary Elections 2019." Facebook, September 27, 2019.

43 Law no. 05/L -20 on Gender Equality, Article 5(2).

44 Interview with Merita Limani, Expert on Gender and Governance, January 29, 2021.

45 Ombudsperson Institution, 2019 "The Ombudsperson filed a lawsuit against CEC related to gender discrimination in political entities candidates' list of for Parliamentary Elections 2019." Facebook, September 27, 2019.

46 Interview with Luljeta Demolli, Executive Director at Kosovar Gender Studies Center, February 08, 2021.

47 Ibid

deputies are moved to ministerial positions. Both Article 10.3 of the Law on Local Elections⁴⁸ and Article 112.2 of the Law on General Elections envisage their replacement by a deputy of the same gender. As stipulated in the Law on General Elections, members of the Assembly are replaced “by the next eligible candidate of the same gender who won the greatest number of votes of the reordered candidate list of the Political Entity on whose behalf the member contested the last election.”⁴⁹ This article was applied in the case of Bardha Dida Rogova, in the 2013 Prishtina municipal elections, and Tinka Kurti, in the 2019 parliamentary elections. Both were unable to take assembly seats even though both had more votes than the male candidates from the same party who were certified to replace outgoing male deputies.

For Dida Rogova, the experience confirmed that the system designed as such was meant to keep the 70/30 (male/female) ratio and thus hinder women in cases when they could get elected based on votes received.⁵⁰ However, it was Tinka Kurti’s case that largely placed this discrepancy in the public spotlight following her vocal public complaint. During 2020, Kurti also filed a lawsuit at the Supreme Court with a request to repeal CEC’s decision; however, the Court dismissed the case with a swift decision. Consequently, Kurti filed a request with the Constitutional Court to repeal the Supreme Court’s decision. Apart from confirmation she received from the Court in July of the same year, stating that her case was being reviewed, no decision has been reached or communicated to date.⁵¹ Her case also highlighted the fact that CEC had never previously received proper complaints on such grounds from candidates.⁵² Kurti herself commented on the provision as “discriminatory and obstructive to the spirit of LGE,” particularly considering the strides made by women to get elected based on votes won and not quotas alone.⁵³

These cases point to the discriminatory repercussions of the provision, particularly in relation to the gender parity requirement set forth by the LGE. Whereas, quotas and affirmative measures are not discriminatory measures, and the LGE encourages and validates the use of quotas and other affirmative measures in cases where inequality persists, suggestions have been put forth that the provision could remain in place only in cases where the deputy is of the underrepresented gender.⁵⁴ As such, the provision would be applied for women to be replaced by women, but not when a male candidate would require replacement. In addition, it is important to note that the lack of prior public or institutional recognition of the potential discriminatory implications of this provision, as well as lack of discussion on the part of women candidates to whom this provision has been applied, also speak of the larger political environment that fails to respond and supports practices — be they political or legal — which rather than contributing to equality end up further disenfranchising underrepresented individuals or communities.

During the preparation of this report, Tinka Kurti’s case was still pending at the Constitutional Court. In the meantime, on 26 March 2021, the Constitutional Court ruled in her favor, arguing that the decision not to nominate Kurti as a replacement for an outgoing deputy presented a violation of four articles of the Constitution, including international conventions it references. The Constitutional articles referenced in the decision include Article 24 “Equality Before The Law” and Article 45 “Freedom of Election and Participation.” It also references Article 14 of the European Convention on Human Rights “Prohibition of discrimination,” and Article 1 of protocol number 1 of the European Convention on Human Rights, “Rights to Free Elections.”

The Court’s decision stipulates that once the minimal 30 percent representation is secured for the underrepresented gender, all following replacements must be made based on the number of votes received by deputy candidates. In addition, the Court’s decision states that the ideal and spirit of the constitutions is to achieve 50 percent equality between the two genders.

The CEC has begun applying the Constitutional Court’s decision regarding the replacement of deputies for the 14 February 2021 parliamentary elections, thus replacing outgoing deputies with candidates based on number of votes won rather than with those of the same gender.

Conclusions and Recommendations

In Kosovo, politics remain male-dominated and institutions fail to adhere to the legal provisions outlined by the LGE, specifically the requirements for gender parity in all branches of government, including decision-making and governing bodies. Although the 30 percent gender quota, part of the Law on General Elections and Law on Local Elections, has contributed to the increase of women’s representation in municipal assemblies and the Kosovo Assembly, the same has not been applied to executive branches of government or state institutions at the central or local levels. In addition, political parties have not adequately addressed disparities within their leadership and decision-making structures. The discrepancy between the two laws addressed here has created a de facto ceiling for women. As an affirmative action mechanism, the quota is not being applied as required by the LGE, on the one hand, while it is also used to set a limit for women’s representation and participation, on the other.

The legal framework requires a thorough review in order to secure that the two laws must fall in alignment in order to provide legally clear and accurate definitions. In addition, the provision in both elections laws that foresees replacement of deputy candidates based on the same gender should be reviewed as it currently discriminates against women, who are already underrepresented.

Based on the review and analysis provided here the following recommendations are made:

48 Law no. 03/L-072 on Local Elections, Article 10.3.

49 Law no. 03/L-073 on General Elections, Article 112.2.

50 Interview with Bardha Dida Rogova, LVV deputy candidate, January 31, 2021.

51 Interview with Tinka Kurti, LVV deputy candidate, February 05, 2021.

52 Halili, Dafina. 2020. “WOMEN’S POLITICAL EMPOWERMENT MEETS ITS LIMIT.” Kosovo 2.0, 2020. <https://kosovotwopointzero.com/en/womens-political-empowerment-meets-its-limit/>

53 Interview with Tinka Kurti, LVV deputy candidate, February 05, 2021.

54 Interview with Donjeta Morina, Gender Equality Specialist, February 03, 2021.

Recommendations

Legal framework

- Conduct an analysis of the achievements, impact and challenges in the implementation of the Law on Gender Equality in order to assess the need for harmonization between the Law on Gender Equality and Law on General Elections.
- Amend the Law on General Elections, particularly the provision on deputy replacement, in order to achieve and maintain gender parity.
- Conduct a general election legislative reform in order to achieve harmonization with other legal provisions pertaining to gender equality.

Political entities

- Develop targeted and elaborated gender policies for party reform. Democratization of political entities must be strengthened and continuous. Women should be empowered as members and decision-makers in their political entities, with mechanisms put in place to ensure participation in leadership positions, including the presidency, party branches and sub-branches, and not only women's forums.
- Political parties should create strategies for the promotion of women candidates for central and local elections, with a special focusing on the latter. More needs to be understood regarding specific dynamics between citizens and representatives at the local level, and applied as a basis for fostering women's political participation, decision-making and leadership.

The role of media

- The media can play a proactive role in promoting gender equality and equal involvement of male and female candidates in debates throughout political campaigns, and not only.
- Media should investigate and report on implementation, successes and failures, of gender equality provisions in Kosovar laws.
- Media should require additional accountability of political parties and institutions on the implementation of the Law on Gender Equality and other gender equality provisions.

The NGO-s

- Non-governmental organizations should campaign for women's suffrage, especially during elections.
- Civil Society Organizations should support citizen education on Law in Gender Equality.
- Civil Society Organizations should monitor and report on gender equality progress, or lack thereof, within political parties.

