

Report

ANALYSIS OF THE ALBANIAN LEGISLATION ON PROTECTION FROM VIOLENCE AGAINST WOMEN IN ELECTIONS



Tirana, May, 2020



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Tirana, May, 2020



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Key words and abbreviations:

- UN – United Nations Organization
- VAWE – Violence against Women in Elections
- GBVE – Gender-Based Violence in Elections
- VAWP – Violence Against Women in Politics
- GBVP – Gender-Based Violence in Politics





INTRODUCTION

Violence against women in elections and politics appears to be a serious violation of human rights and manifests itself in various forms. Rather than violence for political reasons, it constitutes gender-based violence aimed at, “... not just the individuals specifically targeted, but all women from expressing their political voice and agency¹.”

It is manifested as physical, psychological, sexual violence, hate speech, discrimination on the grounds of gender, etc. In this context, our attention is focused against preventing women candidates and those who exercise various functions from taking part in elections and politics, as well as against preventing women and girls at large from exercising their right to vote. Identifying, preventing and combating this type of violence remains one of the biggest challenges for the development of democratic elections and the realization of gender balance in decision-making.

What is violence against women in elections?

The United Nations Organization defines VAWE as: “*any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.*”²

In Albania, this type of violence has not been specifically addressed, which has left it silent, unidentified and unreported. To date, the efforts of the Albanian lawmaker have focused on consolidating the gender quota system

1. UN Women – OHCHR Expert Group Meeting on Violence against Women in Politics, 8 March 2018, New York.

2. UN Declaration on Elimination of Violence Against Women, Resolution 48/104, 20 December 1993.

in elections. But, there is currently a need to create mechanisms that will prevent and combat gender-based violence in elections and politics. The latter can deprive women of the right to vote and can turn the gender quota into a formal, unimplemented system. Studies on the experience of different parts of the world show that gender-based violence reduces the chances of increasing women's participation in elections and politics. It reduces the number of women running for office, preventing them from aspiring to serve and develop their careers in politics. This violence can also hinder the vision of political parties to work to increase women's activism in their midst and can prevent them from making the right decisions during election campaigns³.

The United Nations organizations, UN Women and the UNDP, in collaboration with other partners, have actively investigated this phenomenon worldwide, breaking the silence on this real concern. The UN has raised this issue with the aim of encouraging adoption of measures and addressing this problem to all persons involved in state duties, respectively with these concerns. Prohibiting violence against women in elections is the responsibility of all actors at all levels of the electoral and political spectrum.

Regarding this issue, we find silence in the electoral legislation and political experience in Albania. The reports on the monitoring of electoral processes drafted by various organizations, both national and international, do not report violence against candidates, on gender grounds. In some reports, problems have been identified regarding family voting,

which violates the principle of freedom of voting. But, there is no analysis of the forms and causes for which the "family voting" phenomenon is so widely spread. There is no in-depth research on how it affects women and girls and how it prevents them from voting. Also, election monitoring reports have identified issues of hate speech and discrimination, without delving into their causes. Furthermore, there are cases of violence even within electoral subjects and their supporters, but there is silence over these cases, too. Local media have reported cases of gender-based violence in elections, but these cases have failed to be addressed by Albanian institutions, or the judiciary. Unfortunately, there have been cases where gender-based concerns have also come from the media. Cases of violence against women have also been identified in politics due to sexist and hate speech.

These forms of violence can be prevented and punished not only by criminal legislation, but also by administrative and civil legislation. The Electoral Code also plays a special role in this regard. Legal provisions for this purpose may also be provided for in other laws governing the activity of political parties, their financing, anti-discrimination legislation, gender equality, etc. The operation of an inter-connected network of legal mechanisms in various fields shall make legislation an effective tool for identifying cases of violence, preventing and combating them.

This report is based on the standards set by the UN and its organizations, UN Women and UNDP, for the protection that national legislation should provide on violence against women in elections and politics.

3. For more, see: Programming Guide "Preventing Violence against Women in Election", UN Women and UNDP, 2017, available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/preventing-vaw-in-elections-en.pdf?la=en&vs=3742>

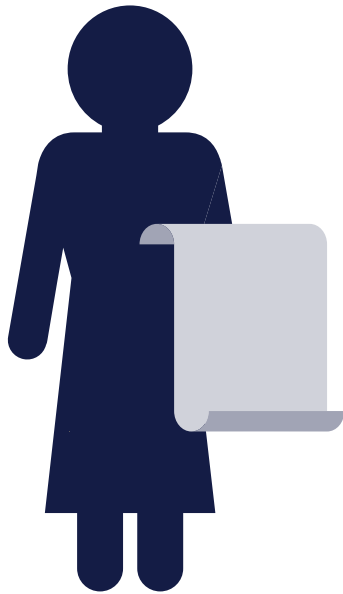


PURPOSE AND SCOPE OF THE STUDY

The purpose of the present study is to draft an analytical report, which can contribute to improving and raising the effectiveness of the Albanian legislation in addressing violence against women in elections (VAWE), as well as strengthening protection provided during the implementation of such legislation.

The **scope** of the study are the existing laws of the Albanian legislation *vis-à-vis* VAWE. A package of laws will be analyzed as part of this study — the latter regulating institutional and individual relations, aiming specifically at governing election and political issues. Special attention will be paid to the protection of life, health and dignity of women in elections, as well as prevention of disenfranchisement of women in elections and decision-making.

The **method** used for the purposes of this report includes in particular a desk study analysis of international acts, and of existing domestic and foreign legislation on this matter. The report's conclusions and recommendations will be drawn through a comparative analysis between international and Albanian experiences, between experiences of different countries, a comparative analysis of Albanian legislation with binding international acts or standards thereof, as well as an analysis of their adaptation with the situation in Albania.



Special attention will be paid to **the protection of life, health and dignity of women in elections, as well as prevention of disenfranchisement of women in elections and decision-making.**

Literature: To achieve what is listed above, we have consulted the Guide drafted by UNDP and UN Women to prevent VAWE in particular⁴, as well as relevant Albanian legislation and analyses thereof. In particular, *Preventing Violence against Women in Elections: A Programming Guide* presents an overview of international policies and legal framework to address VAWE. It identifies the main forms of its exercise and summarizes a series of recommendations for countries to address this form of violence, by including, *inter alia*, legal amendments to national legislations. In addition, this guide includes examples related to legal measures taken in different countries to prevent and protect women in politics from violence exercised during elections.

Self-Study Questions: The lessons drawn from experiences of other countries and from hitherto analyses on this issue help us lay down some self-study questions, which can be summarized as below:

- **What** are the forms through which VAWE is exercised?
- **Who** are the victims of VAWE?
- **Who** are the perpetrators of this form of violence?
- **What** are the legal instruments through which VAWE is addressed?
- **What** are the measures that must be taken by the Government to prevent and fight VAWE?

The purpose of this study is to give answers to all these questions.

4. See: Preventing Violence against Women in Election: A Programming Guide, UN Women and UNDP, 2017, cited.

CHAPTER 1

INTERNATIONAL STANDARDS



INTERNATIONAL STANDARDS

In order to be able to study the Albanian legislation dealing with VAWE, it is important to highlight the most significant findings of international standards in the area. This would help the purpose and objectives of our analysis through **comparative** and **process** analysis. In this view, we must draw lessons from the above mentioned *Programming Guide*, which includes a series of international law instruments relevant to this area. We find that standards are recently established in the UN political documents and Universal International Acts of soft law. For example, the international normative framework related to women participation in election and politics is consolidated in declarations, human and political rights conventions, reports, resolutions, action plans, as well as existing policies on UN electoral assistance⁵. However, these standards are derived directly from the most important acts of universal international law, such as:

1. **Universal Declaration of Human Rights (UDHR) (1948)**
2. **Convention on the Political Rights of Women (CPRW) (1952)**
3. **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979).**

These are acts of a general nature. Although they may not be considered specialized acts

in this field, they do nonetheless address fundamental principles, which serve as a good foundation to draw a comparative analysis of the legislation on the prevention of and fight against VAWE. In this context, the legislative experience of states serves as a good platform. As regards the states, it is of relevance to note the different experiences that may be beneficial for drawing the necessary conclusions. However, specific legislation in a strict sense is found especially in states where the need to address this type of violence has been more apparent. It is worthy of noting that this phenomenon has been especially regulated in legislation due to two factors: *firstly*, due to the **risk intensity and scale** of cases with which it appears in some countries and, *secondly*, due to the intensive studies carried out with this aim.

The Programming Guide referred-to above contains examples of different forms of harassment or violence against women in elections. Hence, in the USA, several studies have been conducted regarding this issue over the last 40 years, testifying that "*women candidates frequently receive more [media] coverage of their appearance, personality and families and less coverage of their positions on issues than do male candidates. These differences, which go beyond mere sexist language, can erode a woman candidate's credibility.*"⁶

5. Programming Guide ... quoted. pp. 12 -17

6. Ibid.

In **Moldova**, in 2016, Presidential Candidate Maia Sandu's credibility was called into question by a leader of the Moldovan Orthodox Church, who cast doubts on Sandu's morality because at age 44, she was neither married, nor a mother.⁷

Ahead of **Mexico's** 2015 local elections, women denounced the surge in violence against women candidates, which they perceived to be a reaction to the Constitutional provisions requiring parity among candidates (50% women)⁸.

The guide also counts a sequence of other cases of forms of violence in some states.

Quite a few other studies testify the large-scale pervasiveness of VAWE as a form of violence. For example, different types of violence experienced by women candidates or voters are also found in the study report drafted by the Inter-Parliamentary Union in 2016, on the basis of questionnaire results on VAW. This report categorizes different forms of violence experienced by women parliamentarians for gender-related issues, in different periods⁹.

Some of them have been grouped as follows:

- **81.8%** experienced psychological violence
- **44.4%** received threats of death, rape, beatings or kidnapping
- **25.5%** experienced physical violence in the Parliament
- **46.7%** feared for their security and that of their family

Furthermore, according to data from the report above, only 21.2% of Parliaments monitored had adopted policies against sexual harassments.

VAWE and VAWP (violence against women in politics) cases have also been covered by independent media. These covers were particularly more frequent in countries with consolidated democracies and media. In these countries, concern is raised over the increase of the number of gender-related harassment cases, in which the development of online technologies and social media has in particular been of influence. Such violence exercised against elected women may influence in the withdrawal or declining of participation of women in politics¹⁰.

Regarding the above, it is necessary to define VAWE and VAWP, as well as subjects who suffer from this kind of violence. While no comprehensively defined prescriptions exist on this topic, we may nonetheless include these categories of violence:

1. Violence exercised against racing or potentially racing women candidates;
2. Violence exercised against women voters to prevent their secret and free ballot;
3. Violence exercised against politically active women to impede their candidacy and advancement in their political career;
4. Violence exercised against women supporters and activists in elections;
5. Violence exercised against all electoral staff or those related to electoral issues due to their gender.

7. Ibid.

8. Ibid.

9. IPU Issues Brief, "Sexism, harassment and violence against women parliamentarians," IPU, October 2016. <https://goo.gl/fWw9Hw>

10. Dafydd Morgan, BBC Politics Wales, "Women in politics face 'daily' abuse on social media", 24 May 2020 available at: <https://www.bbc.com/news/uk-wales-politics-52785157>

Those committing this form of violence fall under no set profile, for as long as they commit gender-related violence. However, when violence is caused by the people responsible for safeguarding these standards, but who instead abuse with their functions, the act deserves a more severe punishment. Furthermore, the forms this violence may be manifested into, are highlighted in detail in the studies¹¹ mentioned earlier in this document.

It is exactly this situation that has pushed United Nations' experts to recommend addressing VAWE, which implies its identification, prevention and protection. Naturally so, a provision for VAWE and obligations on its prevention and elimination in the national legislation, are decisive steps in the fight against VAWE. In this context, we can refer to models suggested in the *Programming Guide* as well. Of course, programs, strategies and action plans can extend in many areas and address a series of measures. However, the present report, based on these standards, aims at drawing lessons on how to meet international UN standards in the Albanian legislation.

Some of these lessons can be summarized as follows:

- The legislation should include the mechanisms necessary to monitor and report VAWE.
- The legislation should offer effective protection against VAWE by providing for special measures and efficient sanctions with the intention to prevent and eliminate it.
- Prevention and elimination of VAWE is carried out in a special way, within the political party life and during the exercise of their activity.

- It is necessary to include the definition of VAWE and forms through which this violence may be manifested in the national legislation. Sanctioning serves to identify cases of VAWE, raise awareness and stop them.

International experiences also offer some models through which the above mentioned standards may be met. For example, to fulfill one of the objectives above, one way is through electoral legislation provisions, or through drafting a special law dedicated to this area. The latter has occurred in few countries, as, for instance, in Bolivia. In many other countries, there is no special law on this matter. In most cases, measures to eliminate VAWE have been integrated in the states' electoral legislation¹². This has turned out to be an efficient method of protection from gender-based violence. Such objective is also achieved through by-laws adopted by Central Electoral Bodies, as well as from soft law acts. Meanwhile, legal acts regulating the organization of political parties, and their financing, are important, too. There are countries that have provided for election-related criminal offenses in their criminal legislation. Other areas of legal nature, which can provide measures against VAWE, may be drafting of legislation on equality and anti-discrimination, etc.

Preliminary conclusion: The attainable purpose of international standards in the legislation against VAWE is to ensure prevention and reduction of this gross infringement of fundamental rights and freedoms, as well as to provide for a sustainable mechanism to prevent and eliminate this type of violence, aiming at the increase of balanced gender representation in decision-making bodies, including electoral governing bodies.

11 Programming Guide ..., pp. 27–30

12 bid.

CHAPTER 2

SITUATION OF ANTI-VAWE LEGISLATION IN ALBANIA



SITUATION OF ANTI-VAWE LEGISLATION IN ALBANIA

2.1. General Overview of the Situation of VAWE in Albania

In countries going through a democratic transition period, VAWE is one of the main obstacles to achieve political rights for women. Albania is still in a democratic transition stage and clearly with a transitional justice. Despite achievements, women candidates in elections still face several challenges for their candidacy and for getting a seat in politics.

Albania lacks a proper study highlighting the form of violence is manifested into. Studies developed up until now have particularly focused on domestic violence. However, by analyzing the studies mentioned earlier in this paper, developed in different parts of the globe, as well as some isolated cases covered by the Albanian media, one notes that these forms of violence are different. They may be divided in classical forms, including the likes of physical, psychological and sexual violence, which are clearly displayed in election-related violence as well. In the absence of cases reviewed by Courts or relevant institutions, as

well as proper research, we have reached a few conclusions, to follow below in this document.

There are numerous factors that give rise to harassments and violence toward Albanian women in elections. Mainly, they are related to the masculine mentalities in political parties running for these elections, as well as the mentality of their supporters. Elected representatives of political parties stand in public offices for a very long time, dominate posts and mainly move from one public office to another, thus not leaving much space for new entries. Another impeding factor is the roughness of political life over the last 30 years of transition, which, particularly due to the language used and support by criminal gangs, has had a traumatizing nature that curbs active participation of women in political life. To make matters worse, elections in Albania are often mired in allegations of unfairness and vote buying. Although there are no reports covering this phenomenon, we think that all these factors make politics a fairly difficult area and discourage women participation.

Lack of statistics and information on this issue is also due to the fact that there are no policy or legislation provisions to fight VAWE.

Legislation is contemporary, but with neutral and quite generalized terminology. Therefore, it is impossible to distinguish reported cases of electoral violence from cases related to women with a gender cause. Although the issue has not become a matter of institutional review, the media have covered cases of pressure against women to resign (remarked in particular during the replacement of resigned MPs), while there have been worrying attacks against women during election campaigns (related to interventions in political rallies). There has been media coverage of women's gender-caused concerns in politics (insinuations of intimate relationships simply because of public appearances in proximity with their (male) colleagues). These insinuations have even included senior representatives of the diplomatic corps, simply due to their gender. These concerns are caused by male political colleagues, political party supporters and, unfortunately, occasionally even by media itself. There are cases when some media cover the women candidates or politicians only focusing on their appearance or gender, and less on the basis of their merits regarding the post they are running or have run for. VAWE happens even as a result of family voting, which has been rather extended in some cases. These forms of violence have especially targeted women activists aiming to run for office, women candidates, as well as women voters themselves, be them supporters of different parties, observers and other election staffers, as well as women officials.

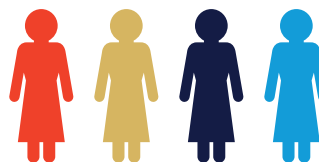
By studying the **Election Monitoring Reports** compiled by different national and international organizations, one cannot reach

accurate conclusions on this phenomenon during elections. To date, there have been family voting-related reports. This factor, among other things, is undoubtedly related to gender-based violence against voters. However, although there is data on violence cases in these reports, they fail to reflect any data on its causes, subjects of violence and consequences arising as a result of this violence. More specifically, one of the election observation reports developed by the Albanian Helsinki Committee in 2013 highlights that: ***"Part of the campaign has been built on the basis of denigrating elements toward their political opponents, including even banal offenses that party leaders addressed, during rallies or talks in the media, to their opponent counterparts. This caused indignation among parts of the population, which talked about this both in front of the media and in meetings with our monitors"***¹³. However, we failed to find any analysis of causes and incidents of violence exercised during the electoral campaign and, as a result, we failed to uncover the cases when violence was due to gender-related causes. However, based on the OSBE-ODIHR Report on the 2017 Parliamentary Elections, we reached to conclusions related to media cover inequality of women candidates in campaigns. ***"Women candidates received little media attention; the public and private television channels monitored by the OSCE/ODIHR EOM devoted 13 per cent of campaign coverage to women."***¹⁴ In this report, OSBE-ODHIR recommends: ***"Any instances and allegations of pressure should be thoroughly and effectively investigated and prosecuted by relevant authorities. All***

13. See: Final Parliamentary Elections Report of 23 June 2013, AHC, Tirana, 31 JULY 2013, p. 16, available at: https://ahc.org.al/wp-content/uploads/2016/12/Final_Report_on_the_Parliamentary_Elections_of_23_June_2013_Albanian_Helsinki_Committee.pdf

14. OSCE/ODIHR Election Observation Mission Final Report, 28 September 2017, p. 12, available at: <https://www.osce.org/files/f/documents/4/d/346661.pdf>

cases, including their outcomes, should be publicly reported.”¹⁵.



Observer Reports of the Commissioner for the Protection from Discrimination. To understand the factual situation of VAWE in Albania, we also reviewed the Commissioner for the Protection from Discrimination Reports for 2017, 2018 and 2019, since these years follow the 2017 Parliamentary Elections. These reports do not include any special addressing either, as regards gender discrimination in elections, whereas gender-caused cases in general are few. Even though discrimination in elections and politics is illegal based on this Law (Article 9), there are no cases addressed in this area. Hate speech reviewed by the Commissioner these years is mainly oriented toward sexual orientation and gender identity¹⁶.

Situation of criminal offenses against women in elections. In this framework, we have reviewed the Statistical Yearbooks of the Ministry of Justice for the last 5 years (records from 2013 to 2018). We found through this review that it is impossible to identify cases of criminal responsibility for the exercise of VAWE. This is due to statistical yearbooks giving only general references by putting all categories of “Crimes against free elections” as criminal offenses in one group, without distinguishing between their types or their inherent elements. In addition, criminal offenses provided for in these yearbooks do not include a special criminal offense type

“Women candidates received little media attention; the public and private television channels monitored by the OSCE/ODIHR EOM devoted 13 per cent of campaign coverage to women.”

for the conviction of VAWE. In electoral or post-electoral years – namely in 2014 and 2017, there have been two criminal offenses against free elections for each year, while 0 cases were recorded in other years. More specifically, in 2017 (electoral year), two cases were sent to trial on grounds of allegations for crimes against free elections provided for in the Criminal Code¹⁷. Furthermore, in 2014, a year after the 2013 Parliamentary Election, two cases were filed with the Court for the same type of offense¹⁸. Meanwhile, in 2018, no cases ended up in the Court¹⁹. We also found that and investigation and trial duration of these cases has become shorter. Whereas for the two cases filed in 2013 a Court Decision was ruled in 2014, the ones filed in 2017 have been staying for longer in the Court.

Preliminary Conclusion: By studying VAWE in Albania, we reach to the preliminary conclusion that VAWE is specifically identified. It is not addressed in the Government’s Policies and Strategies, hence neither by the State,

15. Idem, p. 26

16. See: Commissioner for the Protection from Discrimination, Annual Report, 2017, 2018, 2019, available at: <https://www.kmd.al/raporte-vjetore/>.

17. Ministry of Justice, Statistical Yearbook 2017, available at: <https://www.drejtesia.gov.al/wp-content/uploads/2018/07/Vjetari-Statistikor-2017.pdf>

18. Ministry of Justice, Statistical Yearbook 2014, available at: https://www.drejtesia.gov.al/wp-content/uploads/2017/10/VJETARI_2014_FINAL-1.pdf

19. Ministry of Justice, Statistical Yearbook 2018, available at: <http://drejtesia.gov.al/wp-content/uploads/2019/07/Vjetari-Statistikor-2018-PDF.pdf>

Government or any independent institutions. Therefore it is both high time and necessary to prepare recommendations dedicated specifically to this issue.

2. 2. Analysis of Albanian Legislation

Through an overview of current legislation against VAWE in Albania, we find that Albania has improved its legislation on increasing women participation in decision-making. The gender quota system in the *Law on Gender Equality in Albania* (2008) and the *Electoral Code* have from 2010 brought about improvements in the increase of women participation in elected representative bodies. However, a balance has not yet been struck in the quota percentage imposed by law in all representative bodies, especially in the local government bodies.

To make a formal analysis of the situation of the Albanian legislation regarding identification, prevention and elimination of VAWE, it is worth making a preliminary identification of normative acts that could be used for this purpose due to the nature of their content. As such, the analysis regards the following acts according to their hierarchy:

2.2.1. Constitution of the Republic of Albania

Protection from political violence: The Constitution provides for specific obligations for political parties and their programs aimed at avoiding violence during elections. *“Political parties and other organizations, the programs and activity of which are based on totalitarian methods, which incite and*

support racial, religious, regional or ethnic hatred, which use violence to take power or influence state policy, as well as those with a secret character, are prohibited pursuant to the law.” (Article 9/2).

This article is the Constitutional basis to legitimize the provision of special measures of the legislation in the field of prevention of gender-based violence in elections as well. The latter is directly related to parties’ and political organizations’ activities.

Protection from Discrimination: The Constitution sanctions the general principle for protection from discrimination and allows adoption of special positive measures. It explicitly sanctions gender protection as follows: *“No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage”* (Article 18/2). This stipulation is the basis to legitimize measures against gender-based discrimination, even in elections and politics.

Special protection: The Constitution provides for special protection for children, young people, pregnant women and new mothers (Article 54/1). Protection from violence and ill treatment is explicitly sanctioned for children. *“Every child has the right to be protected from violence, ill treatment, exploitation and from performing any work, especially under the minimum age for child labor, which could damage their health and morals or endanger their life or normal development”* (54/3). Up to now, this stipulation is interpreted in particular for the protection of children from labor exploitation, but in its linguistic interpretation, special protection from violence and ill treatment used here includes all aspects of its

exercise. Regarding the scope of our study, we think that this stipulation legitimizes adoption of measures to stop child exploitation in the elections of political bodies.

Preliminary conclusion: The Constitution of the Republic of Albania constitutes a solid basis to legitimize legal protection from violence in elections, including protection of women and girls from violence.

2.2.2. Electoral Code of the Republic of Albania

The Electoral Code is adopted by virtue of Law No. 10019, of 29 December 2008 and has been recently amended by virtue of Law No. 31/2015, of 02 April 2015. This Code has few material stipulations related to fundamental contents of the **institutes** it regulates. It is mainly purposed as a procedural law that defines the organization and functioning rules for electoral bodies and structures. Furthermore, the Electoral Code only provides for administrative sanctions and does not regulate the aspects of criminal responsibility in/during elections. The latter are regulated through a special Chapter in the Criminal Code of the Republic of Albania.

The current Electoral Code includes stipulations that build the gender quota system through percentage, ordering rules and sanctioning for non-compliance. All rules are integrated in the proportional electoral system. In general stipulations, where the principles of this Code are defined, we only see one explicit principle, which provides for equality in voting. The Electoral Code has no stipulations to address gender-based violence during

elections. This also constitutes one of the main factors why VAWE is not identified and reported during electoral processes in Albania.

Preliminary conclusion: The Electoral Code needs to be amended and supplemented in order to address protection from VAWE. This protection is an indispensable guaranteeing mechanism, even in order to truly meet the gender quota system for equal representation. Without prevention of VAWE of any form, it is impossible to meet the gender quota system provided for by this Code, that is to say to ensure the balanced participation of women and girls in decision-making.

VAWE prevention and elimination can be attained by adding stipulations to the Electoral Code regarding VAWE, obligations of electoral bodies and subjects to stop and report this violence, as well as efficient administrative sanctions for their punishment²⁰. The Electoral Code is the regulatory law of this area, which can take the most important measures on this issue. The Code must define VAWE, especially in forms of harassments, intimidations and hate speech, and it should ensure that acts adopted by the Central Election Commission (CEC) protect women from this violence. As an act of a Constitutional and administrative nature, the Electoral Code must include a full definition to provide for forms of violence, up to a level where they do not constitute criminal responsibility. In this way, the Code ensures at least that VAWE is monitored in the framework of elections, avoided, reported and administratively punished. Beyond this, it should ensure that, part and parcel of the CEC obligations is the identification of effective

20. See: ELECTION LAW OF BOSNIA AND HERZEGOVINA (Unofficial consolidated text) Electoral Code, Bosnia and Herzegovina; Articles 7.2 and 7.3. available at: https://www.legislationline.org/download/id/7655/file/Bosnia_Herzegovina_election_law_2001_am2016_en.pdf

means to inform voting citizens or running candidates regarding VAWE, its forms, and valid means of complaint. The Electoral Code ensures that participants who take part in different levels of electoral bodies are trained on these matters.

2.2.3. Law No. 9970, of 24 July 2008, on Gender Equality in the Society

Beside fundamental aspects of non-discrimination because of gender and gender integration in decision-making, this Law has provided for measures against "gender based harassment" and "sexual harassment".



According to this law, "*Gender Based Harassment*" is any kind of unwelcome conduct relating to the gender of one person and aiming at and/or resulting in violating personal dignity or creating a threatening, hostile, humiliating, disparaging or insulting environment." (Art. 4/9).

"*Sexual Harassment*" is any kind of unwelcome conduct, by means of words or actions, physical or symbolic, of a sexual character, which intends or leads to violating personal dignity, specifically when it creates a threatening, hostile, humiliating, disparaging or insulting environment constitutes (Art. 4/10).

These definitions are further detailed in the sections on employment, services and education. They are not specifically formulated related to women participation in politics. Regarding the latter, the Law only sanctions the gender quota in representative bodies and is not committed to VAWE or VAWP. It goes without saying that these definitions can be formulated and used in the course of the implementation of this law, including even the cases of VAWE or VAWP. Nevertheless, it would be good if this Law, which is the main law falling in the remit of the scope of this study, included legal regulation to protect women and girls, as well as men and boys, from gender-caused violence in elections and politics.

Conclusion: More detailed regulation is needed in the Law *On Gender Equality in the Society* to provide for violence against women and girls in elections and politics, as well as measures for their protection.

2.2.4. Law No. 10 221, of 4 February 2010, on Protection from Discrimination

The Law *on Protection from Discrimination* contains stipulations of a general character against discrimination and its forms.

However, discrimination in the election area is explicitly regulated by Article 9 of the Law, "Participation in politics", which sanctions: "*Discrimination in the exercise of the right to vote, to be elected and to be appointed to the public duty for the causes mentioned in Article 1 of this Law is prohibited*". (Art. 9)

This article prohibits discrimination in the exercise of the right to vote, to be elected and appointed to public duty for causes laid down in it (Article 1 of the Law). In the latter group,

Discrimination in the election area is explicitly regulated by Article 9 of the Law, "Participation in politics", which sanctions: **"Discrimination in the exercise of the right to vote, to be elected and to be appointed to the public duty for the causes mentioned in Article 1 of this Law is prohibited"**



the gender cause is explicitly ordered, among other causes, in an open list. This article is a general formulation that includes all causes and subjects and limited only to stages in the voting and running process. Beyond this, the law in question also provides for definitions closely linked to the cause of protection from discrimination of women in elections, such as: "sexual harassment" and "hate speech". Both these definitions also contribute to the fight against VAWE. Naturally so, similar definitions mentioned in the *Law on Gender Equality in the Society* may be implemented along with those provided for in the *Law on Protection from Discrimination*. In this way, identified VAWE cases may also be subject to review from the Commissioner for the Protection from Discrimination. However, in the last years, as it is noted in the Commissioner's annual reports, complaints against gender-instilled discrimination have been very rare. In fact, according to the 2019 report, only two cases of gender-caused discrimination allegations were reviewed, and both were dismissed because no discrimination was found.

Preliminary conclusion: We think that these stipulations may be implemented and interpreted by especially highlighting harassment in elections and politics, which does not only appear as sexual harassment,

but may as well be vested in other forms. Furthermore, this harassment extends beyond the election and the running period to include political activities, and is mainly directed toward women. Regarding the latter, in the future, there may be a need to amend Article 9 thereof.

2.2.5 Law No. 8580, of 17 February 2000 on Political Parties

The *Law on Political Parties* would be very important in addressing issues related to this field, so as to prevent harassment and/or intimidation of women activists, include them in the political party life, provide for equal funding of candidates, as well as gender quotas in political parties' internal acts. However, currently, this Law does not contain stipulations related to the elimination of VAWE and VAWP. It was adopted in 2000 and has been frequently amended up until 2017. In its content, there are no material stipulations, but only procedural ones, which are often very fragmentary. The chapter regulating political party financing is quite extensive and has a very broad approach. Thus, given the current background, we see no opportunity to include stipulations prohibiting VAWE and VAWP in this particular law.

Preliminary conclusion: It would be quite effective to include stipulations providing for a friendly environment for women and girls participating in political party lives. However, a general revamping of the *Law On Political Parties* is required, by thus extending its scope.

2.2.6. Law No. 152/2013 on Civil Servants²¹

This law is taken upon review as it may be important in eliminating violence against civil servant women, who are either running for office, or exercising their regular activity. It enshrines the principle of equal opportunities and non-discrimination, as well as governs the civil servants' behavior regarding political life. However, this is only a general regulation and is not especially targeted at gender-based harassments and violence. According to this law: *"Civil servants have the right to participate in political activities, outside office hours, but shall refrain from expressing their political persuasions or preferences publicly. Civil servants of some categories are eligible to be members of political parties, but cannot be members of their governing bodies. Also, civil servants have the right to run as candidates or be elected for the Assembly of the Republic of Albania or for local government bodies. In this case a civil servant shall request for his suspension from the civil service.* (Art. 37, "Political rights").

Preliminary conclusion: Given that a woman with political aspirations who happens to be a civil servant may be targeted by gender-based harassment and violence in her appointment or during her service, or when she runs for public office, due to her status, we think that this law must also provide for

or refer to cases of elimination of gender-based harassments or violence. We therefore think that it is important for this Law to also include a preventive clause for harassments/VAW during their recruitment or candidacy for political functions.

2.2.7. Criminal Code of the Republic of Albania, Law No. 7895, of 27 January 1995, as amended

A special chapter on criminal offenses affecting free elections and the democratic elections system came along with the Criminal Code amendments of 2012, 2015 and 2017. The last amendments of this Code, which brought about some improvements in Article 130/a, covering sanctions of domestic violence, were carried out in April 2020.

Chapter X, *Criminal offenses affecting free elections and the democratic elections system*, sanctions 15 types of electoral criminal offenses. They have a general character and feature a gender-neutral language, but may also be implemented for cases when these offenses are related to gender-caused violence. However, some of them are strictly related to gender-based harassment and violence in elections, as listed below:

1. Obstructing Electoral Subjects (325)
2. Falsification of Election Material and Election Results (326)
3. Intentional Damaging of Electoral Material (326/a)
4. Violating voting secrecy (327)
5. Voting More Than Once or without Being Identified (327/a)
6. Active corruption in elections (328)

21. This law has been amended through law no. 178/2014 and law no. 41/2017.

7. Using the public function for public or electoral activities (328/a)
8. Passive corruption in elections (328/b)
9. Intimidation or Abuse against Participants in Election (329)
10. Obstructing Voters (330)
11. Abandonment of Duty by Election Commission Members (330/a)
12. Violating the Voting Rights (331)
13. Obtaining or using the identification documents illegally (331/a)
14. Abuse of military authority (332)
15. Abuse of police authority (332/a)

“Obstruction by means of threat, violence, or any other means, of electoral subjects or candidates to conduct their activities in accordance with the law during the election campaign, is punishable by imprisonment of one year up to five years”.



Judging from the content of the above-referred articles, we come to some conclusions. For example, one can say that, there are some types of criminal offences that convict perpetrators of election violence in its different forms. However, no stipulation does explicitly criminalize VAW or gender-based violence in elections. Some articles, as mentioned above, may be directly implemented in VAWE cases. When possible, all other articles may be used to sanction gender-caused criminal offenses.

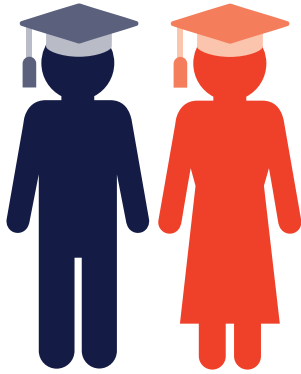
Article 325 “Obstructing Electoral Subjects”
“Obstruction by means of threat, violence, or any other means, of electoral subjects or candidates to conduct their activities in accordance with the law during the election campaign, is punishable by imprisonment of one year up to five years”.

This article prohibits and punishes obstruction by means of threat, violence, or any other means of electoral subjects and candidates to conduct their activities in accordance with the law during the election campaign. Such a case is punishable with from one to five years. This is a general stipulation, which includes the punishment of violence in all its forms of exercise. Threat is distinguished as one of the

severe types of violence. Meanwhile, violence may be demonstrated in all possible forms, i.e. physical, psychological and sexual. In addition, this criminal offense may also be committed through other means, which illegally obstruct electoral subjects or candidates during the election campaign and are punishable by (criminal) law. We think that, in the meaning of the “any other means” phrase, any form of gender-based discrimination may also be included, such as sexual harassment, hate speech, etc., which may be exercised against women and girls to this end. This could be the main article through which the elimination and punishment of violence against women and girls in elections could be implemented, both when referring to women candidates, and women and girl voters.

Further down in the same chapter, the Code also provides for other stipulations of criminal offenses through different means, including active and passive corruption.

Article 328/a, “Using the public function for public or electoral activities”, inter alia, provides for the prohibition of the obligation or the organization of the students of pre-university education, by employees who



Article 328/a, "Using the public function for public or electoral activities", provides for the prohibition of the obligation or the organization of the students of pre-university education.

carry out a state duty in the domain of public education, or a task or function in the private education, to participate in the electoral activities of an electoral subject. Thus, this provision may also prohibit and make use of means of pressure against women and girls to force their participation in electoral activities or vote according to the will of a public official.

Article 329 "Intimidation or Abuse against Participants in Election"

"Intimidating a voter to vote in a certain way, or to participate or not participate in voting, constitutes a criminal offence and is punishable by imprisonment of six months to three years. Intimidating or using violence against a commissioner, observer, vote-counting staff, and any other official in charge of election, in order to prevent him or her from performing his or her duty, or due to his or her activity in electoral administration, is punishable by imprisonment of from one year to four years. When this offence is committed in complicity, or more than once, it is punishable by imprisonment of two to five years".

This article provides for the prohibition and punishment of threat and violence toward voters for their participation in voting, as well

as toward officials in charge of elections, to prevent them from performing their duties. This provision may also be implemented in cases of threat and violence against women and girls.

Article 330 "Obstructing Voters"

"Obstructing a voter to vote at his or her polling centre, in violation of the voting rules, by taking or damaging his or her identification document, or in any other form, is punishable by imprisonment of one year to five years. Where that offence is committed more than once, against more than one voter, or by the election commissioners, it is punishable by imprisonment of three to seven years".

Obstructing a voter to vote at their polling centre by not following the rules of voting, taking or damaging their identification document, or in any other form is punishable by imprisonment. Here, too, any other form of violence is also punished. This article may be applied in cases when women and girls are victims of these illegal actions.

Illegally obtaining or using identification documents (331/a) is a special form of violence, which can be exercised in elections.

This criminal offense may also be referred to in VAWE cases, both in the case of a woman election official and in that of voters, supporters, etc.

The Criminal Code provides for the prohibition of violence or pressure during the election process. Its stipulations employ a general and neutral language in their formulation and do not have special stipulations providing for the prohibition of gender-caused violence. However, these provisions can be fully implemented for protecting women and girls from gender-based violence, in whatever form as provided for under this Code. The subject committing the criminal offense is defined in general and the offense may be punished whatever its perpetrator. However, there are also criminal offenses committed by specific people, mainly those carrying out or related to electoral duties.

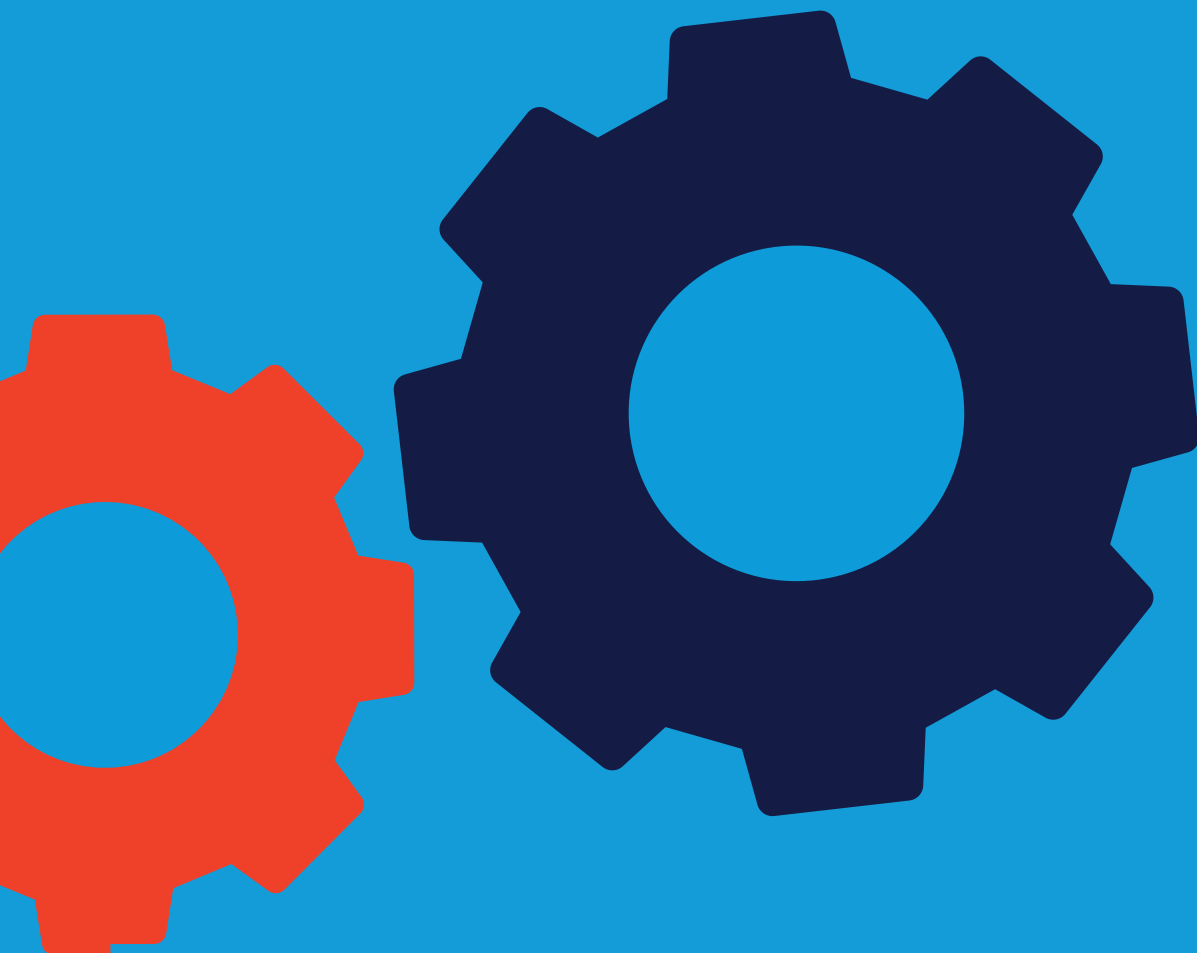
As regards victims or potential victims of criminal offenses in these provisions of the Criminal Code, we may say that they are general subjects. Only in some cases are they special subjects, such as school students, people carrying out or related to electoral duties. In this framework, women and girls formally benefit from equal protection.

However, in order for violence against them to be identifiable, they need to be considered as special subjects in some of these provisions.

Preliminary conclusion: The way how the provisions referred-to above are enforced in cases of gender-caused violence should be subjected to studies and monitored during their implementation in real life. An analysis is indeed needed to shed light on how VAWE is exercised, in cases when it constitutes a criminal offense. For example, if obstructing electoral subjects (Article 325) may be committed with any form of violence, it is necessary to understand how this obstruction may be committed through sexual violence. The latter is harder to be identified during the election process, however, that said, it does nevertheless exist as a form of violence and must therefore be identified. On the other hand, it is unclear what Article 325 refers to when it mentions "other means". What are the other means except for violence? Is it discrimination? Pressure? In our opinion, it is important that these cases be identified through prohibitions explicitly referred in the Electoral Code. Only in this way will professionals become aware of these cases and they will therefore be identified.

CHAPTER 3

SUGGESTIONS FOR AMENDMENTS TO THE ALBANIAN LEGISLATION



SUGGESTIONS FOR AMENDMENTS TO THE ALBANIAN LEGISLATION

3.1. Suggestions for amendments to priority laws in this field, to be carried in short term

Given the above conclusions, one may come across the dilemma if there should be a special law to address VAWE, or should it be addressed through the existing laws. A special law would not be recommendable because of some reasons. Currently, there are numerous laws that either govern that may govern this issue. A special law would remove the prevention of violence from the context and would jeopardize the mechanisms established pursuant to the laws mentioned in this analysis. Furthermore, it is possible that a single law would remain weak if a full dedicated mechanism were not employed and if the context were to “be set aside” from existing mechanisms. These mechanisms may be more naturally built in the existing laws, particularly in the Electoral Code, Criminal Code, and anti-discrimination laws.

Hence, our suggestion is to amend the following laws in a short time perspective:

- The Electoral Code of the Republic of Albania,
- The Law *On Gender equality in Albania*, Chapter III,

3.1.1. Suggestions for amendments to the Electoral Code

Regarding potential amendments of the Electoral Code, we think that it needs to be restructured by stipulating more material provisions encompassing fundamental concepts. In this framework, other provisions preventing VAWE must be stipulated, aiming for its prevention and administrative punishment if they do not constitute criminal responsibility. As such, the Electoral Code must stipulate a provision prohibiting electoral subjects, candidates and political party supporters, independent candidates and their supporters, electoral administration staffers and other people working during the

election process, to publish, post and share articles, announcements, programs and other election campaign materials where women or men are offended or humiliated due to their gender or gender stereotypes, and ordering all election bodies, institutions and media to remove such materials.

Furthermore, provisions in this domain must prohibit hate speech. The Electoral Code must stop electoral subjects, candidates and political party supporters, independent candidates and their supporters, electoral administration staffers and other people working during the election process, from using a language that may provoke or incite violence and spread hate, and publishing or using of photos, symbols, audio and video recordings, SMS messages, internet communications and any other medium which may produce such an effect, and order all electoral subjects, institutions and media to remove them.

In the framework of duties assigned to the CEC, the Electoral Code must also stipulate provisions obligating this body to organize education programs in this field. The CEC should take measures to organize electoral education programs for citizens and training programs for election administration staff regarding compliance with election process rules for the elimination of gender-based violence in elections, hate speech and other rules.

Furthermore, rules should also be provided in the chapter on administrative sanctions in case of breaches of this Code with regards to above provisions. In case of breaching of these provisions, it should be proceeded as below: *firstly* eliminating the breach by removing it and *secondly*, imposing a fine,

which is proportionate to the breach of these provisions.

For example, we suggest that the inclusion of the following provisions in the Electoral Code is demanded:

1. Inclusion of the gender quality principle in the general principles of the Code. Acknowledgment of the equality principle and provision of equal gender protection for participation in elections. This is necessary to legitimize the gender quota system, as well as for anti-VAWE provisions.
2. Inclusion of VAWE definition, only with regards to the Code objectives and scope. In this case, cases of non-criminal violence are prevented and punished. These forms of violence should be made explicit through clear provisions. Some of them are presented below. They are drafted in relation to the current Electoral Code and its scope. If the on-going Electoral Code amendment process allows for further modifications, then it would be good to review these proposals again.

1. Under Article 21 of this Code, paragraph 20/1 must be added with the following content:

20/1. Prohibits electoral subjects, candidates and supporters of political parties, independent candidates and their supporters, election administration employees and other persons working during the electoral process from publishing, posting and distributing articles, announcements, programs and other materials of the election campaign, in which women or men are insulted and/or humiliated on the basis of gender or other grounds and orders all electoral entities, institutions or the media to remove them.

2. In the same place, another paragraph should be added, with the following content:

20/2. Prohibits candidates and supporters of political parties, independent candidates and their supporters, election administration employees and other persons working during the electoral process from using language that may provoke or incite violence or spread hatred or to publish or use photographs, symbols, audio and video recordings, SMS messages, internet communications or any other material that may have such an effect, and orders all electoral subjects, institutions or the media, to remove them.

3. It is necessary to provide administrative sanctions in the relevant article for non-compliance with these stipulations. Currently, the following paragraphs should be added to the relevant article.

4. In Article 21, point 9 of the Code, point 9/1 should be added with this content:

9/1. The CEC also takes measures and organizes programs for the electoral education of citizens, respect of the rules of the electoral process, prohibitions of hate speech, discriminatory language, gender-based violence in election, or other rules

Note: These suggestions are offered on the bases of the Electoral Code that is currently in force.

3.1.2. Suggestions for amendments to the Law on Gender Equality in the Society

This law is the most appropriate act to locate the definition on VAWE or gender-based violence in elections and politics. In such case, this definition may be given in full and include all keywords of a definition.

A full definition, including all aspects, both civil and criminal, may be formulated as follows: *“Gender-based violence in elections is a form of physical, psychological, sexual — as well as any other form of violence against people who run, vote, or support candidates, observers, election administration staff, and/or public officials, exercised during any and all election process stages, by electoral subjects and their supporters, election administration staff and/or other people involved in election processes, thus obstructing the legal exercise of rights on grounds of gender”*.

An alternative formulation could be: *“Violence against women in elections is the act of gender-based violence which brings to, or could bring to, psychological, sexual or physical suffering or damage of women who run for elections, vote, or support candidates, observers, election administration staff, and/or public officials, exercised during any and all election process stages, by electoral subjects and their supporters, election administration staff and/or other people involved in election processes, thus obstructing the legal exercise of rights on grounds of gender”*.

However, there may be even more detailed definitions. For example, this law may provide a definition of a general nature of harassment in politics under the lines of the following definition:

Harassment in politics is a form of discrimination which occurs during the electoral or political process, or exercise of official duties, through inappropriate verbal or non-verbal behavior.



"Harassment in politics is a form of discrimination which occurs during the electoral process, political activity or during the exercise of official duties, through inappropriate verbal or non-verbal behavior, that has the purpose of or results into prejudice against the dignity of girls, women and other people for any cause mentioned under Article 1 of this Law, as well as creates an intimidating, hostile, degrading, humiliating or offensive environment for them".

However, one might opt for a definition of a special nature, as follows:

"Harassment in politics is a form of discrimination which occurs during the electoral or political process, or exercise of official duties, through inappropriate verbal or non-verbal behavior, that has the purpose of or results into prejudice against the dignity of girls and women and creates an intimidating, hostile, degrading, humiliating or offensive environment for them".

The definition should indispensably be accompanied by other provisions with protective measures in this area, which we think should be stipulated under Chapter III **Equal Gender Participation in the Decision-making Process**.

III.2. Suggestions for amendments to priority laws to be carried in long(er) term

III.2.1. Suggestions for amendments to the Criminal Code

We think that, as regards the Criminal Code, it has a broad legal basis, which may also be implemented in VAWE cases. There are some forms of criminal offenses, which may find application in this field. However, we are of the opinion that Article 325, **Obstructing electoral subjects** is the most applicable article for our purpose. That said, enforcement of this provision would require awareness raising, a sound judgment and professional background for all actors involved, so as to identify, report and ultimately punish VAWE. To reach a clearer conclusion whether these provisions are complete and appropriate in punishing this form of violence, **a study of problems arising from practice and of criminally prosecuted cases is necessary, so as to accurately highlight amendments regarding VAWE and VAWP**. However, given the situation at the time of drafting of this report, we think that it is the right time to suggest amendments to the Criminal Code stemming from a gender perspective, and the sooner such amendments are effected, the better it is. A specific provision of gender-based violence would help in identifying this type of violence, highlighting relevant problems, as well as raising awareness on prevention of this form of violence, which is also the main purpose of criminal legislation. However, even if these stipulations were to remain gender neutral, the inclusion of the

forms through which VAW or gender-caused violence is exercised would be of help. Hence, we suggest that some of the criminal offenses provided for in this Code, in particular those referred to under Articles 325 (Obstructing Electoral Subjects), 329 (Intimidation or Abuse against Participants in Elections) and 330 (Obstructing Voters) also provide for usual forms of gender-based violence.

For example, we propose that, Article 325, which formulation is rather vague and general with regards to obstruction by electoral subjects “by any other means”, be formulated to specifically refer to gender-based forms of violence, which would make the stipulation more understandable and applicable in the case of violence against women and girls in elections. For example, except for obstruction through intimidation and abuse, obstruction through systematic (repeated) actions of pressure, harassment, intimidation, threat, or any other use of force that obstructs electoral subjects may also be provided for. By taking into account all the above suggestions, one version of its amendment would be:

**1. Article 325 to be amended as follows:
Obstructing electoral subjects**

Obstruction by means of threat, violence **through repeated acts of pressure, harassment, intimidation, threat, or any other use of force**, of electoral subjects or candidates to conduct their activities in accordance with the law during the election campaign, is punishable by imprisonment of from one year up to five years.

Explanation: This formulation orders in detail some possible acts of violence and removes the formulation “by any other means”, which is very general and may be cause of abuse. In

this manner, the new formulation also includes main forms of violence, encompassing gender-based violence against women and girls.

**2. Article 329 to be amended as follows:
“Intimidation or Abuse against Participants in Election”**

Intimidating a voter to vote in a certain way, or to participate or not participate in voting, constitutes a criminal offence and is punishable by imprisonment of six months to three years.

Intimidating or using violence through repeated acts of pressure, harassment, intimidation, threat, or any other use of force, against a commissioner, observer, vote-counting staff, and any other official in charge of election, in order to prevent him or her from performing his or her duty, or due to his or her activity in electoral administration, is punishable by imprisonment of one year to four years.

When this offence is committed in complicity, or more than once, it is punishable by imprisonment of from two to five years.

Explanation: This amendment clarifies the content of the paragraph that prohibits violence against electoral officials and better highlights its forms, by providing a norm with higher awareness-raising power, as well as is able to highlight the problems and forms of violence, including those against women.

**3. Article 330 to be amended as follows:
“Obstructing voters”**

Obstructing a voter to vote at his or her polling centre, in violation of the voting rules, by taking or damaging his or her identification

document, through pressure, harassment, intimidation, threat, or any other use of force, is punishable by imprisonment of one year to five years.

Where that offence is committed more than once, against more than one voter, or by the election commissioners, it is punishable by imprisonment of three to seven years.

Explanation: This amendment clarifies the content of the “or in any other form” phrase, by highlighting some of these forms and providing a norm with higher awareness-raising power, as well as able to highlight different forms of violence, including those usually exercised against women and girls.

III.2.2. Suggestions for amendments to the Law on Political Parties

We suggest considering the possibility of inserting annexes with the purpose of ensuring prevention of VAWE as soon as a general review of this law becomes possible. It seems to be an outdated and insufficient law as regards material stipulations. In this framework, we may propose stipulations that provide for and encourage positive measures for the development of active women participation in political party actions and activities, and prohibit their harassment and discrimination, as well as ensure equal funding for their electoral campaigns.

III.2.3. Suggestions for amendments to the Law on Protection from Discrimination

Under Article 3 of this law (Definitions), another definition should be added to complement and contribute to the application of Article 9. This law should define more concrete forms of VAWE identification and prevention. Furthermore, through amendments to this law and/or the law *On Gender Equality in the Society*, the provision granting the Commissioner for the Protection from Discrimination also the right to review complaints related to the Law *On Gender Equality in the Society*, as well as to monitor this law, should be explicitly addressed.

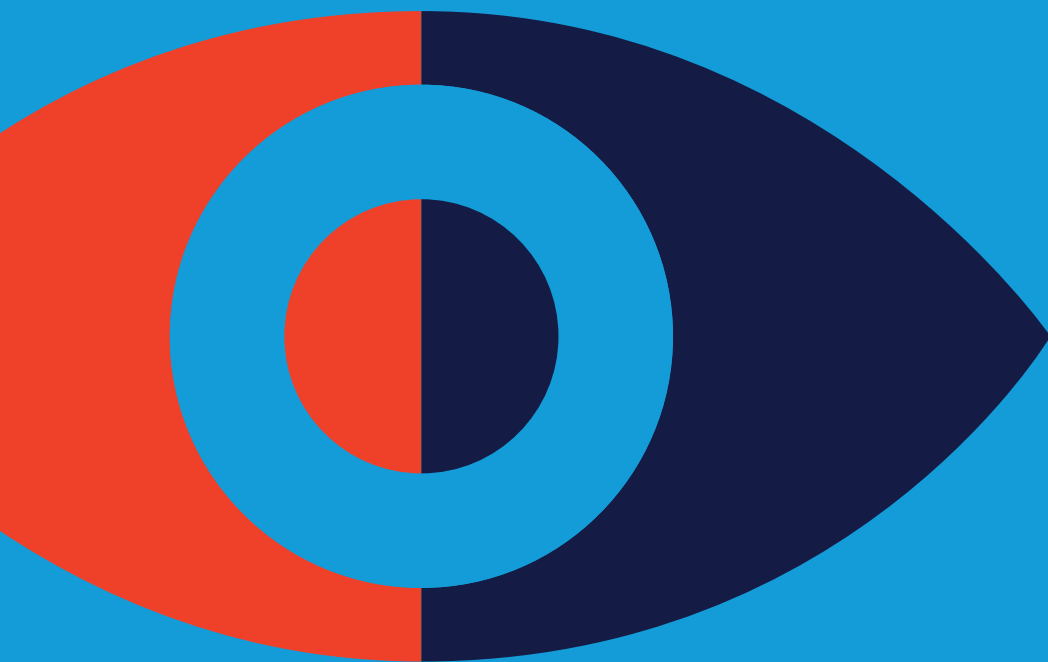
III.2.4. Suggestions for amendments to the Law “on Civil Servants”

This law needs to provide for the prohibition of gender-caused pressures and harassments during recruiting procedures, as well as in different aspects of civil servants’ activities.

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