

UNIVERSITY OF ESSEX
SCHOOL OF LAW

DISSERTATION

LLM/MA IN: Theory and Practice of Human Rights

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SUPERVISORS'S NAME: Dr Andrew Fagan

DISSERTATION TITLE

The positive relationship between the better realization of human rights and electoral integrity

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Hereby, I dedicate this dissertation to the political prisoners of the Republic of Azerbaijan

Introduction

Elections as crucial elements of democracies are universally held to honour the right of humans to reflect their will on the political life of the country.¹ However, not all elections are held in atmospheres where human rights are upheld and are deemed as 'free and fair' or according to all international standards. Thus, the question arises what the implications of poor human rights situation for the quality of elections are and vice-versa. This paper will look into the relationship between human rights and elections to examine how these phenomena influence each other. The first chapter will examine the dynamics between elections and human rights within the democratic framework. The following chapter will shed a light on implications of human rights for the quality of elections. Finally, last chapter will examine the main argument that better realization of human rights is determining factor for the quality of elections through the case studies of three post-soviet countries.

Methodology, Terminology, Limitations

Methodology

The methodology of the paper will be desk-based research. The existing literature on the democracy, elections and human rights, guidelines on the electoral standards and obligations of states accordingly, and credible sources for the human rights performance of the selected countries such as international human rights non-governmental organizations (INGOs hereinafter) and United Nations (UN hereinafter) human rights machinery bodies will be referred to throughout the paper.

The first two chapters will be theoretically approaching the question and building the argument where the third chapter will have an empirical focus to test the hypothesis. As such, since the argument is that better realization of human rights have determining effect on elections, the last chapter will match the human rights performances of the selected countries in the given time period vis-à-vis the quality of elections that are held in the meantime.

¹ Patrick Merloe, 'Promoting Legal Frameworks for Democratic Elections: An NDI Guide for Developing Election Laws and Law Commentaries', (2008), National Democratic Institute For International Affairs, 9, date accessed: 15 June 2019, <https://www.ndi.org/sites/default/files/2404_ww_elect_legalframeworks_093008.pdf>

Terminology

Some terms that will be mainly used throughout the whole document need to be defined to present conceptual clarity in the first place.

- Democratization

Democratization will be referred to as a term to indicate the improvements on the way of achieving the democratic way of governance, where citizens are free to express their will and elections are held accordingly to reflect this will.²

- Electoral Integrity and Genuine Elections

There are several terms to indicate the quality of elections. Usually, 'free and fair' and 'genuine' or 'competitive' are the adjectives to indicate the better quality of elections.³ However, as argued, such terms often lack clear definition, do not present conceptual clarity and may have manipulative usage, for instance, to serve diplomatic language.⁴ As one example, among them, genuineness of elections has not been clearly defined in international law and has been mostly referred to as a situation where all rights and principles attached to the elections are met.⁵ Thus, electoral integrity is used increasingly more and more to cover these terms and explain to what extent the election in question has been held according to international standard and norms for elections.⁶

- Electoral Integrity and Electoral Malpractice

By indicating the level by which the elections have been conducted in line with international norms, electoral integrity not only presents conceptual clarity but is also important to achieve.⁷ As such, electoral integrity is considered to be helpful in terms of increasing the public trust in elections, political legitimacy, voter turnout, political stability and others which are crucial elements for stable

² Staffan Lindberg, 'The Power of Elections Democratic Participation, Competition, and Legitimacy in Africa', (Lund University 2004), Department of Political Science, 44, date accessed: 25 June 2019, <http://users.clas.ufl.edu/sil/downloads/lindberg_dissertation2004.pdf>

Daniela Donno, 'Elections and Democratization in Authoritarian Regimes', (2013), American Journal of Political Science, vol.57, iss.3, 705

³ Pipa Norris, '*Why Electoral Integrity Matters*', (Cambridge University Press 2014), 8-10,20

⁴ Norris (n3) 8-10,20

⁵ Carter Centre, 'Identifying Obligations for Democratic Elections: Narrative of Obligations', (2009), 6-8, date accessed: 12 June 2019, <<https://www.cartercenter.org/resources/pdfs/peace/democracy/des/narrative-of-obligations.pdf>> (Narrative of Obligations hereinafter)

⁶ Norris (n3) 8-10,20

⁷ Ibid

democracies.⁸ As a term, electoral integrity refers to the international conventions and standards which are universally applicable to all contexts worldwide.⁹ These authoritative documents apply to all steps of electoral cycle and determine the norms and therefore, conformity level within that norms.¹⁰ Accordingly, electoral malpractice covers the negative adjectives to indicate the irregularities such as 'fraud', 'rigged', 'stolen' and refers to the breach of electoral integrity which would in context imply the violations of principles electoral integrity refers to.¹¹

Some of the international standard and norms or as principles derive from conventional or alike authoritative human rights documents such as treaties and Universal Declaration of Human Rights¹²(UDHR hereinafter). Another set of such norms and standards derive from international guidelines and other non-binding documents such as relevant declaration and resolutions. On the top of the binding and alike documents comes International Covenant on Civil and Political Rights¹³ (ICCPR hereinafter). Moreover, some other treaties reflect the provisions which are election-related. On the authoritative sources of international election standards Organization for the Security and Cooperation in Europe (OSCE) commitments¹⁴, Venice Commission's Code of Good Practice in Electoral Matters¹⁵, UN General Assembly resolution 70/168¹⁶ and other NGO guidelines can be referred to.¹⁷

- Electoral Integrity Index

Electoral integrity index intends to assess the level of conformity of elections according to international standards. The index does so by surveying the relevant and credible professionals from the given country 1 month after the elections.¹⁸ 49 questions asked to them to indicate the level of integrity observed during the election in question.¹⁹ Electoral integrity index has demonstrated its strength when

⁸ Ibid 10-20, 114-186

⁹ Ibid 8-10,20

¹⁰ Ibid 8-10,20

¹¹ Ibid 8-10, 20-3

¹² United Nations General Assembly, Universal Declaration of Human Rights, (adopted on 10 December 1948), 217 A (III) (UDHR hereinafter); Norris (n3) 20-6

¹³ UNGA, International Covenant on Civil and Political Rights, (adopted on 16 December 1966) 999 UNTS 171, article 6 (ICCPR hereinafter); Norris (n3) 20-6

¹⁴ Conference on Security and Co-operation in Europe, 'Document of the Copenhagen Meeting of the conference on the Human Dimension of the CSCE', (1990), paras.6-8

¹⁵ European Commission for Democracy through Law- Venice Commission, 'Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, Adopted by the Venice Commission at its 52th session', (2002), Opinion No. 190/2002

¹⁶ UNGA, Strengthening the Role of the United Nations in Enhancing Periodic and Genuine Elections and the Promotion of Democratization : Resolution / Adopted by the General Assembly, (2016), A/RES/70/168;

¹⁷ Norris (n3) 20-4

¹⁸ Pippa Norris, Richard Frank, Ferran Martínez Coma, 'Measuring Electoral Integrity around the World: A New Dataset', (2014), Political Science & Politics, vol.47, iss.4, 789-792

¹⁹ Norris (n3) 57, 108; Norris (n18)

matched with the public perception of quality of elections index and with some other prominent indexes, such as NELDA and Freedom House indicators.²⁰

- Electoral Rights

Several internationally recognized human rights are considered to have a more direct and substantial relationship with elections.²¹ These rights will be referred to as electoral rights and electoral human rights throughout the document.

Limitations:

This paper acknowledges that the necessary human rights performance and other sets of political arrangements to reach the electoral integrity may well depend on political will of the incumbents as well. However, this line of the research is beyond the aim of the paper.

Background

It is generally believed human rights and democracy are mutually reinforcing.²² How? And what is the place of elections in this mutual reinforcement? How human rights help elections and what are the implications of electoral quality for the democratization and further human rights situation of the country?

Elections are supposed to be held according to international standard and principles. When they are held in 'free and fair' or genuine manner, they are believed to have a consolidating effect on democracies and better realization of human rights.²³

²⁰ Norris (n18)

²¹ David Carroll, Avery Davis-Roberts, 'The Carter Centre and Election Observation: An Obligations-Based Approach for Assessing Elections', (2013), Election Law Journal, vol.12, iss.1, 90-2; Office of the High Commissioner for Human Rights, 'Monitoring Human Rights in the Context of Elections', (2011), Manual on Human Rights Monitoring, ch.23, 8-10, date accessed: 5 June 2019, <<https://www.ohchr.org/Documents/Publications/Chapter23-MHRM.pdf>>, (Human Rights Monitoring Manual hereinafter);

Demonico Tuccinardi (ed), 'International Obligations for Elections Guidelines for Legal Frameworks', (2014), International Institute for Democracy and Electoral Assistance, 37-51, date accessed: 3 June 2019, <<https://www.idea.int/sites/default/files/publications/international-obligations-for-elections.pdf>>

²² UNGA, Vienna Declaration and Programme of Action, (12 July 1993), para.5, A/CONF.157/23 (Vienna Declaration hereinafter)

²³ Human Rights Monitoring Manual (n21)

In turn, how exactly human rights affect the quality of elections. Usually, human rights are referred to as 'pre-requisite' element for electoral integrity.²⁴ But how human rights help elections when they are upheld and is the relationship straightforward as such? Is there any indirect effect of human rights on the quality of elections?

A. The nexus between election, democracy and human rights.

The implications of the situation of human rights in the given society for both democracy and elections deserves to be closely examined. In order to examine the relationship between human rights and elections it would be useful to start the quest in a bigger picture and consider the nexus between democracy, human rights and elections. This chapter will look through the existing literature to date on the relationship between these three phenomena and conclude upon what implications human rights have in these relationships.

1. Democracy and human rights

While some define democracy as the combination of institutional arrangements, institutions are sought to serve the principles that govern them.²⁵ Therefore, definition of complex design such as democracy better be formulated in form of principles rather than the result of the realization of the principles as institutions.²⁶ Drawing upon the various definitions, David Beetham sets pair of principles as the core of the democracy that covers the wide-range of democratic elements. Accordingly, 'political equality and popular control' are the principles that essentially defines the way of governance that is

²⁴ Human Rights Monitoring Manual (n21) 1-3;

Daniel Stockemer, 'Internet Penetration: A Way to Strengthening Electoral Integrity', (2015), European Consortium for Political Research Website, 5, date accessed: 16 June 2019, <<https://ecpr.eu/Filestore/PaperProposal/5e7a4302-cb6c-49b8-8678-b8d5352f0416.pdf>>

²⁵ David Beetham, '*Human Rights and Democracy*', (Polity Press 1999), 2-5

²⁶ Joseph Alois Schumpeter, '*Capitalism, Socialism and Democracy*', (5th edn. Unwin University Books 1952), 269, 294-5; Beetham (n25) 2-5

democratic.²⁷ As such, democratic principles are realized where every person acquires equal and meaningful right to participate and vote, therefore to effectively control the elected officials and political life of the country.²⁸

Human rights refer to the inherently acquired entitlements of individuals given the value of inherent dignity of the person.²⁹ At first glance, the relationship between democracy and human rights is visible since definitions cross at points of the person's right and role in democratically governed society.³⁰ However, further exploring the relationship determines much complex connection.

As a general assumption, human rights and democracy are considered to have a general mutually beneficial relationship.³¹ In one of the prominent explanations, human rights are believed to be a crucial element of democracies, whereas democracies are deemed to be the best design of governance that can advance human rights.³² Following sections will explore the limbs of this assumption one by one.

On the first limb, regardless of the conclusion, the problem arises when what is meant by human rights has mostly been the combination of civil and political rights.³³ Democracies are traditionally considered where civil and political rights are protected the most and this assumption affected democracy-measurement efforts as well.³⁴ However, this equalization may fail to fully analyse the relationship.³⁵

As internationally recognized, all human rights are interdependent and indivisible, play a crucial role in the life of human being and the society and deserve equal effort of examination.³⁶ Therefore, the following sections will briefly explore the relationship between different set of human rights and democracy to have a bigger picture of the impact of human rights on democracy.

²⁷ Ibid 5-6

²⁸ Ibid

²⁹ UDHR, Preamble; Beetham (n25) 89-91

³⁰ Beetham (n25) 89-91

³¹ Vienna Declaration, para.8

³² Zehra Arat, 'Human Rights and Democracy: Expanding or Contracting?', (1999), *Polity*, vol.32, iss.1, 132-3; Robert Wesson, *Democracy: A World Survey*, (Praeger Publishers 1987), 1-2;

Benjamin Gregg, *The Human Rights State: Justice Within and Beyond Sovereign Nations*, (University of Pennsylvania Press 2016) 175-177;

Johannes Hendrik Fahner, 'Revisiting the Human Right to Democracy: A Positivist Analysis', (2017), *International Journal of Human Rights*, vol.21, iss.3, 321

³³ Arat (n32) 132-4; Beetham (n25) 89-91, 94-5

³⁴ Ibid

³⁵ Beetham (n25) 89, 94-5

³⁶ Vienna Declaration, para.5

a) Civil and Political Rights and Democracy

Democracy upon its core principles depends on the effective control of citizens with equal entitlements over the decisions that govern their life and society.³⁷ Evident from the translation of the term into basic principles, the term relies on the equal status of individuals to meaningfully participate in and influence the way their community is governed.³⁸ Citizens with the help of the institutions such as elections, civil society, media and so on, affect the decision making on political fora on equal basis either direct or indirectly.³⁹ Thus, there are institutions that help to realize the democratic ideal, however, the functioning of these institutions rely on the equally guaranteed fundamental rights of citizens that protect their say.⁴⁰ Such rights are not limited to but include right to vote, freedom of expression, freedom of peacefully assembly and association, right to security and liberty of the person, freedom of movement and etc. Thus, these civil and political rights which are enshrined in the ICCPR, serve to ensure the opportunities of the individuals to participate in the political life without fear of retaliation from possibly abusive majority or authorities.⁴¹ Thus, civil and political rights are crucially forming part of the democratic realization.⁴²

b) Economic, Social and Cultural Rights and Democracy

As presented above, democracy primarily relies on the realization of the civil and political rights which ensures the basic principles of political participation of the equal citizens. These set of rights have been mostly regarded as the basis of democracy and even to some extent more important than their social and economic counterparts.⁴³ However, it is hard to imagine the full realization of civil and political and therefore the idea of democracy rights in the absence of social and economic rights. Under what circumstances may the human beings realize the right to express themselves to affect the political life of the country if those individuals lack the basic necessities of the dignified human life such as housing, nutrition, healthcare and so on.⁴⁴ Not having access to such basic needs may psychologically deprive one of the incentives to perform the guaranteed rights, since that person is much more occupied with finding food, shelter, clean water, meeting the ends and other basics.⁴⁵ How the ordinary people are

³⁷ Beetham (n25) 90-1

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid 90-2

⁴² Ibid 92-3

⁴³ Susan Moller Okin, 'Some Issues in Human Rights Theory', (1981), American Society for Political and Legal Philosophy, vol.23, 242-4; Arat (n32) 132-4; Beetham (n25) 89-91

⁴⁴ Okin (n43) 243-5; Beetham (n25) 96-8

⁴⁵ Ibid

supposed to have genuine opportunity to participate and influence the political life where economic inequalities lead to the shaping of politics by the well-off elites.⁴⁶ What are the chances of ordinary people to be informed about both accessing basic necessities and grasping the complex enough political dynamics of the country in the absence of quality or mere existence of education?.⁴⁷ Upon such questions, one may observe the harsh reality that the empowering civil and political rights may become of formal aspirations than entitled rights in the absence of basic necessities and opportunities of the people to access them on equal basis.⁴⁸ These basic elements of the human life and provisions to ensure them are enshrined in the International Covenant of Economic, Social and Cultural Rights⁴⁹ (ICESCR hereinafter). Indeed, without the chances to maintain a dignified human life, it is less likely for people to be able to perform citizenship rights and affect political affairs. Thus, economic and social rights, directly and indirectly, contribute to the realization of civil and political rights and therefore, to the realization of the democracy. Thus, civil and political rights are undermined in the absence of their other counterpart rights which, in turn, curtails their ability and opportunities of individuals to perform them.⁵⁰

Moreover, modern societies cannot fully be considered as homogeneous and are mostly multicultural and multinational societies where certain group and communities have distinctive character of lifestyle, believes and etc..⁵¹ Drawing upon the conclusion on the importance of civil, political and economic, social rights, it can also be argued that one society cannot really achieve true democracy where certain minorities with cultural and other distinctive differences from the majority are left behind, systematically discriminated, denied to realize their cultural distinctiveness and deprived of basic necessities and citizenship rights.⁵² ICESCR also covers the cultural rights of both individuals and communities.⁵³ Thus, the full accomplishment of the democratic principles of equal participation opportunities of all citizens in the political life of the society is compromised where the cultural rights of the culturally distinctive group and communities are ignored.⁵⁴

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Raymond Plant, *Modern Political Thought*, (Blackwell Publishers 1991), 235-252; Beetham (n25) 96

⁴⁹ UNGA, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, 993 UNTS 3 (ICESCR hereinafter)

⁵⁰ Beetham (n25) 96-100

⁵¹ Ibid 111

⁵² Ibid 111-4

⁵³ ICESCR, article 1,3,6,15

⁵⁴ Beetham (n25) 113-4

Thus, civil, political, social, economic and cultural rights altogether enable and entitles the individuals to have equal rights and meaningful opportunities to partake and control the political life of the country. This contribution of human rights to democratic principles demonstrates the crucial importance of human rights to realize democratic governance.

Returning to the second limb of the affirmative assertion, democratic way of governance affects human rights as well. As standard, it is believed that a democratic system is the most favourable one where human rights can be advanced.⁵⁵ Democratic governments are more likely to pay attention to the protection of human rights through the effects of democratic features such as accountability, power distribution, competitive elections and so on.⁵⁶ Theoretically, well-functioning democracy is where officials elected through real competition with genuine participation of the people, elected officials and public policies are subject to civil control over media, civil society and other constitutional arrangements, where more accountability is achievable and authorities are less likely to initiate or conduct human rights violations.⁵⁷ Moreover, democracies with competitive elections and accountable system have proven to improve the level of enjoyment of human rights.⁵⁸ Thus, democracies where several arrangements mentioned above are theoretically in place, are considered as the atmospheres where human rights are more likely to thrive.

Additionally, apart from the mutual effects of democracy and human rights, democracy itself is claimed to qualify as a human right as well. This approach claims democracy as a political commitment and instead of finding philosophical grounds for it, it defends democracy by emphasizing the importance of democratic way of governance.⁵⁹ It is argued that democratic theory needs transformation where the sole aim of democratization should be interpreted in a way to serve the realization (respecting, protecting and fulfilling) of the all (civil, political, economic, social and cultural) human rights universally for all human beings equally.⁶⁰ Thus, democracy as human rights (DHR hereinafter) approach defines

⁵⁵ Arat (n32); Fahner (n32);

⁵⁶ Beetham (n25) 106-7

⁵⁷ Bruce Bueno De Mesquita and others, 'Thinking inside the Box: A Closer Look at Democracy and Human Rights', (2005), *International Studies Quarterly*, vol.49, iss.3, 439;

Poe Steven, Neal Tate, 'Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis', (1994), *American Political Science Review*, vol.88, iss.4, 855;

Arat (n32) 132-3; Wesson (n32) 1-2; Beetham (n25); Gregg (n32)

⁵⁸ Linda Camp Keith, 'Constitutional Provisions for Individual Human Rights (1977-1996): Are They More than Mere Window Dressing?', (2002), *Political Research Quarterly*, vol.55, iss.1, 134-5;

Christian Davenport, '*State Repression and Domestic Democratic Peace*', (Cambridge University Press 2007), 131-3; Bueno De Mesquita (n57) 451-6;

⁵⁹ Michael Goodhart, '*Democracy as a Human Right*', (Routledge 2013), 135-40

⁶⁰ Ibid 135-62

democracy as a political dedication to universally guaranteeing the all rights of all persons and accordingly sees the democratic institutions as means to serve the goal of securing fundamental human rights primarily.⁶¹ Beyond political theory literature, DHR is also believed to be embodied in the international human rights law whereas, primarily, the article 21 of the UDHR and article 25 of ICCPR alongside with relevant provisions of regional human rights treaties are cited and interpreted to conclude so.⁶² Such assertive approach consolidates the interrelationship between theories of human rights and democracy by synthesizing the aims of them.

Upon what have been discussed above, it can be argued that both phenomena of democracy and human rights have positive effect on each other. While human rights are an integral part and major contributor to democratic governance, democratic realization is compromised where human rights are not sufficiently secured and enhanced. Having concluded on the dynamics between democracy and human rights, the following sections will carry on examining the linkage between democracies and elections.

2. Democracy and Elections

Human rights serve to the core principles and institutions of the democracy to make them functionate. Elections are one of the most-associated and crucial institutions of democracy. Almost all of the definitions and explanations of democracy includes remarks of elections or electoral elements such as where people's will is observed through elections where ideas and promises compete for serving people, the quality of elections are measured to define the level of democracy and etc. At first glance, one may observe the nested connection between the two. The following section will shed a light on details how elections help to maintain or advance the democracies.

Elections are believed to be one of the key drivers of the democratic way of governance and through elections peoples' freely expressed interest is reflected where people are collectively choosing the

⁶¹ Ibid 160-2

⁶² Fahner (n32) 324-7

officials to govern.⁶³ Theoretically, elections are the periods where public is periodically organized for political reasons and increased level of pressure on incumbents or newcomers compel more responsive behaviour.⁶⁴ Moreover, during elections, countries are exposed to international attention and scrutiny more than they do in non-electoral periods.⁶⁵ Thus, every election means the new battle for power and one cannot assume the power and relentlessly ignore the voters' interests in the light of the next elections looming to reflect the possible outrage by the people.⁶⁶ Therefore, it is believed that elections, upon the above-mentioned characteristics have positive impact on democracies to advance and consolidate.⁶⁷

Main approach dominating the field has been that elections, regardless of their quality help to democratize the country in the bigger picture.⁶⁸ It is argued that, even under authoritarian rule, more the society is exposed to competitive elections, more it becomes mobilized and informed about democratic elements which in the long run helps the country to become more democratized.⁶⁹ According to the theory, more the authoritarian regimes hold competitive elections periodically, more the behaviour of the rulers, opposition and citizens change according to the necessities of the reality which triggers the incentives of opposition and citizens to build coalitions, associations, learn and practice democratic principles and win elections or significantly challenge the regime in the end.⁷⁰ Even not 'free and fair' and 'rigged' elections, arguably, if held in stable manner which means uninterrupted line of competitive and participatory elections, lead public to develop the value, belief and principles over time to mobilize and challenge the upcoming elections and in general non-democratic regime.⁷¹ Accordingly, different studies show varying level of contribution of elections to democratization.⁷² Thus, it is claimed that the

⁶³ Staffan Lindberg, 'A Theory of Elections as a Mode of the Transition' in Staffan Lindberg (ed), '*Democratization by Elections*', (John Hopkins University Press 2009), 314-6, 327-8

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Jan Teorell, Alex Hadenius, 'Elections as Levers of Democratization: A Global Inquiry' in Staffan Lindberg (ed), '*Democratization by Elections*', (John Hopkins University Press 2009), 79, 99-100;

Nam Kyu Kim, 'Reassessing the Relationship between Elections and Democratization', (2019), *International Political Science Review*, vol.40, iss.3, 2-5

⁶⁹ Teorell (n68) 79-80;

⁷⁰ Kim (n68) 3

⁷¹ Teorell (n68) 79-80; Lindberg (n2) 126-32

⁷² Amanda Edgell and others, 'When and Where Do Elections Matter? A Global Test of The Democratization by Elections Hypothesis: 1900–2010', (2018), *Democratization*, vol.25, iss.3, 438-9

Teorell (n68) 79-80, Lindberg (n63) 78-100; Kim (n68) 2-5;

mere existence of continuously conducted elections have a, generally, positive impact on democratization.

However, this theory is challenged as well. Accordingly, autocratic elections may even consolidate autocratic regimes.⁷³ Autocratic regimes may use the rigged elections simply to measure the relative power of the elections and voters' turnout behaviour to subsequently apply minor policy concessions or additional repression strategies.⁷⁴ Moreover, such elections may be used to induce the opposition members to be represented in complex authoritarian systems and buy legitimacy for the current system.⁷⁵ Autocratic governments may even gain more legitimacy where they can effectively imitate genuine elections.⁷⁶ Additionally, successfully rigged elections may even demonstrate the incumbent regime's financial and organizational power.⁷⁷ Followingly, another result of authoritarian elections can be getting the aids from international actors, contingent to international politic dynamics at the given time, and make authoritarian governments even more durable and powerful.⁷⁸ Even though competitive elections may help democratization, effect is mostly associated with the short term whereas in the long run regimes have proven to achieve more stable power.⁷⁹ Thus, while self-enforcing power of elections towards democratization is generally trusted, such studies demonstrate how authoritarian elections may even help autocrats to keep holding the power.

The discussion on the democratizing power of elections is enlarged by another set of theorists who explore the other conditional effects of elections. Starting with the claim of series of periodic elections helps to democratize the country more, it is argued that such competitive elections are much more conducive for democratization in better contexts where political liberalisation has been in the place beforehand.⁸⁰ Another condition is set about the power of the opposition parties where it is claimed that in powerful autocracies even through the competitive elections, opposition forces are not likely to stand a chance to mobilize and challenge the incumbents.⁸¹ On the other hand in order to challenge the

⁷³ Kim (n68) 4-5

⁷⁴ Jennifer Gandhi, Ellen Lust-Okar, 'Elections Under Authoritarianism', (2009), *Annual Review of Political Science*, vol.12, 403-6; Kim (n68) 4-5;

⁷⁵ Kim (n68) 4-5; Gandhi (n74) 405

⁷⁶ Payam Foroughi, Uguloy Mukhtorova, 'Helsinki's Counterintuitive Effect? OSCE/ODIHR's Election Observation Missions and Solidification of Virtual Democracy in Post-Communist Central Asia: the Case of Tajikistan, 2000–2013, (2017), *Central Asian Survey*, vol.36, iss.3, 12-4

⁷⁷ Kim (n68) 4-5

⁷⁸ Carl Henrik Knutsen and others, 'Autocratic Elections Stabilizing Tool or Force for Change?', (2017), *World Politics*, vol.69, iss.1, 103; Kim (n68) 4-5

⁷⁹ Kim (n68) 4-5; Knutsen (n78) 110-2, 136-7

⁸⁰ Donno (n2) 713-714; Kim (n68) 4-5

⁸¹ Kim (n68) 4-5

regime, elections are deemed more helpful in competitive authoritarian contexts where such regimes are more vulnerable to external democratization pressure.⁸² Moreover, state's capacity is yet another condition that effects the democratization by elections theory. Accordingly, stronger state apparatus under authoritarian regimes are less likely to become democratic by elections, since such regimes hold more opportunities to oppress the regime opponents and dissenting voices and prevent further mobilization.⁸³

A different set of studies demonstrate varying level of impacts of elections on level of democracy in the given contexts. Under various circumstances election are tested to contribute to democratization. However, in most circumstances elections even in authoritarian regimes are required to hold at least some of these positive characteristics such as being periodic, free and fair, competitive, participatory and so on, in order to be helpful. These positive adjectives characterizing the elections are sought to refer to the realization of the idea that through this elections people can freely express their will to elect the office-holders to possible extent.

Electoral integrity refers to the state of elections being in conformity with the international standard and norms and as an umbrella word covers mostly election-associated positive adjectives and provides conceptual clarity over the quality of elections.⁸⁴ In other words, using electoral integrity scaling helps to describe whether elections were better in line with international standard and norms, which require elections to be, among other technical details, genuine, periodic, free and fair, expressing the will of the people, participatory, competitive and etc.⁸⁵ Thus, in the ideal case, electoral integrity implies a situation where public is fully informed by diverse and independent media, have genuine choice between candidates competing on fair basis and electoral matters are conducted according to rule of law and international standards to avoid electoral malpractices. Therefore, it can be argued that elections, on their own part, can contribute to the democratic governance most when they are conducted according to international standard and norms, or where electoral integrity is protected.

⁸² Kim (n68) 4-5; Donno (n66) 713-4

⁸³ Carolien van Ham, Brigitte Seim, 'Strong States, Weak Elections? How State Capacity in Authoritarian Regimes Conditions the Democratizing Power of Elections', (2018), *International Political Science Review*, vol.39, iss.1, 59-60; Kim (n68) 4-5;

⁸⁴ Norris (n3) 8-12

⁸⁵ Ibid 8-13

However, the issue of how much elections can counter-productively affect the democracy and human rights under if populist governments get elected and how electoral integrity can be a safeguard against self-destruction of human rights and democracy ideals is beyond the aim and scope of this paper

3. *Human Rights and Elections*

This section will look at the connection between the impact of elections and the human rights situation. Firstly, it would be conducive to start exploring the interrelated linkage between election and human rights by mentioning the claim which considers elections as human rights. Accordingly, elections are believed to be conducted primarily to uphold the right of human beings to express their will on the way they are governed by.⁸⁶ Thus, elections should not be considered solely political or technical activity, but essentially it's the exercise to uphold human rights in the first place.⁸⁷ Deriving from mostly Article 21 of the UDHR and Article 25 of ICCPR, genuine and periodic elections where the other international norms are observed are claimed to be recognized in the international human rights law and needs further construction.⁸⁸ Among relevant provisions, 'the right to free elections' – the article 3 of the First Protocol to the European Convention of Human Rights⁸⁹– especially stands out for more explicitly highlighting the legal recognition of elections.⁹⁰ Especially, the rising tide of non-democracies in the world enforces the need for constructing such human right further, while international human rights law is not powerful enough to outlaw single-party regimes and other fraudulent elections to reinforce the democracies worldwide.⁹¹

Moreover, studying the effect of different elements of democracies, researches indicate that the human rights situation in the analysed contexts mostly benefited from two elements.⁹² The lower level of violation of the analysed rights, therefore higher level of enjoyment of human rights altogether is observed where competitive and participatory elections are accompanied by accountable system in place.⁹³ While these studies mostly focus on civil and political rights, since the human rights are

⁸⁶ Merloe (n1)

⁸⁷ Ibid

⁸⁸ Amnon Rubinstein, Yaniv Roznai, 'The Right to a Genuine Electoral Democracy', (2018), *Minnesota Journal of International Law*, vol.27, iss.1, 148-57

⁸⁹ Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, (1952), ETS 9, article 3

⁹⁰ Rubinstein (n88) 159-60

⁹¹ Pipa Norris, '*Why Elections Fail*', (Cambridge University Press 2015), 177; Rubinstein (n88) 175-7;

⁹² Bueno De Mesquita (n57) 453-6; Davenport (n58) 131-3

⁹³ Ibid

interdependent and indivisible, it is reasonable to argue that violation of one set of rights may have detrimental effect on all of them.⁹⁴

Thus, elections with positive features such as being competitive and participatory which are covered by the term electoral integrity have an effect on the better realization of human rights.⁹⁵ While the findings also indicate that accountable system in place is yet another element that improves human rights situation, the previously installed accountability is beyond the aim of this paper. Moreover, as will be explored in the next section, better realization of human rights contributes to the level of accountability as well.

What becomes apparent, is that elections better in line with international electoral standard and norms, or in other words, electoral integrity contribute to the further consolidation of democratic way of governance, under which human rights are more likely to thrive. On the other hand, electoral integrity also has more direct effect on the realization of human rights. Thus, electoral integrity both directly and indirectly via democratization is helpful to advance the human rights situation.

The remaining limb of the connection to explore among these phenomena is the effect of human rights on the level of electoral integrity. As will be argued and theoretically explained in the next chapter, human rights when they are fully realized (protected, respected and fulfilled) increases the chances of electoral integrity and without the realization of the human rights, the opportunities are undermined to achieve electoral integrity. Thus, human rights are not only the beneficiaries of the cycle-like relationship among elections, democracy and human rights, but also enforces the cycle by being upheld.

⁹⁴ Vienna Declaration, para.5;

Iain Byrne, 'The Importance of Economic, Social and Cultural Rights in Guaranteeing Civil and Political Rights within the Euro-Mediterranean Partnership', (2004), *Mediterranean Politics*, vol.9, iss.3, 345-7

⁹⁵ Human Right Monitoring Manual (n21) 1-3; Bueno De Mesquita (n57) 453-6; Davenport (n58) 131-3

B. How human rights create conducive ground for electoral integrity

The following paragraphs will elaborate on the dynamics between the realization of electoral rights and achieving higher level of electoral integrity. Electoral human rights can be conditionally categorized into two groups. One group of rights found the basis for elections altogether. The second group of rights have more process-focused relationship with elections. The following chapters will look into the group of rights and their linkage to elections.

1. Electoral human rights regulating the overarching principles of elections.

Deriving from authoritative international human rights documents, this group of rights have foundational importance for electoral processes; First of all, the article 21 of the UDHR stands as one of the most fundamental lines reflecting the legal basis for elections. As follows,

“The will of the people shall be the basis of the authority of government; this will 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 equivalent free voting procedures”⁹⁶

These lines from the authoritative human rights document play the role of the cornerstone of conducting elections in a democratic way of governance.⁹⁷ Elections, therefore are called an exercise where human rights are honoured, and such a foundational document outlines the basic principles of the process.⁹⁸ Different parts of this phrase and other provisions from relevant international human rights documents will be explored below as overarching human rights principles for elections.

⁹⁶ UDHR, article 21(b)

⁹⁷ Narrative of Obligations (n5) 6; Tuccinardi (n21) 39

⁹⁸ Merloe (n1)

I. Right and Opportunity to Participate in Public Affairs

Together with article 21(3) of the UDHR, article 21(1) states another crucially important principle to ensure the people's will be expressed as the source of authority of the government.⁹⁹ According to it, everyone holds the right to take part in the government of their country through elected representatives.¹⁰⁰ Moreover, ICCPR expands the rights as being entitled to participate in all matters of public administration of the country.¹⁰¹ Emphasizing both negative and positive obligations of the state parties, General Comment 25 of the Human Rights Committee (General Comment 25 and HR Committee hereinafter) elaborates on the right and states the foundational principles where state, among others, should give effect to the right by accepting relevant laws that regulate the voting processes and etc.¹⁰² Additionally, it is also mentioned that such participation is not limited to voting processes and states undertake obligations related to several other freedoms such as freedom of expression, information, peaceful association and assembly, which regulate the citizens' entitlements to partake through civil society institutions, non-governmental organizations, public debates and etc.¹⁰³ This right is also recognized in other international human rights documents as well.¹⁰⁴

II. Periodic Elections

Being periodic is another foundational element of modern elections and is enshrined in both UDHR and ICCPR.¹⁰⁵ According to these provisions, elections must be held on a frequent basis.¹⁰⁶ As ICCPR General Comment 25 outlines, the rationale behind the periodicity of elections comes from the idea that governments must be representatives of the people for reasonable amount of time and States must ensure that the domestic laws indicate the frequency of elections without unduly long periods and unnecessary postponements.¹⁰⁷

⁹⁹ UDHR, article 21(1); Tuccinardi (n21) 39;

¹⁰⁰ Ibid

¹⁰¹ UN Human Rights Committee (HR Committee), CCPR General Comment No. 25: Article 25; Participation in Public Affairs and the Right to Vote, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service', (1996), CCPR/C/21/Rev.1/Add.7 ICCPR, para.5 (General Comment 25 hereinafter); ICCPR, article 25; Tuccinardi (n21) 39-40

¹⁰² General Comment 25, para.7; Tuccinardi (n21) 39-40

¹⁰³ General Comment 25, paras.8, 25-6; Tuccinardi (n21) 39-40

¹⁰⁴ Tuccinardi 39-40

¹⁰⁵ UDHR, article 21, (3); ICCPR, article 25(b);

¹⁰⁶ Tuccinardi (n21) 41-2; Narrative of Obligations (n5) 6-7

¹⁰⁷ General Comment 25, para.9; Tuccinardi (n21) 41-2; Narrative of Obligations (n5) 6-7

III. Genuine Elections

The foundational principle of elections of being genuine is reflected in both UDHR and ICCPR, alongside some other international and regional human rights documents,¹⁰⁸ whereas there is not a comprehensive definition for the term.¹⁰⁹ but it is interpreted in a way that means competitive multiparty elections where people enjoy the politically pluralist atmosphere and can have a real choice.¹¹⁰ Moreover, there is not an established framework to assess the violation of principle of genuine election, while the securing the genuine character of the election may be observed where all human rights standards and principles attached to election are duly followed.¹¹¹

IV. Right and Opportunity to Vote

Right to vote is yet another substantial human right enabling citizens to effectively participate in the political life of the country through electoral processes. It has been recognized in the relevant international and regional documents and widely guaranteed in domestic laws as the basic rule regulating the elections.¹¹² The right can be restricted, however, the international human rights law enlists the criteria and principles to obey while doing so.¹¹³ Therefore, State party undertaking the effective implementation of the obligations, among others, cannot put restrictions on the grounds of literacy, property, physical disability, political party membership and etc while any restriction should meet the standard freedom from discrimination requirement of being on an objective and reasonable basis.¹¹⁴ Moreover, General Comment 25 treats the right requiring effective measures to ensure equal opportunities as well.¹¹⁵ Accordingly, states are obliged to ensure, among others, ensure the identical voting procedures, outreach of voter education campaigns to everyone, the impartial assistance to the people with disabilities, language or economic barriers and etc.¹¹⁶ Obligations upon states in regard to right to vote also prohibits the intimidation of votes and impediments on the freedom of movement, as

¹⁰⁸ Organization of American States (OAS hereinafter), American Convention on Human Rights, 'Pact of San Jose', (1969), article 23, (ACHR hereinafter); Narrative of Obligations (n5) 6;

¹⁰⁹ Narrative of Obligations (n5) 6-8; ICCPR, article 25(b); UDHR, article 21(3)

¹¹⁰ Narrative of Obligations (n5) 6-8

¹¹¹ Ibid

¹¹² African Charter on Human and Peoples' Rights, (1981) CAB/LEG/67/3, article 13(1) (AfCHPR hereinafter); ACHR, article 23; ICCPR, article 25; General Comment 25, paras.7,10; Tuccinardi (n21) 40; Narrative of Obligations (n5) 12-5

¹¹³ General Comment 25, para.10; ICCPR, article 2,25; Narrative of Obligations (n5) 12-3

¹¹⁴ UNGA, Convention on the Rights of Persons with Disabilities, (24 January 2007), A/RES/61/106, article 29 (CRPD hereinafter); General Comment 25, paras.10, 14-6, 23; ICCPR, article 2, 25; Tuccinardi (n21) 40; Narrative of Obligations (n5) 12-3

¹¹⁵ Tuccinardi (n21) 40; Narrative of Obligations (n5) 12-5

¹¹⁶ CRPD, article 29; General Comment 25, para.11; Tuccinardi (n21) 40; Narrative of Obligations (n5) 12-4;

well. Thus, right to vote, in conjunction with freedom from discrimination, personal security, freedom of movement, and others, entails the basics of the citizens' ability to participate in political affairs.¹¹⁷

V. Right and Opportunity to be Elected

Together with the right to vote, right to be elected represents the two sides of an imaginary coin and regulates the rights of contestants as another group of main stakeholders in elections. As General Comment 25 puts it, implementation of the right to be elected implies the realization of the rights of the voters to have free choice of candidates, as well.¹¹⁸ Enjoying international recognition, right is reflected on several prominent binding human rights documents.¹¹⁹ This right entitles every citizen to stand for elections and compete for public office without being unduly deprived of this right on the unacceptable grounds because of his/her candidacy.¹²⁰ Among others, grounds such as political party membership and affiliation, ethnic origin, physical disability, religion and level of education are treated as unacceptable to discriminate upon.¹²¹ Effective implementation of obligations arising from this right coincides with several other human rights such as freedom of expression, peaceful assembly and association, personal security, freedom of movement and information and others, since the implementation the right to be elected, or in other words, pursuing a candidacy meaningfully lasts through the whole electoral period and processes.¹²²

VI. Secrecy of the ballot

The secrecy of the ballot represents another one of the building blocks of foundational election-related principles, deriving from international human rights documents. Both UDHR and ICCPR make explicit references to the principle.¹²³ According to human rights provisions, the secrecy of the ballot must be guaranteed the whole electoral period.¹²⁴ General Comment 25 elaborating on the principle outlines several relevant obligations. Accordingly, the principle, firstly, refers to the casting of the votes in a situation where secrecy is guaranteed, and voters should not face any version coercive attitude to

¹¹⁷ General Comment 25, paras. 11-2, 15, 23; Tuccinardi (n21) 40; Narrative of Obligations (n5) 12-4;

¹¹⁸ General Comment 25, para.15; Tuccinardi (n21) 41

¹¹⁹ ICCPR, article 25; ACHR, article 23; AfCHPR, article 13; Narrative of Obligations (n5) 15-7;

¹²⁰ Tuccinardi (n21) 40-1; Narrative of Obligations (n5) 15-6; ICCPR, article 2,25; General Comment 25, paras.15,17;

¹²¹ UNGA, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, (adopted on 18 December 1990), A/RES/45/158, article 41; General Comment 25, para.17; ICCPR, article 2,25; CRPD, article 29; Narrative of Obligations (n5) 15-7

¹²² Narrative of Obligations (n5) 15-7

¹²³ UDHR, article 21(3); ICCPR, article 25(c); Narrative of Obligations (n5) 43; Tuccinardi (n21) 11

¹²⁴ General Comment 25, para.20

disclose the intended or casted vote.¹²⁵ Moreover, secrecy of the ballot implies the protection of the ballot boxes and transparent counting processes where public confidence in the electoral processes are secured.¹²⁶ Thus, securing the secrecy of the ballot principle implies a situation where voters' freely expressed will is counted in fair conditions.¹²⁷ Moreover, implementation of the obligations incurred under this principle overlaps with another human right as well, such as right to liberty and security of the person.¹²⁸

VII. Equal and Universal Suffrage

Another one of the foundational elements of modern elections is the principle of universal and equal suffrage. Both principles are enshrined in international and regional human rights documents including UDHR, ICCPR, American Convention on Human Rights (ACHR hereinafter) and International Convention on the Elimination of All Forms of Racial Discrimination¹²⁹ (ICERD hereinafter).

Implementing the principle of equal suffrage means ensuring the equal weight of every vote.¹³⁰ General Comment 25 indicates that, generally, the best design is probably allocating the same number of voters for each representative, however varying approaches may be taken into account to achieve fair boundary, delimitation models.¹³¹ Though such broad wording does not address the technicalities of, for instance, gerrymandering issues in-depth, it opens up the opportunities for authoritative interpretations.¹³²

Universal suffrage refers to a process where the right to vote and be elected is secured in a discrimination-free environment.¹³³ Strengthening the universality principle in electoral matters requires the implementation of obligations with regards to right to vote and right to be elected to be pursued in a way to lead as much inclusiveness as possible.¹³⁴ Thus, while overlapping with already-stated rights to a significant extent, this element plays more a role of restating the overarching principle to guide all election-related matters, carrying implications for voter registration, mainstreaming the participation of

¹²⁵ General Comment 25, para.20; Narrative of Obligations (n5) 43; Tuccinardi (n21) 11;

¹²⁶ Ibid

¹²⁷ Ibid

¹²⁸ Ibid

¹²⁹ UNGA, International Convention on the Elimination of All Forms of Racial Discrimination, (adopted on 21 December 1965), 195 UNTS 660, article 5(d); UDHR, article 21(3); ICCPR, article 25(c); ACHR, article 23

¹³⁰ Narrative of Obligations (n5) 10-1; Tuccinardi (n21) 42

¹³¹ General Comment 25, para.21; Narrative of Obligations (n5) 10-1; Tuccinardi (n21) 42

¹³² Ibid

¹³³ Ibid

¹³⁴ Ibid

vulnerable and disenfranchised groups etc.¹³⁵ The implementation of this principle undoubtedly overlaps with the obligations incurred under the freedom from discrimination as well, which will be expanded in the later sections.

Apparent from the discussion around the above-mentioned rights, these right and principles form the normative ground for elections. Having reflected on internationally binding human rights treaties, these principles form the integral part of the international norm and standards concerning elections and the full realization of these rights inevitably contributes directly to achieving electoral integrity.

2. Electoral human rights regulating the process-related components of elections

As explained, a number of human rights principle and standards set the normative ground for elections. Implementation of such foundational principles heavily overlaps with the obligations incurred under other human rights as well. These rights include freedom from discrimination, freedom of expression and information, freedom of peaceful assembly and association, freedom of movement, right to liberty and personal security. These set of rights are considered as pre-requisite rights for elections where human rights standards are met, therefore for achieving the electoral integrity.¹³⁶ Differing than the first group, this group of rights regulate more process-related matters and also have wider implications for elections that are in conformity with international human rights principles which will be expanded below.

I. Freedom of Expression and Opinion

Freedom of expression and opinion are widely recognized rights in international human rights law.¹³⁷ The right is defined as the entitlement of the humans to hold, seek, receive information freely both online and offline.¹³⁸ This freedom is one of the foundational pillars of democratic societies and highly interlinked with other rights such as right to vote, right to political participation, freedom of peaceful assembly and association as well.¹³⁹ HR Committee, among other actors, also emphasize the

¹³⁵ Ibid

¹³⁶ Human Rights Monitoring Manual (n21) 9

¹³⁷ CoE, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, (1950), ETS 5, article 10, (ECHR hereinafter); ICCPR, article 19; ACHR, article 23; AfCHPR, article 9

¹³⁸ Human Rights Council, Frank La Rue, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, (2014), A/HRC/26/30, para.60; Narrative of Obligations (n5) 20-26

¹³⁹ UN HR Committee, General comment no.34: Article 19, Freedoms of Opinion and Expression, (2011), CCPR/C/GC/34, paras.2-4 (General Comment 34 hereinafter); La Rue (n138) paras.10, 20-1; Narrative of Obligations (n5) 20-6

contribution of the right to achieving electoral integrity by enabling an environment where free and open political communications are in place.¹⁴⁰

States undertake the tasks to realize the right by not violating the right, protecting it from others and enabling the effective enjoyment of the right by enacting suitable legal environment etc.¹⁴¹ The obligations incurred under the freedom of expression and opinion, in an electoral context, regulates the entitlements of the voters and those who are standing for offices to circulate their ideas freely.¹⁴² An election period which is to enable citizens to form, hold and decide upon the opinions they have, import and export, cannot be imagined in the absence of the freedom of expression and opinion. Therefore, the implementation of the obligations related to right to participate in political life also depends on the level of enjoyment of freedom of expression and opinion.¹⁴³ Thus, voters can get and circulate the information, they deem useful to decide upon without any interference of any kind, including but not limited to intimidation for expressing political affiliation etc.¹⁴⁴

Political debates are the central element of electoral processes where the realization of the freedom guarantees the available and regulated political debates and other means of communications to hold and promote their ideas without interference for all contestants by which the voters are enabled, in turn, to make their decisions.¹⁴⁵ Freedom of voters extends to include the right to investigate, scrutinize and criticise the contestants as well, where such opportunities should not be unduly interfered with.¹⁴⁶

Moreover, freedom of expression and opinion regulates the rights of political party and candidates where they should enjoy the unimpeded and fair access to the public and in some cases private media organizations as well.¹⁴⁷ Such access entails the regulated media environment where no political party or candidate unfairly dominates or are excluded from the fair access to it.¹⁴⁸ On the other hand, enjoyment of the freedom of expression does not include the right to disseminate the information which promotes and incite racial hatred, therefore must be executed within the limit of equality and non-

¹⁴⁰ General Comment 34, para.10;

¹⁴¹ Ibid para.8

¹⁴² La Rue (n138) para.20; General Comment 25, paras.8,12

¹⁴³ Ibid

¹⁴⁴ Ibid

¹⁴⁵ La Rue (n138) paras.23-5

¹⁴⁶ Ibid para.25;

¹⁴⁷ La Rue (n138) paras.23-5,48-9;

Article 19, 'Freedom of Expression and the Angolan Elections', (2007), Global Campaign for Free Expression, 4, date accessed: 24 June 2019, <<https://www.article19.org/data/files/pdfs/publications/angola-foe-elections.pdf>> (Angolan Elections hereinafter)

¹⁴⁸ La Rue (n138) paras. 3, 12-3, 49

discrimination principles.¹⁴⁹ Thus, freedom of expression is interlinked with freedom from discrimination as well.

Apart from the voters and contestants, media also play a crucial role in democratic governance and elections and is one of the actors that enjoy the freedom of expression the most.¹⁵⁰ Freedom of expression becomes especially important to guarantee the media freedom, where media can play its function as the 'fourth government' to receive information from authorities, scrutinize the contestants and inform the public on electoral matters.¹⁵¹ Freedom of expression requires states to enact legislation where media freedom is guaranteed and free from censorship and restrictions.¹⁵² Important information must be publicly accessible and the legislation should enable media to seek and receive information from authorities on reasonable time periods and with explanation in case of refusal.¹⁵³ Moreover, according to the obligations incurred under freedom of expression and opinion, media environment needs balanced regulation where publicly-owned media outlets should allocate fair and unbiased attitude, equal airtime for all political contestants whereas State refrains from interfering with the independence of media outlets.¹⁵⁴

As General Comment 34 further indicates, any interference must be necessary and proportional where the ban should also indicate the ground and the direct causation between the ban and the legitimate objective to avoid blanket bans.¹⁵⁵

Thus, freedom of expression, outlining state obligations sets the number of human rights principle and standards by which electoral processes should be guided by. Therefore, a situation where it fully realized contributes to the aim of achieving electoral integrity. Apart from direct consequences of freedom of expression for elections, the obligations of the freedom require States to promote diverse, independent and free media environment. Thus, where freedom of expression may not be well-defined in some instances to tackle the issues such as campaign finance, having free, diverse and independent

¹⁴⁹ Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Italy, (2012), CERD/C/ITA/CO/16-18, para.17, 17(a) (CERD hereinafter); La Rue (n138) para.30;

¹⁵⁰ La Rue (n138) para.11; General Comment 34, para.13;

¹⁵¹ General Comment 34, para.13; La Rue (n138) paras.12,19

¹⁵² General Comment 34, para.13

¹⁵³ Ibid para.19;

Election Observation and Democratic Support, 'Compendium of International Standards for Elections', (4th edn. 2016), European Commission Service for Foreign Policy Instruments, 76-77, date accessed: 22 June 2019, <<https://eeas.europa.eu/sites/eeas/files/compendium-en-n-pdf.pdf>>; (Compendium hereinafter)

¹⁵⁴ La Rue (n138) para.48-9; Angolan Elections (n147)

¹⁵⁵ ICCPR, article 19.3(a)(b); Narrative of Obligations (n5) 20-6; General Comment 34, para.22;

media, is also helpful to deal with any electoral issue that may arise and undermine the integrity of elections. Later paragraphs will expand on the impact of media and civil society on electoral integrity.

II. Freedom of Peaceful Assembly and Associations

Freedom of peaceful assembly and association is considered one of the building blocks of democratic order and electoral processes.¹⁵⁶ Since elections are the procedures where citizens participate to influence the political life of the society, this freedom becomes, especially important in the context of elections to guarantee the realization of the right to participate in political life.¹⁵⁷ Thus, freedoms of assembly and associations are widely recognized in the international law and States are obliged to implement several obligations incurred under the freedom.¹⁵⁸ First of all, freedom must be protected by law and should not be unnecessarily infringed.¹⁵⁹

Elections are crucial time periods where candidates and parties compete to promote their agendas, represent the people and manage the public affairs. Under freedom of peaceful assembly and association, states are expected to ensure the rights of individuals and group of individuals to gather and establish political associations on equal terms to compete in elections.¹⁶⁰ Contestants and their agents often rely on demonstrations, rallies and another version of meetings to reach to the people to make their political agendas visible, share the ideas, persuade the voters, whereas, such opportunities are indicated by the freedom of assembly and association and should be duly guaranteed by States.¹⁶¹ Moreover, as long as these assemblies are peaceful, there should not be undue interference with the enjoyment of the right and such meeting should also be protected by the interventions of provocateurs and so on.¹⁶²

¹⁵⁶ HRC, Report of the Independent Expert on the Promotion of a Democratic and Equitable International Order, (2018), A/HRC/39/47, para.23

¹⁵⁷ UNGA, Rights to Freedom of Peaceful Assembly and of Association: note / by the Secretary-General, (2013), A/68/299, para.13; General Comment 25, para.8;

UNGA, Convention on the Elimination of All Forms of Discrimination Against Women, (adopted on 18 December 1979), 1249 UNTS 13, article 29 (b) (i) , (CEDAW hereinafter)

¹⁵⁸ HRC, Summary of the Human Rights Council Panel Discussion on the Promotion and Protection of Human Rights in the Context of Peaceful Protests Prepared by the Office of the United Nations High Commissioner for Human Rights, (2011), A/HRC/19/40, para.13; ICCPR, article 21-2; AfCHPR, article 11; ACHR, article 15; ECHR, article 11; Narrative of Obligations (n5) 26-8; Tuccinardi (n21) 45-6

¹⁵⁹ ICCPR, article 21, 22(2); Kiai (n157) paras.21-9; 33-7, 58(c); Kiai (n156) paras.53-5, 63-5, 84-100

¹⁶⁰ Kiai (n157) paras.21-29; 58 (b)(c)(d)(e)

¹⁶¹ Ibid

¹⁶² Kiai (n157) paras.21-29; Kiai (n156) paras.33, 84-100

Freedom of expression enables voters, as well, to found or join associations and rallies to express voter impressions on electoral matters, support candidates and so on, freely.¹⁶³ Additionally, law enforcement bodies should be trained to effectively support and guarantee the enjoyment of the right.¹⁶⁴ Thus, this freedom outlines the basic entitlements of the main electoral actors and electoral integrity cannot be achieved in the denial of this freedom.¹⁶⁵

Moreover, this freedom has implications for civil society organizations as well, of which activities and strength heavily depend on the guarantees for freely execute the right to assemble and establish organizations.¹⁶⁶ Groups of citizens under various aim and programmes are entitled to enjoy the freedom of peaceful assembly and association without unnecessary restrictions, to act as civil society organizations and affect the life of the society on several spheres both in and outside the electoral periods.¹⁶⁷ As will be expanded in later paragraphs, civil society organizations are deemed crucially important for electoral integrity and democratic order.

III. Freedom of Movement

Freedom of movement forms another crucial element of electoral periods and is an internationally recognized human right.¹⁶⁸ While the freedom of movement has greater implications for international migration of humans, the rights also play a crucial role in guaranteeing an electoral process that is in conformity with international laws.¹⁶⁹ States undertake several obligations in regards to freedom of movement, starting with enshrining the right in national legislation and not interfering with it upon discriminatory ground.¹⁷⁰

The political party, candidate and groups should not face undue restrictions, for instance geographical restrictions, while they may need to share their messages across the whole territory of the country.¹⁷¹

¹⁶³ Kiai (n157) paras.21-9; 33-7; Kiai (n156) paras.53-5, 63-5, 84-100

¹⁶⁴ Kiai (n156) paras.43-7, 84-100

¹⁶⁵ Kiai (n157) paras.7

¹⁶⁶ Kiai (n157) paras.43-57; Kiai (n156) para.48

¹⁶⁷ Ibid

¹⁶⁸ CoE, Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto, (1963), ETS 46, Article 2 § 1;

ICCPR, article 12; AfCHPR, article 12; ACHR, article 22; ICERD, article 5(d)(1); Tuccinardi (n21) 46; Narrative of Obligations (n5) 28-9;

¹⁶⁹ General Comment 25, para.12; General Comment 34, para.45; Compendium (n153) 71,83,88,129-30, 140; Tuccinardi (n21) 46; Narrative of Obligations (n5) 28-9;

¹⁷⁰ ICCPR, article 12;

UN HR Committee, CCPR General Comment No. 27: Article 12: Freedom of Movement, (1999), CCPR/C/21/Rev.1/Add.9, para.14; Tuccinardi (n21) 46; Narrative of Obligations (n5) 28;

¹⁷¹ Narrative of Obligations (n5) 29

Freedom of movement also entails opportunities for voters, where General Comment 25 states that any obstacles in the way of freedom of movement should be lifted to enable voters enjoy their right to vote.¹⁷² Moreover, travel bans on government critics, journalists, media representatives and so on, as specific kind of violation of freedom of movement, indicates problematic atmosphere where citizens' political participation incentives are compromised in the fear of retaliation by prohibiting to exit the country.¹⁷³ While it may also happen outside the electoral periods, pattern of violation of the right may signal censoring practice of government and discourage activists, journalists and others from actively participating in the political life of the country, both during and outside the electoral periods.¹⁷⁴

General Comment 34 and Report of the special rapporteur on the promotion of the freedom of peaceful assembly and association emphasize the freedom of movement of, among others, journalists, media representatives, civil society activists and election observation groups to move, investigate, report and observe freely in the context of elections.¹⁷⁵ Additionally, non-binding sources also enlist the implications of freedom of movement for an electoral period that is in line with international human rights standard and norms.¹⁷⁶ Thus freedom of movement not only regulates the rights of the main electoral actors such as voters and contestants but also empowers the media and civil society organizations.

¹⁷² General Comment 25, para.12; Narrative of Obligations (n5) 29; Tuccinardi (n21) 46; Compendium (m153) 71,83,88

¹⁷³ Ramute Remezaite, Zohrab Ismayil, 'Shrinking Space for Civil Society in Azerbaijan', (2016), 3-4, date accessed: 2 July 2019, < <http://www.caucasusinitiative.org/researchs/2/shrinking-space-for-civil-society-in-azerbaijan>>;

Amnesty International, 'Egypt: Travel Bans Systematically used to Silence Human Rights Defenders' Voices', (2016), Amnesty International Joint Public Statement, 1-2, date accessed: 24 June 2019, <<https://www.amnesty.org/download/Documents/MDE1234322016ENGLISH.pdf>>;

Amnesty International, 'Malaysia: Open-ended Travel Bans Violate the Rights of Human Rights Defenders and Political Figures', (2017), Amnesty International Public Statement, 1-2, date accessed: 27 June 2019, <<https://www.amnesty.org/download/Documents/ASA2866972017ENGLISH.pdf>>

¹⁷⁴ Ibid

¹⁷⁵ Kiai (n157) para.13; General Comment 34, para.45; Narrative of Obligations (n5) 28-9

¹⁷⁶ International IDEA, 'Freedom of Movement in Political Campaigning: an Information Brief', (2014), 2-4, date accessed: 15 June 2019, <https://themimu.info/sites/themimu.info/files/documents/Ref_Doc_Freedom_of_Movement_in_Political_Campaigning_IDEA_May2014.pdf>; Narrative of Obligations (n5) 29;

IV. Non-discrimination and equality

The notions of equality and non-discrimination not only lead the historical progressive movements, but they are also enshrined in both the UDHR and the United Nations Charter.¹⁷⁷ Moreover, several human rights treaties and all regional human rights mechanisms include relevant provisions.¹⁷⁸

Though it varies through different interpretations, non-discrimination generally means everyone's equal rights before the law and equal treatment and outcomes for all.¹⁷⁹ Accordingly, everyone should be equal before the law and should enjoy their rights without restrictions on discriminatory grounds which aim to ensure the fairness of electoral processes and form the basis of electoral integrity in the electoral context.¹⁸⁰ Moreover, apart from outlining overarching principle, freedom from discrimination and equality before the law obliges states to perform several tasks in the electoral context to implement the rights.

Standing for election should not be resulted in facing any discriminatory and disadvantageous situation for the person.¹⁸¹ Moreover, the contestant should enjoy equal treatment on access to public media outlets.¹⁸² Individuals and groups should face equal treatment in terms of founding an association.¹⁸³ Electoral Management bodies are also expected to perform in impartial manner which implies equal treatment to all electoral actors.¹⁸⁴

The voters are entitled to their right to participate in political life and to vote without facing discrimination. Moreover, State, additionally to the negative obligations, are required to address the issues arising from systemic and historical discriminations that may render the above-mentioned rights meaningless.¹⁸⁵ Different vulnerable groups and minorities, such as women, people with physical disabilities, LGBT

¹⁷⁷ UDHR, article 1,7; Bal Sokhi-Bulley, 'Non-Discrimination and Difference: The (Non-) Essence of Human Rights Law', (2005), Human Rights Law Commentary: University of Nottingham Human Rights Centre, 1, date accessed: 16th April 2019, <<https://www.nottingham.ac.uk/hrlc/documents/publications/hrlcommentary2005/nondiscriminationanddifference.pdf>>

¹⁷⁸ CERD, article 2,5; ICESCR, article 2(2); ICCPR, article 3, 14, 25-26; ACHR, article 1; AfCHPR, article 2; ECHR, article 14; General Comment 25, paras.21,23; Olivier De Schutter, *International Human Rights Law*, (2nd edn, Cambridge University Press 2014), 638-9; Narrative of Obligations (n5) 18-20; Tuccinardi (n21) 43-5;

¹⁷⁹ Daniel Moeckli, 'Equality and Non-Discrimination', in Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran (eds), *International Human Rights Law*, (2nd edn. Oxford University Press 2014), 155

¹⁸⁰ Narrative of Obligations (n5) 18-20; Tuccinardi (n21) 43-5

¹⁸¹ General Comment 25, para.15; Narrative of Obligations (n5) 19

¹⁸² La Rue (n138) paras.23-5,48-9; Angolan Elections (n147); Narrative of Obligations (n5) 19-20

¹⁸³ Kiai (n157) paras.21-29; 58 (b)(c)(d)(e)

¹⁸⁴ General Comment 25, para.20; Narrative of Obligations (n5) 18-20

¹⁸⁵ Narrative of Obligations (n5) 18-20

individuals, people with lower income or racially, religiously distinct people and others, may have suffered from discrimination, stigmatization, exclusion, inequality or some other disadvantageous attitude for long-time periods which in turn decreases the incentives and opportunities of such groups to realistically participate in the political life of the country.¹⁸⁶ States should address any ongoing discriminatory treatment of these groups, which may itself mean the realization of social, economic and cultural rights as well.¹⁸⁷ It is also required to empower such groups to enable them to effectively enjoy their rights such as political participation and to vote.¹⁸⁸ Accordingly, States are required to take positive measures in order ensure that women and people with disabilities are duly informed as voters on their right to vote.¹⁸⁹ Participation of women in political life can also promoted by the state practice of implementing quotas as temporary measures to promote de facto equality.¹⁹⁰ Moreover, voter education materials are expected to be translated into the languages of minorities and also such materials should take people with varying disabilities into account while designing.¹⁹¹ States are also required to ensure the equality in the conjunction with the implementation of other rights whereas, for instance the enjoyment of freedom of expression and opinion should not protect the speeches that incite racial superiority and hatred and must be duly regulated by law.¹⁹² In case of violation of any above-mentioned rights, right to an effective remedy is also recognized to be implemented in a way where everyone is equal before tribunals and courts.¹⁹³

As shown above, freedom from discrimination and equality-related provisions have specific implications for the main electoral actors. Moreover, the implementation of equality and discrimination-related obligations may necessitate the implementation of economic, social and cultural rights as well. Arguably, depending on the context, these rights may retain the status of electoral rights as well. Additionally, the press and civil society organizations and activist also enjoy such right both during and

¹⁸⁶ HRC, Promotion, Protection and Implementation of the Right to Participate in Public Affairs in the Context of the Existing Human Rights Law: Best Practices, Experiences, Challenges and Ways to Overcome them, (2015), A/HRC/30/26, paras.20,29; Narrative of Obligations (n5) 19-20;

¹⁸⁷ Narrative of Obligations (n5) 19-20;

¹⁸⁸ Ibid

¹⁸⁹ CRPD, article 24; CEDAW, General Recommendation No. 23: Political and Public Life, (1997), A/52/38, para.45 (General Recommendation 23 hereinafter); Narrative of Obligations (n5) 19-20;

¹⁹⁰ Narrative of Obligations (n5) 19-20; General Recommendation 23, para.15

¹⁹¹ General Comment 25, para.12; Narrative of Obligations (n5) 19-20;

¹⁹² La Rue (n138) paras.30-2

¹⁹³ HR Committee, General Comment no. 32; Article 14, Right to Equality Before Courts and Tribunals and to Fair Trial, (2007), CCPR/C/GC/32, para.7 (General Comment 32 hereinafter); ICCPR, article 14(1);

Alessandro Nai (ed), 'Access to Justice and Electoral Integrity: A Policy Brief of the Electoral Integrity Initiative', (2016), Kofi Annan Foundation, Policy Brief No.3, 14, date accessed: 14 June 2019, <<https://www.ifes.org/sites/default/files/eii-policy-brief-3-access-to-justice-and-electoral-integrity.pdf>>

outside the electoral periods where they enjoy their rights such as freedom of expression, peaceful assembly and association and others on equal basis.¹⁹⁴

V. Right to liberty and security

As one of the fundamental human rights, the right to liberty and security of the person is internationally recognized.¹⁹⁵ All individuals, including voters and contestants, automatically enjoy the right during electoral periods as well. Voters, for instance should not face any intimidation, threat or coercive attitude during the whole electoral processes, including during voter registration and voting cycles.¹⁹⁶ Moreover, contestant also should be entitled to and cannot be deprived of their security and liberty because of their candidacy.¹⁹⁷

Apart from these main electoral actors, media representatives and civil society activists are also entitled to the right and their enjoyment should not be unduly interfered with while they are performing tasks in electoral periods as well.¹⁹⁸ Moreover, right to life and right not to be tortured come under specific attention since the violations of the right to liberty and security, in forms of arrests and attacks, may be accompanied by violations regarding these rights as well. And the systematic violation of these fundamental pair of rights signals the autocratic regime type where human rights suffer the most under repressive practice of government towards critics, media representatives, civil society activists and any other politically 'undesirable' person and activities.¹⁹⁹ Therefore, the realization of these rights are not only important during electoral periods and they may well signal the serious human rights problems if violated outside the electoral period as well.

VI. Access to Justice and Effective Remedies and Fair Trial

Right to an effective remedy is an internationally recognized human right and encompasses all human rights violations where it states that the violate right should be remedied.²⁰⁰ Accordingly, state must

¹⁹⁴ Kiai (n156) paras.13,65, 73,84(b); Kiai (n157) paras.15,21,25,45,56; La Rue (n138) paras.12,23; General Comment 34, paras.26,32,39,48; Narrative of Obligations (n5) 22-3, 26-8

¹⁹⁵ ICCPR, article 9; ECHR, article 5; AfCHPR, article 6; ACHR, article 7(1); Narrative of Obligations (n5) 30-1

¹⁹⁶ General Comment 25, para11, 19; Narrative of Obligations (n5) 30-1

¹⁹⁷ Narrative of Obligations (n5) 30-1

¹⁹⁸ General Comment 34, para.23; Kiai (n157) paras.17, 45, 58(c), Narrative of Obligations (n5) 30-1

¹⁹⁹ Peter Haschke, 'Democracy and the Human Right to the Physical Integrity of the Person', (2014), University of Rochester, date accessed: 5 July 2019, VII-VIII, <file:///C:/Users/murad/Downloads/Haschke_rochester_0188E_10697.pdf>;

Marlies Glasius, 'What Authoritarianism is ... and is not: a Practice Perspective', (2018), International Affairs, vol.94, iss.3, 529-31

²⁰⁰ ICCPR, article 2; ECHR, article 13; ACHR, article 25; CEDAW, General Recommendation No. 33 on Women's Access to Justice, (2015), CEDAW/C/GC/33, para.1; Nai (n193) 16; Narrative of Obligations (n5) 31

have necessary legislation in place to ensure the effective enjoyment of rights and should act in a timely manner to effectively remedy the violations.²⁰¹ The stoppage of violation, enforcement of reparations and prevention of recurrence can be included in the effective implementation of right to remedy.²⁰²

Apparent from nature, the remediation of violations of electoral human rights play irreplaceable role in achieving the electoral integrity.²⁰³ Electoral integrity necessitates the availability of legal avenues and remedies to challenge the decisions of electoral bodies, electoral legislation and any malpractice happening during the electoral periods.²⁰⁴ Such cases may include but not limited to, parties challenging the decisions about their formation and dissolution, any electoral actor challenging the malpractices during vote counting etc.²⁰⁵ Moreover, civil society organization and activist and media representatives and organizations are among the electoral actors who may benefit from this right in case of violation of their political participation-related, above-stated rights.

Moreover, the right to a fair trial constitutes integral component of right to an effective remedy. Accordingly, there must be public hearing at impartial and independent judicial body to decide on disputes without any interference and influence.²⁰⁶

Thus, as components of rule of law, access to justice, right to an effective remedy and right to a fair trial are sought guarantee the enjoyment of all human rights, including the electoral rights in electoral context and while fully realized, ensure the conformity of elections with the international human rights standard and principles.

Altogether, above-mentioned two groups of electoral human rights outline the overarching principles and process-related requirements of conducting elections according to international law. Therefore, electoral integrity cannot be achieved in the outright absence of these human rights, namely when these rights lack legal recognition or systematically violated and not remedied as a practice. However, electoral human rights have limitations and their realization also have indirect effect on achieving electoral integrity. The following paragraphs will address these statements.

²⁰¹ AfCHPR, article 7; Narrative of Obligations (n5) 31-2; ICCPR, article 2

²⁰² ICCPR, article 2; HR Committee, General Comment no. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, (2004), CCPR/C/21/Rev.1/Add.13, paras.15-7,19; (General Comment 31 hereinafter); Narrative of Obligations (n5) 31-2

²⁰³ Nai (n193) 14

²⁰⁴ Narrative of Obligations (n5) 31-2;

²⁰⁵ Ibid

²⁰⁶ General Comment 32, paras.19,25-7; Narrative of Obligations (n5) 33-5

3. Limitations of binding human rights sources and indirect effect of human rights on electoral integrity

a) Limitations

As argued through the paragraphs above, when electoral human rights, enshrined in internationally and regionally binding human rights documents, are fully protected, respected and fulfilled increase the chances for elections to be better line with international standard and norms, therefore for electoral integrity. The relevant provisions of human rights set the normative ground for elections and elaborate on standards on how elections must be held. Accordingly, State must act in a way to implement the obligations incurred under these documents which they became a party to, freely.²⁰⁷

However, international human rights provisions tend to have a broad focus and fail to sufficiently address every electoral malpractice.²⁰⁸ They either do not cover some electoral technicalities or address in limited manner where they set only general principles.²⁰⁹ Such matters may vary from the very tiny details such as frequency of updates of voter registration lists, the structure of the polling stations, interval between elections to wider issues such as gerrymandering, campaign finance, election-related corruption, independence of Electoral Management Bodies (EMBs hereinafter) and others.²¹⁰ This may open up opportunities for badly motivated interpretations and some electoral malpractices may go legally unchallenged because of the lack of sufficient international recognition.²¹¹ Unsurprisingly, non-binding and authoritative sources such as good practice guidelines, NGO reports and other non-binding UN documents elaborate on each and every aspect of technicalities of election standards.²¹² The reason can be the less attention to the election by human rights community, not feasible opportunities of human rights machinery to expand and elaborate on electoral rights, lack of coordination between

²⁰⁷ UNGA, Vienna Convention on the Law of Treaties, (adopted 23 May 1969) 1155 UNTS 331, article 26

²⁰⁸ Norris (n3) 21-8, Norris (n91) 176-7

²⁰⁹ The Carter Centre, 'Strengthening International Law to Support Democratic Governance and Genuine Elections', (2002), 26-48, Annex1, date accessed: 10 June 2019, <<http://www.eods.eu/library/strengthening-international-law-to-support-democratic-governance-elections.pdf>> (Strengthening International Law hereinafter); The Carter Centre, 'State Obligations Relevant to Democratic Governance & Elections', (2012), 8-18, date accessed: 9 June 2019, <https://democracy-reporting.org/dri_publications/policy-paper-state-obligations-relevant-to-democratic-governance-elections/> (State Obligations hereinafter); Norris (n3) 21-8, Norris (n91) 176-7; Norris (n3) 8-10, 20, 204-5;

²¹⁰ Strengthening International Law (n209); State Obligations (n209); Norris (n3) 21-8, Norris (n91) 176-7; Norris (n3) 8-10, 20, 204-5

²¹¹ Norris (n3) 21-8, Norris (n91) 176-7; Norris (n3) 8-10, 20, 204-5

²¹² See the number of principles deriving from non-conventional sources such as 'state practice' and 'other sources' compared to 'obligation' and 'interpretation's: Strengthening International Law (n209); State Obligations (n209); Narrative of Obligations (n5) 6-39 ; Norris (n3) 21-8, Norris (n91) 176-7; Norris (n3) 8-10, 20, 204-5

electoral and human rights communities so on.²¹³ However, this topic beyond the aim of this paper and will not be addressed at length here. What becomes apparent from this lack of scope of agreed-upon international human rights provisions is that respecting, protecting and fulfilling conventional human rights may limited impact and does not automatically translate into ensuring electoral integrity.

Despite this limited scope of conventional human rights, the impact of the electoral human rights to the electoral integrity is not only limited to the direct relationship where violations automatically undermine the integrity. Apart from creating the normative ground for and governing the procedural matters regarding elections, human rights create conducive ground for several institutions to thrive by which electoral integrity is also affected. Shedding a light on civil society and media, next paragraphs will expand on how human rights create conducive ground for these institutions and how they affect the electoral integrity.

b) Indirect effect

As mentioned throughout the second group of rights that regulate the various processes related to elections, human rights also entail the obligations which are supposed to lead to an environment where civil society and media are likely to thrive. Rights require their implementation and their implementation, if duly realized, are likely to lead to a situation where media and civil society enjoys the fundamental rights that are pertinent to their existence.

Freedom of the media and strength for civil society are likely to be achieved where, among others, freedom of expression and peaceful assembly and association are realized. The realization, accordingly, implies that relevant legislation and policies are in place and rights are duly protected, state does not interfere with the independence and the establishment of media outlets, CSOs, protects media and CSA from interference of the third parties and takes positive steps to ensure the effective enjoyment of the rights.²¹⁴ Supposedly, it is easy to establish media outlets and CSOs, diversity is promoted, and

²¹³ Norris (n91) 176-7; Avery Davis-Roberts, 'Human Rights and Elections: a Call for Coordination and Action', (2019), Universal Rights Group's Website, date accessed: 3 July 2019, <<https://www.universal-rights.org/blog/human-rights-and-elections-a-call-for-coordination-and-action/>>; OHCHR, 'Human Rights and Elections', OHCHR Website, date accessed: 4 July 2019, <<https://www.ohchr.org/EN/Issues/Pages/HRElections.aspx>>

²¹⁴ General Comment 34, paras.13; La Rue (n138) paras.12,19, 48-9; Compendium (n153) 76-77; Kiai (n157) paras.21-9; 33-7; Kiai (n156) paras.48, 53-5, 63-5, 84-100;

media outlets and CSOs are in unlimited number, the same amount of coverage and focus on every issue is possible in the absence of interference from authorities²¹⁵. Moreover, freedom of movement guarantees the geographically restriction-free reporting and activism experiences for journalists and CSAs.²¹⁶ Right to security and liberty governs the environment where journalists and CSAs are protected from authorities' and third parties' coercive, restrictive, censoring attempts, not jailed for investigative, challenging, dissenting journalism and activism.²¹⁷ Media representatives and CSAs do not suffer from discriminatory state and third-party practices under the freedom from discrimination.²¹⁸ The violations concerning the media outlet and representatives' and CSOs' and CSAs' rights are duly addressed in the light of availability of legal processes, independent and impartial judicial bodies and remedies are duly enforced by the State.²¹⁹ Under such circumstances media and civil society are likely to be powerful, free and independent, whereas the violating such rights are widely reported to be counter-productive for the operations of these institutions, electoral integrity and democratic governance.²²⁰

If human rights are realized, the conditions above are met and assumedly free, independent and powerful media and civil society exist, there are several ways how these institutes may affect the electoral integrity.

Media, primarily, would be free to cover any topic, convey ideas and messages and inform the public on matters of, among other, electoral integrity.²²¹ Freedom of media implies its ability and experiences on investigating electoral issues and any topic sensitive for the public in electoral periods, criticising and scrutinizing the political messages and agendas, covering and challenging decision and policies by authorities and so on.²²² Diverse and interference-free media environment would give rise to independent media outlets which may challenge even mainstream reporting experience and focus on deliberately unreported sensitive issues, if there is a tendency not to challenge specific groups, leaders,

²¹⁵ General Comment 34, para.13; La Rue (n138) paras.12,19, 48-9; Compendium (n153) 76-77; Kiai (n157) paras.21-9; 33-7; Kiai (n156) paras.48, 53-5, 63-5, 84-100;

²¹⁶ Kiai (n157) para.13; General Comment 34, para.45; Narrative of Obligations (n5) 28-9

²¹⁷ General Comment 34, para.23; Kiai (n157) paras.17, 45, 58(c), Narrative of Obligations (n5) 30-1

²¹⁸ Kiai (n156) paras.13,65, 73,84(b); Kiai (n157) paras.15,21,25,45,56; La Rue (n138) paras.12,23; General Comment 34, paras.26,32,39,48; Narrative of Obligations (n5) 22-3, 26-8

²¹⁹ ICCPR, article 2; General Comment 32, paras.19,25-7; ICCPR, article 2; General Comment 31 paras.15-7,19; Narrative of Obligations (n5) 31-5; General Comment 34, para.23

²²⁰ La Rue (n138) para.15-7; Kiai (n157) para.38

²²¹ General Comment 34, para.13; La Rue (n138) para.19;

Hilde Coffé. 'Citizens' Media Use and the Accuracy of their Perceptions of Electoral Integrity', (2017), International Political Science Review, vol.38, iss.3, 293

²²² La Rue (n138) paras.42, 56,61, 82(a)

decisions or topics or give airtime to most provoking voices to be expressed to balance the publicization of political messages within the boundaries of law.²²³

Moreover, media's role in contributing to electoral integrity is not limited to challenging reporting abilities, whereas media may also play a pivotal role on voter education by raising awareness on technicalities of electoral procedures and so on.²²⁴

Additionally, EMBs are deemed as one of the main institutions to ensure the accountability and therefore integrity in the electoral periods where the main body governing electoral decisions is impartial and independent.²²⁵ However, it is not always the case and impartiality and independence of EMBs can be subject to political pressure from authorities.²²⁶ Media freedom bridges this gap by detecting and reporting electoral irregularity and malpractices, holding authorities and electoral stakeholders to account.²²⁷ Similarly, in the light of insufficient international legal recognition and interpretation, media can shed a light on and drag the public attention to issues such as corruption, gerrymandering, campaign finance deregulations and any other type of electoral malpractice that may arise.²²⁸ Authorities, in turn, are less likely to ignore the public reaction on electoral malpractices as a result of media coverage since it affects the public perception on the quality of electoral conduct.²²⁹ Thus, in the absence of effective international and domestic legal recognition of some electoral matters and impartial EMBs, media, can play a crucial role for electoral integrity where it enforces the accountability by shedding light on and publicising the malpractices.²³⁰

Strong and independent civil society is possible where human rights relevant to its existence are duly realized. The number of civil society initiatives may vary from being watchdogs of electoral authorities, presenting policy and analyse paper of decisions and messages from electoral authority and contestants and so on. CSOs also have vital importance for electoral integrity in terms of observing the

²²³ La Rue (n138) paras.49,56,61, 82(a)

²²⁴ Ibid para.57;

Oliver Walton, 'Helpdesk Research Report: Election Monitoring, Voter Education and Election-Related Violence', (2012), Governance and Social Development Resource Centre, 3, date accessed: 24 June 2019, <<http://www.gsdrc.org/docs/open/hdq841.pdf>>

²²⁵ Sarah Birch, Carolien Van Ham, 'Getting Away with Foul Play? The Importance of Formal and Informal Oversight Institutions for Electoral Integrity', (2017), European Journal of Political Research, vol.56, 489-90

²²⁶ Birch (n225) 489-90;

²²⁷ Staffan Lindberg, 'Mapping Accountability: Core Concept and Subtypes', (2013), International Review of Administrative Sciences, vol.79, iss.2, 215-6; Birch (n225) 489-92

²²⁸ La Rue (n138) para.42; Birch (210) 490-2

²²⁹ Birch (n225) 491; Coffe (n221);

²³⁰ Alessandro Nai, 'The Fourth Estate' In Pippa Norris, Alessandro Nai (eds), '*Election Watchdogs: Transparency, Accountability and Integrity*', (Oxford University Press 2017), 200-1; Birch (n225) 489-92;

elections, where such efforts are more capable of detecting, preventing and challenging the electoral malpractices throughout the whole electoral period.²³¹ Especially, when the international and domestic law is insufficient to address some electoral matters in-depth, civil society findings may not only inform the public on electoral malpractices but also can inform EMBs on necessary reforms, can be used in legal procedures to challenge the malpractices and ineffective legislation.²³² Moreover, the civil society fosters the accountability where even if EMBs are not responsive to findings since together with media, civil society drags the public attention to electoral malpractices and demand changes.²³³ Moreover, Together with media, civil society can advocate and raise awareness on voter education to effectively inform the public.²³⁴ Thus, both civil society and media can foster the accountability, may, among others, advocate for the strengthening the domestic law, acceptance and ratification of international treaties and other legal procedures to ensure the level of conformity of domestic situation for international election standard and principles.²³⁵

Moreover, the electoral human rights, especially, the second group of them, have implications for both in and outside of electoral periods since they guarantee the entitlements that people enjoy in their daily lives. The level of enjoyment of these entitlements should not be examined only within electoral periods since these rights cannot be deemed as properly realized if they are constantly subject to systematic restrictions outside the electoral periods. The reason is, the effective enjoyment and indirect effect of these rights on media, civil society and therefore electoral integrity, in the end, would be meaningless where such rights are systematically denied and restricted which is likely to lead a hostile atmosphere outside the electoral periods. Such unsuitable environments are usually perceived as repressive, discouraging citizen participation and unwelcoming towards the independent initiatives by media and civil society. Moreover, such hostile practice of abusing human rights is unlikely to reverse in one night before the electoral periods start. Therefore, the proper realization of these electoral rights which is argued to empower the institutions and boost the electoral integrity level depends on their realization on continuous basis regardless of electoral periods.

²³¹ Kiai (n157) paras.6,10,42

²³² Kiai (n157) para.42; Birch (n225) 491

²³³ Ibid

²³⁴ Kiai (n157) paras.6,10,42; Walton (n224) 3,6

²³⁵ Kiai (n157) para.42; Birch (n225) 491;

Having considered the insufficient expansion of the international law on the details of electoral malpractice, it needs to be mentioned that the realization of the electoral human rights does not automatically translate into the full level of electoral integrity.²³⁶ However, when human rights that are related to elections or in other words electoral rights are duly respected, protected and fulfilled they promote the accountability, empower civil society and media which in turn contributes to the process of achieving electoral integrity. Therefore, arguably, countries, where electoral rights are better realized, are more likely to achieve higher level of electoral integrity.

On the other hand, violation of the electoral rights seriously undermines the integrity of electoral processes both directly by curtailing the fundamental opportunities of electoral actors and indirectly by paralysing the institutions crucial for elections that are conducted in conformity with international standard and norms. Thus, not duly realizing and systematically abusing electoral rights would render achieving higher levels of electoral integrity effectively impossible.

The next chapter will go through the experiences of three post-soviet countries and test the argument by matching the level of realization of electoral rights and electoral integrity level they achieved during recent elections.

C. Case studies

As argued through the last chapter, the election is more likely to be conducted in line with international electoral standard and norms when the electoral human rights are better realized both in and outside the electoral periods. Among the electoral rights, the second group of rights²³⁷ play more important role in election assessment methodologies since they bear both direct and indirect relationship with electoral matters and cover more processes than overarching principles. Therefore, through the case studies the realization level of the second group of rights will be matched with the electoral integrity projects index.

For the aim of the paper, three countries selected are Georgia, Kazakhstan and Turkmenistan. Belonging to the same area of – post-Soviet – countries all countries have the same age of the

²³⁶ Norris (n3) 8-10, 20, 204-5

²³⁷ As mentioned above: Freedom of Expression, Peaceful Assembly and Association, Movement, Right to Liberty and Security of the Person, Right to Life, Right to Fair Trial, Access to Effective Remedy, Information, Freedom from Discrimination, Torture.

statehood since the 1990s.²³⁸ Sharing more or less the same governance culture of post-soviet state-building, these three countries had the same starting point to strengthen as a State.²³⁹

Through the case studies, firstly, the performances of the countries on certain human rights will be analysed. These human rights have both direct and indirect relationships with elections and their realization both in and outside electoral periods, as argued, have determining effect on the level of electoral integrity. The relative ranking of performances on the realization of certain human rights in these countries between 2012-2018 then will be matched with the electoral integrity index, covering the elections held in the same time period.

1. Human Rights Performances

I. Turkmenistan

Turkmenistan has been named as one of the most oppressive countries where citizens suffer from the established pattern of human rights violations.²⁴⁰ Violations of and irregularities related to freedom of expression, peaceful assembly and association, freedom of movement, right to liberty and security in conjunction with right to life and right not to be tortured of activists, human rights defenders and journalists, discrimination on unacceptable grounds have been reported by human rights NGOs.²⁴¹

²³⁸ Vera Tolz, *Forging the Nation: National Identity and Nation Building in Post-Communist Russia*, (1998), *Europe-Asia Studies*, vol.50, iss.6, 993

²³⁹ Herbert Quelle, 'Impediments to Democratization and Human Rights Implementation in Post-Soviet States', (2014), Weatherhead Centre for International Affairs, Harvard University, 1, date accessed: 11 July 2019, <<https://scholarsprogram.wcfia.harvard.edu/fellows/files/quelle.pdf>>; Tolz (n238)

²⁴⁰ Human Rights Watch, 'Turkmenistan', (2019), Human Rights Watch Website, date accessed: 14 June 2019, <<https://www.hrw.org/europe/central-asia/turkmenistan>>

²⁴¹ Amnesty International Report 2013, 'State of the Worlds Human Rights', (2013), Annual Report, 277-8, date accessed: 20 June 2019, <<https://www.amnesty.org/download/Documents/16000/pol100012013en.pdf>> (Amnesty 13 hereinafter)

Amnesty International Report 2014-15, 'State of the Worlds Human Rights', (2015), Annual Report, 377-9, date accessed: 21 June 2019, <<https://www.amnesty.org/download/Documents/POL1000012015ENGLISH.PDF>>; (Amnesty 14-15 hereinafter)

Amnesty International Report 2015-16, 'State of the Worlds Human Rights', (2016), Annual Report, 373-5, date accessed: 21 June 2019, <<https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF>> (Amnesty 15-16 hereinafter)

Amnesty International Report 2016-17, 'State of the Worlds Human Rights', (2017), Annual Report, 371-3, date accessed: 21 June 2019, <<https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>>, Amnesty 16-7 hereinafter)

Amnesty International Report 2017-18, 'State of the Worlds Human Rights', (2018), Annual Report, 372-3, date accessed: 21 June 2019, <<https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>>, Amnesty 17-8 hereinafter)

Human Rights Watch, 'World Report 2013: Events of 2012', (2013), 494-500, date accessed: : 18 June 2019, <https://www.hrw.org/sites/default/files/wr2013_web.pdf>, (HRW13 hereinafter)

Human Rights Watch, 'World Report 2014: Events of 2013', (2014), 503-8, date accessed: 18 June 2019, <https://www.hrw.org/sites/default/files/wr2014_web_0.pdf>, (HRW14 hereinafter)

Human Rights Watch, 'World Report 2015: Events of 2014', (2015), 555-61, date accessed: 18 June 2019, <https://www.hrw.org/sites/default/files/world_report_download/wr2015_web.pdf>, (HRW15 hereinafter)

Human Rights Watch, 'World Report 2016: Events of 2015', (2016), 586-92, date accessed: 18 June 2019,

Freedom of expression has been in dire conditions for the whole period of reported time-period. All media outlets are, reportedly either owned or controlled by the government.²⁴² In the absence of the independent media outlets, few independent journalists have been regularly target for intimidation, threats, attacks and imprisonment for the outspoken journalism.²⁴³ The foreign media outlets have severely restricted access to the country and domestic journalists and other civil society and media members have been threatened to make contact with them.²⁴⁴ The internet is controlled by the government and public suffers from wide-spread blocking of main social-media.²⁴⁵ There have been reported cases where citizens have been forced by authorities, among others, to delete the rightfully obtained information, to change satellite service to use government controlled services and have controlled access to limited channels and so on.²⁴⁶

Freedom of peaceful assembly and association has been reportedly denied where civil society activists and organizations were not able to openly function and engage in human rights monitoring activities under repressive circumstances.²⁴⁷ Government has applied several restrictive legislative elements which aim to control the funding activities of the CSOs.²⁴⁸ Moreover, the registration for CSOs has been reported to be complicated and impeding the effective realization of the right.²⁴⁹ Additionally, no independent NGOs have been able to pass through the registration stage where unregistered CSO activities are considered unlawful against international standards.²⁵⁰ Moreover, very few openly working human rights defenders have been facing several forms of intimidation, attacks and public smearing

<https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf>, (HRW16 hereinafter) Human Rights Watch, 'World Report 2017: Events of 2016', (2017), 608-14, date accessed: 18 June 2019, <https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf>, (HRW17 hereinafter) Human Rights Watch, 'World Report 2018: Events of 2017', (2018), 568-74, date accessed: 18 June 2019, <https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf>, (HRW18 hereinafter)

²⁴² See Turkmenistan Country Profile in HRW and Amnesty Annual Reports; HRW 13,14,15,16,17,18, Amnesty 13,14-15,15-16,16-17,7-8

²⁴³ HRW17 (n241) 610; HRW18 (n241) 568; Amnesty 17-8 (n241) 372; Amnesty 16-7 (n241) 372; Amnesty 15-6 (n241) 374; Amnesty 13 (n241) 278

²⁴⁴ HRW18 (n241) 568; HRW17 (n241) 610; Amnesty 17-8 (n241) 372; Amnesty 16-7 (n241) 372

²⁴⁵ HRW 16 (n241) 587; HRW 13(n241) 495-6

²⁴⁶ HRW 14 (n241) 506; HRW16 (n241) 587; HRW17 (n241); 608-11; Amnesty 15-6 (n241) 374

²⁴⁷ Amnesty 14-5 (n241) 378; HRW 13 (n241) 495; HRW14 (n241) 505; HRW15 (n241) 556; HRW17 (n241) 608-9; HRW18 (n241) 569; HRW19 (n241) 597

²⁴⁸ Amnesty 14-5 (n241) 378;

²⁴⁹ Amnesty 14-5 (n241) 378; HRW14 (n241) 505; HRW15 (n241) 556; HRW17 (n241) 608-9; Amnesty 16-7 (n241) 372

²⁵⁰ Amnesty 14-5 (n241) 378; HRW14 (n241) 505; HRW15 (n241) 556; HRW17 (n241) 608-9

companies for their activities.²⁵¹ Domestic laws put unnecessarily restrictive conditions and make it unlikely for citizens to exercise the right to peacefully assemble.²⁵²

Moreover, freedom of movement also has been among the frequently violated human rights. CSA, media representatives, dissidents, critics of the government and sometimes students studying abroad who are altogether deemed disloyal by authorities have been arbitrarily banned from leaving the country.²⁵³ Such cases have been accompanied by the ban on the relatives of the targeted citizens as well.²⁵⁴ On other cases, it has been reported that some citizens have been deprived of legal documents which in effect impeded their access to different regions in their own country.²⁵⁵ It is reported that around 30 thousands of Turkmen are currently banned from traveling abroad for mostly political reasons.²⁵⁶

Right to liberty and security of the person, considered with the right to life and right not to be tortured of those who are arbitrarily arrested, have been regularly violated in Turkmenistan. Turkmen activists, journalists, dissidents and other critics of government regularly face politically motivated imprisonment, torture and ill treatment or if they are 'lucky' only physical attacks and verbal threats for their human rights related activities.²⁵⁷ Turkmen prisons are infamous for reported torture and ill-treatment cases where even death cases happened in custodies.²⁵⁸ For those who choose the outspoken way of political life, the constant threats and intimidations and other 'punitive measures', reportedly orchestrated by the government, are part of the life-style.²⁵⁹

Moreover, right to a fair trial has also been denied where human rights groups indicated the general impunity for violation of the rights of critics of government, lack of transparency in the opaque judicial system, undermining the chances of impartiality and independence of judicial system as well.²⁶⁰

²⁵¹ HRW13 (n241) 495; HRW14 (n241) 505; HRW15 (n241) 556; HRW17 (n241) 608-9; HRW19 (n241) 597

²⁵² HRW16 (225) 587;

²⁵³ Amnesty 14-5 (n241) 378-9; HRW14 (n241) 507; HRW15 (n241) 557; HRW18 (n241) 570; HRW19 (n241) 598

²⁵⁴ Amnesty 14-5 (n241) 378-9; HRW14 (n241) 507; HRW15 (n241) 557; HRW16 (n241) 588; HRW19 (n241) 598

²⁵⁵ HRW13 (n241) 495;

²⁵⁶ HRW19 (n241) 598;

²⁵⁷ HRW13 (n241) 495-7; HRW 14 (n241) 505,8; HRW 15 (n241) 556,9; HRW17 (n241) 608-10; HRW19 (n241) 597; HRW18 (n241) 568; Amnesty 17-8 (n241) 372; Amnesty 16-7 (n241) 372; Amnesty 15-6 (n241) 374; Amnesty 13 (n241) 278

²⁵⁸ HRW 14 (n241) 509; HRW 15 (n241) 559; HRW16 (n241) 589; Amnesty 17-8 (n241) 373; Amnesty 14-5 (n241) 378

²⁵⁹ HRW13 (n241) 495-7; HRW 14 (n241) 505,8; HRW 15 (n241) 556,9; HRW17 (n241) 608-10; HRW19 (n241) 597; HRW18 (n241) 568; Amnesty 17-8 (n241) 372; Amnesty 16-7 (n241) 372; Amnesty 15-6 (n241) 374; Amnesty 13 (n241) 278

²⁶⁰ HRW13 (n241) 497; HRW14 (n241) 508; HRW17 (n241) 611; HRW18 (n241) 571; Amnesty 13 (n241) 278;

Additionally, under the severely repressive governance, trials are closed, and no independent group dares to monitor the trials of these cases of politically motivated arrest of Turkmenists.²⁶¹

Turkmenistan's government, reportedly, is discriminative against religious groups and people with untypical sexual orientation and gender identities.²⁶² Despite international calls and UPR recommendations to decriminalize, it is still against the law to be engaged within same-sex relationship.²⁶³ Moreover, LGBT community members face regular discriminatory attacks, arrests and other forms of intimidation.²⁶⁴ Moreover, religious groups face discriminatory challenges to establish associations, practice their religion and for peaceful gatherings.²⁶⁵ Moreover, Committee of Committee on the Rights of Persons with Disabilities in its concluding observations on Turkmenistan mentioned the exclusionary practices towards people with disabilities and raised concerns related to the violations of and irregularities around the right to political participation, right to vote and get elected and voter education of the group.²⁶⁶ Such discriminatory and exclusionary practices established by government may well leave the group out of the life of the society and curtail the rights and incentives of excluded groups to participate in the political life of the country.

HR Committee, in its concluding observations in 2017, recognize most of the violations stated above as well.²⁶⁷ Turkmenistan's failure to adopt the recommendations on the implementation of the right to an effective remedy is above the human rights-related concerns of the committee.²⁶⁸ Among others, Turkmenistan is advised to decriminalize the consensual same-sex relationships between adults and strengthen the domestic law to outlaw the discrimination on the grounds of sexual orientation and gender identity.²⁶⁹ Moreover, concerns are raised about the legislation insufficiently addressing the torture and ill-treatment of prisoners.²⁷⁰ Committee also highlights the systematic violations of freedom of movement, expression and association and call the government to reassess the restrictive laws and

²⁶¹ HRW13 (n241) 497; HRW14 (n241) 508; HRW17 (n241) 611; HRW18 (n241) 571; Amnesty 13 (n241) 278;

²⁶² Amnesty 16-7 (n241) 372; Amnesty 15-6 (n241) 374; Amnesty 17-8 (n241) 373

²⁶³ HRC, Report of the Working Group on the Universal Periodic Review: Turkmenistan, (2018), A/HRC/39/3, paras.87, 116(37-41); Amnesty 17-8 (n241) 373; HRW 13 (n241) 498; HRW 14 (n241) 509; HRW15 (n241) 560; HRW16 (n241) 589-90; HRW17 (n241) 617;

²⁶⁴ Amnesty 17-8 (n241) 373; HRW 13 (n241) 498;

²⁶⁵ Amnesty 16-7 (n241) 372; Amnesty 15-6 (374)

²⁶⁶ Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Turkmenistan, (2015), CPRD/C/TKM/CO/1, paras.45-6

²⁶⁷ HR Committee, Concluding Observations on the Second Periodic Report of Turkmenistan, (2017), CCPR/C/TKM/CO/2, paras.4-54 (Concluding Observation on Turkmenistan hereinafter)

²⁶⁸ Concluding Observation on Turkmenistan, para.5

²⁶⁹ Ibid paras.6-10

²⁷⁰ Ibid paras.18-23

integrate the international law principles into domestic law to ensure the effective enjoyment of these rights by citizens.²⁷¹ Moreover, discriminatory practices against religious communities and the insufficient independence and impartiality of judicial bodies are mentioned among the raised concerns and relevant recommendations.²⁷²

Thus, one may conclude that Turkmenistan holds one of the worst human rights performances in the region. The public is systematically denied fundamental civil and political rights, accompanied the denial of several other set of rights as well. The repressive atmosphere discourages citizens, journalists, activists and others to speak out or engage with human rights-related activities where such activities most of the time are not tolerated by the government and is likely to be accompanied by intimidation, imprisonment, torture and even death. Even in non-electoral periods, main electoral rights are widely violated, not effectively remedied. Unsurprisingly, Turkmenistan holds the last place on the ranking list of media freedom index worldwide and is labelled as having a closed civil society which indicates the worst conditions for CSA and CSOs.²⁷³

II. Kazakhstan

Kazakhstan is another central Asian country that is known for its poor human rights records. However, the situation of human rights is mostly labelled as restricted compared to state of being systematically denied what was observable through the section examining Turkmenistan's human rights performance.

For the reported timeline (2012-18) Kazakh authorities have been criticised for politically motivated and restrictive attempts and legislations that impeded the enjoyment (level of the fundamental human rights). The country has been reported to have deteriorating human rights performance over time.²⁷⁴

Various laws and court decisions in the given period have put undue restrictions that curtailed the effective execution of freedom of expression by citizens and media.²⁷⁵ As HR Committee also mentioned, justifications tended to be vague, open-ended, citing often-unclear grounds such as threatening national security, inciting, among others, social and religious discord and possibly

²⁷¹ Ibid paras.28-9, 42-9

²⁷² Ibid paras.30-1, 38-41

²⁷³ Reporters Without Borders, '2019 World Press Freedom Index', (2019), RSF Website, date accessed: 24 June 2019, <<https://rsf.org/en/ranking>>; CIVICUS, 'Monitor: Tracking the Civic Space', (2019), CIVICUS Website, date accessed: 24 June 2019, <<https://monitor.civicus.org/>>

²⁷⁴ HRW 13 (n241) 447

²⁷⁵ Amnesty 13 (n241) 145; HRW14 (n241) 461; HRW15 (n241) 326-7; Amnesty 15-6 (n241) 213; HRW16 (n241) 345-6; HRW17 (n241) 373,6; Amnesty16-7 (n241) 217; HRW19 (n241) 327

criminalizing the enjoyment of freedom of expression against the international standards.²⁷⁶ Several independent media outlets were ordered to shut down, access to blogs and social media platforms was restricted for minor violations of law or on technical grounds which has been reported to be politically motivated attempts to silence the critics of the government.²⁷⁷ Moreover, arbitrary arrests, attacks and other form of intimidation cases were reported against those who were enjoying the freedom of expression.²⁷⁸

Deteriorating human rights performance has also been observed in terms of the enjoyment of the freedom of peaceful assembly and association. NGO and other association laws were reported to have unnecessarily restrictive clauses to impede the enjoyment of the right, by tightening registration and reporting requirements.²⁷⁹ Peaceful protests were regularly denied permissions, interfered with and several demanding restrictions in law lead to the curtailment of freedom of assembly against the international standards whereas Kazakhstan even rejected the relevant UPR recommendation to review such laws.²⁸⁰ Several peaceful protesters and other CSAs regularly faced harassment, attack and administrative arrests and imprisonment over the reported time-period.²⁸¹ The Special Rapporteur on the promotion of freedom of peaceful assembly and association and HR Committee also mentioned the restrictive laws and practices by authorities as impeding the entitlements of people to associate and assemble.²⁸²

Right to liberty and security of the CSAs, media representatives and other outspoken citizens were regularly infringed where they often faced politically-motivated intimidation, physical attacks,

²⁷⁶ HR Committee, Concluding Observations on the Second Periodic Report of Kazakhstan, (2016), CCPR/C/KAZ/CO/2, paras.13-4, 49-50, 53-4 (HR Committee Kazakhstan hereinafter)

HRW13 (n241) 451; HRW14 (n241) 461; HRW15 (n241) 326-7; Amnesty 15-6 (n241) 213; Amnesty16-7 (n241) 217; HRW18 (n241) 312-3; HRW19 (n241) 327; HRW17 (n241) 376

²⁷⁷ Amnesty 14-5 (n241) 211; HRW14 (n241) 461; HRW15 (n241) 326-7; Amnesty 15-6 (n241) 213; HRW17 (n241) 373; Amnesty16-7 (n241) 217; Amnesty17-8 (n241) 221; HRW18 (n241) 312-3; HRW19 (n241) 327

²⁷⁸ HRW14 (n241) 461; HRW15 (n241) 326-7; HRW16 (n241) 345-6; HRW17 (n241) 373; Amnesty16-7 (n241); 217; Amnesty 17-8 (n241) 221; HRW18 (n241) 312-3; HRW19 (n241) 327

²⁷⁹ Amnesty 14-5 (n241) 211; Amnesty 15-6 (n241) 213-4; Amnesty 16-7 (n241) 213-5; HRW 16 (n241) 345-6; HRW17 (n241) 372-3; HRW18 (n241) 311,3; Amnesty 17-8 (n241) 221;

²⁸⁰ HRC, Report of the Working Group on the Universal Periodic Review: Kazakhstan, (2014), A/HRC/28/10, paras.77,108 (UPR Kazakhstan hereinafter);

Amnesty 14-5 (n241) 211; HRW13 (n241) 451; HRW14 (n241) 463-4; Amnesty 15-6 (n241) 213-4; Amnesty 16-7 (n241) 213-5; HRW 16 (n241) 345-6; HRW17 (n241) 371-3; HRW18 (n241) 311,3; HRW15 (n241) 330

²⁸¹ Amnesty 14-5 (n241) 211; HRW14 (n241) 463-4; HRW15 (n241) 325-6; Amnesty 15-6 (n241) 213-4; Amnesty 16-7 (n241) 213-5; HRW 16 (n241) 345-6; HRW17 (n241) 371-3; HRW18 (n241) 311,3; Amnesty 17-8 (n241) 221

²⁸² HRC, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai: Mission to Kazakhstan, (2015), A/HRC/29/25/Add.2, paras.52, 67-71; HR Committee Kazakhstan, paras.53-4; HRW 16 (n241) 346;

administrative arrests and imprisonment.²⁸³ Moreover, both the outspoken group and other prisoners were reportedly faced torture and ill-treatment, including forced psychiatric detention as also mentioned by the Committee against Torture(CAT hereinafter).²⁸⁴ Despite the CAT recommendations to bring the domestic law in conformity with international standards and formal commitments and legislative and policy changes by authorities, impunity, ineffective investigations an ineffective investigations and dubious trials, reportedly, remained as pressing human rights issues and undermined the rule of law and implementations of right to public trial, right to effective remedy provisions of international law.²⁸⁵

Violations and irregularities related to discrimination were among the issues the international human rights NGOs and UN human rights machinery bodies reported over the examined time-period. Different groups, such as the LGBT community, migrant workers, women and people with physical disabilities suffered from discriminative and exclusionary practices.²⁸⁶ The domestic law and authorities, reportedly, failed to protect the rights of and advance the situation of such groups.²⁸⁷ Kazakhstan got number of recommendations in the second cycle of UPR processes and by Committees of several conventions to, among other steps, review the domestic laws to strengthen equality and freedom from discrimination provisions.²⁸⁸ Moreover, adverse impact of discriminatory and excluding practices towards such groups on the implementation of rights to political participation, vote and elected are also among the mentioned concerns in recommendations to Kazakhstan.²⁸⁹

Thus, Kazakhstan over the examined period of time sustained its poor human rights performance where several pressing issues remained ineffectively tackled and electoral human rights were violated on a

²⁸³ Amnesty 14-5 (n241) 211; HRW14 (n241) 460-1, 3-4; HRW15 (n241) 325-7; Amnesty 15-6 (n241) 213-4; Amnesty 16-7 (n241) 213-5,7; HRW 16 (n241) 345-6; HRW17 (n241) 371-3; HRW18 (n241) 311-4; Amnesty 17-8 (n241) 221; HRW19 (n241) 327; HRW 13 (n241) 448-9

²⁸⁴ Committee against Torture, Concluding Observations on the Third Periodic Report of Kazakhstan,(2014), CAT/C/KAZ/CO/3, para.19 (CAT Kazakhstan hereinafter); Amnesty 14-5 (n241) 209-11; Amnesty 15-6 (n241) 212; Amnesty 16-7 (n241) 215; Amnesty17-8 (n241) 220-1; HRW 13 (n241) 448-9; HRW14 (n241) 462; HRW16 (n241) 346-7; HRW16 (n241) 346-7; HRW18 (n241) 314; HRW19 (n241) 328

²⁸⁵ See especially the: CAT Kazakhstan, paras.7-9,11, 13-7, 19-26; Amnesty17-8 (n241) 220-1; Amnesty 14-5 (n241) 209-11; Amnesty 15-6 (n241) 212; HRW15 (n241) 327-8; HRW16 (n241) 346-7; HRW17 (n241) 375; HRW18 (n241) 314; HRW19 (n241) 328; HRW (n241) 375-7

²⁸⁶ Amnesty 17-8 (n241) 220-2; HRW13 (n25) 451; HRW14 (n241) 463; HRW16 (n241) 346,9; HRW (n241) 375-7; HRW18 (n241) 314-6; HRW19 (225) 330

²⁸⁷ HR Committee Kazakhstan, paras.9-10, 47-8; Amnesty 17-8 (n241) 220-2; HRW16 (n241) 346,9; HRW18 (n241) 314-6; HRW19 (n241) 330

²⁸⁸ CERD, Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Kazakhstan, (2014), CERD/C/KAZ/CO/6-7, paras.6-7, 13, (CERD Kazakhstan hereinafter);

CEDAW, Concluding Observations on the Combined Third and Fourth Periodic Reports of Kazakhstan, (2014), CEDAW/C/KAZ/3-4, paras.9-13, (CEDAW Kazakhstan hereinafter);

UPR Kazakhstan, 70, 73-4, 80-1, 89, 98; HR Committee Kazakhstan, paras.9-10,47-8; CAT Kazakhstan, 16,8;

²⁸⁹ CERD Kazakhstan, para.9; CEDAW Kazakhstan, paras.14, 23-4; HR Committee Kazakhstan, paras.47-8, 53-

frequent basis. The country, through the reform attempts and formal commitments addressed some issues, however, it mostly restricted the enjoyment of the electoral rights by several manipulative tactics. To summarize, electoral human rights were recognized and to some extent realized, however, insufficiently, in Kazakhstan while Turkmenistan stands out for severely repressive atmosphere and what would be denial of electoral rights in principle. Unsurprisingly, indirect effect of better realization of electoral rights by Kazakhstan compared to Turkmenistan is also observed through the more favourable place of Kazakhstan in the rankings for media freedom and space for civil society²⁹⁰

III. Georgia

In the reported time-period Georgia steadily improved its human rights standards, however, several electoral rights were reported on several occasions to be violated and not sufficiently protected and remedied.

Regarding the freedom of expression, Georgia has maintained mostly free and diverse media environment, however suffered from biased coverage of political matters by publicly funded nationwide TV stations.²⁹¹ Several cases were reported where opposition-related and independent journalists, other citizens and media outlets faced attacks, intimidations and attempts of interference by authorities and third parties.²⁹² These undermined the implementation of obligations incurred under the right but was often accompanied by several launched investigations into allegations and legislative and policy improvements as well.²⁹³ Moreover, some of the attacks to journalists happened in the electoral periods as well.²⁹⁴

Freedom of assembly and association has been reported, to be generally unrestricted.²⁹⁵ However, on several occasions, peaceful protests were denied protection, interrupted by violence, use of excessive force or undue interference both by authorities and third parties.²⁹⁶ Moreover, several opposition

²⁹⁰ Reporters Without Borders, '2019 World Press Freedom Index', (2019), RSF Website, date accessed: 24 June 2019, <<https://rsf.org/en/ranking>>; CIVICUS, 'Monitor: Tracking the Civic Space', (2019), CIVICUS Website, date accessed: 24 June 2019, <<https://monitor.civicus.org/>>

²⁹¹ HRW13 (n241) 444; HRW14 (n241) 458;

²⁹² Amnesty13 (n241) 103-4; Amnesty 15-6 (n241) 164; HRW13 (n241) 444; HRW14 (n241) 458; HRW16 (n241) 275-6; HRW17 (n241) 292; HRW18 (n241) 244; HRW19 (n241) 246

²⁹³ Amnesty13 (n241) 103-4; Amnesty 15-6 (n241) 164; HRW13 (n241) 444; HRW14 (n241) 458; HRW18 (n241) 244;

²⁹⁴ Amnesty13 (n241) 103-4;

²⁹⁵ Amnesty13 (n241) 104; Amnest16-7 (n241) 165-6

²⁹⁶ Amnesty13 (n241) 104; Amnesty14-5 (n241) 160; Amnesty15-6 (n241) 164; Amnesty16-7 (n241) 165-6; HRW14 (n241) 457

activists faced harassment and physical attacks where opposition associations suffered from, reportedly, politically motivated fines and investigations.²⁹⁷

Right to liberty and security was mostly realized, however there were reported cases of persistent practice of administrative arrests by authorities, attacks to and harassment of people who were enjoying their fundamental rights and prominent case of failed protection of the right to liberty and security where Azerbaijani journalist in exile was kidnapped by third parties and ended up in neighbour Azerbaijan where he was immediately arrested.²⁹⁸ Moreover, Georgian authorities, reportedly, failed the issue of tackling torture and ill-treatment by law enforcement bodies.²⁹⁹

Discrimination has been frequently reported, to remain as one the human rights issues not tackled by authorities sufficiently and has been part of recommendations by UN bodies as well.³⁰⁰ Mostly, LGBT community, religious groups and women suffered from insufficient protection in law and practice and the absence of effective measures to have equal opportunities.³⁰¹

Justice system failed to handle the primarily pressing human rights issues of Georgia. Lack of accountability, absence of effective and impartial investigations into human rights violations, impunity and the political interference in the judicial system undermined the enjoyment of the right to fair trials, right to an effective remedy and, generally, provisions of rule of law.³⁰² Authorities failed to effectively investigate the law enforcement bodies for human rights violations and number of dubious judicial decisions raised concerns of the political interference and impartiality and independence of judicial bodies.³⁰³

²⁹⁷ Amnesty13 (n241) 103; Amnest16-7 (n241) 165-6; HRW14 (n241) 457; HRW14 (n241) 457

²⁹⁸ Amnesty13 (n241) 103-4; Amnest16-7 (n241) 165-6; HRW14 (n241) 457-8; Amnesty 15-6 (n241) 164; HRW13 (n241) 442,4; HRW16 (n241) 274-6; HRW17 (n241) 292; HRW18 (n241) 243-4; HRW19 (n241) 246; Amnesty 17-8 (n241) 172; HRW13 (n241) 443; HRW14 (n241) 454; HRW 15 (n241) 254; HRW16 (n241) 275; HRW17 (n241) 290-1;

²⁹⁹ Amnesty 14-5 (n241) 161-2; Amnesty 15-6 (n241) 164-5; Amnesty16-7 (n241) 166;

³⁰⁰ HR Committee, Concluding Observations on the Fourth Periodic Report of Georgia, (2014), CCPR/C/GEO/CO/4, paras.6-8,18 (CCPR Georgia hereinafter); CEDAW, Women Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Georgia, (2014), CEDAW/C/GEO/CO/4-5, paras.10-1, 16-21, (CEDAW Georgia hereinafter)

³⁰¹ CEDAW Georgia, 16-21; HRW14-5 (n22) 159-60; Amnesty15-6 (n241) 164; Amnesty 17-8 (n241) 173; Amnesty16-7 (n241) 166; HRW 14 (n241) 456-7; HRW15 (n241) 255; HRW 16 (n241) 276; HRW17 (n241) 291-2; HRW19 (n241) 245-6

³⁰² CCPR Georgia, paras.11-3; Amnesty 15-6 (n241) 163-4; Amnesty 17-8 (n241) 172; Amnesty 16-7 (n241) 165; HRW 14 (n241) 455-6; HRW15 (n241) 253; HRW16 (n241) 273-4; HRW17 (n241) 291; HRW18 (n241) 241-2; HRW19 (n241) 242

³⁰³ CCPR Georgia, paras.11-3; Amnesty 15-6 (n241) 163-4; Amnesty 17-8 (n241) 172; Amnesty 17-8 (n241) 172; HRW13 (n241) 443-5; HRW16 (n241) 273-4; HRW17 (n241) 291;

Thus, Georgian mostly enjoy their electoral rights in the unrestricted atmosphere however accompanied by frequent violations and insufficient remediation efforts. Despite pressing issues such as political interference in judicial bodies and impunity for human rights violations, Georgia, compared to both Kazakhstan and Turkmenistan, even not to full extent, realizes the electoral rights to much higher degree, accompanied by some persistently insufficient elements. Unsurprisingly, media and civil space in Georgia is considered to have better atmosphere to operate within when compared to both Turkmenistan and Kazakhstan.³⁰⁴

As examined above, these three countries differ for their electoral human rights performances. While it is hard to operationalize, measure and compare the severity of human rights violations, the general analysis makes it easier to compare three distinctive versions. According the international human rights NGOs and UN human rights machinery bodies' reports, general atmosphere of human rights in the given countries differ for being generally denied, largely restricted and largely unrestricted. Thus, Georgia, Kazakhstan and Turkmenistan would respectively take the first, the second and the third places if their human rights performances are measured together from the best to the worst.

2. Electoral Integrity Performances

Office for Democratic Institutions and Human Rights of OSCE (OSCE ODIHR hereinafter), has been observing, assessing the quality of elections in these countries since the mid-1990s.³⁰⁵ OSCE election observation missions (EOM hereinafter) cover the whole electoral period and gives recommendations to promote compliance with OSCE and other international electoral commitments of these countries in their final reports. Unsurprisingly, OSCE reports also vary in assessments in the final reports of conducted elections in the given time period. Final report on the presidential elections of Turkmenistan which was held in 12 February 2017, among others, indicates, unregulated campaign finance laws, strictly controlled political environment, insufficiently impartial EMBs, electoral laws in need of urgent

³⁰⁴ Reporters Without Borders, '2019 World Press Freedom Index', (2019), RSF Website, date accessed: 24 June 2019, <<https://rsf.org/en/ranking>>; CIVICUS, 'Monitor: Tracking the Civic Space', (2019), CIVICUS Website, date accessed: 24 June 2019, <<https://monitor.civicus.org/>>

³⁰⁵ OSCE Office for Democratic Institutions and Human Rights, 'Elections', OSCE Website, date accessed: 25 June 2019, <<https://www.osce.org/odihr/elections>> (OSCE ODIHR hereinafter)

reforms, issues related to not plural and independent media environment and concerns related to separation of powers and rule of law.³⁰⁶ Moreover, undue restrictions, irregularities and other concerning practices are mentioned in regards to right to vote, secrecy of the ballot, freedom of assembly and association, freedom of expression and information and others which includes blatant malpractices such as proxy voting, multiple voting and dishonest vote counting cases.³⁰⁷ OSCE EOM final report from Kazakhstan's early presidential elections in 2015 presents slightly different image. In Kazakhstan, OSCE reports, mostly orderly mannered electoral administration and election day however with lack of competitive atmosphere, insufficient regulations according to campaign finance, restrictive electoral laws.³⁰⁸ Additionally, OSCE indicates that electoral integrity suffered from undue restrictions and undesirable practices towards the enjoyment of right to vote, be elected, freedom of expression, peaceful assembly and association where serious malpractices such proxy and multiple voting and problematic vote counting practices were also observed.³⁰⁹ In contrast, Georgian presidential elections in 2018, have been reported by OSCE to be a professionally administered, competitive and genuine elections.³¹⁰ Although, OSCE also reported several irregularities and concerning restrictions in regards to right to vote, be elected and affective remedy.³¹¹ In other words, OSCE reports the most problematic electoral period and results in terms of the enjoyment of electoral rights in Turkmenistan, where Georgia leads the group with few issues to be addressed.

Electoral Integrity index presents a much clearer image of these countries' elections performances in numerical ranking. For the quality of elections that happened in these countries during the examined time-period (2012-8) each country has different scores in 1-100 points scale, where the more points mean the higher level of electoral integrity:³¹²

Turkmenistan 35, Kazakhstan 45, Georgia 58.

³⁰⁶ OSCE ODIHR, 'Turkmenistan: Presidential Elections 12 February 2017', (2017), OSCE/ODIHR Election Assessment Mission Final Report Turkmenistan, 1-5, 9-12, date accessed: 25 June 2019, <<https://www.osce.org/odihr/316586?download=true>>

³⁰⁷ Ibid, 2-5, 8-9, 16

³⁰⁸ OSCE ODIHR, 'Republic of Kazakhstan: Early Presidential Elections 26 April 2015, (2015), OSCE/ODIHR Election Observation Mission Final Report Kazakhstan, 13-4, 19-20, date accessed: 25 June 2019, <<https://www.osce.org/odihr/elections/kazakhstan/174811?download=true>>

³⁰⁹ Ibid, 1-2, 9-11, 13-5, 17, 20-1

³¹⁰ OSCE ODIHR, 'Georgia: Presidential Elections 28 October and 28 November 2018, (2019), OSCE/ODIHR Election Observation Mission Final Report, 1, date accessed: 26 June 2019, <<https://www.osce.org/odihr/elections/georgia/412724?download=true>>

³¹¹ Ibid, 8, 12, 17, 19

³¹² Pippa Norris, Max Grömping, 'Electoral Integrity Worldwide: PEI 7.0, (2019), Electoral Integrity Project Website, 6, date accessed: 15 June 2019, <<https://www.electoralintegrityproject.com/the-year-in-elections-2017>>

3. Matching Results

Thus, when countries are ranked from the worst to the best for their results, both the human rights performance and electoral integrity ratings correspond to have the same sequence. Accordingly, Turkmenistan with relatively the worst electoral human rights performance also holds the worst electoral integrity results, whereas Georgia excels other countries in both indicators.³¹³ (See Table 1 for visual description)

Table 1:

Countries	Electoral Integrity Index Results (2012-8)	Electoral Human Rights Performance (2012-8)
Georgia	58	Relatively the Best
Kazakhstan	45	Relatively Okay
Turkmenistan	35	Relatively the Worst

Thus, the argument that countries, where electoral rights are better realized are more likely to achieve a higher level of electoral integrity holds true. Similarly, where electoral rights are systematically abused and denied, elections are less likely to be conducted according to international standard and principles. While not covering the institutional analysis of the reasons for failure and success in achieving electoral integrity, argument outlines overarching principle of respecting, protecting and fulfilling electoral human rights in the given context as one of the main determinants of electoral integrity.

³¹³ Ibid

Conclusion

Democracy and human rights share mutually beneficial relationship where human rights govern the fundamental entitlements of people and democracies have a better record in upholding human rights.³¹⁴ Elections are inseparable part of democracies and the best way they contribute to the further democratization of the country and the situation of human rights is when they are held according to international standard and norms. Human rights, on the other hand, have both direct and indirect contributions to electoral integrity. They not only set the normative ground but also govern the election-related procedures to contribute to the conformity level with the international standards. Moreover, electoral human rights when duly realized create conducive ground for institutions such as media and civil society to thrive, be powerful, free and independent to foster the accountability and address and advocate for the issues where international conventional human rights documents yet fail to address in-depth.³¹⁵ Thus, proper realization of electoral rights has determining effect for electoral integrity. Therefore, when electoral integrity is met, it is likely to contribute to further democratization under which human rights are more likely to be further advanced. To sum up, human rights are not only the beneficiaries of the circle-like relationship among elections, democracy and human rights, but also enforces the reaction by being upheld.

³¹⁴ Arat (n32); Wesson (n32)

³¹⁵ Kiai (n157) para.42; Birch (n225) 491

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