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**THE CARTER CENTER
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SUMMARY OF PROCEEDINGS

Introduction

The third Human Rights and Election Standards workshop co-convened by the Office of the High Commissioner for Human Rights (OHCHR) and The Carter Center, brought together representatives of the international human rights and elections communities and representatives of States active in the Universal Periodic Review (UPR) on February 21, 2017, at the United Nations in Geneva, Switzerland. Participants took part in five sessions in which they considered how the topic of elections has been addressed in the UPR process, discussed practical steps to make recommendations regarding elections more effective in the UPR context, and identified collaborative measures to ensure follow-up and implementation of election-related UPR recommendations. Discussions following formal presentations were held under Chatham House rules. The Carter Center and the OHCHR plans to follow-up this workshop series with a final conference to outline a plan of action, building on the outcomes and recommendations of the previous workshops.

Opening Remarks

Shahrazad Tadjbakhsh, OHCHR, welcomed participants. She encouraged participants to explore ways in which the international human rights community, the election community, and State representatives can encourage actionable recommendations in the UPR that can be implemented and beneficial to all. She encouraged meeting participants to spend the two days considering how to ensure that UPR recommendations are S.M.A.R.T. (specific, measurable, attainable, time bound) and to think about ways that we can collectively support the implementation of the recommendations at the country level.

David Carroll, The Carter Center, stated that this Human Rights and Election Standards (HRES) workshop series is focused on bringing together the election community with the international human rights community to find points of intersection. He highlighted the benefit of discussing human rights in the context of the UPR, as exercising the right to vote is dependent upon the protection and realization of other human rights.

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

Presenters: *Avery Davis-Roberts*, The Carter Center
Hernan Vales, Office of the High Commissioner for Human Rights (OHCHR)

Avery Davis-Roberts provided background on the Center's Democratic Election Standards (DES) initiative which started 10 years ago with the aim of articulating standards for democratic elections based on international human rights law. The HRES meeting series was started in February 2015. The initial meeting proved that there was an interest in increased collaboration and cooperation between the human rights and the election observation communities. The subsequent meetings were focused on bringing together specific audiences. In January 2016, election practitioners met with a selection of Special Procedures mandate holders, and the June 2016 meeting brought together election practitioners and members of treaty monitoring bodies. The goal of this meeting was to discuss whether and how election issues can be better incorporated into treaty body processes.

Hernan Vales added that OHCHR partnered with The Carter Center on the HRES initiative because they recognized that genuine elections require a general respect for human rights. In addition, it was noted that although the human rights community and the electoral community may operate in different and sometimes overlapping spheres, they share the same goals. *Vales* invited reflection on potential strategies to increase collaboration between human rights and election observation practitioners.

Session Two: Introduction to Election Observation and to the UPR Process

Facilitator: *Frank McLoughlin*, International Institute for Democracy and Electoral Assistance (IDEA)
Presenters: *Isabel Martinho*, European External Action Service (EEAS) EU
Mohammad Abu-Harthieh, OHCHR

Frank McLoughlin opened the session by explaining that although electoral processes and election observation processes are relatively new, they share a common characteristic with the UPR process; the search for truth and the promotion of accountability. *McLoughlin* encouraged panelists to consider how the two processes can benefit from and complement each other.

Isabel Martinho provided an overview of the European Union's election observation work and methodology. Since 2000, the EU has deployed 183 observation missions, following an invitation from the country. She noted that election observers analyze the laws of the country and observe electoral practices, sharing their views and recommendations with authorities and other stakeholders. Observers do not interfere in the election process in any way. Election observation missions can enhance transparency, accountability, public confidence and participation in electoral processes.

In 2005, European External Action Service (EEAS) endorsed the *Declaration of Principles for International Election Observation and the Conduct for International Election Observers (DoP)*, which is recognized as the gold standard for credible election observation. Final reports issued by the EU typically have 20 to 30 recommendations and they strive to make them as detailed as possible and realistically achievable. Follow-up has now become a crucial issue for the EU, and

they strive to make the implementation of recommendations part of the design of cooperation with specific countries. In addition, since 2012, they have conducted follow-up missions to meet with stakeholders and analyze implementation.

Mohammad Abu-Harthieh noted the history of the UPR process and emphasized that the mechanism was created to help members of the UN build an additional layer of accountability. The OHCHR engages with the various mechanisms by working to assist states with compliance with recommendations and observations in a holistic and comprehensive approach. *Abu-Harthieh* mentioned three important questions regarding the difficulty of State accountability when it comes to human rights protections: (1) What if a member State has not ratified all treaties? (2) Would that State be allowed to violate rights that they didn't consider to be rights to be enjoyed by their citizens?, and 3) How do mechanisms look at the impact of conflict and International Humanitarian Law? The UPR process helped answer these questions by using a comprehensive methodology which ensures that states get recommendations on various topics even if they had not specifically reported on them.

Abu-Harthieh then described the structure of the UPR process. It was noted that the UPR process is based on three types of written documents:

- 1) State reports, which tend to highlight a country's achievements
- 2) A summary of stakeholder submissions, including from NGOs, coalitions, regional bodies, trade unions, political parties, and others, and may present views opposite to the national records
- 3) A compilation of UN official and public documents, including UN entities on the ground that collect information on a country's human rights record and any challenges it is facing.

After these documents are compiled, they are then presented to the working group which oversees the making of recommendations.¹ The review process is led by a group of three states known as a "troika". Once the recommendations are finalized, states have about four and half years to work on the implementation of accepted recommendations.

One way in which the OHCHR is assisting with implementation follow-up is by assisting in the creation of a national structure entrusted with the implementation of a national action plan, and by building a database that will allow member states to compile all recommendations across review processes. This digital platform will allow states to view their recommendations in clusters, organized by topic area, and provides access to the information to all relevant stakeholders, which can serve to facilitate planning as well as monitoring and evaluation.

Following the presentations, participants raised questions about the technical status of recommendations being 'noted' versus 'rejected' during the UPR review. It was pointed out that when a State says that a recommendation is 'noted', it does not necessarily mean that the State has rejected that recommendation. There are various reasons as to why States may not accept recommendations, including insufficient funds for implementation and follow-up. In some cases

¹ "The reviews are conducted by the UPR Working Group which consists of the 47 members of the Council; however any UN Member State can take part in the discussion/dialogue with the reviewed States. Each State review is assisted by groups of three States, known as "troikas", who serve as rapporteurs. The selection of the troikas for each State is done through a drawing of lots following elections for the Council membership in the General Assembly." United Nations Human Rights, Office of the High Commissioner, *Basic facts about the UPR*, 2017, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>.

‘noted’ may indicate that there is fertile ground for reform in the longer-term, but that opportunities for change in the immediate term are limited. Therefore, the OHCHR encourages States to add comments as to why they chose to mark the recommendation as ‘noted.’ Participants added that States are held accountable for the recommendations that they accept.

Conversation then turned to the UPR’s need to further engage with the African Peer Review Mechanism (APRM). OHCHR representatives in African countries and the EU have engaged with the APRM, however, it was concluded that there is room for greater collaboration between the UPR and the APRM, especially since the mechanisms serve similar functions.

State representatives suggested that recommendations may not take into account country-context. Others responded that democratic elections are not one size fits all, and that participating countries are expected to research the main issues and priorities of a country and then draft appropriate recommendations.

Session Three: How Elections Have Been Addressed by the UPR Process to Date

Facilitator: *Nathalie Prouvez*, OHCHR
Presenters: *Edward McMahon*, University of Vermont
Jean Claude Vignoli, UPR Info
Alex Shlyk, OSCE/ODIHR

Edward McMahon began the session by presenting his research on the prevalence of election related recommendations in the UPR process. He noted that concerns about the credibility and accountability of elections is a global issue, and despite this, there is a lack of engagement on the topic within the UPR. UPR Info has developed a [Database of Recommendations and voluntary pledges](#) that allows you to search all UPR recommendations across various categories. *McMahon* noted that based on that database, only 321 out of 55,225 UPR recommendations have been related to elections.² However, of those 321 election-related recommendations, 77 percent have been accepted. In addition, 75 percent of those recommendations were made by western states.³ It was also noted that 77 percent of recommendations have been addressed to Africa and Asia, indicative of a north-south recommendation imbalance. *McMahon* detailed his hypotheses as to why there has been less focus on elections within the UPR process:

- 1) Elections are infrequent which may make it difficult for states to focus on the issues as they are too far off in the horizon. However, the election assistance community has learned that elections are not one-off events and the actions that may delegitimize elections are not limited to election day. Elections require full-time nurturing and preparation.
- 2) Other broader UPR issues have election-related implications, such as freedom of association and freedom of assembly. Recommending states may think that election-related considerations are included in the range of other recommendations, even if not explicitly mentioned. The problem is that the larger issue areas tend to be more broad, which inhibits attention on elections and results in looser recommendations lacking specific action.

² Note that these recommendations have been coded by UPR Info has explicitly dealing with elections and may not necessarily include recommendations that may impact rights related to the electoral process. Data points are based on the *Database of Recommendations* by UPR Info. Details of the logic of the tagging of recommendations based on thematic issues can be found here: https://www.upr-info.org/database/files/Database_Issues_explanation.pdf.

³ Western states include the United States, members of the Western European and Others Group (WEOG), the Eastern European Group (EEG), and the Latin American and Caribbean Group (GRULAC).

- 3) The prioritization of issues means that some States may choose not to view elections as an issue that needs to be emphasized in relation to human rights - election issues may get “crowded out” by competing priorities. In addition, recommending states may choose two or three themes on which to concentrate all their recommendations. Some states may not be focusing on election related issues due to their own domestic political context.

McMahon then provided four recommendations to address the lack of engagement with election related issues in the UPR:

- 1) UPR recommending states should make more recommendations on elections;
- 2) Efforts should be made to encourage states from the global south to make recommendations;
- 3) Outreach efforts to encourage election-related recommendations should be directed at key NGOs representing a range of issue interests. Dialogue with influential NGOs should be emphasized as they could usefully promote election-related recommendations in their dialogues with recommending states;
- 4) States need to make recommendations more specific, action-oriented and tangible;

McMahon emphasized that the UPR is not just a one-way street for States to submit recommendations, but rather a two-way, mutually beneficial mechanism through which the election community can buttress their work and views.

Jean-Claude Vignoli discussed the ways in which UPR Info engages with governments. UPR Info provides training to diplomats on how to draft recommendations, and also assists States by providing technical expertise on the UPR mechanism itself. *Vignoli* noted that the UPR is a political process and that generally, recommendations flow from countries in the global north to African and Asian countries. *Vignoli* suggested that NGOs can use the UPR to facilitate awareness raising on elections, to increase collaboration with other NGOs which focus on similar issues, and to follow-up with governments on their implementation of recommendations in bi-lateral meetings. In 2011-2012, UPR Info conducted an assessment of the first cycle of the UPR, and reviewed the recommendations made. Of the 89 recommendations made, 11 recommendations were fully implemented, 29 were partially implemented, and 49 were not implemented.

Vignoli highlighted Kenya as a good example of UPR implementation and engagement. In Kenya’s first cycle there were a number of recommendations regarding the 2007 electoral violence. The Kenyan government has engaged stakeholders on a regular basis after receiving UPR recommendations. The government set up a task force, and encouraged the participation of civil society and the National Human Rights Institution in the process. Cote d’Ivoire also received and implemented 3 recommendations regarding the electoral process and implemented those recommendations within one year of receiving them. UPR Info values the response of Kenya and Cote d’Ivoire to the UPR recommendations because genuine democracies require participation of civil society and minorities.

Alexander Shlyk described benefits and challenges of updating election observation reports for submission to the UPR. OSCE/ODIHR has deployed more than 330 election observation missions. Following missions, the organization produces election observation reports that include findings and recommendations. The recommendations are based on their findings of observation, standards of democratic elections, and also rely on previous UPR recommendations and UN documents to characterize the human rights environment. From their election observation

reports, OSCE/ODIHR submits key priority recommendations to the UPR process. Some of these recommendations may touch upon other fundamental human rights.

One challenge that *Shlyk* identified was the lack of clear, international legal standards for some electoral issues (such as campaign finance).

In discussion, participants debated the value of short-term versus long-term recommendations, and agreed that while there is a need for both short-term and long-term recommendations, long-term recommendations are more useful for the development of States. However, long-term recommendations should continue to be SMART. Some participants raised concerns that many recommendations come from the West with little regard for the national report submitted. It was also noted that it is common for Recommending States that are new to the UPR process to listen to recommendations from NGOs because they tend to know the national environment well.

Participants also noted differences in the quality of recommendations submitted. Some are drafted quickly with little regard to possible implementation. It was suggested that implementation be taken into consideration during the drafting process and that it might be beneficial to allow States under review to be involved in the drafting process to facilitate ease of implementation and follow-up.

One participant suggested that the lack of actionable recommendations which are based on legally binding documents risks political backlash from receiving states. The participant also noted the potential for backlash leads to the use of softer language and the use of the word “should”, instead of “must”, when issuing recommendations. Generally, participants agreed that general, non-specific recommendations allow States to engage in limited follow-up and therefore should be avoided in the UPR process as much as possible, despite the aforementioned hurdles. Some participants suggested that UPR may not be the appropriate platform for general recommendations and that other UN bodies may be more suitable for more overarching recommendations on rights implementation.

Session Four: Making Constructive Recommendations on Elections

Facilitator: *Michael Svetlik*, IFES
Presenters: *Charlotte Marres*, UK
Idrissa Kamara, African Union

Charlotte Marres gave a presentation on how the United Kingdom (UK) drafts recommendations, the types of recommendations that the UK considers to be high-quality, and the ways in which CSOs can assist in election-related recommendations. Recommendations from the UK are produced through collaboration between the desk officer in London and the liaison in Geneva. The UK gives at least two recommendations to every country in the UPR, and has occasionally raised election-related issues. The UK tries to make S.M.A.R.T. recommendations that create clear expectations for the State under review and tries also to engage CSOs in the development of recommendations. Concretely, *Marres* recommended that CSOs participate in UPR Info consultations, and focus on getting clustered meetings with UPR working group members during UPR sessions because time is limited. She also recommended that, if capacity allows, CSOs contact those in the embassies and in capitals. Finally, she suggested that CSOs provide short fact sheets that are easily digestible and clearly lay out two to three priority

recommendations, including the basis for the recommendations, that working group members should consider.

Idrissa Kamara described the challenges of addressing election-related recommendations including the use of overly technical language and jargon in recommendations. *Kamara* suggested that recommendations should use simple, precise language, and take into account the country context. This includes taking into consideration the varying degrees of socioeconomic development that may impact the implementation of recommendations. Ultimately, *Kamara* expressed that recommendations are more likely to be well received when they are written with an advisory tone of assistance, rather than a prescriptive tone. He also highlighted the important role of civil society engagement in the process of formulating constructive recommendations.

Kamara also reiterated the need for collaboration between the African Peer Review Mechanism (APRM) and the UPR. Although the APRM predates the UPR and promotes good political governance on the continent, its resources are limited. Collaboration between the two mechanisms would facilitate information sharing and could increase implementation of recommendations. *Kamara* concluded by presenting some of the challenges faced by election observation missions that impact the quality of recommendations:

1. A limited understanding of country context;
2. Political and security challenges on-the-ground that may limit movement and impact observation.;
3. Subjectivity and possible organization bias;
4. The difficulty of appearing independent, especially when issuing statements;
5. Limited resources and reliance on short-term observers impacts the nature of observation;
6. Observation methodology: missions may not take into account why states have not implemented previous recommendations;

Discussion initially focused on the importance of the APRM process. While APRM promotes good governance, engagement on elections has been limited. Greater engagement with the mechanism by election observation organizations could help to change this.

Participants then discussed how to make election-focused recommendations more useful. Participants agreed that such recommendations need to be more specific. One participant suggested that the UPR process should be more encouraging of good behavior, and should not focus on criticisms. Another participant stated that comments should be more constructive and forward looking. It was noted that there is time during item 10 (technical assistance and capacity building) of the Human Rights Council meeting in which positive developments can be discussed

Participants also discussed the opportunity for debate offered by “advance questions”. These are questions proposed to the State ten working days before the review. It was noted that advance questions allow consideration of additional issues that may not be specifically addressed in the recommendations.

Participants highlighted the fine line between recommendations being specific and recommendations being prescriptive. Concerns were brought up about respecting sovereignty and independence and therefore crafting recommendations in a manner that is more advisory and less instructive. Some participants from the election community articulated that they are careful

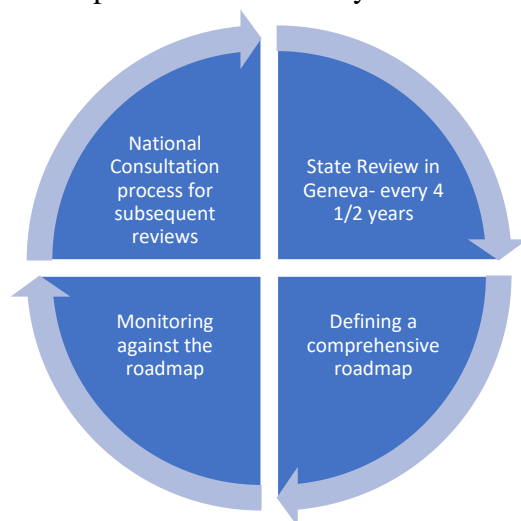
not to propose solutions, but rather outline a problem and then allow the State to determine how they would like to bridge that gap. One country representative stated that the reason for the scarcity of election-related recommendations is the fact the issue is not often raised in reports submitted to the UPR.

Session Five: Implementation of and Follow-Up on Election Related UPR Recommendations

Facilitator: *Agnes Picod*, OHCHR

Presenter: *Mohammad Abu-Harthieh*, OHCHR

Mohammad Abu-Harthieh began by discussing the challenges of implementing UPR recommendations related to elections; best practices for implementing and following-up on recommendations; and ways in which stakeholders can assist in the process of implementation and follow-up. He emphasized that the UPR was designed as a top-down, political process. He described the four distinct phases of the UPR cycle:⁴



He noted that despite multiple stages of follow-up in the UPR process, a key enforcement mechanism is having empowered people on the ground.

The UPR relates to the rights and freedoms associated with elections in a democratic society; in particular – the freedom of expression, association and assembly, in addition to the political rights protected by the ICCPR. Returning to the question of why there have been so few election focused UPR recommendations, *Abu-Harthieh* hypothesized that recommendations are made in two main scenarios: (1) addressing issues of whether there were human rights violations in the last election or (2) if there is an expectation of abuses during an upcoming election. He noted that there are many other recommendations that touch on issues relevant to elections, like hate speech, or exclusion, that were not coded as related to elections in the UPR Info database. He added that in the Human Rights Council, most States have specific issues of interest and it may be that there are not States who are expressly interested in electoral issues. To increase the number of recommendations focused on elections, organizations should focus on increasing

⁴ Defining a comprehensive roadmap begins immediately after review. Once the roadmap is complete, monitoring against that roadmap begins at the national level and may include voluntary reporting to the Human Rights Council.

contact with States which are focused on electoral issues and which might consider putting forward election-focused recommendations.

Abu-Harthieh also highlighted some of the factors that impact a State's decision whether to accept a recommendation, suggesting that a recommendation from a friendly State may be more likely to be accepted. He also emphasized the importance of follow-up, noting that it can have multiple impacts including: reducing tensions that need to be dealt with immediately in order to avoid destabilization of a country, allowing time for laws to be passed, allowing time for proper allocation of resources, and facilitating partnership with other organizations.

Abu-Harthieh underscored that the UPR provides an opportunity to share best practices among States. This can help develop cooperative mechanisms; promote information sharing on how to create inter-ministerial sustainable structures to implement recommendations, which saves resources, capacity, and time; and suggest means for knowledge management. He concluded by emphasizing that one of the objectives of the UPR is to achieve change and positively impact the lives of people.

In discussion, some participants voiced concerns that the UPR does not fully reflect that all countries are different and may have different interpretations of democracy, elections and human rights. It was noted that for recommendations to be implemented, there must be strong political will for change within that country. Despite this, participants generally recognized that the UPR is a constructive exercise with the overarching goal to improve the lives of people on the ground. Looking forward, participants agreed that the third cycle of the UPR should focus on implementation of recommendations, while keeping in mind that there may be different methods of implementation.

One participant suggested greater focus on how States are engaging with CSOs in a constructive atmosphere. It was noted that the UPR process is unique in that it recognizes CSO input into the process and CSOs can assist governments with recommendation implementation through cooperation and partnership.

Other participants reiterated that the UPR process is highly collaborative, with every stakeholder in the process being important. Once again, it was noted that there needs to be a more strategic approach to recommendation drafting and follow-up, and that the major hurdles to implementation - political will and accountability – must be addressed.

Meeting Summary and Close

Speakers: *Hernan Vales*, OHCHR
David Carroll, TCC

David Carroll reiterated that the interaction between election community and UPR should not be a one-way street, but rather a mutually beneficial relationship. He then noted that main points from the meeting as follows:

- 1) Recommendations should be SMART, with the aim to improve the overall quality of elections. This means that they should take into account country context and be written in precise, simple, and implementable language based on identified gaps.

- 2) Recommendations should be prioritized and clustered by thematic areas to allow states to focus on specific areas of improvements.
- 3) States from the global South should be more engaged and make more recommendations on election issues.
- 4) Election observation organizations should submit more reports to the UPR based on their findings and ensure their recommendations are actionable.
- 5) Outreach efforts should include NGOs that work on a range of issues in order to foster their interest in promoting democracy, noting that democratic elections themselves are not the end goal, but rather have a significant impact on other human rights, including those upon which they work.
- 6) It is useful to refer to or footnote political commitments made by States in the proposed recommendations to encourage action, especially if that State made a commitment that requires follow-up (an example is the OSCE Istanbul document in which member states agree to follow-up on all elections related recommendations.)
- 7) Pre-session meetings could be encouraged to shed more light on election issues and encourage collaboration and cooperation between relevant stakeholders including National Human Rights Institutions (NHRIs), CSOs, NGOs, and States
- 8) It is important for stakeholders to know who their “allies” are on their issues of interest. Stakeholders should network and lobby more effectively with State missions in their country capitol and Geneva to make sure their issues of interest are being reflected in recommendations.
- 9) States should partner with civil society to build capacity and implement recommendations. Civil society should be utilized and engaged more throughout the UPR process.

Hernan Vales again noted the similarities between the UPR process and election observation missions - both systems are cyclical, face challenges, and assist States in filling gaps. He noted that the UPR process has a unique comprehensiveness that makes it a very useful tool for analyzing elections. He reminded participants that recommendations should be constructive and precise without being overly prescriptive and noted the importance of the bi-directional relationship between the human rights and elections communities and noted to the UPR process.

Finally, *Carroll* explained to participants that The Carter Center and the OHCHR intend to co-convene a final conference to in Atlanta, GA in late 2017. He noted that the goal of the final conference will be to put forward an overall plan to action for building stronger connections between the election community and the human rights community.