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Electoral Participation of Internally Displaced Persons (IDPs)

A Case Study of Ukraine

Author: Adam Drnovsky
Supervisor: Dr. Christina Binder, E.MA

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Abstract:

The aim of the presented thesis is to examine electoral participation of IDPs in Ukraine's elections in the view of relevant international standards. To this end, this thesis provides a comprehensive overview of IDP electoral participation from the theoretical perspective which is put into the contrast with often lacking practical realization of IDP voting rights. Based on this tension, a list of critical areas of IDP electoral participation is formulated and utilised for the purposes of the case study analysis. In order to assess IDP electoral participation in the view of international standards, next part of the thesis deals with relevant international instruments protecting IDP voting rights and summarizes Ukraine's commitments in this regard. Subsequently, the case study of Ukraine is analysed in regard to three electoral process held in the recent years and following the assessment framework created in the previous part. Building upon conclusions of the previous parts, the last part of the thesis assesses Ukraine's compliance with relevant international standards in light of IDP electoral participation in Ukraine's elections. The thesis finds that IDP electoral participation in Ukraine's elections was mostly impeded by various obstacles of practical and legal nature which resulted in Ukraine's failure to follow its international commitments regarding IDP enfranchisement.

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1. Introduction

Participation of internally displaced persons (IDPs) in elections has become an increasingly relevant topic over the last two decades as the total number of IDPs doubled in size.¹ According to official figures, there are nowadays over 40 million people worldwide displaced within the territory of their own state. Although comprehensive data is lacking, existing research shows that IDPs often face significant obstacles in seeking to exercise their right to vote. These may be various barriers of legal, administrative, practical and sometimes political nature which impede IDP electoral participation or prevent IDPs from participating in elections whatsoever.² As a result, accountability of governments is diminished and IDPs face further marginalization. The lack of engagement and reintegration of IDPs then exacerbates reconciliation needed for durable conflict resolution in divided societies.³ Eventually, by failing to allow IDPs to exercise their right to vote, states often violate existing international commitments as well as provisions included in their own domestic legal frameworks.

With regard to existing international standards, IDPs are entitled to the same electoral rights as other citizens of a given state. The right to vote is provided for in international human rights instruments, most importantly in Article 21 of the non-binding Universal Declaration of Human Rights (UDHR) and in Article 25 the International Covenant on Civil and Political Rights (ICCPR).⁴ At the regional level, there are number of commitments arising from membership in regional treaties and organizations, such as the Organisation of Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE). Nevertheless, clear reference to the category of IDP is rather rare in those instruments and the situation of these persons is thus normally covered by provisions providing for general electoral participation rights.⁵ Importantly, provisions set by the mentioned standards are usually embedded in national

¹ IDMC, 'Global Report on Internal Displacement' (2016); UNHCR, 'Global Trends: Forced Displacement in 2016' (2016).

² Elizabeth Ferris, Erin Mooney and Chareen Stark, 'From Responsibility to Response: Assessing National Approaches to Internal Displacement' (2011); Eka Gvalia, 'Increased Participation of Internally Displaced Persons (IDPs) – Proposal for the Improvement of the Implementation of the State Strategy Action Plan on IDPs in Georgia' (2013); Tabib Huseynov and Yulia Gureyeva-Aliyeva, "'Can You Be an IDP For Twenty Years?": A Comparative Field Study On the Protection Needs and Attitudes Towards Displacement Among IDPs and Host Communities in Azerbaijan' (2011).

³ Brett Lacy, 'Building Accountability, Legitimacy, and Peace: Refugees, Internally Displaced Persons, and the Right to Political Participation' (2004); Jeremy Grace and Erin D Mooney, 'Peacebuilding through the Electoral Participation of Displaced Populations' (2009) 28 Refugee Survey Quarterly 95.

⁴ See in section 3.1. below UN Guiding Principles on Internal Displacement

⁵ Compare with Kampala Convention which is one of a few binding international instruments explicitly obliging states to ensure IDPs' enjoyment of the right to vote.

constitutions and in different ways reflected in domestic electoral regulations, although in most cases not explicitly addressing IDPs as a special vulnerable group.⁶

Despite existing standards, electoral participation of IDPs is frequently not taken for granted in many countries. There are various causes behind this. On the one hand, IDPs may be deprived of their right to vote on purely political grounds based on the fear that change of constituency electorate could alter electoral results. Incompetence of the state may be another reason for excluding IDPs from electoral participation.⁷ On the other hand, there may be objective reasons making it unfeasible to have full IDP participation and at the same time to guarantee overall quality and integrity of elections. Under certain circumstances enfranchisement of a large IDP population can reduce electoral integrity, excessively burden budgetary resources and/or paralyze electoral process due to technical and operational overload.⁸ In reality, a combination of all is common and pursuing compliance with electoral standards therefore becomes a challenging and complex task which requires sufficient resources and capacities as well as political will. In other words, this situation poses the classical dilemma between universal suffrage and integrity of electoral process.⁹

This thesis approaches the abovementioned issues from three perspectives. Firstly, it aims to provide a comprehensive overview of all international standards relevant for electoral participation of IDPs, particularly those applicable to states in the OSCE/CoE area. Secondly, it examines a case study of Ukraine in the view of electoral participation of IDPs in the last few elections providing a comparative perspective of different electoral processes. Thirdly, building on the previous objectives this thesis seeks to assess Ukraine's compliance with relevant international in regard to IDP electoral participation. This entails an analysis of challenges and shortcomings to IDP voting in the view of Ukraine's commitments.

⁶ Council of Europe Parliamentary Assembly, 'Europe's Forgotten People: Protecting the Human Rights of Long-Term Displaced Persons' (2009); Elizabeth Ferris, Erin Mooney and Chareen Stark, 'From Responsibility to Response: Assessing National Approaches to Internal Displacement' (2011) 63-85.

⁷ International Organization for Migration, 'Case Studies on the Participation of Conflict Forced Migrants in Elections Participatory Elections Project (PEP)' (2003); Simon Bagshaw, 'Internally Displaced Persons and Political Participation : The OSCE Region' (2000) 7.

⁸ Erin Mooney and Balkees Jarrah, 'Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region' (2005) 4 Human Rights; Aysha Shujaat, Hannah Roberts and Peter Erben, 'Internally Displaced Persons and Electoral Participation : A Brief Overview IFES White Paper' (2016).

⁹ See for example Pippa Norris, *Why Electoral Integrity Matters* (Cambridge University Press 2014).

1.1. Case study and research questions

As indicated above, Ukraine is selected as a case study and analysed over a period during which last three elections took place. This sample allows to study a country of the OSCE/CoE area which undergoes substantial political transformation resulting in a significant number of IDPs due to related violence. Since three distinct types of elections are examined, situation of IDPs in the view of their electoral participation is analysed in three different contexts. Likewise, international instruments setting standards for electoral participation of IDPs are assessed in three different perspectives. Ukraine is a highly relevant case study considering the political and security challenges the country has been facing since the Maidan revolution in 2013. The illegal annexation of Crimea by Russia and the outburst of violence in parts of eastern regions of Donetsk and Luhansk caused internal movements of people in such a scale that Europe did not witness for decades. In this respect, mapping electoral participation of IDPs contributes to finding a durable conflict resolution for which full integration of IDPs is absolutely necessary. Consequently, peace and stability in Ukraine is essential for security in the whole region.¹⁰ The set time framework covers the most recent developments and provides sufficient data which exhaust the extent of a master's thesis. All in all, this thesis seeks to put under scrutiny the current state of the electoral rights of IDPs and assess both potential as well as shortcomings of the existing international framework setting standards for electoral participation of IDPs.

For this purpose, the research objectives of the presented thesis are articulated through following research questions:

RQ1-What are the relevant international standards of IDP electoral participation applicable to Ukraine?

RQ2-What are the main differences and similarities in IDP electoral participation in different electoral processes in Ukraine?

RQ3-What are the main challenges to IDP enfranchisement in Ukraine in the view of international standards?

¹⁰ OSCE Special Monitoring Mission to Ukraine, 'Conflict-Related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities' (2016); Jeremy Grace and Erin D Mooney, 'Peacebuilding through the Electoral Participation of Displaced Populations' (2009) 28 Refugee Survey Quarterly 95; OSCE, *The OSCE and Contemporary Security Challenges: A Collection of Essays* (2016) 23-32.

The pivotal concepts of the research are defined as follows. Firstly, international standards are understood as all international instruments relevant to IDP electoral participation. These include binding and non-binding international commitments creating legal or political obligations on the state. The existing instruments either address IDP electoral participation explicitly or contain general provisions providing for universal and equal suffrage. The foundations of the international protection of the right to vote have been laid by the Universal Declaration of Human Rights (UDHR). Although not binding, provisions in the UDHR proclaiming universal and equal suffrage are reflected in various international binding treaties. The most important one, the International Covenant on Civil and Political Rights (ICCPR), sets almost universally recognised standards of electoral participation rights enshrining the principle of non-discrimination further elaborated on in international treaties such as CEDAW or CERD which protect rights of marginalized groups. These binding, though only general, commitments are put into the context of IDPs in the UN Guiding Principles on Internal Displacement which reflect and set forth international law obligations of states to ensure electoral participation of IDPs. Besides universal level, there is a rich body of regional instruments that codify and further specify the commitments deduced from the abovementioned treaties. Of special interest of this thesis is the European human rights regime which sets a complex system of legally or politically binding instruments protecting electoral participation rights. Most importantly, these principles are provided for in the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms and in the Copenhagen Document.¹¹

Secondly, the concept of electoral participation is defined as an exercise of the active right to vote in a regular election or referenda. In this respect, focus is put not only on the de jure aspects of the electoral participation but also on the de facto ones. Electoral participation is thus understood in a broad sense taking into account all factors related to the IDP status which possibly impact ability to participate in elections through exercising the right to vote. That said, besides legal aspects, other areas with a tangible impact on electoral participation of IDPs are examined as well. In Georgia, for instance, the law did not allow IDPs to vote unless they change their permanent residency to the new constituency which, according to the law, entailed to renounce the IDP status with all benefits. When a new law was introduced and IDPs were finally enabled to vote without losing their status, local electoral officials were not adequately familiarized with the new provisions and continued to deny IDPs to exercise their lawful right.

¹¹ See chapter 3

IDPs were thus first deprived of their right to vote de jure and then, after the law was rectified, they remained in the same situation de facto.¹²

Finally, conceptualization of the category of IDPs is based on the UN Guiding Principles on Internal Displacement defining IDPs as “*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border*”. Thus, all groups of IDPs are included in this research regardless of the cause of their displacement. That said, this thesis deals with both, IDPs displaced due to conflict and violence as well as those displaced due to natural or human-made disasters. Importantly, since electoral rights are typically reserved to citizens, only persons in possession of citizenship of state within which they are displaced can be for the purposes of this thesis categorized as IDPs.¹³ However, aside from IDPs there are also other groups of people that are frequently subjected to disenfranchisement due to their displacement. These include refugees, asylum seekers and migrant workers who are, along with IDPs, often labelled as forced migrants. Although all these groups often face similar challenges and their disenfranchisement may have similar results, this thesis focuses specifically on IDPs as defined above by the Guiding Principles.¹⁴

1.2. Methods and procedure

The research design of this thesis is based on a single case study which is analysed through an assessment framework reflecting international best practices and recommendations regarding IDP enfranchisement. The analysis is divided into three analytical units according to individual electoral rounds this research focuses on. Particularly, these are 2014 early presidential elections, 2014 early parliamentary elections and 2015 local elections in Ukraine. Each unit of analysis is dealt with separately in order to be then compared with one another for the purpose of providing a complex view of IDP electoral participation in Ukraine during the

¹² Erin Mooney and Balkees Jarrah, ‘The Voting Rights of Internally Displaced Persons: The OSCE Region’ (2004) 32-43.

¹³ See Rhodri Williams, Elizabeth Ferris and Khalid Koser, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* (Erin Williams ed, Brookings Institution - University of Bern: Project on Internal Displacement 2008) 12-13.

¹⁴ Hannah Roberts, ‘Forced Migration and Electoral Participation’ [2003] Forced Migration Online (FMO) Research Guide 1-3.

examined period. The outcome of the analysis is afterwards put into the context of existing international standards of IDP electoral participation in order to assess how application of these standards works on the ground.

The analytical framework of the research is based on existing reports identifying the key issues regarding electoral participation of IDPs. This list of issue areas is adjusted for the purposes of this research and as such comprises following areas of assessment:¹⁵ 1) Domestic legislation – *Do policies and laws explicitly address IDPs as a vulnerable group and are electoral rights of IDPs secured in law transparently and well in advance of elections?*; 2) Operational planning – *Are extra financial resources and sufficient time available in order to implement special provisions and electoral planning for IDP enfranchisement?*; 3) Electoral integrity issues – *Do arrangements for IDP enfranchisement reduce overall integrity of elections, are IDPs more vulnerable to manipulation than other voters, and do IDPs have opportunity to lodge complaints and appeals?*; 4) Residency requirements – *Are IDPs excluded from participating in an election by residency requirements?* 5) Choice of constituency – *Are IDPs entitled to register and vote in a constituency of their choice, either in the constituency of their origin, or in the current constituency, or in the constituency of their future residence?*; 6) Electoral system – *Does electoral system have any negative impact on electoral participation of IDPs?*; 7) Documentation requirements – *Are IDPs excluded from the electoral process based on documentation requirements and do they have access to alternative solutions?*; 8) Absentee voting – *Can IDPs participate in an election through absentee voting arrangements that allow them to vote at a location other than their constituency?* 9) Voter information – *Are effective measures such as voter education and registration campaigns put in place in order to inform IDPs about special electoral arrangements?*; and finally 10) Security issues – *Are minimum security conditions in place for IDPs to participate in an election without the risk of physical harm or intimidation and disruption of the electoral process?*¹⁶ The original list is complemented by two more issue areas used in similar studies conducted by Mooney and Jarrah¹⁷, namely 11) Discriminatory practices – *Are IDPs discriminated in exercising their right to vote?*; and by Grace and Mooney¹⁸, namely 12) Physical access to polling stations – *Do IDPs*

¹⁵ See chapter 2

¹⁶ Aysha Shujaat, Hannah Roberts and Peter Erben, 'Internally Displaced Persons and Electoral Participation : A Brief Overview IFES White Paper' (2016) 6-17.

¹⁷ Erin Mooney and Balkees Jarrah, 'Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region' (2005) 4 Human Rights 36.

¹⁸ Khalid Koser and Andrew Solomon, *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges* (The American Society of International Law 2010) 521.

have unhindered physical access to polling stations?. This analytical framework provides a valuable tool for the analysis and by drawing on the mentioned studies represents a linkage between this thesis and the existing research.

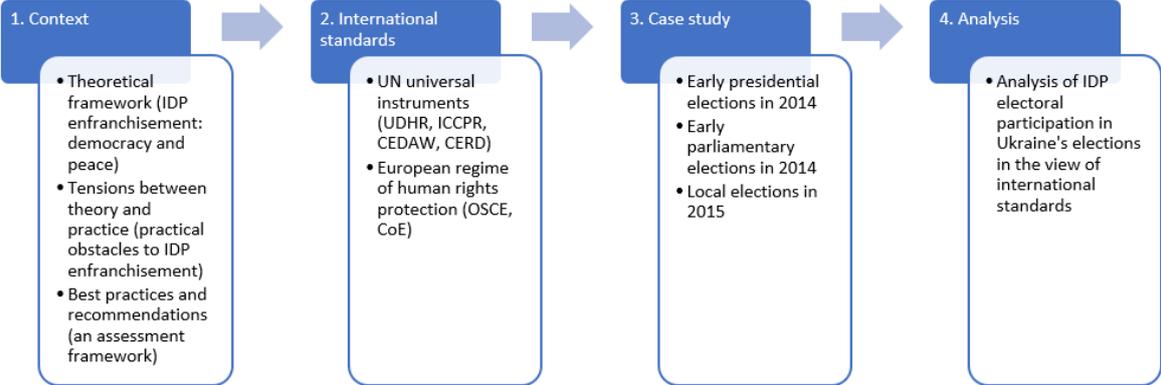
The analysed data consist of primary sources in the form of various government materials, laws and other norms as well as of a wide range of secondary sources. Those include academic research, newspaper articles and reports as well as other official documents released by governments, NGOs or intergovernmental organizations. The collected data is processed through analysis of a qualitative nature following the chosen procedure and analytical framework. The outcome of the analysis lies in findings relevant information for answering the research questions. Based on that, the thesis concludes in providing a comprehensive picture of the current state of the electoral participation of IDPs, both in the field as well as at the level of international standards. In the end, this result contributes to the ongoing debate and helps to develop measures for better integration of IDPs into electoral processes, relevant particularly in the case of Ukraine.

The structure of the thesis is as outlined in Diagram 1 below. Chapter 1 provides a detailed overview reflecting tensions between, on the one hand, reasons why IDP electoral participation is important and, on the other hand, often lacking practical realization of IDP voting rights. Against this background, existing good practices and recommendations on IDP enfranchisement are summarized and translated into an analytical framework providing a list of issue areas which is employed for the analytical purposes in chapter 3. In chapter 2, the presented thesis examines existing international standards relevant for electoral participation of IDPs. This section is divided into three sections providing firstly an overview of international instruments with universal scope and afterwards focusing on instruments existing within the European regime of human rights protection. The existing standards are then put into the context of Ukraine's international commitments which is further utilised in chapter 4. Chapter 3 deals with the selected case study of Ukraine and provides an analysis of three elections examined in the view of IDP electoral participation following the analytical framework based on international best practices and recommendations. Finally, in chapter 4 electoral participation of IDPs in Ukraine's elections is analysed in the view of Ukraine's international commitments seeking to identify the main challenges in compliance. Based on the outlined objectives, this thesis provides answers to the research questions formulated in chapter 1.

The presented thesis concludes that IDP electoral participation in Ukraine was a highly problematic aspect of all three electoral processes examined. Most importantly, IDPs faced

obstacles stemming from legal requirements on residency and documentation against the background of electoral system which, apart from presidential elections, was not conducive to IDP voting. Additionally, there were multiple practical impediments on exercising the right to vote such as lacking voter education, insufficient time frameworks etc. This is contradictory to Ukraine’s international commitments to guarantee equal and universal suffrage without any distinctions. International binding standards nonetheless lack provisions explicitly addressing IDP enfranchisement which possibly results in states’ negligence in dealing with this issue as the case of Ukraine showed.

Diagram 1: Thesis structure



2. Context of IDP electoral participation

In this chapter, I will first discuss theoretical claims in favour of full integration of IDPs into electoral processes supported by arguments from the perspective of theory of democracy and conflict management. This part provides only solution-oriented reasons while rights-based view focusing on states' international law obligations is left to be discussed in chapter 3. In the next part, I will put the discussed theoretical claims in the contrast with often lacking practical implementation of IDP voting rights and I will identify the main obstacles that IDPs face while seeking to exercise the right to vote. In the final part, I will draw on existing literature providing for international best practices and recommendations on IDP enfranchisement. Based on that I will formulate a list of main issue areas of IDP electoral participation which need to be regarded while assessing IDPs' access in exercising the right to vote. This chapter concludes with an assessment framework which is then employed in the analysis of IDP electoral participation in Ukraine in chapter 3.

2.1. Theoretical framework: Reasons for IDP enfranchisement

Arguments in support of full integration of IDPs into electoral processes can be distinguished into two categories depending on the causes of displacement and on the context in which IDPs are to be found. Firstly, theory of democracy sees universal suffrage and representative electoral process as a precondition for any conception of modern democracy. In general, this approach is relevant for electoral participation of both, persons internally displaced by natural or human-made disasters as well as of those displaced due to conflict and violence. Secondly, electoral participation by forcibly displaced persons in conflict and post-conflict situations is considered crucial for a durable conflict resolution. As such, inclusive elections create an environment for meaningful reconciliation and sustainable peace, and in the long term lay the foundations for the development of strong democratic institutions. This shows that, eventually, democracy and peace are inseparable, and accordingly, electoral participation of IDPs reinforces both processes. In the following paragraphs, I elaborate on the mentioned lines of reasoning and provide the rationale of this study.

In political theory, elections are traditionally perceived as an indispensable feature of democracy which inherently requires equal political participation based on free competition of ideas. In essence, elections represent the realization of rule of the people and fulfil the ideal of

sovereignty and self-governance. Importantly, elections are the only legitimate mechanism of delegating the power deriving from the will of the people to the elected representatives to whom is bestowed the right to exercise acts of coercion over the very same people. In this sense, elections as a feature of democracy represent an institution which introduces a particular kind of vertical accountability which contains a competitive element averting monopolization of the indirect relationship between the people and elected representatives. This makes free competition and equality of votes a central issue due to which incumbents are held accountable. Equal opportunity to be part of the decision-making process through elections is thus the core value of democratic governance. Therefore, in order for any political regime to qualify as democratic, legal provisions providing for equal electoral participation of all citizens in form of universal suffrage must be in place and must be put into practice.¹⁹

Those theoretical presumptions have significant practical implications for the quality of democracy in situations when significant portions of population, such as IDPs, are unreasonably excluded from electoral process. Consequently, in such situations affected population is not only denied casting the ballot but, as a result, is also prevented from shaping other dimensions of electoral process. Thus, unlike regular voters, IDPs do not have the ability to draw attention of political parties and set political agendas of the election campaign. This is especially worrying considering the number of difficulties related to the situation of internal displacement which need to be addressed. Among many other things, IDPs face such fundamental challenges as security concerns, insufficient access to food and water, lack of adequate housing, lack of access to health and education, unemployment and lack of social protection, and insufficient measures concerning property restitution. Nevertheless, solution of these issues is frequently put off and omitted due to the under-representation of IDPs resulting in the lack of political will to genuinely deal with them.²⁰

Finally, by excluding IDPs, acceptance of the electoral results may be at stake and legitimacy of the whole electoral process as well as legitimacy of the new government are

¹⁹ See John Locke, *Two Treatises of Government* (Cambridge [England]; New York : Cambridge University Press 1988); Joseph Schumpeter, *Capitalism, Socialism and Democracy* (Routledge 1976); Robert Dahl, *Democracy and Its Critics* (Yale University Press 1989); Giovanni Sartori, *The Theory of Democracy Revisited: Part One: The Contemporary Debate* (CQ Press 1987); Andreas Schedler, *Conceptualizing Accountability*. in Schedler and others (eds), *The Self-restraining State: Power and Accountability in New Democracies* (Lynne Rienner Publishers 1999).

²⁰ Brett Lacy, 'Building Accountability, Legitimacy, and Peace: Refugees, Internally Displaced Persons, and the Right to Political Participation' (2004) 4-6; Jeremy Grace and Erin D Mooney, 'Peacebuilding through the Electoral Participation of Displaced Populations' (2009) 28 *Refugee Survey Quarterly* 95 121; Walter Kälin and Elizabeth Ferris, 'Addressing Internal Displacement in Peace Processes , Peace Agreements and' (2007) 66.

undermined. This is particularly important with regard to elections understood as a factor of democratization. In fact, acceptance of electoral results by all actors of political transition as well as acceptance of the results at the grassroots level becomes a necessary precondition for establishing consolidated democracy. Strong democratic institutions and the rule of law can be hence achieved only through legitimate, that said inclusive, electoral process.²¹ All in all, disenfranchisement of IDPs diminishes legitimacy and accountability within the political system which, in the long run, imperils overall sustainability of democracy and impedes the democratization process.²²

Having encapsulated the discussion on electoral participation of IDPs in the context of democracy, it can be easily noted that impacts of IDP disenfranchisement on the quality of democracy are closely interlinked with peace processes in post-conflict and divided societies. In peace processes opposing parties usually negotiate arrangements of the post-conflict governance and define principles of elections leading to the establishment of a new democratic government. In this sense, electoral participation is one of the most formalized mechanisms through which IDPs can be involved in peace processes. This stems from the nature of elections as an institution based on clear rules and procedures protecting integrity of the process and rights of the voter. Ideally, elections constitute a unique framework through which the national authorities as well as the international community guarantee that IDPs have a chance to take part in decision-making affecting their lives.²³

Genuine and inclusive elections allow post-conflict and divided societies to resolve the causes of conflict by casting the ballot rather than by taking up guns. Elections held in order to re-establish the rule of law, protect human rights and promote reconciliation contribute to overcoming differences in polarized societies and create necessary conditions for effective post-conflict rebuilding. If free and fair, elections in post-conflict situations contribute to sustainable democratic transition. Free and fair elections also provide legitimacy to new political institutions and political elites, and enhance accountability and good governance. This eventually strengthens stability of the political system. On the contrary, if large portions of

²¹ *ibid* 48.

²² Rafael López-Pintor, "Reconciliation Elections: A Post-Cold War Experience," in *Rebuilding Societies After Civil War: Critical Roles for International Assistance*, ed. Krishna Kumar (Boulder, Colorado: Lynne Rienner Publishers, 1997) 55; Grace and Mooney (2009); Jeremy Grace and Jeff Fischer, 'Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices Participatory Elections Project (PEP)' (2003) 3; Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict*, (New York: W.W. Norton and Company, 2000).

²³ Grace and Mooney (2009) 95-96; The Public International Law & Policy Group, 'Refugee Return: Peace Agreement Drafter's Handbook' (2005); Kälin and Ferris (2007) 34.

electorate are disenfranchised, elections can due to feelings of exclusion result in deepening of tensions in society and eventually lead to a renewal of hostilities. Thus, inclusiveness along with transparency are essential principles for elections in order to be instrumental in confidence-building realizing its peacebuilding potential.²⁴ For this matter, the former UN High Commissioner for Refugees António Guterres emphasised in his statement to the UN Security Council that including refugees and IDPs in peace processes “*can provide critical perspectives on the causes of conflict and contribute to a sense of shared ownership in peacemaking and peacebuilding*”.²⁵

There are number of concrete effects of IDP electoral participation on their situation of internal displacement in the conflict and post-conflict context. Firstly, since displacement is induced by conflict of political nature, political activity of IDPs rises and their electoral participation is therefore instrumental in finding durable solution to their displacement. This is especially important considering that participation in electoral processes helps to restore the link between IDPs and the communities in the area of their origin which is necessary for eventual return and re-integration of displaced population. Further, IDPs are often vulnerable to attempts at demographic engineering through forced population movements aiming to alter composition of electoral constituencies. Risks of such politicization and instrumentalization of the issue can be averted by ensuring that IDPs are able to exercise the right to vote in their areas of origin. Electoral participation also gives IDPs an opportunity to organize and advocate for better protection of their rights. Similarly, electoral participation of IDPs guarantees that their interests are represented in negotiations of formal peacemaking and peacebuilding agreements. Through elections genuine representation and clear legitimacy of those acting on behalf of IDPs in peace processes are ensured. Lastly, ensuring that IDPs are involved in peace process through participating in an election represents a strong signal for the society showing that post-conflict government will care of and derive its legitimacy from marginalized and vulnerable victims of conflict.²⁶

Exclusion of IDPs from electoral processes bears serious consequences which can possibly have long term repercussions threatening both durable peace and quality of democracy. Therefore, there is a broad consensus that IDP enfranchisement needs to be prioritized in the

²⁴ Grace and Mooney (2009) 97-98.

²⁵ António Guterres (UN High Commissioner for Refugees), “Statement to the United Nations Security Council”, New York, 8 Jan. 2009.

²⁶ Michelle Rupp, ‘Internally Displaced Persons and Electoral Participation: A Call For Best Practices’ (2012) 25 Georgetown Immigration Law Journal 683-684.

aftermath of natural or human-made disasters as well as in the conflict or post-conflict situations. Nevertheless, there is a vast evidence that IDPs often face many obstacles that either hinder or impede entirely their access in exercising the right to vote. The following section will focus on these obstacles and will provide their systematic overview.

2.2. Tensions between theory and practice: Practical obstacles

As has been highlighted above, the importance of electoral participation of IDPs is grounded in a rich body of literature. The reasons for IDPs' inclusion into electoral processes, drawing on theory and based on empirical observations, create a strong imperative on states to adopt adequate measures that effectively enfranchise IDP population. This imperative is reflected in international law which creates binding obligations on states to fulfil their commitments.²⁷ Despite this background, effective implementation of IDP electoral rights is often lacking for various reasons. One of these is state's negligence stemming either from the lack of political will to adopt adequate measures, or from incompetence of authorities to deal with this issue effectively. IDPs can also be de facto disenfranchised on the grounds of state's incapacity. Evidence shows that national authorities often cannot undertake steps necessary for addressing the particular challenges IDPs face due to limited resources and tight timelines. Last but not least, IDPs can be deliberately deprived of the right to vote or simply left disenfranchised as a result of political interest which may be, for instance, driven by calculations regarding impacts of IDP electoral participation on electoral results.²⁸ Nonetheless, any of the mentioned motives justifies exclusion of IDPs from electoral process and hence adequate means need to be always put in place to ensure inclusiveness of elections. In the following lines, concrete obstacles that IDPs face are identified and further described.

First of all, IDP voters commonly face the lack of documentation. In general, registering as a voter, obtaining a ballot and voting requires a certain proof of identity. This is normally provided by some sort of personal identity documentation proving citizenship, civil registration or residency of the voter. However, internal displacement frequently results in the loss,

²⁷ See chapter 3 below

²⁸ see Simon Bagshaw, 'Internally Displaced Persons and Political Participation : The OSCE Region' (2000); Erin Mooney and Balkees Jarrah, 'Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region' (2005) 4 Human Rights 29; Erin Mooney and Jeremy Grace, 'Democracy and the Displaced: Political Participation Rights, in Particular the Right to Vote and to Be Elected' [2007] American Society of International Law; Shujaat, Roberts and Erben (2016).

destruction or confiscation of the personal documentation. IDPs are hence unable to meet such requirements in order to register to vote and to certify their eligibility at polling stations. Furthermore, official copies of identity documentation and other personal data contained in voter registries may be damaged or destroyed as a result of disaster or conflict in the area of IDPs' origin.²⁹ For example, in municipal elections held in Kosovo, many IDPs possessed no identity documentation which had been lost or destroyed during the conflict. Moreover, voter or civil registries had been either destroyed or transferred to Serbia.³⁰ Although obtaining replacement documentation may be possible, it is often very difficult to overcome all administrative obstacles. This can even require IDPs to travel back to their areas of origin despite remaining unsafe. During municipal elections in Bosnia and Herzegovina (BiH), IDPs were originally required to produce identity documentation proving that they had been residents in the area one year prior to the election. Although appeal procedures were made available for those who lacked these documents, the high number of applicants caused that the programme eventually collapsed and many IDPs remained disenfranchisement.³¹

Access to identity documentation can also become a matter of discrimination. In some countries women lack identity documentation issued in their own names and instead are registered as dependents of their husbands or other male relatives. In situations of death or family separation which occurs often during internal displacement, these women lose all legal identity and only with tremendous difficulties obtain replacement documentation.³² With regard to minorities, communities of Roma, Ashkali and Egyptian IDPs are often very vulnerable to disenfranchisement due to a lack of proper documentation even prior to their displacement. This was the case during presidential elections in Serbia and Montenegro.³³ Another example of discrimination was the situation of IDPs from Croatian Serb minority who faced irregularities in issuing their identity documentation. This issue coupled with missing IDP voter's lists in

²⁹ Mooney and Grace (2007) 11; Mooney and Jarrah, 'Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region' (2005) 35-36; Lauren Prather and Erik Herron, 'Enfranchising Displaced Voters: Lessons from Bosnia-Herzegovina' (2007) 6 *Election Law Journal*; Khalid Koser and Andrew Solomon, *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges* (The American Society of International Law 2010) 337-362.

³⁰ International Organization for Migration, 'Case Studies on the Participation of Conflict Forced Migrants in Elections Participatory Elections Project (PEP)' (2003) 99; Erin Mooney and Balkees Jarrah, 'Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region' (2005) 4 *Ethnopolitics* 58-59.

³¹ OSCE/ODIHR, 'Bosnia and Herzegovina Municipal Elections 13-14 September 1997' (1997) 8-15; Rupp (2012) 392-393.

³² Office of the Special Adviser on Gender Issues and Advancement of Women, 'Enhancing Women's Participation in Electoral Processes in Post-Conflict Countries' (2004) 21.

³³ OSCE/ODIHR, 'Republic of Serbia Presidential Election 13 and 27 June 2004' (2004) 11.

some locations resulted in preventing significant number of eligible Serbian IDPs from voting in local elections in Croatia.³⁴

Secondly, obsolete or restrictive residency requirements pose another commonplace obstacle that IDPs face. Typically, the right to participate in an election is closely linked to the voter's permanent residency. In accordance to national law and electoral codes the right to vote is conditioned by residency requirements stipulating that voters can only exercise their right to vote in the constituency of their residence. This is highly problematic in situations of internal displacement in which a vast majority of IDPs are most often displaced outside of the electoral district of their permanent residence. In this context, features of electoral system play an important role. Electoral participation is for IDPs easier to access in a single nationwide electoral district in which IDPs can vote without being required to change constituency or travel back to the area of their origin. IDPs face several obstacles in this regard. Firstly, it is forbidden by law to change constituency. Secondly, change of residency entails an excessive administrative burden. Thirdly, change of residency bears unreasonable consequences such as losing the IDP status. Fourthly, tight time schedule prevents IDPs from managing the procedure in time. And lastly, in order to change residency IDPs can be required to travel back to unsafe areas and risk their lives.³⁵

The legacy of the so called *propiska* system existing in successor states of the former Soviet Union is in this respect emblematic. This system was created in order to restrict freedom of movement by tying the exercise of rights, the right to vote included, to residency permits which needed to be approved by authorities if citizens' place of residency was to be newly established or changed. Its influence lingered in many countries of the region in form of restrictive laws, administrative regulations and policies hindering IDPs' access in exercising their right to vote in places of displacement other than their areas of origin.³⁶ In Armenia, as well as in Russia, Azerbaijan and Uzbekistan alike, it proved to be extremely difficult, if not impossible, for IDPs to officially register their relocation and hence to be able to register as voters in their new places of residence. According to Armenian law, unless being owner or immediate relative of the owner of the property any person asking for residency was required to obtain a written notice

³⁴ OSCE/ODIHR, 'Election of Representatives to the Chamber of Counties of the Parliament and of Representatives of Local Government and SelfGovernment Bodies of the Republic of Croatia, 13 April 1997' (1997); Bagshaw (2000) 11.

³⁵ Mooney and Grace (2007) 8; Shujaat, Roberts and Erben (2016) 10.

³⁶ Council of Europe Parliamentary Assembly, 'Situation of Refugees and Displaced Persons in the Russian Federation and Some Other CIS Countries' (*Recommendation 1667*, 2004).

by the owner notarized by a lawyer.³⁷ Similarly, in Georgia while being able to vote in presidential elections and in proportional component of parliamentary election, IDPs were de facto deprived of the right to vote in local elections and in plurality-majority component of parliamentary elections. The reason behind this was a provision in law stipulating an obligation to terminate residency in the area of IDPs' origin and obtain a new one in the area of displacement. But renouncing residency in the area of origin bore significant consequences resulting in the loss of the IDP status entailing significant benefits and, most importantly, the right to return home. This was a result of government's deliberate policy pursuing eventual return of ethnic Georgians expelled from the break-away region of Abkhazia.³⁸

Another example of restrictive residency requirements is the situation of displaced Muslims in Sri Lanka. Although having the right to vote in areas of their origin through absentee voting, those IDPs who turned 18 after displacement were de facto deprived of this right as they were required to register in the voting lists in the unsafe areas they fled from. Likewise, those who were registered could not verify that their names were included in the annually updated registry as the posters with names were put up only in the respective areas.³⁹ Unreasonable residency requirements coupled with mismanagement of the return process of IDPs caused IDP disenfranchisement in Liberia. IDPs staying in shelter camps before elections in 2005 had to decide whether to register as voters in camps or in the areas of their origin. Although being encouraged to register in their areas of origin, due to delays and mismanagement most of IDPs remained in the shelter camps during the elections and thus could not vote.⁴⁰ Finally, residency requirements can also entail the element of discrimination. Once again, Roma, Ashkali and Egyptian IDPs are often disenfranchised through discriminatory practices resulting in their unresolved residency status as was the case in parliamentary elections in Serbia and Montenegro.⁴¹

³⁷ Norwegian Refugee Council, 'Trapped in Displacement: Internally Displaced in the OSCE Area' (2004) 10-11, 20-21, 28.

³⁸ OSCE/ODIHR, 'Georgia Parliamentary Elections 31 October & 14 November 1999 Final Report' (2000) 15-16; Mooney and Jarrah, 'Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region' (2005) 36-37.

³⁹ Catherine Brun, 'Local Citizens or Internally Displaced Persons? Dilemmas of Long Term Displacement in Sri Lanka' (2003) 16 *Journal of Refugee Studies* 386-390.

⁴⁰ IDMC, 'Liberia: Rushed IDP Return before Elections Brings Voluntariness into Question' (2005); Jeremy Grace, 'Liberia: Refugees and Internally Displaced Persons in the October 2005 Elections Participatory Elections Project (PEP)' (2005).

⁴¹ OSCE/ODIHR, 'Republic of Serbia Parliamentary Election 28 December 2003' (2004) 12.

The third obstacle frequently impeding electoral participation by IDPs is a lack of adequate and timely information. Access to information is a necessary precondition for free and fair elections, especially with regard to voting arrangements that frame the electoral process. Besides understanding the voting and registration procedures, voters also need to have a sufficient campaign information to be able to make an informed decision. IDPs have a diminished access to this sort of information and often even lack information affirming their right to vote.⁴² This can be result of electoral officials insufficiently trained on particular legal provisions or procedural arrangements in place to enable electoral participation of IDPs. For instance, IDPs in Russia who fled from Chechnya to adjacent region of Ingushetia were repeatedly given contradicting information on IDP electoral procedures during the days leading up to the election. While the Central Election Commission announced that mobile boxes would be arranged for IDPs at their current locations, other officials publicly claimed that IDPs were able to vote only in the areas of their permanent residence in Chechnya. The confusion which followed these statements then resulted in de facto disenfranchisement of IDPs.⁴³ Similarly, when a new law enabling IDPs to vote was introduced in Georgia, electoral officials were not adequately informed about the new provisions and continued to deny IDPs the right to vote.⁴⁴

Even if accurate and timely, access to voter information can be hampered by language barriers or low literacy. In Serbia, Roma, Ashkali and Egyptian IDPs lacked voter information provided in the Roma language which caused their extremely low electoral turnout.⁴⁵ In Azerbaijan, the government failed to provide IDPs with voter information in Cyrillic alphabet. As a result, IDPs had difficulties in understanding information in Latin alphabet which significantly limited their participation in elections.⁴⁶ The use of languages other than Turkish forbidden by law during electoral campaign coupled with low literacy rates in Kurdish populations, especially among women, in some parts of Turkey posed a significant obstacle to electoral participation of Kurdish IDPs.⁴⁷ On a similar note, access to voter education is no less important in terms of IDP enfranchisement. In Liberia, IDPs remaining isolated in camps lacked

⁴² Mooney and Jarrah, 'Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region' (2005) 39.

⁴³ OSCE/ODIHR, 'Russian Federation Chechen Republic Referendum of 23 March 2003 Preliminary Statement' (2003) 3; Erin Mooney and Balkees Jarrah, 'The Voting Rights of Internally Displaced Persons: The OSCE Region' (2004) 50-51.

⁴⁴ OSCE/ODIHR, 'Republic of Georgia Presidential Election 9 April 2000 Final Report' (2000) 20; International Organization for Migration (2003) 86-87.

⁴⁵ OSCE/ODIHR, 'Republic of Serbia Parliamentary Election 28 December 2003' (2004) 12.

⁴⁶ International Organization for Migration (2003) 35.

⁴⁷ Erin Mooney and Balkees Jarrah, 'The Voting Rights of Internally Displaced Persons: The OSCE Region' (2004) 62.

information on political parties' platforms and thus were deprived of the possibility to make an informed decision in the election.⁴⁸

Fourthly, physical access of IDPs to polling stations represents an obstacle of practical or logistical nature. Problems with physical access occur in situations of insecurity, disaster conditions, long distances or high travel costs. In such situations IDPs are often disenfranchised as governments fail to adopt effective measures allowing them to either change their constituency or to use absentee voting. Provisions of absentee voting provoked some controversy during the Mostar municipal elections in BiH. In this election, absentee voting was made available only for refugees residing abroad while IDPs were required to return and cast their ballots in Mostar which entailed certain security risks.⁴⁹ In the United States, absentee voting procedures established in the state of Louisiana after the Hurricane Katrina were so complicated that many IDPs were discouraged from making use of them. Moreover, there were problems with delivering absentee ballots to those who registered and many IDPs thus remained unable to either access their polling stations or use absentee voting instead.⁵⁰ During elections in Sierra Leon, many IDP women had to travel long distances to their polling stations which bore substantial financial burden as well as difficulties regarding caring for children.⁵¹ In East Timor, IDPs were free to register at any registration centre at which they were later able to vote. The problem was that some of the centres that had been considered safe during the registration period were no longer safe at the election day. Some IDPs were thus unable to access these polling stations and cast their ballots.⁵² Finally, following the earthquake in 2010 in Haiti, many IDPs had simply no polling station to vote in even if registered.⁵³

All in all, four main categories of obstacles to IDP electoral participation have been identified in the existing literature. These are namely the lack of documentation, restrictive residency requirements, the lack of adequate and timely information, and the limited physical access to polling stations. As the abovementioned examples showed, all of these obstacles can have both de facto and de jure dimension and hence the situation of IDPs needs to be analysed at the level of domestic legislation as well as according to the situation on the ground. Moreover,

⁴⁸ Jeremy Grace, 'Liberia : Refugees and Internally Displaced Persons in the October 2005' (2005) 26-27.

⁴⁹ Bagshaw (2000) 8.

⁵⁰ Brian Brox, 'Elections and Voting in Post-Katrina New Orleans' (2009) 16 *Southern Studies: An Interdisciplinary Journal of the South* 17; Mooney and Grace (2007) 12-13.

⁵¹ Women's Refugee Commission, 'Voting for Peace, Survival and Self-Reliance: Internally Displaced Women Go to the Polls in Sierra Leone' (2002).

⁵² International Organization for Migration (2003) 62.

⁵³ Jake Johnston and Mark Weisbrot, 'Haiti's Fatally Flawed Election' (2011) 6.

there are several pervading factors, namely discrimination, effects of electoral system and security risks, which in conjunction with some of the mentioned obstacles prevent IDPs from participating in elections at different levels of the electoral process. In order to overcome these obstacles, measures like absentee voting and choice of constituency are sometimes introduced. Although these measures are meant to ensure or enhance electoral participation of IDPs, they often fail in doing so from a variety of reasons. Such measures can even by themselves or due to errors and misconduct by election authorities reduce integrity of elections. Therefore, special attention needs to be paid to the legal provisions contained in the domestic legislation regulating IDPs' status and access to electoral rights. Likewise, operational planning, meaning overall electoral management, plays an important role in setting the conditions under which IDPs participate in elections.⁵⁴ Based on this overview and following the existing literature, there are in total twelve issue areas relevant for assessing electoral participation of IDPs. In the following section, I will further elaborate on them in respect of good practices and recommendations.

2.3. Best practices and recommendations: An assessment framework

In the previous sections, I have outlined the main points of tension between the theoretical claims in favour of IDP enfranchisement and the practical realization of IDP electoral rights. Against this background, I will in the following lines provide an overview of existing international best practices and recommendations relevant for different areas of electoral process which are critical from the perspective of IDP electoral participation. This is to demonstrate that the existing tensions are possible to overcome if adequate measures are introduced. The said critical areas have been discussed in the previous section and they include namely: 1) *Domestic legislation*; 2) *Operational planning*; 3) *Residency requirements*; 4) *Documentation requirements*; 5) *Electoral system*; 6) *Absentee voting*; 7) *Choice of constituency*; 8) *Electoral integrity*; 9) *Voter information*; 10) *Security*; 11) *Physical access*; 12) *Discrimination*. This list of issue areas subsequently serves as an analytical framework allowing for assessment of electoral participation of IDPs in the next chapters. For this purpose, each of the twelve issue areas contained in the assessment framework is operationalized through several questions revealing single aspects of IDP electoral participation.

⁵⁴ Shujaat, Roberts and Erben (2016); Koser and Solomon (2010) 507-550; Mooney and Jarrah, 'Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region' (2005).

In the first place, electoral rights of IDPs must be protected within the domestic electoral framework defined as a group of constitutional, legislative, regulatory, jurisprudential and management rules that govern the electoral process. Domestic legal framework must be in line with the state's constitutional provisions and obligations based on international binding commitments. This framework must ensure that IDPs are guaranteed full and equal rights to electoral participation corresponding to the same rights of any other citizen of state. Additionally, the more IDP electoral rights are secured explicitly in law through legal provisions or special mechanisms ensuring that IDPs remain able to vote, the better chance that these rights are fulfilled in practice. However, IDP electoral rights are usually not addressed in specific laws. Instead, this issue is more often addressed by administrative decisions of an election management body, government policies, rulings of electoral tribunals and adjudications of courts. These mechanisms complement, clarify and make operational the existing legislation. Importantly, measures regulating this issue should be adopted well in advance of an election.⁵⁵ In Nigeria, for instance, legal provisions concerning IDP electoral participation were lacking which resulted in a decision of the election management body establishing alternative polling stations for IDPs. Although the decision was not very timely, significant number of people displaced in northern Nigeria were, as a result, able to cast their ballots which strengthened legitimacy of elections crucial for Nigerian democracy.⁵⁶

Once domestic legislation provides sufficient framework for IDP electoral participation, operational planning needs to be ensured for concrete provisions to be implemented through procedures addressing specific issues. This requires adequate financial resources in order to provide for adequate materials and equipment. Additional election management staff needs to be hired and properly trained in complexities involved within the IDP enfranchisement framework. All should be realized in sufficient timelines allowing to implement necessary measures and providing information about special provisions to IDPs. It is also recommended that a special focal point or unit for IDP matters is established within the election management body. This authority is then charged with coordinating operational planning measures and communicating them with other stakeholders.⁵⁷

Regarding residency requirements, the simplest way of overcoming this obstacle is not to impose such condition in the first place. This can be either a special measure adopted in order

⁵⁵ Koser and Solomon (2010) 523-525, 543-544.

⁵⁶ European Union Election Observation Mission (EU EOM), 'Federal Republic of Nigeria Final Report' (2015) 15.

⁵⁷ Shujaat, Roberts and Erben (2016) 16-17; Koser and Solomon (2010) 526, 543.

to facilitate electoral participation of IDPs or a general rule allowed by electoral system. In East Timor, for instance, no residency requirements for voters existed at all. Instead, voter eligibility was only conditioned by citizenship based on the nationality law principles of *jus sanguinis* and *jus soli*. Hence, everyone either born in the territory of the state, or with at least one parent who was a citizen of the state, was eligible to vote regardless of whether ever resided in the country. In 1996 elections in BiH, IDPs had the option to vote in the municipality of their origin prior to the outbreak of hostilities provided that they were found on the 1991 Census. If not on the Census, IDPs could petition the OSCE to cast a ballot for their current municipality. Finally, IDPs were allowed to vote in the municipality in which they intended to resettle in the future. In Kosovo, the rules concerning residency requirements were in a sense more restrictive as they pursued enfranchisement only of those who were displaced as a result of conflict. Applicants had to submit a wide variety of documents proving their residency prior to elections and be either born in Kosovo, or have one parent born in Kosovo, or alternatively lived in Kosovo continually for five years.

Documentation requirements often go hand in hand with residency requirements. In order to overcome obstacles in documentation, three possible measures can be introduced. Firstly, electoral authorities perform documentation searches and/or verifications. This was the case in Bosnia and Herzegovina, where the OSCE established a special body assisting applicants whose names were not found in the Census and who were not able to produce appropriate documentation. Secondly, a new census or civil registration is conducted prior to the elections using newly issued documents in conjunction with the voter registration process. In Kosovo, civil registration programme required all persons to produce documents proving they were habitual residents of Kosovo. Those lacking such documentation went through a review process verifying their eligibility. Based on this civil registration process applicants' documentations were reviewed and, accordingly, a new voter registry was established. The third option involves the so called social documentation and allows applicants to swear before recognized authority that he or she is eligible to vote based on residency, citizenship etc. In East Timor, if not able to prove his or her eligibility with documentation, applicant produced an affidavit before a religious leader witnessed by a person who knows the applicant and is a fully documented registered voter.

In all abovementioned cases, the adopted measures concerning residency and documentation requirements pursued an enhancement of IDP electoral participation. In BiH, these measures were intended to ensure that IDPs, if desired, could have voted specifically in

the electoral districts of their origin. This was an important step from the peacebuilding point of view since it sought to reverse consequences of ethnic cleansing signalling that these crimes were not to be rewarded and legitimized through elections. In case of Kosovo, the primary objective was to recreate the electorate as it was before the conflict which caused movements of population and whereby strengthen legitimacy of the electoral process. An important motive in this respect was to ensure adequate representation of Serbian minority.⁵⁹ In East Timor, the flexible provisions were meant to facilitate the situation of IDPs whose needs needed to be reflected in the inclusive electoral process which generally played a positive role for the new and poorly developed democracy.⁶⁰

Electoral system is a sovereign matter of every state. Some electoral systems are, however, more favourable for IDP electoral participation. Presidential and other single nationwide district elections are typically more accessible for IDPs since there is normally only one ballot and the right to vote is thus not closely tied to residency and documentation requirements. Simple plurality systems are preferable as a second-round election requires re-mobilization of IDPs and poses extra-timeframes and additional costs. With regard to parliamentary, regional and local elections, those are often proportional electoral systems (PR) based on multiple constituencies with single or more representatives.⁶¹ Liberia, for example, adopted PR system with a single national district despite the fact that the country had a long tradition of using plurality system with multiple districts. The reason was that this system was more conducive to electoral participation of IDPs. A single nation-wide electoral district provided a straightforward and easy-to-implement formula, and removed the need to create a special ballot for IDPs based on their areas of origin. Thus, it avoided the dilemma of whether IDPs should be counted when determining the number of mandates according to their original locations or according to their place of current residence (in multiple districts, the former is recommended more). It also eliminated the need to delineate and divide districts which is often time-consuming, costly and politically sensitive. Overall, this solution considerably simplified the conduct of the balloting and contributed to the post-conflict national reconciliation in Liberia.⁶²

⁵⁹ *ibid* 30-31; Grace and Mooney (2009) 101.

⁶⁰ Ragnhild Hollekim, 'Democratic Republic of Timor-Leste Parliamentary Election' (2007) 14-15; Grace and Fischer (2003) 29.

⁶¹ Shujaat, Roberts and Erben (2016) 10.

⁶² Andrew Reynolds, Ben Reilly and Andrew Ellis, *Electoral System Design: The New International IDEA Handbook* (2005) 153-154; Nagbe Tiah, 'Liberia: Proportional Representation in the 1997 Liberian Elections' (AllAfrica.com 2005).

Security is a vital precondition for any meaningful participation of IDPs in elections. This issue is often linked with IDP access to electoral facilities and generally their freedom of movement which should be explicitly guaranteed in electoral codes. States undergoing violent conflicts or aftermaths of disasters adopt various measures in order to ensure that IDPs are able to move freely and safely in order to vote, register, obtain documentation, or exercise any other acts necessary for realization of their electoral rights without any restrictions, impediments, threats, harm and/or fear of consequences. Security must be assured in IDPs' current locations, while in transit and/or after their return to places of origin. Electoral authorities must closely cooperate with domestic or international security forces that must be impartial and reliable. As an example, NATO troops and UN civilian policemen deployed to BiH played an important role in preventing full-scale violence committed on IDPs returning to their places of origin for the purposes of voting. The role of international forces lied, among others, in maintaining safe transit routes that protected election-related movements of IDPs during registration and voting. Besides that, additional absentee polling stations in safe areas along the inter-entity boundary line were established, although in insufficient number, for those IDPs whose security could not be guaranteed. The security situation should be carefully reviewed even before elections are convened. Nevertheless, in the case of BiH some observers and election administrators called for cancelation of elections due to security fears but in spite of that elections were held and eventually contributed to solidifying peace thanks to the implemented security measures.⁶³

Regarding voter information, states face two types of challenges in their endeavour to ensure effective IDP enfranchisement. Firstly, IDPs need to obtain information on how to participate in elections. This is normally a task entrusted to the election management body which carries out a voter education programme addressing eligible IDPs. Concretely, this includes electoral and procedural timelines, eligibility criteria, and mechanisms of registering and casting a ballot. Post-hurricane Louisiana provides a good example of state authorities and national media being able to effectively and timely instruct eligible IDPs about how to vote which played an important role in the post-disaster reconstruction of communities.⁶⁴ Secondly, in order to fully exercise the right to vote, IDPs need to be able to make an informed choice. To this end, states create conditions in which political parties and candidates are free and able to

⁶³ Margaret Satterthwaite, 'Human Rights Monitoring, Elections Monitoring, and Electoral Assistance as Preventive Measures' (1997) 30 N.Y.U. Journal of International Law and Politics; Prather and Herron (2007); OSCE Parliamentary Assembly, 'Report on the Elections in the Republic of Bosnia and Herzegovina: Held on September 14th, 1996' 18-19.

⁶⁴ Williams, Ferris and Koser (2008) 217.

disseminate information related to their platforms. In any case, voter information as well as all instructions concerning electoral procedures must be provided in sufficient time.⁶⁵

As has been highlighted above, states adopt various special measures in order to overcome or at least mitigate obstacles that IDPs face while seeking to exercise their right to vote. However, some of these measures may increase risks of fraud and reduce overall integrity of the electoral process. Firstly, such measures may include less stringent documentation requirements allowing to recognize alternative forms of documentation proving identity and eligibility of IDP voters.⁶⁶ Secondly, absentee polling arrangements make voting more accessible by allowing IDPs to vote at a place other than the one where they are registered, but still having their vote counted in the designated constituency. This can be realized as an in-person absentee voting, either in regular polling stations supplied with ballots from other constituencies, or in special IDP polling stations (or mobile voting services) established in camps or areas where IDPs are concentrated.⁶⁷ Alternatively, absentee voting can be pursued through postal voting in rare cases where postal service is deemed safe and reliable. Absentee voting in either form is administratively a complex operation and it requires detailed knowledge of numbers, locations and registered constituencies of IDPs as well as extra financial and personnel resources and advanced planning. This mechanism is typically used in multiple-constituency electoral systems since in elections with single nation-wide constituency voter's place of polling is normally not significant for counting the electoral result.⁶⁸

Thirdly, IDPs may have an option to choose constituency where their vote is registered and counted. In practical terms, this can be their home constituency, the current constituency of their displacement or, in exceptional cases, the constituency of their future residence as was the case of BiH highlighted above. Importantly, the right to return to the home area and the right to vote in the place of current residence should not be mutually exclusive. Nevertheless, in order to respect equality of the vote, IDP voters must be registered and vote only in one constituency.⁶⁹ Fourthly, deadlines for voter registration can be extended for those IDPs who registered in their place of displacement but returned or moved somewhere else before the election day, for instance for security reasons. In such cases, exceptions to regular registration

⁶⁵ *ibid* 217-220.

⁶⁶ Shujaat, Roberts and Erben (2016) 10-11.

⁶⁷ As in the case of BiH described above.

⁶⁸ Shujaat, Roberts and Erben (2016) 12-13; Williams, Ferris and Koser (2008) 214.

⁶⁹ Venice Commission, 'Venice Commission: Code of Good Practice in Electoral Matters Guidelines and Explanatory Report' (2002) 15; Bagshaw (2000) 14-15; 'The Voting Rights of Internally Displaced Persons: The OSCE Region' (2004) 8-9.

deadlines may be made in order for IDPs to be able to re-register. Finally, if movements of IDPs continue even after extended registration deadlines, IDPs can cast a provisional ballot allowing voting for those not present in the final voter register. This can work either as a general rule or be based on individual petitions. After polling closes, these ballots are separated and undergo secondary verification procedures in accordance with law.⁷⁰ This mechanism was employed in Sierra Leone for IDPs who returned to their areas of origin between the date they registered elsewhere and the election day. Although it did not work perfectly due to operational difficulties, at least part of the IDP population was able to participate in elections despite dynamic situation in the country.⁷¹

In the view of electoral integrity, all the mentioned mechanisms of IDP enfranchisement need to be considered in the following respects. Firstly, adequate measures need to be adopted in order to ensure that the secrecy of vote is maintained. This requires that the secrecy of postal voting is assured and that absentee votes are mixed with regular ballots in centralized facilities before the counting so that political preferences of IDP communities remain undisclosed.⁷² Secondly, the risk of impersonation, and multiple registration and voting must be reduced through thorough operational planning so the principle of equality of votes is respected.⁷³ Thirdly, IDPs are often more vulnerable to electoral manipulation due to their reliance on aid and assistance provided by government, NGOs, political parties and other actors. This makes IDPs an easy target of political exploitation. In order to avoid this, there is a need of high level of scrutiny of the election management body, independent observers, the media and the public.⁷⁴ Fourthly, IDPs often have lesser access to complaints and appeals since these are normally required to be filed in the constituency where the vote is counted. Thus, lodging a complaint or appeal usually entails returning to the constituency of origin which is from various reasons complicated. Therefore, there should be established effective electoral dispute resolution mechanisms fully accessible for IDPs. Overall, all mechanisms enhancing electoral participation of IDPs should be transparent and electoral offenses should be set and strictly enforced through effective penalties in order to deter frauds.⁷⁵ All in all, ensuring that electoral

⁷⁰ *ibid* 214.

⁷¹ European Union, 'Sierra Leone Presidential and Parliamentary Elections 14 May 2002 European Union Election Observation Mission Final Report' (2002) 3, 11, 15; Carter Center, 'Observing the 2002 Sierra Leone Elections Final Report' (2002) 22, 30.

⁷² Grace and Fischer (2003) 63.

⁷³ Shujaat, Roberts and Erben (2016) 6.

⁷⁴ Williams, Ferris and Koser (2008) 215-216.

⁷⁵ Shujaat, Roberts and Erben (2016) 6-7.

participation of IDPs does not reduce integrity of electoral process contributes to democratic consolidation and peace-building.⁷⁶

Finally, in all abovementioned issue areas states may also need to take account of possible discrimination existing in practice or in legal provisions and adopt special measures facilitating electoral participation of those IDP groups discriminated against. This can involve policies removing historical legal distinctions between different minority groups in enjoyment of the right to vote and assistance in exercising it. For example, for the elections held in 2003 Croatia introduced provisions that deleted legal distinction between “expelees”, mainly ethnically Croatian IDPs, and “displaced persons” who were almost always Serbs. Based on these two categories, access to almost all aspects of electoral process was hindered for ethnic Serbs internally displaced in Croatia. Removal of this legal distinction significantly facilitated access of ethnic Serbs in exercising their right to vote which contributed to better cohabitation of both ethnics in Croatia.⁷⁷ It is also recommended that established practice of providing all election related information and instruction only in the majority language is altered in favour of addressing vulnerable groups in their own languages and scripts.⁷⁸

The following table summarizes the critical issue areas of IDP electoral participation which need to be analysed in order to thoroughly assess IDPs’ access in exercising the right to vote. Besides the respective issue areas, this table also provides specific aspects through which the issue areas are operationalized for the purposes of analysis conducted in chapter 3.

Table 1: Assessment framework for IDP electoral participation

Issue areas	Specific aspects
1. Domestic legislation	<ul style="list-style-type: none"> a. Are international commitments of state incorporated in the domestic legal framework? b. Are IDP electoral rights explicitly secured in electoral legal framework? c. Are relevant provisions stipulated in electoral legal framework well in advance of elections?

⁷⁶ Grace and Fischer (2003) 61.

⁷⁷ OSCE/ODIHR, ‘Republic of Croatia Parliamentary Election 2000 Final Report’ (2000) 10-11, 14, 21; OSCE/ODIHR, ‘Republic of Croatia 2003 Parliamentary Elections Final Report’ (2003) 8; Mooney and Jarrah, ‘Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region’ (2005) 36.

⁷⁸ Koser and Solomon (2010) 519-520.

<p>2. Operational planning</p>	<p>a. Is there a special authority established in order to coordinate and communicate implementation of relevant provisions?</p> <p>b. Are sufficient materials and equipment provided for implementation of relevant provisions?</p> <p>c. Is sufficient and trained staff available for the purposes of implementing relevant provisions?</p>
<p>3. Electoral system</p>	<p>a. Is the used electoral system conducive to electoral participation of IDPs?</p> <p>b. Are there any adjustments of the system facilitating IDP electoral participation?</p>
<p>4. Residency requirements</p>	<p>a. Are there any residency requirements conditioning IDPs' access in exercising the right to vote?</p> <p>b. Must IDPs only vote in the electoral district of their origin?</p> <p>c. Are there any special measures mitigating residency requirements for IDPs?</p>
<p>5. Documentation requirements</p>	<p>a. Can IDPs obtain necessary documentation in due time, without security risks, in manageable distance and for affordable price?</p> <p>b. Are there any alternative ways for IDPs to prove their identity and eligibility to vote?</p>
<p>6. Absentee voting</p>	<p>a. Are IDPs, if necessary, allowed to vote in a designated constituency and have their vote counted in their home constituency where they are registered?</p> <p>b. Are IDPs, if necessary, allowed to vote through postal voting?</p>
<p>7. Choice of constituency</p>	<p>a. Are IDPs, if necessary, allowed to choose where they vote and where their vote is counted?</p> <p>b. Are IDPs allowed to do so without having to change their permanent residency?</p> <p>c. Are there any significant consequences for IDPs if they decide to register as voters in electoral district other than the one in the place of their origin?</p>
<p>8. Electoral integrity</p>	<p>a. Is the secrecy of IDP votes secured, for instance, through mixing IDP ballots with regular ballots in centralized facilities before the counting starts?</p>

	<ul style="list-style-type: none"> b. Is the equality of votes secured, for instance, through measures reducing risks of impersonation, and multiple registration and voting of IDPs? c. Is the risk of electoral manipulation of IDPs or IDP votes reduced, for instance, through high level of scrutiny of all stakeholders and effective electoral offense system? d. Do IDPs have equal access to complaint and appeal mechanisms?
9. Voter information	<ul style="list-style-type: none"> a. Is there a government voter education programme addressing eligible IDPs in matters concerning all aspects of electoral process and promoting electoral participation? b. Do all political parties and candidates have access to pursue campaign activities in places where IDPs are allocated?
10. Security	<ul style="list-style-type: none"> a. Does the overall security situation allow for safe IDP electoral participation? b. Do IDPs have safe access to all aspects of electoral process? c. Are special measures adopted in order to ensure that IDPs are secure in their current locations, while in transit and after their return to places of origin?
11. Physical access	<ul style="list-style-type: none"> a. Is there sufficient number of operational polling stations and other necessary election facilities in the vicinity of places where IDPs reside? b. Can IDPs access polling stations and other election facilities without any impediments, restrictions, threats, harm or fear of consequences?
12. Discrimination	<p>Are there any practical or legal obstacles to electoral participation disproportionately affecting particular group within IDP population?</p>

In this chapter, I have highlighted that although IDP enfranchisement plays an essential role in the view of quality of democracy and conflict resolution, practical implementation of IDP voting rights is often lacking. Against this backdrop, I have provided a set of international good practices and recommendations showing that the IDP enfranchisement is possible to be achieved, if right policies are adopted. Eventually, the whole chapter has mapped the current

state of the discussion on IDP electoral participation and provided a background for the following parts of the thesis.

3. International standards of IDP electoral participation

This chapter will deal with instruments of international law setting standards for IDP electoral participation. The discussed standards compose mainly those instruments that create a binding obligation on state regarding IDP enfranchisement. Nonetheless, the focus is also put on some relevant non-binding instruments that specify state's binding obligations and provide important guidelines for states on implementation of particular international law treaty provisions. In the first part, I will discuss universal instruments and particular provisions for IDP electoral participation which exist within the United Nations architecture. In the second part, I will focus on regional international instruments relevant for the case study of Ukraine, existing namely in the European regime of human rights protection. At the end of this chapter, I will put the discussed instruments into the context of Ukraine in order to answer the first research question.

3.1. United Nations: Universal instruments

The historically first international instrument with universal scope proclaiming universal and equal suffrage is the Universal Declaration of Human Rights (UDHR) which in Article 21 declares that: “1) *Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*” and “3) *The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by the equivalent free voting procedures*”.⁷⁹ Although not a binding treaty, many principles declared in the UDHR and later codified in the two Covenants and Optional Protocols, the so called “International Bill of Human Rights”,⁸⁰ have over time become accepted as customary international law.⁸¹ It remains nonetheless a matter of discussion which particular provisions contained in the UDHR have reached this international legal status.⁸² Although there is no wide consensus regarding the above cited provisions establishing the right to political participation, growing literature acknowledges this right as approaching the formal status of customary

⁷⁹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) (UDHR).

⁸⁰ United Nations General Assembly Resolution (1948) 217 A (III).

⁸¹ See for example Hurst Hannum, ‘The Status of the Universal Declaration of Human Rights in National and International Law’ (1995) 25 Georgia Journal of International and Comparative Law 317-354.

⁸² See for example David Forsythe, *Human Rights in International Relations* (2012); Gregory H Fox and Brad R Roth, *Democratic Governance and International Law* (Cambridge University Press 2000).

international law. This is mainly due to nearly universal acceptance of the UDHR whose compliance carries considerable political weight and whose provisions concerning political participation rights are widely reflected in number of universal and regional binding instruments.⁸³

Contrary to the UDHR, the International Covenant on Civil and Political Rights (ICCPR) imposes legally binding obligation on its signatories. The Covenant codifies the right to political participation declared in the UDHR in Article 25 affirming that: “*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*” a) “*To take part in the conduct of public affairs, directly or through freely chosen representatives,*” b) “*To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors*”.⁸⁴ Importantly, Article 25 protects the rights of “*every citizen*” compared to every human being as worded in the UDHR. Hence, there is an eligibility criterion of citizenship, along with other requirements, for individuals to be able to claim this right. Nevertheless, the article also prohibits “*unreasonable restrictions*” on the right to vote which is, besides citizenship, normally exempted on the grounds of age, residence, criminal conviction and few more criteria.⁸⁵ Following principles of general derogations from treaty obligations, any restrictions on the right to vote are acceptable only as long as they are objective, non-discriminatory, compatible with obligations of the rule of law and the convention, proportionate and if they pursue a legitimate aim.⁸⁶

Notably, Article 25 of the Covenant explicitly refers to “*the right and the opportunity*” and hence puts an emphasis on practical realization of the right. In this vein, Human Rights

⁸³ See Thomas Franck, ‘The Emerging Right to Democratic Governance’ (1992) 86 63-77; Jackson Nyamuya Maogoto, ‘Democratic Governance: An Emerging Customary Norm?’ (2003) 5 University of Notre Dame Australia Law Review 55; Alec Ewald, *Criminal Disenfranchisement in an International Perspective* (Cambridge University Press 2009) 109-135; Elizabeth DeFeis, ‘Elections: A Global Right?’ [2000] Wisconsin International Law Journal 321; Jeremy Grace and Jeff Fischer, ‘Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices Participatory Elections Project (PEP)’ (2003) 6; Compare with Alexander Kirshner, ‘The International Status of the Right to Vote: Democracy Coalition Project’ (2003) 3; Susan Marks, ‘What Has Become of the Emerging Right to Democratic Governance?’ (2011) 22 European Journal of International Law; Ludvig Beckman, ‘The Right to Democracy and the Human Right to Vote: The Instrumental Argument Rejected’ (2014) 13 Journal of Human Rights.

⁸⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁸⁵ see André Blais, Louis Massicotte and Antoine Yoshinaka, ‘Deciding Who Has the Right to Vote: A Comparative Analysis of Election Laws’ (2001) 20 Electoral Studies 41.

⁸⁶ Aysha Shujaat, Hannah Roberts and Peter Erben, ‘Internally Displaced Persons and Electoral Participation : A Brief Overview IFES White Paper’ (2016) 5.

Committee, the ICCPR treaty body, has stressed that: “*States must take effective measures to ensure that all persons entitled to vote are able to exercise that right*”.⁸⁷ The Committee also touched upon the issue of residency requirements noting that: “*If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote*”.⁸⁸ Although the term “homeless” was not used as applying to IDPs but rather to those who lack fixed residence, such as travellers, the Committee did not explicitly reject that this general comment may be also relevant for this group.⁸⁹ Finally, the Committee highlighted that: “*Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice*”.⁹⁰ Overall, this puts an onus on the states party to adopt special measures enabling groups that face specific difficulties, such as IDPs, to participate in elections. Apart from Article 25 ICCPR also includes the so called “political and campaign rights” which, as Goodwin-Gill argues, give practical effect to the right to vote.⁹¹

ICCPR also contains general obligations related to non-discrimination which is central to the concept of universal and equal suffrage. As Article 25 states, the political participation rights are to be guaranteed “*without any of the distinctions mentioned in article 2*”. Article 2(1) specifies that “*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”. According to non-binding Guiding Principles on Internal Displacement, the term “*other status*” is to be interpreted broadly and as such it may be concluded that the non-discrimination principle forbids discrimination against IDPs based on their status⁹². In this regard, the Human Rights

⁸⁷ United Nations Human Rights Committee, General Comment 25, paragraph (1996) 11.

⁸⁸ *ibid.*

⁸⁹ Simon Bagshaw, ‘Internally Displaced Persons and Political Participation : The OSCE Region’ (2000) 4.

⁹⁰ United Nations Human Rights Committee, General Comment 25, paragraph (1996) 12.

⁹¹ Guy Goodwin-Gill, *Free and Fair Elections: New Expanded Edition* (Inter-Parliamentary Union 2006) 102; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 19, 21, 22.

⁹² See for example Marc Bossuyt, *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights* (Martinus Nijhoff Publishers 1987) 486; United Nations, Guiding Principles on Internal

Committee highlighted the importance of the fulfilment of Article 25 in the Concluding Observations on Colombia expressing “*concern regarding the difficulties experienced by internally displaced persons in exercising their civic rights, especially the right to vote. The State party should... take the necessary steps to ensure that displaced persons are able to exercise the rights guaranteed in article 25*”.⁹³ Furthermore, ICCPR Article 26 requires states to actively protect against discrimination on the same grounds as stated in Article 2. This non-discrimination principle, in conjunction with Article 25, serves as the basis for subsequent international human rights instruments that guarantee the right of political participation of IDPs as such as well as of specific vulnerable groups represented in the IDP population.⁹⁴

Besides ICCPR, there are other treaties with near-universal levels of support that sharpen the principle of non-discrimination in the enjoyment of the right to vote for particular groups of persons who historically have been marginalized. Specific provisions guarantee this right for women, racial and ethnic minorities and persons with disabilities, which are all groups typically overrepresented in IDP populations.⁹⁵ The following international instruments put an emphasis on special measures providing for de facto equal electoral participation of vulnerable groups. The general provisions of non-discrimination are supplemented on basis of sex in a number of instruments that specifically articulate the rights of political participation of women. The Convention on the Political Rights of Women (CPRW) affirms that women shall be entitled to vote in all elections and be eligible for elections to all publicly elected bodies on equal terms with men, without any discrimination.⁹⁶ Further, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) obliges that: “*States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies*”.⁹⁷

Displacement, presented by the UN Secretary-General Francis M. Deng to the United Nations Commission on Human Rights, UN doc. E/CN.4/1998/53/Add.2.

⁹³ United Nations Human Rights Committee, Concluding Observation, 2004 (CCPR/CO/80/COL), point 19; See also HRC Report on Congo: Human Rights Committee/10/59 (Joint Report on technical assistance and capacity building, 2009).

⁹⁴ See bellow

⁹⁵ Shujaat, Roberts and Erben (2016) 4.

⁹⁶ Convention on the Political Rights of Women, 193 U.N.T.S. 135, entered into force July 7, 1954.

⁹⁷ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.

There also exist specific provisions providing for additional protection of the political participation rights of ethnic and minority groups who are often disproportionately affected by displacement due to conflict and violence. The Convention on the Elimination of All Forms of Racial Discrimination (CERD) requires in Article 5 that “*States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights*” and specifies that this obligations concerning, among others: “*Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage*”.⁹⁸ Regarding electoral rights of IDPs, the Committee on the Elimination of Racial Discrimination has made a general recommendation stressing that “*All such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels*”.⁹⁹ Although this was an important statement, the recommendation fails to address political rights of IDPs during displacement or in the situation when IDPs opt for resettlement rather than return.¹⁰⁰

The last vulnerable group covered by international standards are persons with disabilities whose electoral participation rights are protected in the Convention on the Rights of Persons with Disabilities (CRPD). Article 29(a) of the Convention obliges states to “*Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected*”.¹⁰¹ Additionally, there are few non-binding universal instruments addressing electoral rights of vulnerable groups of which the most important provisions are Article 2(3) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities¹⁰² and Article 6(b) of the

⁹⁸ Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965), 660 UNTS 195 entered into force Jan. 4, 1969.

⁹⁹ Committee on the Elimination of Racial Discrimination, General Recommendation XXII, Refugees and displaced persons (Forty ninth session, 1996), U.N. Doc. A/51/18, annex VIII at 126 (1996), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.6 at 211 (2003). Art. 2 (d)

¹⁰⁰ Erin Mooney and Jeremy Grace, ‘Democracy and the Displaced: Political Participation Rights, in Particular the Right to Vote and to Be Elected’ [2007] American Society of International Law 6.

¹⁰¹ United Nations. Convention on the Rights of Persons with Disabilities. (2006).

¹⁰² Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, G.A. res. 47/135, annex, 47 U.N. GAOR Supp. (No. 49) at 210, U.N. Doc. A/47/49 (1993).

International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.¹⁰³

In respect to the specific context of internal displacement, IDPs are guaranteed to participate in elections in a situation of armed conflict even though international humanitarian law does not address the issue of political participation. If elections take place in the course of an armed conflict (whether internal or international), the continued application of the principle of non-discrimination provided for in the international human rights law ensures that IDPs cannot be deprived of the right of political participation.¹⁰⁴ Similarly, IDPs' right of political participation is affirmed also in the situation of natural or man-made disaster. Although not binding, the UN Inter-Agency Standing Committee's Guidelines on Human Rights and Natural Disasters note based on relevant treaty law that: "*Those affected by natural disasters, whether displaced or not, should have, as soon as possible, the right to participate, either directly or through elected representatives, in public affairs. They have the right to vote in elections and to be elected even if they cannot exercise these rights at their places of habitual residence*".¹⁰⁵

Although general principles providing for the right to vote are enshrined in the international treaty law, there is a lack of provisions addressing IDPs specifically. This is reflected in the United Nations Guiding Principles on Internal Displacement which reaffirm and set forth commitments of states concerning electoral participation of IDPs. This compilation constitutes the first international instrument focusing exclusively on IDPs. Besides providing a clear definition of the IDP status¹⁰⁶, the Guiding Principles spell out the rights and guarantees relevant to the protection of IDPs in all phases of displacement. Though not formally binding, the Principles reflect and are consistent with international law by analogy. The Guiding Principles aim to address the existing gaps and grey areas where the international instruments fail to provide sufficient protection of IDPs' rights.¹⁰⁷ They serve as a reminder for governments that the rights also apply to IDPs and even though governments cannot be held accountable if

¹⁰³ Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59, entered into force Sept. 5, 1991.

¹⁰⁴ Erin Mooney and Jeremy Grace, 'Political Participation Rights in Particular the Right to Vote' in and Andrew Solomon Walter Kälin, Rhodri C. Williams, Khalid Koser (ed), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges* (The American Society of International Law 2010) 514.

¹⁰⁵ United Nations, Inter-Agency Standing Committee (IASC), Operational Guidelines on Human Rights Protection in Situations of Natural Disasters, with Particular Reference to the Persons who are Internally Displaced (Guidelines on Human Rights and Natural Disasters), Guideline D.5.1, 2006, 32.

¹⁰⁶ See section 1.1 above

¹⁰⁷ Roberta Cohen, 'The Guiding Principles on Internal Displacement: A New Instrument for International Organizations and NGO's' (1998) 2 Forced Migration Review 31.

they disregard them, it is always possible to invoke the binding treaties upon which the Guiding principles are built.¹⁰⁸

The Guiding Principles on Internal Displacement entrench the principles of equality and non-discrimination of IDP voting rights. Principle 1(1) provides that IDPs: “*shall enjoy in full equality, the same rights and freedoms under international and domestic law as do other persons in their country*” and “*shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.*” Principle 22(1)(d) affirms that these tenets apply to the right to political participation and specifies that: “*Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right.*” To give effect to this right, Principle 22(1)(a) affirms the “*rights to freedom of thought, conscience, religion or belief, opinion and expression*” and Principle 22(1)(c) provides for the “*right to associate freely and to participate equally in community affairs.*” Finally, Principle 29(1) reaffirms the right of IDPs: “*to participate fully and equally in public affairs at all levels also upon their return or their resettlement*”.¹⁰⁹ Both, IDPs living in camp and non-camp situations, are thus equally entitled to the right to political participation, specifically right to vote, to participate in public affairs, and to freedom of assembly. Importantly, these rights apply regardless of whether IDPs choose to return to their areas of origin, integrate locally, or resettle elsewhere in the country.¹¹⁰

3.2. European regime of human rights protection

As has been indicated above, regional instruments play an important role in transposing universal standards of IDP electoral rights protection into the context of regional human rights regimes. At the regional levels, the standards are often complemented and consequently provide in some cases more explicit protection of IDPs’ voting rights. In Europe, the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) obliges state parties in Article 3 to: “*undertake to hold free elections at reasonable intervals by*

¹⁰⁸ Walter Kälin, ‘The Role of the Guiding Principles on Internal Displacement’ [2005] *Forced Migration Review* 8; See Phil Orchard, ‘Protection of Internally Displaced Persons: Soft Law as a Norm-Generating Mechanism’ (2010) 36 *281*.

¹⁰⁹ See Kälin, ‘Guiding Principles on Internal Displacement: Annotations’ (2008).

¹¹⁰ Mooney and Grace (2007) 2.

secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".¹¹¹ Although this provision seems only to guarantee holding of free elections rather than an individual right to political participation, the case law of the European Commission on Human Rights and the European Court of Human Rights, particularly in *Mathieu-Mohin and Clerfayt v Belgium*, have interpreted this language as implying the principle of universal and equal suffrage, namely the right to vote and the right to stand for election.¹¹² However, Goodwin-Gill argues that the failure to explicitly express an individual right can, by implication, have serious consequences with regard to the enforcement. Since the language in Article 3 lies in the expressions "*free*", "*reasonable intervals*", "*secret ballot*", and "*free expression of the people*", the article itself does not prescribe any particular form or system for elections. Hence, the state parties are free to qualify exercise of the right to vote or related freedoms unless the conditions curtail the rights in question to such an extent as to impair their very existence and deprive them of their effectiveness.¹¹³ Subsequent decisions by the Commission and the Court have, nonetheless, been consistent with the judgement in the case of *Mathieu-Mohin and Clerfayt v Belgium*.¹¹⁴

The provision of the First Protocol and the ECHR case law have been endorsed and further specified by some non-binding statements of CoE bodies. The 2005 Resolution of the Parliamentary Assembly of the Council of Europe requires member states to: "*grant electoral rights to all their citizens (nationals), without imposing residency requirements.*"¹¹⁵ This resolution aims to grant the right to vote to the largest group of voters possible even though it primarily addresses resident non-nationals and expatriates. Hence, it addresses also obstacles that IDPs face in terms of residency requirements and timely registration.¹¹⁶ The Council of Europe Committee of Ministers affirmed in 2006 that: "*Member states should take appropriate legal and practical measures to enable internally displaced persons to effectively exercise their*

¹¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

¹¹² European Court of Human Rights, *Mathieu-Mohin and Clerfayt v Belgium*, Application 9267/81 2 March 1987.

¹¹³ Goodwin-Gill (2006) 103-104; See *Handyside v United Kingdom* (1976) Series A no 24 para 52.

¹¹⁴ Compare with Directorate of Human Rights Council of Europe *Yearbook of the European Convention on Human Rights: The European Commission and European Court of Human Rights* (Martinus Nijhoff 1962) 265-268; Note that the European Commission of Human Rights was abolished by the Protocol 11 to the Convention in 1998.

¹¹⁵ PACE Resolution 1459(2005), Abolition of restrictions on the right to vote, 24 June 2005.

¹¹⁶ Council of Europe, 'Enhancing the National Legal Framework in Ukraine for Protecting the Human Rights of Internally Displaced Persons' (2016) 92.

*right to vote in national, regional or local elections and to ensure that this right is not infringed by obstacles of a practical nature”.*¹¹⁷

Again with regard to the situation of IDPs, the Parliamentary Assembly of the Council of Europe recommended the Committee of Ministers in 2009 to: “*Ensure that IDPs can exercise their right to participate in public affairs at all levels, including their right to vote or stand for election, which may require special measures such as IDP voter registration drives, or absentee ballots*”.¹¹⁸ In 2012, the Parliamentary Assembly addressed indirectly difficulties that IDPs face during registration and encouraged relevant electoral authorities in member states through another Resolution to: “*draw up electoral registers in such a way as to ensure that as many voters as possible register. First-time registration should be automatic, electoral registers should be permanent and recourse to supplementary lists exceptional*”.¹¹⁹ The Venice Commission, an advisory body of the Council of Europe, addressed this issue in a widely respected *Code of Good Practice in Electoral Matters* which provides guidelines, among other issues, on matters regarding electoral participation of IDPs. In particular, the Venice Commission provides that: “*The freedom of movement of citizens within the country, together with their right to return at any time, is one of the fundamental rights necessary for truly democratic elections. If persons, in exceptional cases, have been displaced against their will, they should, provisionally, have the possibility of being considered as resident at their former place of residence*”.¹²⁰

The Organization for Security and Cooperation in Europe (OSCE) creates certain political commitments on its member states through OSCE human dimension mechanisms. Of particular importance is the 1990 Copenhagen Document which provides that the participating states: “*Declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government*”. The OSCE states have undertaken to “*Respect the rights of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes*”¹²¹ and “*To ensure that the will of the people serves as the basis of the authority of government, the participating States will guarantee universal and equal suffrage to adult*

¹¹⁷ Council of Europe, Recommendation adopted by the Committee of Ministers on Apr. 5 (2006) para 9.

¹¹⁸ Parliamentary Assembly, Recommendation 1877, *Europe’s forgotten people: protecting the human rights of long-term displaced persons* (2009).

¹¹⁹ PACE Resolution 1897(2012), Ensuring greater democracy in elections, 3 October 2012, para. 8.1.1.

¹²⁰ The Venice Commission, *Code of Good Practice in Electoral Matters* (2003) 15.

¹²¹ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) para 6.

citizens".¹²² Signatories commit themselves to allow election observation missions, organized by OSCE/ODIHR, to monitor the compliance of electoral process with the Copenhagen criteria.¹²³

Regarding electoral participation rights of IDPs in particular, OSCE underscored in 2002 that "*It should be a matter of special scrutiny whether IDPs can freely exercise their right to vote*"¹²⁴ and in 2004 recommended that the member states "*Ensure special attention to the voting rights of IDPs in the OSCE's election observation work, monitoring IDPs' ability to vote and promoting reforms to ensure the full exercise of their right to political participation*".¹²⁵ Importantly, OSCE states have also committed themselves to "*Take into account the UN Guiding Principles on Internal Displacement as a useful framework for the work of the OSCE and the endeavours of participating states in dealing with internal displacement*".¹²⁶ Thus, many OSCE countries have incorporated the Guiding Principles into their domestic frameworks for addressing the situation of electoral participation by IDPs.¹²⁷

3.3. International standards applicable to Ukraine

With regard to the case study of this research, Ukraine is a state party to all abovementioned international law treaties and as such is obliged to comply with their provisions concerning voting rights in general, and with specific provisions (indirectly) addressing IDPs in particular. In practice, Ukraine is in accordance with ICCPR obliged to guarantee that IDPs have equal electoral participation rights as other eligible citizens of the state without any distinctions. Regarding IDPs indirectly, only reasonable restrictions on eligibility to vote are allowed and, according to the authorized interpretation of the Covenant, these do not include restrictions based on lacking fixed residence. Moreover, the general obligations require that states not only guarantee but also actively facilitate practical realization of electoral rights. For this purpose, effective measures addressing specifically vulnerable groups must ensure that IDPs, just as every eligible citizen, are able to exercise their right to vote in practice. This non-discriminatory

¹²² *ibid* para 7(3).

¹²³ Grace (2003) 15.

¹²⁴ OSCE Final Report, *Supplementary Human Dimension Meeting on Migration and Internal Displacement* (2000) 5.

¹²⁵ OSCE Supplementary Human Dimension Meeting, Final Report, *Internally Displaced Persons* (2004)

¹²⁶ OSCE Ministerial Council, *Decision No. 4/03: Tolerance and Discrimination* (2003)

¹²⁷ Erin Mooney and Balkees Jarrah, 'Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region' (2005) 4 *Ethnopolitics* 34-35.

dimension of the right to vote is further reflected in the subsequent international binding instruments to which is Ukraine signatory as well. Importantly, These provide additional protection to the groups that are often disproportionately represented in IDP populations, namely women, racial and ethnic minorities and persons with disabilities. Although providing sufficient basis for IDP electoral participation at the general level, the universal binding instruments lack provisions explicitly addressing IDPs as a significant vulnerable group. This deficiency is partly addressed through Guiding Principles on Internal Displacement which constitute a non-binding instrument specifying states' obligations concerning IDP electoral participation derived from binding international treaty law. This document serves for Ukraine, as well as for other countries, as a guiding tool on implementation of voting rights in the context of IDP electoral participation.

At the regional level, Ukraine is a signatory to the ECHR and is also an OSCE participating state. On these grounds, Ukraine is bound by all commitments that have been discussed in the previous section on European regime of human rights protection. Concerning the right to vote, Ukraine ratified the First Protocol to the European Convention and thus, according to the case law of the Court, is directly obliged to guarantee the universal and equal right to vote of all eligible citizens. This legally binding obligation is reaffirmed in a series of non-binding documents and statements of political nature expressing the commitment of states to comply with the relevant provisions of international law. Additionally, these "soft law" instruments existing within both CoE and OSCE also contain provisions emphasizing states' obligation to pay special attention to the IDP electoral participation calling states to take active measures ensuring full IDP enfranchisement. Finally, an important link between universal and regional instruments has been made by an explicit recommendation of the OSCE for its participating states to follow and incorporate into domestic legislation the UN Guiding Principles on Internal Displacement. However, Ukraine has not followed this recommendation and the provisions of the Guiding Principles are not directly incorporated into its domestic legal framework.

To conclude, this chapter has provided a comprehensive overview of relevant universal and regional instruments which set international standards for the right to vote which must be guaranteed on the universal and equal basis for every eligible citizen. Although explicit references to IDP voting rights are missing, general provisions ensure that IDPs are covered by commitments deduced from international treaty law. Despite the lack of binding provisions addressing IDPs specifically, there is a growing body of non-binding instruments based on international treaty law underscoring states' obligations not only to guarantee IDP voting rights

but also to adopt active measures for integration of IDPs into domestic electoral processes. As has been pointed out above, Ukraine as a state party to all mentioned binding instruments is obliged to guarantee IDPs the same voting rights as other citizens of the state. In the following chapter, I will examine how international instruments setting standards for IDP electoral participation were implemented in Ukraine's elections.

4. Case study of Ukraine

In this chapter, I will analyse three electoral processes that took place in the recent years in Ukraine. These are namely 2014 presidential election, 2014 parliamentary elections and 2015 local elections. The analysis focuses primarily on the legal aspects of election environment in respect to IDP electoral participation. For the analytical purposes, I will follow the assessment framework identifying relevant issue areas based on international best practices and recommendations as discussed in chapter 2. In the final part of this chapter, I will summarize findings of the analyses and put them into comparison reflecting differences and similarities of analysed elections in the view of IDP electoral participation. Based on this, the second research question will be answered.

4.1. Context of IDP situation in Ukraine

The political crisis in Ukraine started in 2013 and escalated into violence during the Maidan revolution resulting in removal of the Ukrainian president Yanukovich from the office. These events set off a chain reaction of consequences starting with a so called referendum on the Crimean Peninsula, annexed by Russia later that year, and unfolding further into conflict and violence in the Eastern Ukraine where similar referenda took place followed by counter-insurgency operations of the Ukrainian government. These events created challenging security environment which seriously affected everyday lives of Ukrainian citizens in some regions of the country. As a result, large numbers of people were forced to flee these areas as they faced imminent security risks either due to ongoing armed conflict or threats of persecution. Nevertheless, only a fraction of all displaced persons sought exile abroad since the localized character of the conflict allowed them to find refuge in other areas of Ukraine.¹²⁸ Majority of people displaced by the conflict in Ukraine thus qualified as IDPs according to the international definition set by the UN Guiding Principles on Internal Displacement.¹²⁹

In the first wave of displacement prior the early presidential elections organized on 25 May 2014, mainly Crimean IDPs came as a result of Russian intervention in Crimea which was annexed on 18 March 2014. As of 20 May, around 10 000 IDPs originally from Crimea were

¹²⁸ See David R Marples, *Ukraine in Conflict: An Analytical Chronicle* (E-International Relations Publishing 2017).

¹²⁹ See chapter 1

estimated to be internally displaced in Ukraine but the numbers were rising steadily.¹³⁰ However, the main flow of IDPs was yet to come from the Eastern regions of Donetsk and Luhansk where the situation was gradually deteriorating since April 2014 as the Ukrainian government started losing control of large areas seized by separatists. The very first wave of around a thousand of IDPs from Eastern Ukraine began to arrive shortly before the scheduled presidential election in 2014. This trend accelerated due to government's offensive in the East over the following two months after the election and culminated at the end of August 2014 with number of IDPs from Donetsk and Luhansk exceeding 200 000 people.¹³¹ Although the First Minsk Agreement signed in early September promised improvements of security situation and decreasing IDP population, the hopes did not materialize. At the time of the early parliamentary elections on 26 October 2014 the number of IDPs was reported to having reached 417 200 people which was a significant increase in comparison to the previous presidential election with around 10 000 IDPs reported.¹³²

At the turn of the year, the situation culminated as 823 000 persons were registered as IDPs. This steep raise was allegedly caused by government resolution stipulating that state social payments and pensions are available only for those citizens of occupied areas who seek refuge in Ukraine and register as IDPs in areas under government control. Consequently, almost three-thirds of all 978 321 registered IDPs were pensioners at the beginning of February 2015 after fighting again intensified in late January.¹³³ In mid-February 2015 Second Minsk Agreement was achieved and after rounds of negotiations resulted in a ceasefire in Eastern Ukraine implemented on 1 September 2015. Although the security situation improved, tensions in the East remained high and the number of IDPs was therefore still constantly increasing. Shortly before the local elections of 2015, 1 500 000 IDPs were registered in Ukraine.¹³⁴ Such a significant number of IDPs created challenging conditions under which a series of crucial elections was going to take place. Concerns were raised regarding possible difficulties related to participation of such a substantial portion of Ukrainian citizens displaced out of their homes.

¹³⁰ UNHCR, 'UNHCR Says Internal Displacement Rising in Ukraine' (2014) <<http://www.unhcr.org/news/briefing/2014/5/537b31b49/unhcr-says-internal-displacement-rising-ukraine.html>> accessed 8 July 2017.

¹³¹ UNHCR, 'Profiling and Needs Assessment of Internally Displaced Persons (IDPs) 18 August 2014' (2014).

¹³² UNHCR, 'Profiling and Needs Assessment of Internally Displaced Persons (IDPs) 17 October 2014' (2014).

¹³³ UNHCHR, 'Ukraine Situation UNHCR Operational Update 31 December 2014' (2014) 2; UNHCR, 'Ukraine Situation UNHCR Operational Update 6 February 2015' (2015) 1.

¹³⁴ UNHCR, 'Ukraine Situation UNHCR Operational Update 8 September - 6 October 2015' (2015).

The following parts seek to assess how successfully IDP voting rights were implemented in Ukraine's elections.

4.2. Early presidential election in 2014

On 25 May 2014, the scheduled early presidential election took place amid dynamically changing political-security environment resulting in movements of large numbers of people. In the initial phase at the beginning of the year, this concerned mainly Ukrainian citizens fleeing Crimea. Later during the period leading up to the presidential election, an increasing number of IDPs coming from the Eastern Ukraine started flowing into other parts of the country. Over this period, the general legal framework did not provide for any IDP-explicit laws creating official legal status of IDP and addressing IDP electoral participation. IDP electoral rights were thus protected by general provisions of the Constitution guaranteeing IDPs the same voting rights as other state citizens. In this respect, protection of electoral participation rights complied fully with Ukraine's international commitments which were incorporated into the domestic legal framework on the basis of Article 9 of the Constitution.¹³⁵ For presidential elections, Ukraine uses a two rounds majoritarian system with the second round election held if no candidate wins more than 50 per cent of the votes cast in the first round. This countrywide electoral district system was generally conducive to IDP electoral participation. Since the winning candidate won in the first round, there were no difficulties for IDPs related to the possible second round of the election.¹³⁶

As a general rule based on a law *On state voters' registration*, voters were at the time of elections normally entitled to vote at the polling station located in the area in which voter is registered in the voter register, typically corresponding to his or her place of permanent residence. If any voter, including IDPs, wished to vote at a different polling station than prescribed in the voter register without changing his or her permanent residency, the voter could apply for a temporary change of place of voting at a voter register office in any part of the country. The application had to be submitted no later than five days before the polling day and had to contain documentation providing evidence for the attested reason of the temporary

¹³⁵ Tymchenko, Leonid. "International Legal Norms in the System of the Ukrainian Constitution." *Baltic Yearbook of International Law Online* 15.1 (2016); Council of Europe, 'Enhancing the National Legal Framework in Ukraine for Protecting the Human Rights of Internally Displaced Persons' (2016) 92-93.

¹³⁶ Brian Mefford, 'IDP Electoral Obstacles & Solutions in Ukraine - Brian Mefford' <<http://www.brianmefford.net/idp-electoral-obstacles-solutions-in-ukraine/>> accessed 4 July 2017.

change of voting address. This documentation could be a certificate from an educational institution, a letter from employer, copies of property rights, a round-trip travel document or rent rights for accommodation located in the place in which voter wishes to vote. This provision is a residue of the former *propiska* system and as such impedes the procedure of changing the place of voting as it requires additional documentation. It was unlikely that IDPs were able to obtain these documents prior to their displacement or thereafter which required them to travel back to the areas of origin.¹³⁷ Another shortcoming of this law was the fact that it did not directly provide for the procedure which was regulated by a bylaw of the central electoral commission (CEC). As a result, CEC and other authorities were not obliged to disclose details on the number of voters who applied for this option and succeeded to have their voting address temporarily changed which reduced the integrity of the IDP voting process.¹³⁸

Additionally, the situation in the Crimean Peninsula brought about a legislative initiative in the Parliament of Ukraine seeking to adopt new legislation prior to the election which would facilitate access to the polls for Ukrainian citizens fleeing Crimea, who qualified as de facto IDPs, although no such a legal category existed in Ukrainian law. On 15 April, only five weeks before the election day, this initiative transformed into a new *Law on Ensuring the Rights and Freedoms of Citizens and the Legal Order on the Temporary Occupied Territory of Ukraine*. This law stated that no elections would be held in Crimea during occupation, affirmed all constitutional rights and freedoms, including voting rights, of Ukrainian citizens residing in Crimea, and provided for a legal framework regulating provisions for aggrieved citizens concerning their social benefits, property rights, replacement of identity documentation, voter registration and temporary residence out of Crimea. In addition, CEC resolution adopted on 29 April simplified for Crimean IDPs the procedure of changing voter registration records. This clearly represents a legal discrimination against IDPs fleeing Eastern Ukraine who were given lesser protection and assistance in terms of realization of their voting rights.¹³⁹

Based on the abovementioned measures, Ukrainian citizens fleeing Crimea could apply for a temporary change of place of voting at the voter register office on the same basis as other citizens according to the law *On state voters' registration*. However, unlike regular applicants,

¹³⁷ See chapter 2.1.

¹³⁸ European Platform for Democratic Elections, 'Final Reports of EPDE Election Experts on the Presidential Elections in Ukraine 25 May 2014' (2014) 7.

¹³⁹ Dorota Woroniecka-Krzyzanowska and Nika Palaguta, 'Internally Displaced Persons and Elections under Military Conflict in Ukraine' (2016) 30 *Journal of Refugee Studies* 33-37; OSCE/ODIHR, 'Ukraine, Early Presidential Election 25 May 2014' (2014) 7-8.

applying persons with permanent residency in Crimea did not need any certificate of necessity but only a valid national identity card. The applicants had to apply again no later than five days before the election day. Noticeably, this timeframe did not allow to vote those persons internally displaced from Crimea, as well as those starting to flee Eastern Ukraine, later than five days before elections.¹⁴⁰ In general, this mechanism proved burdensome for IDPs residing in areas out of government control since they had to make two out-of-region trips in order to register and vote. That entailed travel, financial expenses and security risks. Moreover, the extremely tight timelines and other operational issues before the election day affected the procedure of IDP voting in a few ways. Firstly, electoral administration staff seemed to have very differing levels of training in the abovementioned procedures depending on different regions. In some of the areas especially members of the precinct-level election committees proved to be insufficiently trained in procedures regulating voting of Crimean IDPs. Some IDPs encountered difficulties while filing applications at the voter register office in Kiev where long lines were observed due to issues with equipment, namely lacking computer hardware and other computer-related problems. In some cases, IDPs were rejected to file an application on the last day of the five-day period prior to the election day and were redirected to file a complaint at local courts which eventually impeded their chances to vote.¹⁴¹

In general, one of the causes of the issues mentioned above was the lack of comprehensive IDP-specific electoral laws and the absence of a national authority established for the purposes of dealing with IDP-related electoral issues. This was, in overall, consequence of the extremely shortened timeframe given by the nature of early elections and the dynamic IDP situation. All of these facts left a negative mark also on general IDP voter information. In particular, voter education in terms of IDP electoral participation was found insufficient concerning both the regular procedure of obtaining temporary voting address, utilised by IDPs from Eastern Ukraine, and the parallel procedure adjusted for needs of IDPs from Crimea. In the latter case, voter education was especially needed considering the fact that the new measures were adopted only shortly before the election. On top of that, all official materials were provided only in Ukrainian language which could possibly impeded access of some Russian speaking IDPs, although no such cases were reported. As a result of lacking voter education, the number of IDPs that applied and acquired the temporary voting address and cast their ballots was very

¹⁴⁰ OSCE/ODIHR, 'Ukraine, Early Presidential Election 25 May 2014' (2014) 8; CANEOM (2014) 16-17.

¹⁴¹ CANEOM, 'Ukraine 2014 Presidential Election Observation Mission CANEOM Final Report' (2014) 15-17; ENEMO, 'Ukraine Early Presidential Elections 25 May 2014 Final Report' (2014) 9-11.

low.¹⁴² Finally, those IDPs who were displaced within the broader areas of their origin in Eastern Ukraine and the Crimean Peninsula were de facto disenfranchised due to the absence of polling stations. While in Crimea no polling stations were opened due to the law adopted by the government, in Eastern Ukraine polling stations were being forcibly closed by armed militants whose activities posed a security threat on IDPs willing to vote.¹⁴³

4.3. Early parliamentary elections in 2014

The IDP situation during the early parliamentary elections of 26 October 2014 differed dramatically from the previous presidential election. Most importantly, the total number of IDPs raised over this period substantially as the conflict in Eastern Ukraine escalated. This was reflected in the national debate about legal, institutional and policy responses the state should adopt in order to address this issue which in the meantime became also a subject of political campaign. On 20 October, only six days before the election day, new comprehensive national law on IDPs was finally adopted under the name *On Ensuring Rights and Freedoms of Internally Displaced Persons*. Nonetheless, the newly adopted law, which also created legal category of IDPs, came into force only a month later after its adoption and therefore brought no legal changes for IDPs during this parliamentary election.¹⁴⁴ IDP voting rights thus remained protected by the general constitutional provisions incorporating relevant international standards as mentioned above. The electoral system is characterized as a mixed proportional-majoritarian system with half of the mandates elected on the basis of proportional representation in one single nationwide constituency, and the other half elected parallelly in single-mandate electoral districts in one-round first-past-the-post majoritarian system. Every voter casts two ballots for each element of the described voting system. This system proved to be problematic in the view of IDP electoral participation for reasons described below.¹⁴⁵

Despite the continuing lack of IDP-explicit comprehensive legal framework, one significant improvement was achieved in regard to electoral participation of those IDPs fleeing Eastern Ukraine. As described above, every eligible voter was according to law entitled to apply five days prior to election for a temporary change of voting address if she or he could not vote

¹⁴² OSCE/ODIHR, 'Ukraine, Early Presidential Election 25 May 2014' (2014) 14-15, 21.

¹⁴³ Erik S Herron, Michael E Thunberg and Nazar Boyko, 'Crisis Management and Adaptation in Wartime Elections : Ukraine's 2014 Snap Presidential and Parliamentary Elections' (2015) 40 *Electoral Studies* 422.

¹⁴⁴ Annelise Albert, 'Internal Displacement in Ukraine: Where the Government Went Wrong' (University of Mississippi 2016) 17-22.

¹⁴⁵ Oxana Shevel, 'The Parliamentary Elections in Ukraine, October 2014' (2015) 39 *Electoral Studies*.

at the polling station registered in the voter list, typically in the area of his or her permanent residence. A new CEC resolution, adopted 19 days before the election day, stipulated for this matter that IDPs from Eastern Ukraine were relieved from the obligation to provide documentation justifying the request and instead are only obliged to show a valid ID under a similar simplified procedure as IDPs from Crimea.¹⁴⁶ Besides the drawbacks described above, namely the inadequate five-days deadline and the difficulties for persons displaced within the territories not under government control, this mechanism proved to be problematic in regard to the electoral system. Due to a certain discrepancy between national law and relevant CEC resolutions, IDP voters who temporarily transferred their voting address could only vote in the proportional representation nationwide district. IDPs could cast both ballots only in the exceptional case that the temporary voting address was still within the single-mandate majoritarian constituency at which the voter was permanently registered prior to displacement. In most cases, though, IDPs were given only one ballot for the proportional element of the electoral system while they were excluded from the majoritarian one. The IDP votes were always counted in the constituencies where ballots were cast and hence no absentee voting was allowed.¹⁴⁷

Since electoral authorities had in contrast to the previous election more time to adjust electoral framework to the needs of IDPs, the situation regarding operational readiness of the electoral administration improved. No major shortcomings were reported concerning insufficient staff, lacking training or material and inadequate equipment impeding IDP voting.¹⁴⁸ Other areas remained insufficiently regulated. In the first place, no national authority coordinating and communicating policies and measures aimed at facilitation of IDP electoral participation existed. With only a few regional exceptions, effective IDP voter education was lacking which probably contributed to low voter turnout among IDPs who often were not familiarized with existing registration and voter procedures. Especially affected were IDPs from Eastern Ukraine considering that CEC resolution facilitating their electoral participation was adopted only shortly before elections. Low turnout could be partly also due to the language barrier given by the official status of Ukrainian language. During the election campaign, certain irregularities occurred and might have affected some of the IDP voters who could be subjected

¹⁴⁶ European Parliament, 'Election Observation Delegation to the Parliamentary Elections in Ukraine (26 October 2014)' (2014) 7.

¹⁴⁷ CANEOM, 'Ukraine 2014 Parliamentary Election Observation Mission CANEOM Final Report' (2014) 19; Woroniecka-Krzyzanowska and Palaguta (2016) 38-39.

¹⁴⁸ CANEOM, 'Ukraine 2014 Parliamentary Election Observation Mission CANEOM Final Report' (2014) 20.

to vote-buying, distribution of aid as a part of campaign and breaches of campaign silence. Except the former Party of Regions, with traditional voter strongholds in Crimea and Eastern Ukraine, no other contesting political party focused on IDP issues during the campaign.¹⁴⁹ Security situation for IDPs in Crimea and Eastern Ukraine, as well as along the buffer zones, remained incompatible with exercising the right to vote due to imminent security risks and, in most cases, non-existing polling stations.¹⁵⁰ Finally, women, who in fact made two-thirds of all adult IDPs, faced disproportionately higher obstacles in seeking to exercise their right to vote. This was due to the fact that for women it was often difficult to travel or queue in long lines while having to care for their children at the same time.¹⁵¹

4.4. Local elections in 2015

Another round of elections followed one year later on 25 October 2015. Since the political and security situation in Crimea and Eastern Ukraine remained unchanged, large numbers of IDPs were expected to participate in the upcoming local elections. Besides Crimea, no elections took place in certain areas of Eastern Ukraine, which were declared either as temporarily occupied or insecure although remaining under government control. At this time, the adopted law on IDPs was in force and the legal framework finally provided definition of the legal category of IDP. According to the law *On Ensuring Rights and Freedoms of Internally Displaced Persons* is IDP “a citizen of Ukraine, permanently residing in Ukraine, who was forced or voluntarily left one’s residence place as a result of or in order to avoid negative impact of armed conflict, temporary occupation, situations of generalized violence, mass violations of human rights and disasters of natural or human-made origin”. Based on this law, any form of discrimination against IDPs was prohibited and the rights and freedoms of IDPs as Ukrainian citizens were confirmed. In order to register as an IDP, the applicant had to announce her or his place of residence before and after displacement. The IDP certificate was to be extended every six months should the conditions in the area of origin endure.¹⁵²

This law proved to be troublesome for IDPs in few respects. Firstly, many IDPs did not register at all as they feared that the registration data could leak to armed groups controlling the

¹⁴⁹ OSCE/ODIHR, ‘Ukraine Early Parliamentary Elections in 26 October 2014’ (2014) 13, 22, 26-27.

¹⁵⁰ National Democratic Institute, ‘Statement of the NDI Delegation to Ukraine’s 2014 Parliamentary Elections’ (2014) 5; Herron, Thunberg and Boyko (2015).

¹⁵¹ UNHCR, ‘Profiling and Needs Assessment of Internally Displaced Persons (IDPs) 17 October 2014’ (2014) 6; CANEOM, ‘Ukraine 2014 Parliamentary Election Observation Mission CANEOM Final Report’ (2014) 44-45.

¹⁵² UNHCR, ‘Ukraine Situation: UNHCR Operational Update 02 December 2014’ (2015) 3-4.

conflict areas which could possibly expose IDPs, their families or their property to imminent danger. This was coupled with a lack of information and assistance on the registration procedure.¹⁵³ Secondly, the law initially did not provide a list of areas affected by war in which IDPs had to be registered as residents prior to displacement in order to be eligible for IDP status. Although the law was later complemented by a resolution specifying concrete settlements in areas not controlled by the government, it was still insufficient due to the frequent movements of the buffer zone and the insecurity along the contact line. Thus, some IDPs found their home areas outside the list even though they fled them because of the conflict. Thirdly, the IDP status had to be renewed every six months but the law lacked clarity on whether IDPs would still qualify for the renewed status if they acquired a new permanent residency while displaced. That was relevant in respect to the electoral law, discussed below, allowing IDPs to vote only in place of their permanent residency. This provision prevented IDPs from exercising their right to vote as they feared to lose benefits linked to the IDP status.¹⁵⁴

The local elections were regulated by a new election law *On Local Elections* adopted less than four months before election day in an expedited manner without substantial public debate. The election law introduced three different electoral systems for local elections. For mayoral elections, a first-past-the-post system was used in settlements with fewer than 90 thousand voters. In cities with more voters a two-rounds absolute majority system was used. In both cases, cities and towns were always single-district constituencies with one elected mayor. For council elections, first-past-the-post system was used for electing members of very small settlements while proportional representation system was used for electing members of region, district, city and city district councils, in either ways council elections were based on multi-member constituencies divided into nomination districts. This system was improper for IDP electoral participation due to its complexity, fragmentation, ambiguity and related operational difficulties.¹⁵⁵

Although provisions of the national IDP law, as described above, guaranteed IDPs the same rights as any other citizen including voting rights in local elections, the election law did not technically provide IDPs the opportunity to cast their ballots. According to the law *On Local Elections*, only citizens registered as voters in relevant electoral districts are eligible to cast the ballot in local elections. In addition, a CEC resolution stipulated that citizens are not allowed

¹⁵³ UNHCR, 'Profiling and Needs Assessment of Internally Displaced Persons (IDPs) 17 October 2014' (2014) 4-5.

¹⁵⁴ UNHCR, 'Ukraine Situation: UNHCR Operational Update 22 May - 8 June 2015' (2015); Woroniecka-Krzyzanowska and Palaguta (2016) 34-35.

¹⁵⁵ ENEMO, 'International Election Observation Mission: Ukraine Local Elections 2015' (2015) 8-9.

to apply for temporary change of voting location without changing their permanent address for the respective location. As has been noted above, a change of permanent residency entailed a risk of losing IDP status. This measure is a legacy of the *propiska* registration system linking individual rights, such as the right to vote, to individual's approved place of residence. There was neither any possible mechanism for IDPs to cast an absentee ballot. Importantly, some of the IDPs that were denied being included into the voter list filed complaints with courts of which some found the complaint rightful and obliged relevant precinct electoral commissions (PEC) to accept an IDP certificate as a proof of registration sufficient for adding the applicants name to the voting list. However, the court decisions were inconsistent and not applicable to the second rounds of the election.¹⁵⁶

The Ombudsperson of Ukraine stressed for this matter that *“such situation violates the principle of non-discrimination, both in terms of securing the equality of rights and freedoms and the equality of possibilities, creates indirect discrimination on the grounds of place of residence and belonging to the group of IDPs, and contradicts the international law, the Constitution, the laws of Ukraine, and the commitments of Ukraine to ensure the sustainable integration of the IDPs at the place of displacement”*.¹⁵⁷ The OSCE Special Monitoring Mission to Ukraine (SMM) marked this *“as a violation of basic rights and an obstacle to building positive relations within host communities”* and noted that in many places IDPs felt they could not enjoy equal participation in the local communities which caused that political parties had no incentive to consult them and protect their rights. In an interview conducted by SMM one IDP said: *“When it comes to paying bills, mobilization and taxes, we are considered citizens of Ukraine. But when it comes to voting in the community where we reside we have been deprived of our rights”*.¹⁵⁸

¹⁵⁶ OSCE/ODIHR, 'Ukraine, Local Elections 25 October and 15 November 2015' (2016) 6, 12, 25; Council of Europe (2016) 93-94; Ganna Ianova, 'Internally Displaced Persons in Ukraine: Gaps in Law and Practice' (2016) 30-31.

¹⁵⁷ Valeria Lutkovska, 'Ukraine's Ombudsperson Calls on Parliament to Allow IDPs to Vote - News City : Human Rights Information Center Humanrights' (*Human Rights Information Centre*, 2015) <https://humanrights.org.ua/en/material/ombudsman_zaklikala_parlament_dozvoluti_pereselencjam_golosovati> accessed 7 July 2017.

¹⁵⁸ OSCE Special Monitoring Mission to Ukraine, 'Conflict-Related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities' (2016) 18-19.

4.5. Summary

The case study analysis revealed that IDP electoral participation was a problematic element of all three elections that have been examined. Following the assessment framework introduced in chapter 2, I will in this section comment on each issue area with reference to the outcome of analysis. Firstly, with regard to domestic legislation, incorporation of Ukraine's international commitments concerning electoral participation rights into the domestic legal framework was not an issue at any of the examined electoral processes. On the contrary, IDP voting rights were explicitly secured in the Ukrainian electoral legal framework only prior to local elections, while during presidential and parliamentary elections no such a legal provision existed. On the other hand, there were always legal provisions in place facilitating access of IDPs to the electoral process. Nonetheless, these provisions addressed only a portion of all IDPs in Ukraine and were introduced very shortly before elections. The short timelines then negatively impacted the electoral process from the perspective of operational planning, namely in respect to implementation of provisions and readiness of election administration. The lack of training of some electoral officers as well as insufficient equipment affected especially the presidential election. In general, in all examined electoral processes operational planning suffered from the absence of special national authority which would deal with IDP electoral participation.

Regarding electoral systems used, presidential elections took place in a nationwide single-district system with single ballot for each voter which was, compared to the remaining two elections, the most conducive one for IDP electoral participation. The parallel system used for the parliamentary elections combining proportional and majoritarian elements with voters casting two separate ballots provided mixed results. While the proportional part based on one single nationwide constituency proved conducive for IDP voting, the parallel majoritarian system with multiple single-mandate districts in most cases did not allow IDP participation as the right to vote was tied to residency. Finally, the local elections due to their complexity were the most problematic in the view of IDP participation. Since each of the three different electoral systems used for local elections required permanent residency in the place of voting, IDPs were not allowed to vote at all. Importantly, no adjustments were made in order to make any of the examined elections more accessible for IDPs.

As indicated above, some form of residency in the place of voting was a requirement on the right to vote in all three electoral elections. The least restrictive system of voter registration in this respect was introduced in the presidential elections where only temporary voting address

sufficed for being eligible to vote. A similar system of registration was applied to the proportional element of parliamentary elections, while the majoritarian element allowed to vote only those permanently residing in the place of voting. Contrarily, in order to participate in local elections permanent residency in the place of voting was necessary. Special measures mitigating documentation requirements on temporary change of voting address were adopted for presidential elections but addressed only IDPs fleeing Crimea. IDPs from Eastern Ukraine had to go through a standard procedure which demanded submission of certain types of certificate of necessity justifying the change of voting address. This proved to be difficult since IDPs had to either obtain this documentation before their displacement, or return to their areas of origin. In the proportional element of the parliamentary elections the same measure relaxing procedure for obtaining temporary voting address was introduced also for IDPs fleeing Eastern Ukraine. In both presidential as well as parliamentary elections IDPs faced nonetheless difficulties linked to the five-days deadline for application before election day which technically excluded newly arrived IDPs from voting. Concerning alternative ways of proving identity and eligibility to vote, IDPs were always obliged to present national identity card accompanied with either one of the documents of necessity or a “IDP” card firstly issued only for Crimean IDPs, later extended to those from Eastern Ukraine as described earlier. In overall, the omission of IDPs from Eastern Ukraine during the presidential elections amounted to discrimination of a particular group within IDP population although this group was yet not very large at the time of elections.

In relation to residency and documentation requirements, IDPs were allowed to choose their constituency of voting once they obtained temporary voting address which was possible only for presidential elections and proportional elements of parliamentary elections. In these cases, the votes were always counted only in the constituency where the ballot was cast. If a voter wished to participate in the majoritarian part of parliamentary elections or in local election she or he had to first obtain permanent residency in the place of voting which proved to be both administratively difficult and risky in terms of retaining the IDP status. In none of the examined elections neither absentee voting in person nor postal voting was allowed. There were no major electoral integrity issues related to IDP voting. When eligible to vote, IDPs always cast regular ballots and secrecy of their votes was not compromised. Likewise, IDP enfranchisement neither affected equality of votes nor led to electoral manipulation since the election environment ensured relatively fair electoral processes. IDPs had access to complaint and appeal

mechanisms and in few cases succeeded with a complaint to the court due to their disenfranchisement during the first round of the local elections.

During all three elections, there was a lack of voter education on relevant procedures and existing provisions facilitating IDP voting. Except parliamentary elections, political parties did not pay attention to IDP issues and did not make significant efforts in addressing IDP voters during election campaign. On a limited scale, IDP electoral participation could be aggravated by use of only Ukrainian language in all aspects of elections. In the view of security, the overall situation in most regions of the country allowed IDP electoral participation. Those IDPs displaced within the areas that were not under government control or along the contact line were exposed to risks if they sought to exercise their right to vote in areas where polling was, at least partly, ongoing. This concerned voting during presidential and parliamentary elections in Eastern Ukraine. Mostly, there were no accessible polling stations or no polling stations at all in areas out of government control.

In this chapter, I have provided an analysis of the case study of Ukraine in the view of electoral participation of IDPs. In the three analytical parts dealing with recent electoral processes in Ukraine I have followed the assessment framework created in chapter 2 and gathered relevant information which provides answer to the second research question formulated in chapter 1. In the following chapter, I will proceed to the final part of the research utilising findings I have achieved in this and the previous part of the thesis.

5. IDP electoral participation in Ukraine's elections in the view of international standards

In the following lines, I will discuss conclusions of the previous chapter from the perspective of relevant international standards of IDP electoral participation. To this end, this chapter will be referring to the findings made throughout the whole thesis, regarding particularly international standards of IDP electoral participation applicable to Ukraine as discussed in chapter 3. This chapter will make final remarks on IDP electoral participation in the context of Ukraine and will answer the last research question of this study providing an assessment of Ukraine's ability to live up to its international commitments regarding voting rights of IDPs.

In light of the examined electoral processes, Ukraine clearly failed to comply with general provisions of its international commitments providing for equal and universal suffrage. The fact that the absolute majority of IDPs were disenfranchised during the majoritarian part of parliamentary elections as well as during local elections amounts to violation of Article 25 of ICCPR which requires that all eligible citizens have the right and the opportunity to vote. Likewise, this situation was inconsistent with Ukraine's commitments stemming from the 1990 OSCE Copenhagen Document and stipulated by article 3 of the First Protocol to the ECHR. Although IDPs formally had during the examined elections the right to vote guaranteed by constitution and relevant laws, in fact they could not exercise this right due to the situation of their displacement which deprived them of the opportunity to vote. In this case, the state failed to follow Human Rights Committee's General Comment interpreting realization of the opportunity to vote as to take effective measures that would facilitate ability of IDP voters to exercise their right to vote despite possible legal or other impediments. For the Council of Europe, the Committee of Ministers affirmed that states should adopt legal and practical measures to enable IDPs to exercise their right to vote in all types of elections without any practical obstacles. In the view of this, Ukraine failed to take account of the specific difficulties that IDPs faced, such as possible language barriers, impediments to freedom of movement preventing IDPs from voting, and inadequate voter information. Although disenfranchisement may be justified on reasonable grounds, the sole status of internal displacement resulting in lacking fixed residency in the place of voting arguably does not provide justifiable reason as the Human Rights Committee noted for the situation of homelessness. Thus, inability of Ukraine to adjust its legal framework in such a way that would enable IDPs to register as voters

caused IDP disenfranchisement on grounds of lacking permanent residency in the voting area of displacement.¹⁵⁹

Regarding the principle of non-discrimination enshrined in ICCPR, Article 25 stipulates that the right to vote must be guaranteed to all eligible citizens without distinctions mentioned in Article 2. Although there is no mention of discrimination based on the status of IDP, Article 2 recognizes the term “other status” which, if interpreted broadly in accordance with UN Guiding Principles on Internal Displacement, entails the situation of internal displacement. Following this line, by leaving IDPs disenfranchised, Ukraine also violated ICCPR Article 2 since the lack of adequate legal provisions allowing IDPs to vote created distinction between “regular” eligible citizens and those who were against their will forcibly displaced from places of their residence. The latter group was deprived of the right to vote based on its status of internal displacement which required additional efforts of IDPs in order to be able to exercise their right to vote. This effectively impeded or even prevented opportunity of IDPs to vote and discriminated them vis á vis other eligible citizens. Based on similar grounds, different legal conditions that existed during the presidential election created a distinction within IDP population. While there were legal provisions facilitating electoral participation of IDPs from Crimea, those IDPs fleeing Eastern Ukraine were left disadvantaged in terms of their ability to register as voters since they had to fulfil same requirements as other citizens which proved to be difficult due to their displacement. Apparently, this legal distinction was another case of discrimination, this time against one particular group within IDP population, namely IDPs from Eastern Ukraine.¹⁶⁰

Besides general provisions of ICCPR providing for equal and universal voting rights as well as for the principle of non-discrimination in exercising the right to vote, Ukraine was during the examined elections confronted with its commitments stemming from other international treaties with universal scope. These are namely CPRW and CEDAW obliging Ukraine to guarantee voting rights for women on equal terms with men. This proved to be problematic as some reports showed that eligible female IDPs, who made up significant portion of all IDPs, encountered worsened access to electoral procedures due to their specific status. Since CEDAW obliges states not only to guarantee equal rights but additionally to adopt all appropriate measures in order to achieve this goal, Ukraine fell short of fulfilling this provision as there were no special measures adopted aiming to facilitate female IDPs in their access in

¹⁵⁹ See chapter 3

¹⁶⁰ *ibid*

exercising the right to vote.¹⁶¹ Another international treaty that was relevant for IDP electoral participation in Ukraine's elections was CERD on whose basis is Ukraine forbidden to discriminate against ethnic or national minorities, particularly in their enjoyment of the right to vote. Since in both regions from where IDPs were fleeing predominated either Russian element in terms of language or ethnicity, or alternatively Crimean Tatars in case of Crimea, majority of disenfranchised IDPs belonged to ethnic or national minorities (as they perceived themselves or were perceived in other regions of the country).¹⁶² Thus, although minorities were not affected specifically as ethnic Ukrainians represented significant portion of IDPs as well, the disproportionate impact of IDP disenfranchisement on ethnic or national minorities was apparent.¹⁶³

Other non-binding instruments provide Ukraine with guidelines on how to effectively implement its international treaty law obligations regarding universal and equal suffrage and specify how to guarantee voting rights for vulnerable groups that are not explicitly addressed by any binding treaty. In light of the UN Guiding Principles on Internal Displacement, Ukraine is in line with its abovementioned international commitments exhorted to ensure that IDPs enjoy in full equality the right to vote as other eligible citizens without discrimination on the grounds of internal displacement. According to the Guiding Principles, this includes the right to have access to the means necessary to exercise the right to vote which undoubtedly was one of the obstacles that IDPs faced in Ukraine's elections. In particular, this involved excessive documentation required for IDPs to vote which was additionally difficult to obtain in due time and without security risks related to the travel back to their home areas. Although Ukraine as an OSCE participating state agreed within the Ministerial Council in 2003 that Guiding Principles are a useful tool in dealing with IDPs, the Principles were never directly incorporated into Ukraine's domestic legal framework as was the case of some other OSCE states.¹⁶⁴ Regarding non-binding standards for IDP electoral participation set by the Council of Europe, Ukraine did not follow a recommendation of the CoE Parliamentary Assembly urging states to ensure that IDPs can exercise their right to vote through special measures such as IDP voter registration drives and absentee ballots. Although some special measures mitigating

¹⁶¹ OSCE Special Monitoring Mission to Ukraine, 'Gender Dimensions of SMM's Monitoring: One Year of Progress' (2015) 8-9.

¹⁶² Agnieszka Pikulicka-Wilczewska and Greta Uehling, *Migration and the Ukraine Crisis: A Two-Country Perspective* (E-International Relations Publishing 2017) 49-61.

¹⁶³ See chapter 3

¹⁶⁴ Thomas George Weiss and David A Korn, *Internal Displacement: Conceptualization and Its Consequences* (2006) 114.

requirements on IDP voter registration in the area of displacement were adopted during presidential and partly during parliamentary elections, Ukraine did not introduce any of the measures recommended by the Parliamentary Assembly.

On the whole, international instruments setting standards for IDP electoral participation proved to be ineffective in ensuring IDP voting rights in Ukraine's elections examined in this study. Although the relevant international instruments provided workable framework which, if followed, was sufficient for IDP enfranchisement, Ukraine failed to fully implement its international commitments on the ground. The causes behind this were partly accidental since the situation that Ukraine faced was challenging, especially in its initial phase preceding the first electoral process. During the presidential election, the state proved some capability to cope with the situation of IDPs fleeing Crimea for whom some voting procedures were relaxed. The apparent drawback of this measure was that it addressed exclusively Crimean IDPs while IDPs from Eastern Ukraine had to go through standard procedure which was burdensome to such an extent that these IDPs were eventually disenfranchised and *de jure* discriminated vis á vis Crimean IDPs. The presidential election was also simpler to manage in this regard as the electoral system used was generally conducive to IDP voting.

Electoral system played a more problematic role in IDP voting during the next electoral process, the parliamentary elections. Prior to this election, Ukraine had sufficient time to adjust the electoral framework to the influx of IDPs from different parts of the country, but aside from relaxing voting procedures for IDPs from Eastern Ukraine on the equal terms as for IDPs from Crimea, the state did not undertake any systematic legal steps aiming at full integration of IDPs into the electoral process. As a result, IDPs were excluded from the majoritarian part of the parliamentary elections which demanded stricter residency requirements in the place of voting. This situation constituted disenfranchisement on the basis of electoral system and residency requirements. Finally, the *de facto* blank disenfranchisement of all IDPs based on lacking permanent residency in the place of voting during the local elections amounted to the most serious breach of Ukraine's international commitments regarding the right to vote.

This chapter built upon outcomes of the previous parts of this thesis and provided an analysis of electoral participation of IDPs in Ukraine's elections from the perspective of relevant international standards. It found that international commitments obliging Ukraine to guarantee equal and universal suffrage without discrimination were not completely fulfilled in terms of IDP voting rights. Although the situation varied considering different electoral processes, in overall IDPs had dramatically reduced opportunity to exercise their internationally

guaranteed right to vote. Regarding the last research question of this thesis, the findings made throughout this research show that the main challenge to IDP enfranchisement in Ukraine in the view of international standard was the lack of fulfilment of general provisions guaranteeing the right to vote. This affected specifically eligible voters among IDPs, disproportionately women, who as a vulnerable group faced additional obstacles to exercise their right to vote, often resulting in their disenfranchisement as has been illustrated in the previous chapters. Hence, there is a need of more attention to this issue which could be raised through explicit notions emphasizing that general provisions of international law providing for the universal right to vote fully apply to IDPs. Such provisions should be binding on states and regulate all aspects of IDP electoral participation, including voter education, specific recommendations on how to overcome commonplace obstacles as well as other relevant issues.

6. Conclusion

The thesis dealt with electoral participation of IDPs in the context of the case study of Ukraine. The focus was put on the perspective of international instruments setting standards for IDP electoral participation and their applicability on the ground. Throughout this thesis, this issue was approached from three respects. Firstly, the existing literature on IDP electoral participation was reviewed in order to comprehend the context of IDPs and elections. In this part, the thesis examined the normative framework of IDP electoral participation and provided theoretical reasons in favour of full integration of IDPs into electoral process. As this part demonstrated, IDP electoral participation is an important aspect of elections since it contributes to the quality of democracy and durable peace. Nonetheless, the analysis showed that there is a significant tension between theoretical claims and practical implementation of the IDP voting rights. In reality, IDPs often face a number of practical obstacles such as residency requirements, documentation issues, insecurity or a lack of access to voting procedures. As a result, IDPs frequently end up disenfranchised and further marginalized. This challenge is reflected in existing international best practices and recommendations addressing particular issues and providing useful guidelines. On this basis, the first chapter provided an assessment framework identifying main issue areas of IDP electoral participation useful for the purposes of analysis of the case study of Ukraine in the following parts.

In the second part of this thesis, relevant international standards of IDP electoral participation were identified and discussed in respect to universal instruments within the United Nations system as well as those instruments with regional scope, existing particularly within the European regime of human rights protection which is relevant for Ukraine. Based on this overview, binding international law provisions setting general standards for the right to vote were identified and put into the context of Ukraine's binding commitments. Besides that, this chapter also discussed some important non-binding instruments setting forth standards for IDP electoral participation deduced from general provisions of international treaty law. This chapter concluded that for Ukraine, obligations regarding the right to vote are set for in ICCPR as well as in other treaties providing for additional protection of vulnerable groups. On the European level, Ukraine is obliged to guarantee the right to vote on the basis of ECHR as well as through its membership in the OSCE. Moreover, a number of "soft law" instruments puts Ukraine's obligations into the context of IDP electoral participation.

The third chapter provided an analysis of three electoral processes held in Ukraine during the examined period. The analysis followed the assessment framework created in chapter 2 and identified the main obstacles that IDPs faced in Ukraine's elections. This chapter revealed that situation of IDPs differed depending on the particular electoral process at hand. The presidential elections proved to be the less problematic as the used electoral system coupled with government measures enhancing IDP voting allowed participation of IDPs from Crimea. Nonetheless the main shortcoming was the fact that IDPs from Eastern Ukraine, although representing yet only a minority within IDP population, were disadvantaged since for them there were no measures facilitating their participation. The second electoral process, the parliamentary election, proved to be problematic due to the factual IDP disenfranchisement in the majoritarian part of election based on strict residency requirements. IDPs were nevertheless allowed to vote in the proportional element of the election. This time both groups of IDPs were addressed by a legal provision facilitating their participation. Finally, IDPs found themselves completely disenfranchised during local election in which IDPs were required to change their permanent residency in order to vote. This was for IDPs for various reasons problematic.

The last chapter provided an overview of IDP electoral participation in Ukraine's election from the perspective of Ukraine's international commitments regarding the right to vote. Based on the previous parts, this chapter identified the main inconsistencies between the IDP voting situation on the ground and Ukraine's relevant international commitments. The analysis showed that Ukraine mostly failed to fulfil its commitments since IDPs faced in all examined elections certain impediments that prevented them from voting. These were found as violations of the principle of universal suffrage in cases where IDPs had reduced opportunity to vote or were de facto deprived of this right whatsoever. In the case of different legal treatment of distinct groups of IDPs, violations of the principle of non-discrimination was identified. This applied also to the situation when IDPs were disenfranchised as a whole group. Overall, Ukraine's negligence in implementing IDP voting rights may stem from the fact that there is a lack of explicit provisions in international binding instruments addressing IDP enfranchisement. As a result, the states of Ukraine did not view this issue as a priority and did not address IDP electoral participation through comprehensive measures.

7. List of abbreviations

BiH	Bosnia and Herzegovina
CEC	Central Electoral Commission
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CoE	Council of Europe
CPRW	Convention on the Political Rights of Women
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention of Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Person
ILO	International Labour Organization
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Cooperation in Europe
PEC	Precinct Electoral Commission
SMM	Special Monitoring Mission to Ukraine
UDHR	Universal Declaration of Human Rights
UN	United Nations

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