

HOW TO ACHIEVE 40% OF WOMEN IN THE LEGISLATIVE BODIES IN BIH?

An Analysis of the Possible Interventions to the Electoral System of BiH

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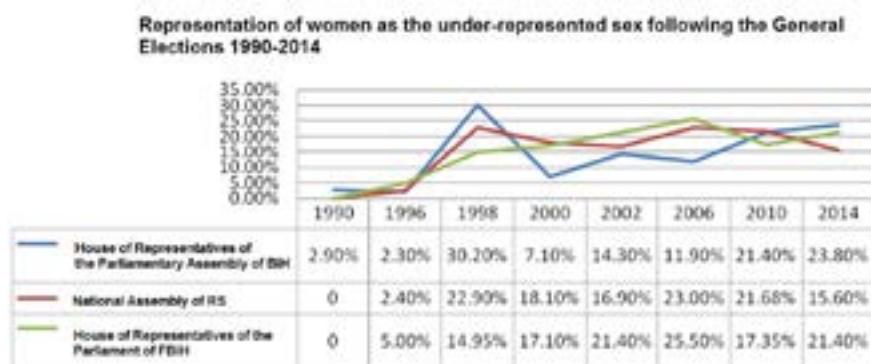
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1. INTRODUCTION

Equal representation of women and men in the legislative bodies is one of the key indicators of the achieved level of gender equality in any society. In most countries in the world, women are still the less represented sex. The situation in Bosnia and Herzegovina in terms of the participation of women in the legislative bodies does not differ much from the rest of the world.



Beijing Declaration and Platform for Action was adopted by the Fourth World Conference on Women, held on September 15th, 1995. The strategic objective of the document defines the necessity of “setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and men, if necessary through positive action, in all governmental and public administration positions” while referring to the 30% threshold.

Table 1
Representation of women following the General Elections

Even with the introduction of a quota for the less represented sex on the candidate lists, in 2006 the number of women elected to the Parliamentary Assembly of BiH was 11.9%, in 2010 it was 19%, and after the 2014 elections it was 23.8%. This is **well below the 40%** that is considered equitable representation **according to the Law on Gender Equality in BiH** (Article 20) and Council of Europe standards, and even below the Beijing benchmark of 30%

This situation is mainly attributed to the shortcomings in the electoral system of Bosnia and Herzegovina, and in particular to the **need to additionally harmonize the Election Law of BiH in order to fulfil the 40% objective of the Law on Gender Equality in BiH**.

This analysis is to identify the different elements of the electoral system of Bosnia and Herzegovina, including the type of electoral system, the impact of the existing quotas for the candidate lists and the causes which diminish the impact of the quota, and the possible interventions to remove the existing obstacles. When preparing the draft of the intervention, the impact of every intervention will be analysed based on the results of 2014 General Elections, in order to provide directions for the future advocacy campaigns.

1.1. Electoral Systems in Europe

The choice of the electoral system has a big impact on the active and passive electoral rights. The main characteristics influencing the classification of the electoral system are: the electoral threshold, electoral formula, or the manner in which the allocation of mandates is calculated based on the number of votes, and the size of the electoral districts.

ELECTORAL SYSTEMS IN EUROPE

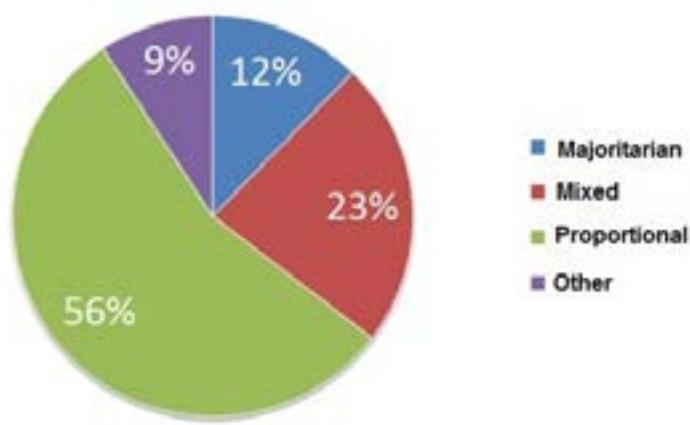


Chart 1

Electoral systems in Europe (Source: www.quotaproject.org)

In general, the electoral systems can be divided into three¹ general types – majoritarian, mixed and proportional – each of which is comprised of multitude of subtypes.

More than 50% of European countries use the proportional system of representation, since it is considered to be the system which enables the full exercising of the voting rights to the greatest extent. In the context of gender equality, the data points to the conclusion that the **representation of women as the under-represented sex is typically greater than in the other two types** (see table below).

	2000.	2010.
Proportional	19,1%	24,4%
Majoritarian	12,7%	20,2%
Mixed	11,5%	18,7%

Table 2

Overview of the representation of women in different electoral systems

(Source: Norris/Krook 2011)

¹ Majoritarian electoral systems are based on smaller electoral districts and the assumption that there is a unique winner in terms of being the “first over the line”, “relative majority” or the “absolute winner”. In the proportional system, the number of seats won by a party or a group of candidates is proportional to the number of the won votes.

However, although the current representation of women in the Parliamentary Assembly of BiH is close to the average of the other countries which use a similar electoral model, the data on the elements of the electoral system which impact the current level of the representation of women is lacking.

1.2. Electoral System of BiH and Quotas for the Under-Represented Sex

Throughout the world, the electoral quotas are among the most commonly used strategic policies for increasing the number of women in politics. Generally, the quotas determine the minimal percent of candidates of the less represented sex on the candidate lists.

More than 84 countries have some form of the quota for improving the election of the female candidates (Tripp/Kang 2008). There is a discussion on whether to implement the quotas in many other countries as well. In the last decade, the legal quotas designed for the acceleration of the candidacy process and election of women to the legislative functions are used. There is evidence that the use of quotas has increased the number of women in parliaments. It indicates that the total number of women has increased by 5.8% in the OSCE participating states following the introduction of quotas, compared to the data preceding their introduction.

Today there are **three basic types of quotas** in the world. First type, **the voluntary quotas** for the electoral lists are adopted and enforced by the parties themselves; second, **the legal quotas for the electoral lists for the less represented sex** and, finally, **the reserved seats**, or the minimum number of parliamentary seats allocated to the less represented sex regardless of the results of the election. Of the countries that currently have gender quotas, 61% have voluntary party quotas (often in combination with the other types), 28% have legislated candidate quotas, and 12% have reserved seats (Tripp/Kang 2008).

Generally, the quotas determine the percentage of minimum representation of the less represented sex, but those determined by the law are considered to be more efficient, as well as those defining the distribution of persons of both sexes on the electoral lists, and those determining the sanctions.

The Election Law adopted in 1998 introduced the quota for the candidates in Bosnia and Herzegovina. Following a number of interventions to the Election Law of Bosnia and Herzegovina, an **electoral quota is stipulated in Article 4.19:**

“Every candidates list shall include candidates of male and female gender, who are equally represented. The equal representation of the genders shall exist in case when one of the sexes is represented with minimum of 40% of the total number of candidates on the list. The minority gender candidates shall be distributed on the candidates list in the following manner. At least one (1) minority gender candidate amongst the first two (2) candidates, two (2) minority gender candidates amongst the first five (5) candidates, and three (3) minority gender candidates amongst the first eight (8) candidates et seq.”

The Election Law of BiH stipulates a **quota of 40% for the candidate lists**. This provision of the Election Law can be considered a special measure in accordance with the Article 8 of the Law on Gender Equality in BiH. Through the analysis of Article 4.19, we can establish that the quota determines the percentage and the position

of the candidates of the less represented sex on the list. If a party fails to deliver a candidate list in accordance with the Article 4.19, the Central Election Commission of BiH will not approve the list. In this manner, the sanction for non-compliance is stipulated, hence the quota can be considered to be a good example of ensuring the representation for both sexes on the candidate list. **The participation of women on the party lists for the House of Representatives of the Parliamentary Assembly of BiH in the General Elections in 2014 was between 40% and 43%** (Miftari 2015). Unfortunately, the persons of the less represented sex (women) were in the second, fifth, eighth, etc. position. It should be noted that the total percentage of **female lead candidates on the certified candidate lists** for the House of Representatives of the Parliamentary Assembly of BiH was only 10.57%.

2. ELEMENTS OF THE ELECTORAL SYSTEM INFLUENCING THE REPRESENTATION OF WOMEN

Although it seems that the electoral system in Bosnia and Herzegovina is optimal in regards to achieving equal representation of women and men, the results of the elections are not yet near the objective of minimum representation of 40%. It is clear that **there are elements of the electoral system which reduce the impact of the quota of 40%**. Several authors have researched these elements (Kadribošić 2014; Miftari 2015; Veličković 2014), and this analysis will use the methods they developed in order to identify the remaining obstacles, that is to create the conditions for **drafting proposals for the new solutions**.

The impact of the following variables will be analysed below:

- Types of candidate lists,
- Compensatory mandates,
- Size of the electoral districts,
- Number of political entities.

2.1. Open or Closed Candidate Lists

The proportional electoral systems may also have “closed” or “open” lists. In the systems with closed lists, the political parties rank candidates, and the seats are allocated according to the ranking list, depending on the number of votes won by a certain party in an electoral district. The closed lists systems are prone to criticism, since the political parties determine the distribution of candidates on the list, thus limiting the choice of the voters.

In Bosnia and Herzegovina, **semi-open lists** are used for the elections of parliamentarians **at state and entity levels**, along with the existence of multiple electoral districts. **Roughly 70% of mandates in the parliaments are allocated through the use of semi-open lists the citizens vote for, while the remaining 30% is allocated through the use of compensatory mandates** (the compensatory mandates shall be discussed in more detail below).

In the systems with open lists, the voters can vote for: a) the entire candidate list (in which case the votes are distributed according to the distribution of the candidates on the list), b) a single person on the list, regardless of its position on the list, or c) for multiple candidates on the same list. The exercising of the right to preferential voting, voting for a single candidate, implies the choice between a man and a woman. Thus, the voters have a greater impact over the outcomes of the election process, which can work in favour of women, if the electorate is more inclined to female candidates, or against women, if the electorate denies their support to the female candidates. Numerous researches suggests that the voters mostly vote for male candidates, in the systems with open lists and in societies in which there are stereotypes of the role of women and men in public and political life.

However, the data gathered for this research (the data available at www.soc.ba

thequotaproject.org) shows that the **average values of the participation of women in parliaments**, in case of the European preferential electoral systems, are quite similar regarding the systems with the closed lists (on average, 29.6%) and the systems with the open lists (on average, 30.7%).

When we analyse the impact of the open lists during the last three election cycles for the House of Representatives of the Parliamentary Assembly of BiH (using the data available at the website of the Central Election Commission) from the point of view of the “lost seats” for women, we can notice that the percentage of lost seats² has been decreasing as the number of directly elected women rose. Thus, the **voters on the General Elections in 2014 and their preferences influenced 16.6% of elected representatives** (5 out of 30). The voters mostly gave their preference to men and they have influenced the three seats which would, had there been no preferential ballot, go to women. Still, it should be noted that the female candidate Aleksandra Pandurević has won the higher number of preferential ballots than the lead candidate on the list, and that she was directly elected to the House of Representatives. For this reason the number of lost votes in the sum total is 2 (out of 30), or 6.66%. The trend of a decrease in the gender-based preferential vote is clear when it comes to the House of Representatives of the Parliamentary Assembly of BiH.

Election year	2006.	2010.	2014.
Results of the election	9,6%	19%	23,8%
Percentage of the “lost seats”	20%	10%	6,6%
Validated results	29,6%	29%	30,4%

Table 3

The number of mandates of the less represented sex influenced by the preferential vote in case of the elections for the House of Representatives of PA BiH

(Source: own calculations)

However, even when we calculate the validated results, that is, when we add the percentage of lost votes to the percentage of directly elected women, we can notice that the **total percentage of women has been around 30%**, which is higher than the average of similar systems in other countries of Europe. At the same time that would still be below 40% defined as the recommended percentage for the minimum representation. For this reason, it is clear that the **open lists influence the decrease in the number of the elected women, although not in the manner which would completely diminish the wanted result of 40%**.

² For the purposes of this research, the term “lost seats” refers to the number of seats for the less represented sex, as influenced by the preferential vote of the electorate.

2.2. Compensatory Mandates

Compensatory mandates³ are the mandates allocated to the lists of political parties or coalitions according to the number of received votes in the electoral districts in which the parties have crossed the electoral threshold of 3%, but did not have enough votes to secure a regular mandate. In the electoral systems with multiple electoral districts, these mandates are used for compensation of the votes the parties have won in certain electoral districts, in order to ensure that the votes of the electorate are reflected in the legislative bodies.

For the House of Representatives of the PA of BiH, the total of 12 mandates is compensated (out of 42), the 7 of which are compensated from the electoral districts in FBiH, and 5 from the electoral districts in RS. Out of the total number of mandates for the House of Representatives of the Parliament of Federation of BiH and the National Assembly of RS, twenty three percent (23%) to twenty seven percent (27%) are compensatory mandates. **There are no compensatory mandates at lower levels (the cantonal, city, municipal)**, since the members of the legislative bodies are elected from a single electoral district.

Unlike the regular mandates allocated through the open lists, **the political parties propose special lists for the compensatory mandates** at entity level (and not separately for each of the electoral districts); they propose a compensatory list for the Parliament of FBiH and for the National Assembly of RS. The parties can only nominate the candidates nominated for the regular candidate lists. These lists are created in accordance with the rule stipulated in the Article 4.19 of the Election Law of BiH.

The allocation of the mandates is conducted according to the number of votes which are compensated and according to the distribution on the lists. Thus we can consider that this **segment of the electoral system in BiH uses the “closed” lists** since the number of the votes actually won by the candidate has no particular impact. This solution causes controversy as it can lead to the election of those candidates who did not win a significant number of votes in their electoral district.

It can be noted that the **results of the compensatory mandates mostly work in favour of women, since they generally win a higher percentage of these mandates**, 33.33% (4 out of 12), in comparison with the regular mandates. These mandates contribute to the increase of the overall percentage of the female representatives. Following the General Elections in 2014, the number of the directly elected female representatives is, for the first time, higher than the number of female representatives who have won the compensatory mandates (6 to 4). Still, those four mandates cause the 10% increase in the total percentage.

³ Article 1.1.a of the Election Law of BiH defines the compensatory mandates as: “Compensatory mandates’ shall mean the mandates that are allocated to the lists of political parties or coalitions according to the number of valid votes received, and serve to compensate for inadequate proportional representation at the entity level arrived at by summing up the results for the particular multimember electoral units in the entity.”

	Women	Men
Number of compensatory mandates	4	8
Number of regular mandates	6	24
Total number of mandates	10	32

Table 4

An overview of the number of regular and compensatory mandates won by women and men for the House of Representatives of the PA BiH in the 2014 General Elections

Since the compensatory lists are created based on the rule stipulated in the Article 4.19 of the Election Law of BiH, at least one of the first two candidates must be a woman. The majority of parties which win compensatory mandates have won at least one regular mandate already, so the chances are that a higher number of women will be elected. Thus, in the General Elections in 2014, the Democratic Front (DF) and the Croatian Democratic Union 1990 (HDZ 1990) had the women leaders of the compensatory lists who won the compensatory mandate. The parties of Party for Democratic Action (SDA) and Party of Independent Social Democrats RS (SNSD) had a male leader of the compensatory lists, but since they had already won the regular mandate, the women positioned in the second place won the compensatory mandate.

2.3. Size of the Electoral District

The size of the electoral district, or the number of mandates elected directly from a single electoral district, is of great significance for the impact of the quota stipulated in the Article 4.19 of the Election Law of BiH. As it was previously stated, 30 representatives are elected directly from eight electoral districts for the House of Representatives of the Parliamentary Assembly of BiH. The number of representatives elected in each electoral district is between three and six. Since it appears to be the rule that at least two political parties are involved in the allocation of mandates in the electoral districts with three available mandates, and even five in the allocation of mandates in the districts with 6 mandates, the impact of the quota stipulated in the Article 4.19 of the Election Law of BiH is significantly diminished.

According to the results of the elections since the introducing of the quota for the candidate lists, generally it is the leader of the list who is elected, and only in rare cases it is the second person on the list elected as well. Analysing the results of the General Elections in 2014, we can see that the leaders of the lists won 74% of the mandates, while the second person on the list won the mandate in 26% of cases.

The rules determined by the quota in the Article 4.19, concerning the placement of the candidates of the less represented sex on the list, have no impact on the results. However, in the context of the results and rules on the placement on the lists stipulated in the Article 4.19, we can conclude that the balance of persons of male and female sex is already present when it comes to the positions which can lead to the election.

The name of the electoral district	Number of mandates	Number of parties which won mandates/ Number of women
FEDERATION OF BiH		
511 – Electoral District 1	3	3 parties won 1 mandate each/1 W
512 – Electoral District 2	3	1 party 2 mandates, 1 party 1 mandate/1 W
513 – Electoral District 3	4	1 party 2 mandates, 2 parties 1 mandate/1 W
514 – Electoral District 4	6	1 party 2 mandates, 4 parties 1 mandate/1 W
515 – Electoral District 5	5	1 party 2 mandates, 3 parties 1 mandate/0 W
REPUBLIKA SRPSKA		
521 – Electoral District 1	3	1 party 2 mandates, 1 party 1 mandate/0 W
522 – Electoral District 2	3	1 party 2 mandates, 1 party 1 mandate/1 W
523 – Electoral District 3	3	1 party 2 mandates, 1 party 1 mandate/1 W

Table 5

Number of the available mandates in electoral districts and the number of parties which won the mandates for the House of Representatives of the PA of BiH

3. ELECTORAL SYSTEM BIH – POSSIBLE INTERVENTIONS

Through the observation of different electoral systems, we can conclude that the electoral system of BiH is optimal for increasing the representation of women in legislative bodies. The quota used in the electoral system is also a good example of ensuring the presence of the less represented sex on the candidate lists.

We can conclude from the aforementioned that the synergy of different elements of the electoral system decreases the desired impact of the quota stipulated in the Article 4.19 regarding the percentage of the elected female representatives. Beside the fact that the proportional system of allocating votes is a the optimal way for ensuring the equal representation of both sexes, the application of the open lists, the existence of the *de facto* closed lists with the existence of compensatory mandates, and the size of electoral districts diminish the full impact of the quota.

Therefore it is necessary to consider other models of ensuring the equal representation of both sexes, that is, to consider the ways for influencing the decrease of the identified elements.

The following suggestions and their impact on the results of the elections will be discussed below:

- Closing the election lists,
- Increasing the quota on the election lists to 50%,
- Reducing the number of electoral districts,
- The “lucky loser” system.

3.1. Closing the Election Lists

This option is one of the simplest ways to increase the percentage of the elected women. There is evidence that the electorate is more inclined to elect the men and this intervention would impact the possibility that the voters cause “the loss” of mandates for the women. At the Parliamentary Assembly of BiH level, based on the results from the 2014, the total increase in case of the closing of the lists would amount to 6.6% and the **total increase would amount to 31% of the elected female representatives** (see table 3). **The situation at the levels of entity and cantonal parliaments is similar, as the number of the elected female representatives would increase by 31%**, which is, although it is a significant increase, still lower than the objective of 40%.

The estimated increase based on the sample and the results of the Local Elections in 2012 would amount to 16.61% (Kadričić 2014) and the **total number of the elected female councillors would amount to 32%**. However, it should be noted that one gets the impression that the possibility of using the preference is mostly used at the local level, at which the voters most commonly vote for a person, and not the entire list. Even though there are plenty of examples of the preferential voting for the female candidate, the voters predominantly vote for the male candidates. Despite the fact that this would be a more significant increase than it would be at the level of

BiH, the percentage would still be below the objective of 40%.

Further, the question whether this solution would represent a step back in the process of the democratization of the electoral system in Bosnia and Herzegovina is raised. The closing of the election lists would increase the influence of the political party leaders and it would limit the willingness of the electorate to give their vote to any person on the list.

3.2. Increasing the Electoral List Quotas to 50%

Increasing the quota stipulated in the Article 4.19 to 50% while alternating persons of both sexes on the list as the only intervention would not, unfortunately, yield any significant results regarding the increasing of the number of the elected female representatives. It has already been concluded in the analysis of the results of the General Elections in 2014 that, generally, two representatives at most are elected from the single electoral district, and that the ranking of persons following the second position would have no influence over the percentage of the persons elected. At least regarding the level of BiH, the rule on the distribution of the candidates stipulated in the Article 4.19 *de facto* already leads to the situation that there is a secured balance regarding the first two positions, and yet there is the recorded loss of three mandates. Thus, even **the combining the increasing with the closed lists at the level of BiH would have no impact**, provided that the **impact would be more significant at entity level and that it would lead to the percentage of the elected women of over 35%. The estimate for the cantonal level is similar, and the percentage of the elected women would also be over 35%.**

The impact on the increasing of the number **at the local level would be more significant, in combination with the closed lists**, since the political parties in some electoral districts win over 10 positions. For example, the number of the elected women in Bihać would be 13, or over 43%, and in Višegrad it would be over 42%. As it can be noted, the increasing of the quota to 50% would not lead to electing the 50%, but the increase would certainly be significant.

3.3. “Lucky Loser” System

The so-called “lucky loser” system applied in the Law on General Elections in Kosovo. Namely, beside the quotas for the lists of candidates, at least 30% as stipulated by this law, and the zipper system (one candidate of each sex is to be included in any group of three candidates), this law also introduces the rule regarding the situation if the candidates of the less represented sex did not achieve 30% of the seats out of the total number of seats of the entity. According to the rule, the **last elected candidate of the majority sex will be replaced by the next candidate of the opposite sex on the list of the candidates of the political entity. Such replacement will continue until the number of seats allocated to the less represented sex is not at least 30% at the level of the legislative entity.**

The application of this system is not without controversy, since it brings the **will of the electorate into question, as it generally leads to the allocation of the mandate to the person who *de facto* won fewer votes**. If we applied this rule to the election results of the General Elections in 2014, we would need to observe each party in isolation to determine: 1) whether the representation of a sex is lesser than 30% in which case we would need to 2) determine who is the next person of the less represented sex who should be allocated a mandate, in order to determine to which extent is the will of the electorate being influenced.

Party	Regular mandates		Percentage		Mandate won through the “lucky loser” system	
	Women	Men	Women	Men	Women	Men
SDA	0	7	0%	100%	+3	-3
DF	2	2	50%	50%	0	0
SBB	0	3	0%	100%	+1	-1
HDZBIH (coalition)	2	2	50%	50%	0	0
SDP BIH	0	2	0%	100%	+1	-1
A-SDA	0	1	0%	100%	0	0
SNSD	1	4	25%	75%	+1	-1
SDS	1	3	33.33%	66.66%	0	0
TOTAL	6	24			6	-6

Table 6
The calculation of the additional mandates according to the “lucky loser” system

With the implementation of the “lucky loser” rule to the results of the General Elections in 2014, the total number of additional mandates would have been 6, i.e. 12 mandates in total or precisely 40%. The highest number of the replaced mandates was in the SDA party, in which three mandates were allocated to the highest ranking women. Some parties have already achieved the equality (DF and HDZ). No corrections would be made concerning the parties which have won a single mandate, as it is impossible to achieve an increase in favour of either sex, without disturbing the minimum 30% representation of the other sex.

Thus, if we for example consider the number of votes won by the SDA candidates who have been directly elected and if we rank the candidates by the number of votes won, the final three male candidates would be replaced by the three female candidates of the aforementioned party who have won the highest number of votes. Through the analysis of the validated results available at the Central Election Commission of BiH website, we conclude that Nermina Kapetanović, Semiha Borovac and Alma Hajdarević are the highest ranked female candidates of the SDA. In the context of the lost votes, the difference is not significant and it amounts to 45 votes, which cannot be considered a significant loss.

The greatest discrepancy in the votes would be in the case of SNSD, since Snježana Rajilić has won 4334 fewer votes than the lowest ranked male candidate Miroslav Milovanović.

What this system could influence, having in mind the current distribution of the electoral districts, is the geographic representation in the House of Representatives. In each of the aforementioned cases, even if the replacement would be done within a single political party, there would still be changes in the representation of electoral districts since in that case certain electoral districts would not be represented, or they would be under-represented, due to the implementation of the “lucky loser” system.

The replacements could also be done within a single electoral district, but in that case the discrepancy in the lost votes could be even greater. Suppose that the regular mandate won by Senad Šepić is replaced by the person of the opposite sex who is ranked next on the list, in this case that would be Maida Aldžić who won 11,000 votes fewer than him, or if the same was done for Miroslav Milovanović and he was replaced by Sanja Vulić who won 12,000 votes fewer than him.

SDA	Number of votes		
Džaferović Šefik	30.007		
Mehmedović Šemsudin	24.624		
Demirović Sefer	23.413		
Fazlić Amir	22.184		
Sarajlić Asim	18.618	Kapetanović Nermina	12.646
Šepić Senad	15.517	Borovac Semiha	14.490
Sokolović Salko	8.540	Hajdarević Alma	15.194

Table 7

The calculation of the additional mandates according to the “lucky loser” system for the Party of Democratic Action (SDA), with the number of votes won

SBB	Number of votes		
Škaljić Fehim	14.958		
Isaković Mirsad	11.461		
Đonlagic Mirsad	9.679	Edita Đapo	6.288

Table 8

The calculation of the additional mandates according to the “lucky loser” system for the Union for a Better Future (SBB), with the number of votes won

SDP BIH	Number of votes		
Bećirović Denis	19.230		
Mešić Mirsad	5.904	Mladina Nada	4.052

Table 9

The calculation of the additional mandates according to the “lucky loser” system for the Social Democratic Party of Bosnia and Herzegovina (SDP BiH), with the number of votes won

SNSD	Number of votes		
Špirić Nikola	43.850		
Prodanović Lazar	23.001		
Staša Koštarac	22.836		
Milovanović Miroslav	20.187	Rajilić Snježana	15.853

Table 10

The calculation of the additional mandates according to the “lucky loser” system for the Alliance of Independent Social Democrats RS (SNSD), with the number of votes won

3.4. Customized “Lucky Loser” System

It is obvious that all the analysed models have certain limitations, and for this reason it is worth to examine the models not listed in the comparative overview, and which could be applied to the BiH electoral system.

It has already been concluded in the overview of the electoral system in BiH that the lists are, at least regarding the state and entity levels, open in 70% cases, while the remaining 30% refers to the compensatory mandates. To minimize the impact on the will of the voters, and on the geographic representation, the amendments to the rules regarding the allocation of the mandates seem like the optimal option.

As it was stated previously, **the compensatory mandate lists are proposed at state and entity levels and they are not dependant on the will of the voters**. For example, Milica Marković won a compensatory mandate even though she won 7,053 votes (which ranks her as the 5th on the SNSD list in that electoral district) or 8,800 votes fewer than Snježana Rajilić, the SNSD female candidate who won the highest number of votes, but did not secure a direct mandate. In the similar manner, Saša Magazinović won a representative seat, even though he won three times fewer votes (2,489) than Zlatko Lagumđija, the leader of the list. It can be concluded that the compensatory lists are completely independent of the will of the voters. Additionally, since the compensatory lists are proposed at state and entity levels, their purpose is not to ensure the geographic representation.

For this reason, the implementation of the “lucky loser” rule on the allocation of the compensatory mandates would not impact the will of the voters, and it would allow the objective of 40% to be met.

In this manner the calculated increase would amount to 8 seats or 19.04%. Out of the total sum, the total percentage of the less represented sex would amount to 40.47%, which would be in accordance with the Article 20 of the Law on Gender Equality in BiH. A similar estimate refers to the entity level, where the percentage would be between 35% and 40%.

Party	Regular mandates		Percentage		Compensatory mandates (women)	Total number (women) with the implementation of the "lucky loser" rule
	Women	Men	Women	Men	Number	
SDA	0	7	0%	100%	1	2
DF	2	2	50%	50%	1	0
SBB	0	3	0%	100%	0	1
HDZ BIH (coalition)	2	2	50%	50%	0	0
SDP BIH	0	2	0%	100%	0	1
A-SDA	0	1	0%	100%	0	0
SNSD	1	4	25%	75%	1	0
SDS	1	3	33.33%	66.66%	0	1
HDZ 1990	n/a	n/a	n/a	n/a	1	0
BPS	n/a	n/a	n/a	n/a	0	1
PDP	n/a	n/a	n/a	n/a	0	1
DNS	n/a	n/a	n/a	n/a	0	1
TOTAL	6	24			4	8

* One out of the three compensatory mandates was already allocated to a woman, with the implementation of the current model

**A woman is already the first person on the list

Table 11

The calculation of the additional mandates according to the "lucky loser" system for the compensatory mandates with the first position on the compensatory list reserved for the person of the less represented sex, on the example of the results of the General Elections in 2014

Depending on the different factors, this percentage may vary, **but the estimate is that it cannot be lower than 30% due to the fact that there is 30% of compensatory mandates. Still, this percentage should not be lower than 40%**. However, the difference in comparison with the calculated percentage based on the results of the General Elections in 2014 should not be higher than +/- 3%.

4. ASSESSMENT OF THE MODELS OF INTERVENTIONS FOR BOSNIA AND HERZEGOVINA

Based on the conducted analyses of the impact of all of the possible models, it is possible to assess which of the models would be optimal for Bosnia and Herzegovina. An overview of the possible models is provided in the table for the selection of the optimal options for the intervention. The five models were considered in regards to the calculated increase at the level of BiH and the local level, the impact on limiting the will of the voters and, finally, the impact on the geographic representation.

	Closing the electoral lists	Increasing the quota in the Article 4.19 to 50%	Combination of closing the lists and the quote of 50%	“Lucky loser” system	Customised “Lucky Loser” system
Calculated increase at the level of BiH/Aggregated increase	6.66%/31.46	0%	No impact	16.2%	19%
Calculated increase at the entity level/Aggregated increase	15–20%	Calculation not possible	15–20%	15–20%	15–20%
Calculated increase (local level)	14.61%/around 31%	0%	Representation over 40%	Over 30% or over 40%	Not applicable
Limiting the will of the voters (level of BiH)	Medium	No impact	Medium	Medium	Low
Limiting the will of the voters (entity level)	Medium	No impact	Medium	Medium	Low
Limiting the will of the voters (local level)	High	No impact	High	High	Non applicable
Impact on the geographic representation (BiH level)	No impact	No impact	No impact	Probable	No impact
ASSESSMENT OF THE MODEL LEVEL OF BIH	2	1	1	4	5
ASSESSMENT OF THE MODEL ENTITY LEVEL	2	1	3	4	5
ASSESSMENT OF THE MODEL CANTONAL LEVEL	3	1	4	3	Not applicable
ASSESSMENT OF THE MODEL LOCAL LEVEL	3	1	4	3	Not applicable

Table 12
Assessment of the possible models of interventions for the election system in BiH

This overview points out to the conclusion that **the higher calculated increase causes the greater limiting of the will of the voters, or of the geographic representation. The closing of the electoral lists would have an impact on the increase of the percentage of the representation of the less represented sex to over 30%; however, this percentage would still be below the minimum representation threshold of 40%.**

Increasing the quota to 50% should also have no impact on the percentage of the elected women, since the preferences of the electorate would still influence the distribution on the lists. **However, increasing the quota to 50% and using the alternate distribution or balancing the lists would certainly lead to the increase in the visibility of candidates of both sexes and could impact the change in the awareness of the voters, so it should be one of the objectives of the advocacy.**

The combining of the increase of the quota with the closing of the lists is also a possible option. At the level of BiH, this intervention would have no impact, even in this combination. However, at the cantonal and local levels this combination would raise the representation of the under-represented sex to over 40%. It should be noted, however, that it would be precisely the closing of the lists at the local level which would have a large impact on the limiting of the will of the voters, since the voters most commonly give individual preferential votes at the local level.

The implementation of the “lucky loser” system would certainly contribute to the increase in the number of representatives. The assessment of the impact of the model currently used in Kosovo on the results of the General Elections in 2014 shows that even with the quota of 30% the percentage amounts to 40%, while this model would contribute to the total percentage of over 30% at the local level. Of course, with the implementation of this model and the quota of 40%, the increase at both levels would amount to 40%, granted that it would be impossible to ensure the minimum 40% representation of both sexes in case of the parties which win three representative seats.

What needs to be considered is the fact that this model can influence the will of the electorate to a large degree, especially at the local level, depending on the model used. In case that the implementation of the model is conducted in the electoral district from which the person of the majority sex is replaced by a person of the less represented sex, the differences can then be significant, even over 70% of the votes won. If we disregard the need to replace the persons with the person from the same electoral district and if we simply use the next ranked person of the less represented sex from the same political body, then is the impact on the will of the voters smaller. However, even in this situation there is the possibility of significantly affecting the geographic representation, as there are great odds that the persons of the less represented sex would not come from the same electoral district.

5. PROPOSAL OF AMENDMENTS TO THE ELECTION LAW OF BIH

It is clear from the entire analysis of the possible interventions that there is no universal solution for all the models of government.

However, considering the current awareness levels on the participation of women and men in the decision-making positions and the impact of the current solutions in the Election Law of Bosnia and Herzegovina, we suggest the following two interventions:

- 1. Achieving the equality of women and men on all the lists of candidates**
- 2. Implementing the customized “lucky loser” system.**

Although the 50% quota which ensures the full equality of women and men does not guarantee success, this solution should over time increase the chances for the higher percentage of female candidates. It is necessary to implement this provision to all lists of candidates at all governmental levels, as well as the intervention regarding the Article 4.19.

As a solution for the level of BiH and the entity levels which would ensure achieving the objective of 40%, the customized “lucky loser” system is proposed. The implementation of this provision requires interventions to the Election Law of BiH, regarding the articles regulating the adoption of the results of the elections for the allocation of the compensatory mandates for the Parliamentary Assembly of BiH, the Parliament of FBiH and the National Assembly of RS.

Hence we suggest the following amendments to the Election Law of BiH:

Pursuant to Article IV 4 a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the _ session of the House of Representatives held on _____ 201_ and at the _session of the House of Peoples held on _____ 201_, has adopted the

**LAW⁴
ON THE AMENDMENTS TO THE ELECTION LAW
OF BOSNIA AND HERZEGOVINA**

Article 1

In the Election Law of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, Nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13 and 7/14; hereinafter: the Law), the Article 4.19, item (4), shall be amended to read:

“Every candidates list shall include candidates of male and female gender, who are alternately distributed on the list.”

⁴ These amendments should be understood as a proposal and not as a final and nomotechnically adequate legal norms.

Article 2

After the Article 9.7a (Chapter 9 Parliamentary Assembly of BiH, Subchapter A House of Representatives of the Parliamentary Assembly of BiH) Article 9.7b shall be added and shall read:

“Article 9.7 b

(1) If following the distribution of seats as provided by Article 9.7 a minimum of 40% of members of both sexes has not been elected, the compensatory mandates shall be allocated to the candidates of the under-represented sex on the compensatory list of the political party or coalition which won the highest number of votes.

(2) The following rule will apply to the compensatory lists of all political parties and coalitions which won compensatory mandate until at least 40% of members of both sexes have not been elected to the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, until all available compensatory mandates are distributed.

(3) If an elected political party or coalition candidate's compensatory mandate terminates, then the mandate shall be given to the candidate of the same sex.”

Article 3

After paragraph 3 of Article 10.6 (Chapter 10 Parliament of the Federation of BiH, Subchapter A House of Representatives of the Parliament of the Federation of BiH) of the Law, new paragraph (4) shall be added and shall read:

“If following the distribution of seats as provided by paragraph (1) of this Article a minimum of 40% of members of both sexes has not been elected, the mandates allocated to the list shall be distributed to candidates in accordance with Article 9.7 of this law. If an elected political party or coalition candidate's compensatory mandate terminates, then the mandate shall be given to the candidate of the same sex.”

Article 4

After paragraph 3 of Article 11.6 (Chapter 11 National Assembly of the Republika Srpska) of the Law, new paragraph (4) shall be added and shall read:

“If following the distribution of seats as provided by paragraph (1) of this Article a minimum of 40% of members of both sexes has not been elected, the mandates allocated to the list shall be distributed to candidates in accordance with Article 9.7 of this law. If an elected political party or coalition candidate's compensatory mandate terminates, then the mandate shall be given to the candidate of the same sex.”

Article 5

This Law shall enter into force on the eighth day after its publication in the Official Gazette of Bosnia and Herzegovina.

CHAIR OF THE
HOUSE OF REPRESENTATIVES OF PA BIH

CHAIR OF THE
HOUSE OF PEOPLES OF PA BIH

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