



www.cartercenter.org

**THE CARTER CENTER
ATLANTA, GEORGIA, USA
JANUARY 14-15, 2016**

SUMMARY OF PROCEEDINGS

I. Introduction

The Human Rights and Election Standards workshop convened UN Special Procedures mandate holders and members of the elections community from Jan. 14-15, 2016, at The Carter Center in Atlanta, Georgia. Participants took part in seven sessions over two days, reflecting on the elements of a human rights-based approach to elections and advancing strategies for collaboration between the human rights and elections communities. This meeting was co-hosted by the United Nations Office of the High Commissioner for Human Rights and The Carter Center's Democratic Election Standards project. Discussions were held under the Chatham House Rules. The Carter Center plans to follow this meeting with additional workshops to explore specific areas for collaboration in greater detail. The participants discussed a number of concrete recommendations for the human rights and election observation community, which are included at the end of this summary.

II. Opening Remarks

Ambassador *Mary Ann Peters*, CEO of The Carter Center, welcomed participants. She noted the emergence of a broad consensus among organizations working on elections and referred to the inaugural Human Rights and Elections Standards conference held in February 2015. She expressed The Carter Center's commitment to public international law as the best basis for assessment criteria for election quality and a hope that the participants would discuss the possibility of a Special Rapporteur or Working Group on the right to participation, to help concentrate attention on the critical issues that bridge human rights and democratic elections.

Hernan Vales, from the Office of the High Commissioner for Human Rights (OHCHR) began by quoting the Declaration of Principles, emphasizing that human rights and the rule of law are interdependent, and the importance of human rights in the electoral process. He also noted that there is sometimes a tendency to focus exclusively on the technical aspects of the electoral process without paying sufficient attention to the human rights environment in which the elections are held, therefore the OHCHR advocates a human rights based approach to elections. Such an approach requires that the several principles derived from human rights law guide

electoral work; especially universality, indivisibility, interdependence of all human rights, accountability for human rights violations, and compliance with the rule of law. This also requires taking into account all civil, cultural, economic, political, and social rights in context. The thematic and country mandates supported by the OHCHR have a variety of tools at their disposal to carry out their human rights work which has allowed them to make significant contributions to the U.N. human rights machinery. One of the key features of Special Procedures is their flexibility and ability to respond quickly to human rights issues which allows them to play a vital role in early warning. He encouraged participants to explore how Special Rapporteurs and election practitioners can benefit from and contribute to each other's work as well as potential challenges and how to address them.

III. Session One: Human Rights and Election Standards: An Overview of the Workshop Series and the Goals of the Meeting

Presenter: *Beth Plachta*/The Carter Center

Beth Plachta, The Carter Center, began the session with an overview of the principles for election observation. After defining election observation, *Plachta* continued with an overview of the work of The Carter Center, specifically the Democratic Election Standards (DES) project which began in 2006. The DES project went on to launch the Database of Obligations in 2010, followed by a companion handbook and database redesign in 2014. She then discussed The Human Rights Election Standards Initiative that was launched in February 2015 with the initial conference held at The Carter Center that brought together election observation groups, civil society organizations, human rights experts and scholars. She also outlined future plans for the Human Rights Election Standards Initiative including meetings with U.N member states and treaty bodies.

Following the presentation, the discussion turned to how the Special Rapporteurs may interact with election observation organizations and facilitate greater collaboration. One question that arose was how often electoral observation mission are in contact with human rights organizations. A number of participants provided insight of the practices of their respective organizations and stated that they consult with human rights organizations and meet with civil society organizations on the ground. Participants mentioned the sensitivity of working with CSO's, including the potential negative consequences for those groups that choose to meet with members of the election observation community. Due to this, some organizations provide extra protection to those actors during communications.

It was noted that while elections typically have a political focus, it is necessary to maintain a human rights perspective. A participant expressed hope that action would spread beyond this initiative and continue after the meeting concluded. A Special Rapporteur commented on the relationship between human rights bodies and elections bodies, suggesting that meetings that occur between human rights experts and election observation organizations should be reflected in the election mission's report. The session ended with two questions: can those who champion citizen election observation be considered human rights defenders and how can the interaction between the Special Rapporteurs and members of the elections community be of value to both groups.

IV. Session Two: Welcome and Remarks from President Jimmy Carter

President Jimmy Carter warmly welcomed the participants and emphasized The Carter Center's commitment to human rights since its inception. He detailed the work of the Center in collaboration with various organizations in the human rights community including the United Nations. *President Carter* further explained the important connection between human rights and elections, mentioning the importance of the creation of international law, and making the election standards more binding. He also highlighted the relationship between this workshop and initiative and the efforts of other programs within the Center, specifically the Access to Information program.

After his comments, the Special Rapporteurs thanked President Carter and asked his guidance on how to manage the broad topics encapsulated by their mandates without losing focus on elections. *President Carter* responded by citing the work of the Center's Access to Information program which started out small, but expanded to add a focus on women and girls as the work progressed. In addition, he noted that observers need to assess the entire electoral process and the broad range of human rights included, not just the casting of votes on election day. *President Carter* then discussed the observation methodology of the Center which includes both long-term and short-term observers that provide information on the entire election cycle.

V. Session Three: Special Rapporteurs and Elections

Facilitator and Presenter: *Markku Suksi*, Abo Akademi

Suksi opened the discussion with a presentation on the concept of the "genuine election" which is comprised of two conceptual levels: concrete and abstract. The concrete level is the physical act of voting and the choice that the voter is making in the polling booth. The abstract level is the information the voter needs to make an informed choice and includes adjacent human rights such as the freedom of assembly, freedom of association, freedom of expression, and the availability of legal remedies. He noted that it may be difficult to assess whether an election was genuine within the short time frame of election observation. Assistance from Special Rapporteurs on what constitutes the hallmarks of a genuine election can help guide the focus of election observation missions and assist in analysis.

Following the opening remarks by *Suksi*, an overview of the Special Procedures mechanism and the history of Special Rapporteurs was presented. Special Procedures mandate holders are comprised of independent experts in the form of Special Rapporteurs, independent experts, or working groups. Special Procedures were originally created to fill a perceived gap in human rights protections with no intention of creating a separate mechanism from the Commission for Human Rights, now known as the Human Rights Council. The continued creation of ad hoc positions evolved over time to the current Special Procedures mechanism in place today, which allows the Special Rapporteurs to use a number of tools to investigate and report on human rights issues including thematic reports, country visits, individual petitions, media usage, and technical support.

As discussion continued, it was stated that the distinction between human rights and elections is misleading and that elections are significant as a catalyst that can either promote peace or create

conflict. One participant noted that there is a difference in the response of the international community to a military coup vs electoral fraud, with the latter in effect serving as a civilian coup. A question was raised regarding the term “generally reflects the will of the people.” One participant noted that it can be difficult to determine whether an election “generally reflects the will of the people” as there can be significant issues with the electoral process that may suggest that citizens lacked complete information or that the process itself was biased. It is important to weigh the entire cycle and not just the vote casting process itself. It was noted that the timeliness of the election observation report is crucial and that the elections observation community should provide impartial and comprehensive reports, as some organizations may soften criticisms for example, perhaps in cases where a peaceful process or some similar characteristic warrants praise. One participant indicated that the elections observation community plays an important role in contributing to change and should be more courageous. Participants agreed that the entirety of the election process is critical and the group should consider questions about how to weigh the various parts of the electoral cycle to create thorough assessments and recommendations.

Furthering previous discussions of the role of the Special Procedures mandate holders, it was noted that Special Rapporteurs should look at different aspects of fundamental rights and freedoms. For example, the right to freedom of expression includes but is not limited to; access to information, protection of the media, journalists, bloggers, digital rights, and rights to vulnerable/underrepresented groups. One Special Rapporteur noted that thematic reporting is an important tool available to Special Rapporteurs and is focused on normative development. Communications with governments from Special Rapporteurs tend to focus on legislation and where the work of the Special Rapporteurs and governments overlap. Also noted were some of the risks, barriers and challenges to collaboration between the elections observation community and Special Rapporteurs including the difficulty for Special Procedures to make timely interventions, allegations of partisanship, and the lack of normative integration and the plurality of law. The creation of a calendar of elections to be shared with Special Rapporteurs was suggested because it can help them to prioritize the timing of interventions. More strategic use of the Special Procedures might also allow them to further the development of “soft law,” and further evolve “hard law.”

It was noted that election issues are not explicitly mentioned in the the mandates of the Special Rapporteurs. One Special Rapporteur noted that they adhere to the standard that administrative bodies must meet the same principles as judicial bodies. This means that Electoral Management Bodies (EMBs) must be respected and states should have mechanisms to settle disputes, to increase validity and legitimacy, and to decrease post-electoral violence. EMBs should also be independent and impartial. Also noted was the significance of the case law regarding effective and adequate remedies; the contributions of the Inter-American system was highlighted in this regard. Another Special Rapporteur specifically agreed with the previously mentioned challenge regarding timeliness and noted that countries may need interventions and assistance faster than it is currently possible.

A description of the electoral system in Haiti gave more context to the discussion. In a previous election in Haiti, 53 candidates who lost elections criticized the results, and the government organized a commission to analyze the results of the election. One participant stated that there

are significant issues facing the electoral process including uncertainty in terms of the rule of law and significant mistrust when the process is marred by violence and criticism. Continuing on the topic of rule of law, it was noted that the stability of electoral law is a challenge when states holding elections frequently change them. A representative of the election community added that electoral observation reports can serve as early warning mechanisms regarding human rights abuses, noting the example of Tajikistan where their organizations' previous report was able to predict the shut-down of the main opposition party.

A question was raised regarding how to balance the promotion of human rights and the legitimacy of the electoral process without undermining the credibility of elections, especially in key transitional elections, which while marred by significant problems, resulted in clear progress, such as the 1994 election of Nelson Mandela. In this context several participants stressed the need for a practical approach to elections. While some participants stressed the desirability of having a common policy on how to weigh and evaluate such contexts, others noted that due to the complicated nature of election standards, detailed joint statements on electoral processes are difficult to craft.

It was also noted that there is a different relationship between election assistance providers and governments. Election assistance providers can only work within a country with the support of the sitting government which can make it difficult to address human rights violations.

The session ended with a comment that emphasized the point that elections are not simply a technical process. Election observation organizations must be honest and impartial in their evaluations, otherwise this limits the available tools to create and encourage change and reform.

VI. Session Four: Plenary Discussion: A Human Rights Based Approach to Elections in Practice: Collaboration Between Mandate Holders and Election Practitioners; Reflections on Opportunities and Challenges

Facilitator: *Andrew Hyslop*, U.N. Electoral Assistance Division

Andrew Hyslop began the session with an overview of the goals and parameters of the session, including a discussion of potential areas of engagement across the human rights and election communities, such as institutional engagement, operational engagement, and methodology. The conversation first turned to methodology. It was emphasized that there are several issues where rights are in conflict with each other, for example should election observation organizations emphasize the protection of the electoral process or the ability of the international media community to report results before the local electoral management body. In these instances, input from the Special Rapporteurs about the prioritization of rights would be beneficial. It was also noted that there is a natural tension between the human rights aspects and political aspects of the electoral process that needs to be balanced. A participant posited that the EU is more effective when their post-election recommendations are based on rights or standards in international human rights law and therefore appear to be much more neutral. In order for recommendations to be effective they need to be grounded in international law and written in implementable language.

The limitations of election observation were also discussed. Specifically, it was mentioned that depending on the nature of an organization, the goals of election observation might be in tension with the goals of conflict resolution within the same organization. Multiple participants agreed that the conflation of roles between election observation and conflict resolution can make action on the ground a challenge. It is noted that there must be a clear interest in and focus on election observation to reduce this challenge.

A question was posed regarding whether election observation reports were beneficial to the Special Rapporteurs and it was noted regrettably, that most Special Rapporteurs do not read them. Participants confirmed that the Special Procedures branch tends to overlook elections reports as a source of information for the Rapporteurs and then recommended that election observation groups should send their reports to the branch. Election observation groups could also send information via OHCHR offices in country since those offices are required to send material back to Geneva. Participants agreed that increased communication between the elections community and Special Rapporteurs is necessary and the sharing and use of reports could be an important and effective means to achieve that goal.

Participants also noted the need to make elections observation reports more useful. It was stated that it could be possible to write reports using more standardized formatting based on highlighted human rights violations, and using a more common language between the human rights and elections communities.

Participants noted that interactions between election observation groups and Special Rapporteurs can be most effective in cases where there is a long-term engagement on elections. The case of Myanmar was cited where observers met with the Special Rapporteur of Myanmar. Participants noted that, given the duration of many election observation missions, it is important that international groups emphasize complementing local groups that can encourage change. Increasing synergy between groups would also encourage confidence in the elections community as whole.

A Special Rapporteur expressed interest in continued work on elections but reiterated that Special Rapporteurs must be careful not to dilute their mandate or their efficacy. Importantly, it was noted that a Special Rapporteur on the right to political participation would be a positive development.

Another significant challenge to the work and increased collaboration was human capital. It was mentioned that although human capital is short, colleges, law schools, and NGOs would be willing to assist the OHCHR. Another option noted was the U.N. Volunteer program which can provide support without office space and salaries. Participants were reminded that a number of things cannot be outsourced from the U.N. due to confidentiality. \

VII. Session Five and Six: Developing Recommendations for Greater Cooperation Between Special Rapporteurs and Election Practitioners & Report out of Small Group Recommendations

Facilitator Session Five: *Beth Plachta/ Avery Davis-Roberts*, The Carter Center

Facilitator Session Six: *Michael Svetlik*, International Foundation for Electoral Assistance

Working in small groups, participants were tasked to discuss and develop concrete recommendations for potential collaboration between Special Procedures mandate holders and election assistance and observation practitioners by responding to the following questions:

- **How can Special Rapporteurs and election practitioners work together at both the international and national level?**
- **What kind of actions or mechanism would be the most appropriate and effective to increase information sharing?**
- **Are there points of potential collaboration beyond information sharing that can/should be explored?**
- **What steps would need to be taken to implement these recommendations?**
- **What challenges do you foresee in implementing the recommendations that you have created?**

Participants crafted recommendations for both the human rights and elections observation communities focusing on a number of issues including: possible means of collaboration, the consistent sharing of information, and the sharing of observed or reported of human rights violations to the Special Procedures branch, especially if an organization cannot act on the victims behalf. A full list of the recommendations is included at the end of this summary.

VIII. Day One Summary and Closing Remarks

Avery Davis-Roberts, The Carter Center

Avery Davis-Roberts noted the number of recommendations that participants developed, which ranged from ideas to facilitate communication to more long-term recommendations such as creating a new Special Procedure mandate on Article 25. She noted the breadth and depth of the conversation over the course of the day and the progress made in understanding the differences and similarities between elections. *Hernan Vales* thanked everyone for their participation and summarized the important points from the day including that the elections community is willing to include more human rights analysis in their approach. Several participants suggested that the human rights community should focus not only on human rights violations during an election, but also the technical aspects of the process that directly impact the enjoyment of rights. Participants agreed that a key challenge going forward, however, is that in order for Special Rapporteurs to engage more, they need information from the elections observation community.

IX. Day Two: Opening Remarks

Jordan Ryan, The Carter Center

Jordan Ryan opened Day two of the workshop by explaining that the goals of the final session, was to have an in-depth discussion of a number of difficult election issues with which both the elections and human rights communities have struggled. He specifically mentioned the issue of political participation for members of former authoritarian regimes, citing legal restrictions post “Arab Spring.” He expressed hope that the discussion would shed light on how these issues can be better addressed, including through the development of new international law, and how they should be considered in the context of analysis and reporting by both elections and human rights experts.

X. Session Seven: Plenary Discussion of Difficult Electoral Issues and Possible Gaps in International Law

Facilitators: *Emanuele Giaufret*, European External Action Service and *Nigel Rodley*, U.N. Human Rights Council

Emanuele Giaufret began the session with an explanation of a number of topics to be analyzed. These topics included term limits, out of country voting, political finance, the right of military to participate in elections, and campaign finance. The conversation started with the issue of biometric voter registration. It was noted that there is a concern about the privacy and protection of such data. One participant stated that their organization will address the topic in a new handbook. Another participant stated that there should be specific laws to address this form of registration to protect the data.

The discussion continued with the topic of gaps in international law. Specifically, it was noted that there are times during observation mission when organizations are confronted with situations where international law may not speak directly to the issue. A participant questioned whether there were actual gaps in law, or whether these gaps are perhaps only perceived. Participants inquired as to how those gaps could be filled and it was noted that participants should be realistic in their expectations regarding the creation of hard law. Finally, a participant question whether changes in laws on elections standards would result in significant changes in practice.

The revocability of rights was also mentioned using the example of the Rohingya, where they were disenfranchised after having been able to vote in previous elections. One participant posed the question of whether a guaranteed right be taken away after it has been exercised. Another participant noted that the interpretations surrounding the revocability of rights depends on the definition of citizen and how one defines reasonable restrictions. Important criteria for the right to participation are that it be non-discriminatory, and that restrictions are not unreasonable. International human rights law can provide criteria for the interpretation of the legal rules. Participants should consider how to reach a conclusion about the meaning of “reasonable restriction”. It was noted that the Special Rapporteur on Myanmar would be including the Rohingya issue in the report.

Participants also brought up the rights of internally displaced persons as well as citizens who lack proper documentation. A participant provided an example regarding this issue during an

observation mission in Europe, where the issue of displaced persons and persons without documentation was more of a political and issue than a technical one and the organization felt it needed to back off of the subject.

Greece was mentioned and a participant explained the distinction between those that leave the country of their own volition and those that leave involuntarily. General Comment 25 is more clear regarding issues of out-of-country voting and that protections should be in place due to the large number of opportunities for fraud with out-of-country voters. It was also noted that security issues that can be present difficulties during out of country voting scenarios, for example with Syrian out of country voting in Lebanon.

The issue of intellectual disabilities was also discussed, including the difficult question of the appropriateness of restrictions on the right to vote due to intellectual or psycho-social disabilities. It was noted that the Convention on the Rights of Persons with Disabilities (CRPD) may fill the gap with cases brought through the individual complaints mechanism. The Hungary case before the CRPD deemed that any exclusion based on mental incapacity is discrimination. A participant noted, however, that there is interesting conflict between the CRPD and the Inter-American Convention, Article 23, which refers to the right to restrict by law, the right to vote.

As the discussion continued on the interpretation of rights, it was noted that in Paragraph Four of General Comment 25, the Human Rights Committee allowed mental capacity as a reasonable criterion for the restriction of rights. However, the Human Rights Committee has taken the stance that any restriction has to be justified on the basis of the ability of the individual and not a general classification which is a change from the previous interpretation. The notion of reasonableness should be straight forward and the example of the right of prisoners and was noted as an example and explains that based on General Comment 25, a blanket denial of rights without any reasoning would be a violation of Article 25. In addition, it was also stated that election observation groups can have a significant impact in the development of state practice and thereby impact the interpretation of international law.

On the issue of a Special Rapporteur on the right to participate in public affairs, a number of participants expressed that there may be a need for a Special Procedures mandate on the right to participation. It was also noted that it would be better to have a rapporteur on participation, rather than a Special Rapporteur on elections, as there is a broad range of issues beyond elections that would be considered through the right to participation. Participants agreed that whether or not there was a Special Rapporteur on participation, there are a number of steps that can be taken to have more impact on elections.

Discussion then turned to issues regarding what is “reasonable”, “objective” and “proportional” in terms of restrictions of rights. It was noted that people tend to assume that democratic systems are the same. However, in fact there are some very fundamental differences and they can impact the answers to questions posed during this workshop. Participants were encouraged to spend more time discussing issues of reasonable restrictions of rights and conflicts of interest, military voting rights, and transitional election justice.

The discussion then turned to the issue of voting rights and whether it is permissible to exclude a certain group of people. Multiple participants noted that their organization witnessed the exclusion of certain groups of voters during observations. Other participants noted that their organization also witnessed the exclusion of military personnel and that there is overlap between issues of exclusion and military voting. The organization concluded that although certain people may be excluded from the electoral process, excluding an entire group of people was an unreasonable restriction

It was noted that the elections community is asking a number of questions that depend on the analysis and guidance of the human rights community, however the elections community is doing the interpretation and citing each other. An increase in collaboration with and the use of reports by Special Rapporteurs would clarify and strengthen the elections community's interpretation of international law. Other participants agreed and a participant noted that their organization would be open to feedback on their election reports to catch any mistakes or review their interpretations. It was also noted that quoting election observation reports would not be difficult for Special Rapporteurs but might be a little more difficult for treaty bodies due to page limits established for submissions. Even the treaty bodies would benefit from having more systematic information from election observation organizations

One participant stated that one of the benefits of this workshop is that it has raised the importance of election issues when special procedures are evaluating different countries. However, there is a challenge with timeliness; one participant cited a case on a gender participation claim during an election and by the time a judgment was passed, the election was over. As a result, the issue was addressed for the future and did not provide immediate relief.

XI. Summary and Closing Remarks

Hernan Vales, OHCHR

David Carroll, The Carter Center

David Carroll and Hernan Vales closed the workshop by thanking all of the participants and informing them of the post-workshop follow-up. Specifically, the recommendations developed during the workshop would be circulated, as would contact information for participants, and a summary of proceedings. It was noted that they would welcome input on how to move forward with a process leading towards a Special Rapporteur on the right to participation. Finally, the participants were informed that the next meeting was tentatively scheduled for June 2016 and would focus on work with the treaty bodies.

Concrete Recommendations from Day One: Sessions Five & Six

For Human Rights Community

- Special Rapporteurs present during the workshop will recommend that representatives of the election observation community be invited to the next annual meeting of Special Procedures in Geneva;
- Election observation and assistance groups should be added to the list of types of groups Special Procedures meet with on country visits, whenever relevant;
- Special Procedures mandate holders and the Special Procedures Branch in OHCHR will review reports from election observation missions before conducting country visits, when available and whenever relevant;
- Special Procedures mandate holders should consider including a focus on elections in reports and country visit schedule, whenever relevant;
- Special Procedures mandate holders and OHCHR should think of the category of issues that would be beneficial for the election observer community to identify in their reports, to facilitate their use by human rights mechanisms (This could be done through a document or a regular consultation);

For Election Observation/Assistance Community

- Create an executive summary for election observation reports with a focus on human rights to be included in country profiles for the attention of Special Procedures mandate holders prior to their country visits. Give a thematic structure to the input so it is easier for the Special Procedures mandate holders to identify relevant information, develop and use common terminology for the two communities;
- Make presentation at annual meeting of Special Procedures in Geneva;
- Send reports to the staff supporting Special Procedures mandate holders' generic email address. Send inputs to Special Procedures mandate holders whenever making a recommendation on a specific right that falls within their respective mandate;
- Share elections calendar with Special Procedures mandate holders so that they might prioritize elections during their work;
- Organizations have offered to share information with Special Procedures mandate holders in relation to elections observation missions;
- Check OHCHR calendar for dates of Special Rapporteur visits in advance of doing elections work in countries to coordinate meetings and information sharing;
- Consider and suggest ways that Special Procedures mandate holders can help follow up on recommendations, for example, analysis of laws or specific recommendations on legal reform;
- Consider the relationship of technical assistance projects with human rights and how to include them in this process.

For Both Communities

- Consideration should be given to the creation of a thematic mandate on Art. 25 and participation in public affairs - there may be overlap with other thematic mandates, but these issues are not at the center of any of the existing mandates.
- Use the communications procedure (for example, allegation letters) to bring allegations of violations in the context of elections to the attention of Special Procedures mandate holders;
- Increase informal consultation between the election observation and human rights communities in the course of their work including during election observation missions;
- Foster more complementary relationships with local observer groups to further support their activities