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ELECTORAL SECURITY AS AN ELEMENT OF PEACE-BUILDING AND SUSTAINABLE DEVELOPMENT

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The concept of electoral security as one of the prerequisites of post-conflict transformations is becoming widespread in operational documents of international organizations (UN) and some national agencies (USAID), expressing the responsibility to promote peace-building activities in a fragile political environment. In the context of human rights based approach, this concept assumes a special meaning for democratic transformations and reforms. It is strongly connected with such concepts as electoral conflict, electoral justice, electoral integrity, and transitional justice. The broad international experience of electoral security implementation enables the search of strategies for a consistent electoral reform in Ukraine and capacity building for elections at the uncontrolled districts of Donetsk and Luhansk regions after the end of the conflict.

Electoral security in the light of human rights based approach: main concepts and definitions

The concept of electoral security is one of the main dimensions of human security related to civil and political rights. While human security does not only mean the absence of a conflict or direct danger, but also the protection of people and their fundamental rights and freedoms, in a broad sense, it is both a prerequisite and a consequence of conflict reconciliation, peace building and peacekeeping.

Meantime, contemporary understanding of human security and ensuring sustainable development needs to bear in mind the human rights based approach as one of the leading paradigms. While the majority of scholars consider such a "young" term as

electoral security with regard to electoral management bodies, law enforcement, military and other security entities, peace building initiatives, women, community leaders, and robust formal and alternative dispute resolution mechanisms are not factored into plans".¹ Meantime, the human rights based approach enables a focus on environment where all citizens can exercise their fundamental right to vote or be elected. In this regard, we may agree with the position of the analysts, who insist that HRBA to election-related issues "can help inform the type and scope of security planning undertaken. It helps crystallize exactly what must be protected, which in turn can shape how this protection should be provided. This approach demands that when we look at the integrity of elections we consider the ability of people to exercise their rights to ensure that "the will of the

¹ Best Practices in Electoral Security. A Guide for Democracy, Human rights and Governance Programming / USAID, 2013 https://www.usaid.gov/sites/default/files/documents/2496/Electoral_Security_Best_Practices_USAID.pdf

people shall be the basis of the authority of government," as stated in the UDHR".²


Broad understanding of electoral security comes from such milestone human rights documents as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD) and other UN/ international instruments such as Security Council Resolution 1325, and Helsinki Final Act on Security and Cooperation in Europe. These core stone human rights documents include articles guaranteeing all people the right to security of person (Article 3); the right to periodic and genuine elections, by universal and equal suffrage, and through secret vote (Article 21); and the right to assemble and associate peacefully (Article 20).³

In a narrower sense, electoral security is a part of the international framework of standards that govern elections. While types of electoral insecurity may change, the final result is usually the same: disenfranchised voters, loss of trust in the electoral process, and lack of electoral integrity. Electoral insecurity also represents a failure to protect the rights of citizens to take part in the electoral process.⁴

Depending on each political system, the necessity of conflict prevention and/or reconciliation process, the cycle of conflict, electoral security is often represented through electoral justice measures,

electoral integrity tools and electoral conflicts mitigation. Such understanding of electoral security is based on a statement that elections might serve either as an additional conflict trigger or as a tool of post-conflict reconciliation.

Regardless the type of political systems, electoral security is closely related to an electoral conflict, which is an intermediate

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issue between electoral integrity approach and conflict prevention and mitigation. International agencies (UN, USAID) operate with these terms for conflict prevention and path to sustainable development. This subject matter can be introduced through a trio of fundamental definitions:

1) electoral security; 2) electoral conflict; and 3) electoral justice. Electoral security is the end-state; electoral conflict is the development challenge; and electoral justice is one of the key mitigating factors. These three concepts are closely related because they collectively embody electoral conflict dynamics.⁵

² Vasu Mohan, A Rights-Based Approach to Electoral Security / The International Foundation for Electoral Systems, 24 Apr 2014, <http://www.ifes.org/news/rights-based-approach-electoral-security>

³ Universal Declaration on human rights // http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

⁴ Vasu Mohan, A Rights-Based Approach to Electoral Security / The International Foundation for Electoral Systems, 24 Apr 2014, <http://www.ifes.org/news/rights-based-approach-electoral-security>

⁵ Vasu Mohan, A Rights-Based Approach to Electoral Security / The International Foundation for Electoral Systems, 24 Apr 2014, <http://www.ifes.org/news/rights-based-approach-electoral-security>

As a rule, electoral conflicts can be caused by numerous reasons of systemic and occasional character. The main factors influencing electoral conflicts can be as follows:

- The absence of public trust in elections as a process and political institutions;
- The conflicts of political parties/candidates' nomination and ability to perform passive electoral rights, especially stipulated by the law on elections;
- Challenges to election results (significance of electoral disputes resolution, timelines of election-related complaints lodging);
- Challenges related to campaign financing, which need precise attention and detailed monitoring during all phases of electoral cycle while the irregularities pose the serious reason for political corruption;
- Election related criminal offences and their implication for ensuring electoral integrity;
- The sociocultural context itself may pose the ground for electoral conflicts;
- The absence of capacities for sufficient civic raising awareness on election-related issues.

According to the "Best Practices in Electoral Security Guide for Democracy, Human Rights and Governance Programming" report produced by the International Foundation for Electoral Systems, electoral security can be defined as "...the process of protecting electoral stakeholders such as voters, candidates, poll workers, media, and observers; electoral information such as vote results,

registration data, and campaign material; electoral facilities such as polling stations and counting centres; and electoral events such as campaign rallies against death, damage, or disruption".⁶

Electoral justice can be described as follows, "...the adjudication of civil challenges to the electoral process which can be filed by voters and political contestants. These civil challenges could concern eligibility, disenfranchisement, campaign practices, irregularities, and disputed outcomes among others."

Electoral integrity is a tool for shaping the sustainable development of political institutions, strengthening of democratic institutions, engagement of citizens in political participation (including vulnerable groups).⁷

The choice of measures for electoral security components implementation depends on the context, but the necessity of citizen's full protection is without doubt.

The role of international community in electoral security acknowledgement

Like in many other issues concerning human security, the role of international community in electoral security implementation is significant. The responsibility to protect and assist may vary as follows:

- Electoral supervision (Namibia and Bosnia and Herzegovina). Through a UN resolution or peace agreement, the international community is requested to supervise elections or referendum;
- Electoral Administration (Cambodia, East Timor, Kosovo);

⁶ Best Practices in Electoral Security . A Guide for Democracy, Human rights and Governance Programming / USAID, 2013 https://www.usaid.gov/sites/default/files/documents/2496/Electoral_Security_Best_Practices_USAID.pdf

⁷ Best Practices in Electoral Security . A Guide for Democracy, Human rights and Governance Programming / USAID, 2013 https://www.usaid.gov/sites/default/files/documents/2496/Electoral_Security_Best_Practices_USAID.pdf

- Electoral Verification (Nicaragua, Angola, El Salvador);
- Electoral Certification (East Timor, Côte d'Ivoire). Through a UN resolution, peace agreement, or invitation by the host country, the UN evaluates each stage of the electoral process and assesses its compliance to international good practices;
- Electoral Assistance (the cases of Bosnia, Macedonia) is a feature for new democracies. Through an invitation from a domestic electoral stakeholder, the international community can be requested to assist sovereign domestic institutions with the conduct of elections or referendum or the adjudication of the results;
- Electoral Monitoring. The purposeful gathering of information about an electoral process and public assessment of that process against universal standards for democratic elections by responsible foreign or international organizations committed to neutrality and to the democratic process for the purpose of building public and international confidence about the election's integrity or documenting and exposing the ways in which the process falls short;
- Electoral Mediation (Nicaragua, Kenya) - a form of electoral engagement whereby an impartial third party employs non-official election dispute.⁸

The most influential international organization providing the full-scale volume of electoral security measures is the UN, which has played an instrumental role in electoral security since 1989. In the last several years, the UN has moved toward more integrated missions

that directly link security and conflict management, human rights, humanitarian development and democratization efforts into a common country-level plan. Electoral security is provided through the UN Electoral Assistance Division (UNEAD), UN Department of Peace-Keeping Operations (UN DPKO) that includes both international military and civilian police to provide election security and overall mission management; UN Development Program (UNDP) that provides project funding and may manage multi-country trust funds common to find the following entities of the UN in the context of elections.

Electoral security for Ukraine: dimensions of constitutional reform and strengthening electoral institutions

Strengthening electoral institutions, implementing good practices in election-related issues, and a comprehensive constitutional reform may serve as a tool for conflict prevention and transformation of existing potential tensions especially in transitional countries. Leaving behind

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the discussions towards the type and nature of Ukrainian democracy (either it is electoral democracy or it is on the

⁸ Electoral Justice: The International IDEA Handbook // IDEA, 2010 http://www.idea.int/publications/electoral_justice/upload/electoral_justice_chapter_2.pdf

way to participatory democracy), it is obvious that sustainable development of political institutions needs reforms and harmonization. In this regard, the electoral reform, which has been broadly discussed for almost a decade in Ukraine, can be a part of conflict prevention and conflict resolution measures.

Meantime, military conflict in uncontrolled districts of Donetsk and Luhansk regions, the annexation of the Crimea by the Russian Federation have their implications for other regions of Ukraine, which, in their turn, need special approaches to promote electoral security. Some elements of international assistance as a tool for electoral security implementation are practiced in Ukraine. Among them, there are electoral monitoring and electoral assistance.

In the light of existing electoral conflicts, the most essential risks for electoral security inherited by each electoral cycle in Ukraine are as following:

- Specifics of “institutional memory”. Electoral system of Ukraine functions in the context of “institutional heritage” and institutional memory where the order of performing certain functions is replaced by personal, regional, inter-groups relations.
- Electoral legislation in Ukraine remains non-harmonized. Elections to the bodies of different levels and different institutions are conducted under different laws. Each new law, in spite of permanent recommendations of international organizations and recommendations of the Code of Good Electoral Practice (Venice Commission Code) is always adopted in less than one year before elections take place.
- Constituency delimitation changes each electoral cycle. Very often borders and the number of voters are the matter of the

compromise between leading political forces drafting a law. This increases the lack of trust in elections transparency and leads to public disappointment in transparency of elections.


- While the majority of Ukrainian media belongs to the leaders of financial groups, they represent mainly the positions of their owners in electoral process. It is very often that public outreach campaigns for Ukrainian journalists, provided by domestic civil society organizations and international donors, are focused on technical aspects of newly adopted electoral legislation and its’ implementation. Meantime, the broader perception of elections as one of the core civil and political rights is left behind.
- Campaign and political parties financing for a long time remain in a shadow that creates a large field for money laundering. It should be noted that the Law of Ukraine on Fighting against Political Corruption (State financing of Political Parties) adopted in 2015, creates certain conditions for combating political corruption and, in its turn, strengthening electoral security. Meantime, the continuing process of the National Anti-corruption mechanisms creation is a serious obstacle for the comprehensive implementation of this measure.
- The ambiguous system of electoral disputes resolution, which allows implementing bodies (election management bodies, courts of different levels) to adopt completely different decisions in similar cases of electoral irregularities. This issue creates concerns for elections to the bodies of different levels and is inherited in each new law on national or local elections.
- Avoidance of responsibility for electoral law violations, which, on one hand, is caused by the level of electoral culture,

but, on the other hand, leads to the growth of mistrust in elections as a tool of elites' rotation.

These challenges, without sufficient attention and consistent tackling through formal and informal rules, create the threat of "soft" electoral security in a transforming society breaking its trajectory on the path of reforms. Meantime, obvious obstacles for "hard" electoral security may exist in conflict-affected areas.

Elections as a tool for peace-building activities: is electoral security possible on the uncontrolled territories of Ukraine?

With a start of the Minsk negotiation process, the issues of local elections and participation of representatives of the uncontrolled districts of Donetsk and Luhansk regions in the government at the central level have been one of the points. While Minsk Agreements signed on 15 February 2015, consider elections as a part of peace-building tools, modalities of such

 ***It is obvious that direct threats to physical security of all participants of this process disable compliance with the international standards and conducting of true elections.***

elections are discussed at each new round of Minsk negotiations. Meantime, there is no clear vision of such modalities, it is unclear either these elections should be

held under acting Ukrainian Law on local elections or the new special law should be elaborated and adopted. Furthermore, the necessity of amendments to the Constitution of Ukraine concerning the special status of Donetsk and Luhansk regions provokes conflicts in Ukrainian society and creates ground for human insecurity.

What challenges for electoral security may such elections bring? Leaving behind the legal basis of the credible electoral process, it should be noted that electoral security is guaranteed entirely only through free and competitive elections without intimidation. Is it the proper context in the occupied regions to act in line with the principles stipulated by the Helsinki Final Act, International Covenant on Civil and Political Rights and other principal human rights documents?

It is obvious that direct threats to physical security of all participants of this process disable compliance with the international standards and conducting of true elections. The primary concerns are resumption of border control by the Ukrainian government, demining the bordering territories, consistent resumption of safe environment. Violations of basic human rights, confirmed by the international organizations monitoring, do not leave the space for performing civil and political rights.⁹ Particularly, an effective electoral campaign is impossible without competitive outreach campaigns of Ukrainian political parties, free presence of Ukrainian and international media, administration provided by trained

⁹ United Nations Human Rights Council (2014) Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Twenty-seventh session, A/HRC/27/75 // http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-75_en.pdf; Report on the human rights situation in Ukraine (16 August to 15 November 2015) // <http://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

election management bodies, monitoring by domestic and international observers, and effective electoral disputes resolution. While these minimal conditions are not maintained at the occupied territories, electoral security remains a rather theoretical issue, which must be followed by the basic human rights guarantees.

As European (Bosnia and Herzegovina, Kosovo) and world (East Timor) experience of electoral justice shows, it is more essential to create a safe environment for elections to prevent security inconveniences. Only restoration of control over Donetsk and Luhansk regions' territories, followed by transitional justice measures, under the international community assistance or supervision could be prerequisites for free and democratic elections.

We may agree with those scholars who insist that "in a fragile or divided political environment, it may be politically desirable to start with local elections and build over time to provincial and national elections as the infrastructure and political situation allow - as has been proposed in Sudan. If such a strategy is chosen, it is important that the system is both designed to meet political requirements of the local elections and feasible to organize given the timetable".¹⁰

Conclusions

Though, elections remain one of the tools of conflict reconciliation and further peace-building, the promotion of electoral security as a prerequisite of electoral integrity and legitimacy needs consistent implementation and inclusion both in a general political agenda and conflict negotiations, and reconciliation process. Disregarding the general context, human rights based approach and effective strategies of electoral security promotion should be the core of electoral process. The choice of the strategy, which guarantees electoral integrity, the level and type of international agencies' involvement in electoral reforms vary and depend on state capacities to promote electoral security. In the worst scenarios, the risks of electoral insecurity, which may lead to further human rights violations and conflict escalation is highly credible.

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¹⁰ IDEA's Handbook on Electoral System Design / IDEA 2004, <https://www.hks.harvard.edu/fs/pnorris/ Acrobat/stm103%20articles/IDEAs%20Handbook%20of%20Electoral%20System%20Design.pdf>