

International Election Observer Recommendations and United Nations' Human Rights Mechanisms: Toward a More Robust System of Global Accountability on Democracy and Human Rights

Avery Davis-Roberts and David Carroll

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Abstract:

In the last decade, states around the world have begun to pass and enforce laws that restrict fundamental rights and freedoms and effectively close off political space. Faced with the challenge of closing political space, there is an urgent need to deepen the linkage between election observation assessments and reporting, and the United Nations' human rights mechanisms and system. In this article, the authors argue that the election assistance and human rights communities must work together to promote a cohesive framework for accountability on all human rights, including electoral rights. Stronger links and reporting from election observation missions into the Universal Periodic Review and treaty body system can function as part of a strengthened international human rights accountability mechanism, using UN mechanisms and related obligations accepted by states.

1. Introduction

In the last decade, states around the world have begun to pass and enforce laws that restrict fundamental rights and freedoms, effectively closing off political space.¹ According to the CIVICUS Monitor, only three percent of the world's population currently live in a country in

¹ Thomas Carothers, 'Closing Space for International Democracy and Human Rights Support' (2016) Volume 8(2) *Journal of Human Rights Practice*; Larry Diamond, Marc Plattner and Christopher Walker (eds), *Authoritarianism Goes Global* (Johns Hopkins, 2016); International Center for Non-Profit Law, 'Survey of Trends Affecting Civic Space: 2-15-16' (2016) Vol 7(4) *Global Trends in NGO Law*

which civic space is truly open.² Civil society organisations, the natural interlocutor on a range of human rights issues increasingly find themselves under threat, unable to receive funds and fearful for the personal safety and freedom of staff and members. For example, between June 2016 and March 2017, CIVICUS reported 160 cases of civil society activists being detained around the world.³

At the same time, however, the notion that human rights— including electoral rights and processes— should be subject to international scrutiny has firmly taken hold. International election observation has emerged as a norm, and international human rights monitoring mechanisms continue to work and, indeed, flourish.⁴ International and regional organisations now have many more tools for monitoring and assessment of human rights in their toolkit, not limited only to election observation but also treaty monitoring bodies, special rapporteurships and peer review mechanisms. These tools become all the more important as national civic space closes.

While there is a great number of similarities in the scope, methods and outputs of election observers and human rights monitoring and assessment mechanisms— all are focused on producing analyses based on public international law about the protection of human rights and fulfilment of State obligations, and produce recommendations for the improvement of the human rights situation— there is little information-sharing and coordination between the elections assistance and human rights communities.

Faced with the challenge of closing political space, there is an urgent need to deepen the linkages between election observation assessments and reporting and the United Nations' (UN) human rights mechanisms and system. In this article, we argue that stronger links between the election assistance and human rights communities – in particular via the submission of election observation reports into the Universal Periodic Review (UPR) process, the treaty body system

² CIVICUS, 'People Power Under Attack: Findings from the Civicus Monitor' April 2017 <[http://www.civicus.org/images/People Power Under Attack Findings from the CIVICUS Monitor.pdf](http://www.civicus.org/images/People_Power_Under_Attack_Findings_from_the_CIVICUS_Monitor.pdf)> accessed 5 September 2017

³ Ibid

⁴ Susan D Hyde, *The Pseudo-Democrat's Dilemma: Why Election Observation Became an International Norm* (Cornell University Press 2011); Judith G Kelley, *Monitoring Democracy: When Election Observation Works and Why it Often Fails* (Princeton University Press 2012); Pippa Norris and Alessandro Nai, *Watchdog Elections: Transparency, Accountability, and Integrity* (Oxford University Press 2017)

and special procedures of the United Nations (UN)— can play a key role in holding states accountable for their international human rights obligations, including electoral rights.

We begin by outlining the standards used in international election observation and the benefits and challenges of a rights-based approach to engaging more with the international human rights community. We then consider how international election observation organisations can interact with three international human rights mechanisms— the UPR process, UN treaty bodies, and special procedures— and describe how interaction with such mechanisms can promote greater accountability and follow-up on international observation recommendations. As an example, we focus on the UPR process and analyse a small sample of recent submissions to the UPR from election observation mission reports by The Carter Center and the Organisation of Security and Cooperation in Europe (OSCE) to assess how organisations engaged in election observation can utilize and impact the UPR process.

In the final section, we outline some of the key challenges that need to be addressed so that election assistance and observation groups can more effectively engage human rights mechanisms, and argue that a greater use of these mechanisms at the national, regional and international levels can help build a more robust system of accountability for democracy and human rights, and a means of addressing the challenge of the closing of democratic political space.

2. Background and Context: Continued Growth and Maturity of International Election Observation

Article 21(3) of the Universal Declaration of Human Rights (UDHR) states that ‘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.’⁵ The notion that genuine democratic elections are an important factor in establishing the legitimate authority of governments, while contested, has

⁵ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR); See also International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 25

become increasingly entrenched over time.⁶ Despite this, electoral rights and electoral processes receive relatively little attention with the international human rights system of the UN.

Impartial election observers, both from international organisations and domestic citizen groups, serve a human rights monitoring function and are increasingly relied upon to provide evaluations of the quality and integrity of electoral processes.⁷ While additional research is required, reports from observer groups can shape perceptions held by stakeholders (the public, political parties and contestants, the international community and others) regarding the quality and overall legitimacy of elections.⁸ In addition, electoral observation reports help create an agenda for reform for future elections.⁹ Yet, election observation currently falls outside of the human rights monitoring framework and has emerged as its own community of practice.

In 2005, following several years of in-depth consultations, international election observation groups came together to endorse the *Declaration of Principles for International Election Observation* at a ceremony held at the UN in New York.¹⁰ The *Declaration of Principles* highlights the human rights monitoring character of election observation, provides a definition and outlines general guidelines for professional and credible election observation, including the appropriate scope and duration of missions and key conditions required for missions to be credible.¹¹

The collaborative and consultative drafting process that led to the *Declaration of Principles* also laid the foundation for the development of a professional community of election observation groups. The endorsers, now numbering over fifty intergovernmental and international nongovernmental organisations that include the Secretariat to the UN, the African Union, the Organization of American States, the European Union, the Commonwealth

⁶ Guy Goodwin-Gill, *Free and Fair Elections* (Inter-Parliamentary Union 2006); Bo Rothstein, 'Creating Political Legitimacy: Electoral Democracy Versus Quality of Government' (2009) 53:3 *American Behavioral Scientist*

⁷ The Declaration of Principles for International Election Observation, (2005) <<http://electionstandards.cartercenter.org/wp-content/uploads/2013/10/Declaration-and-Code-English-revised.pdf>> accessed 5 March 2017

⁸ Susan D Hyde, *The Pseudo-Democrat's Dilemma: Why Election Observation Became an International Norm* (Cornell University Press 2011); Sarah Sunn Bush and Lauren Prather, 'The Promise and Limits of Election Observers in Building Election Credibility' (2017) Vol 79(3) *The Journal of Politics* <<http://dx.doi.org/10.1086/691055>> accessed, 5 September 2017

⁹ Pippa Norris, *Strengthening Electoral Integrity* (Cambridge University Press 2017)

¹⁰ Declaration of Principles (n 7)

¹¹ For example, host country guarantees to ensure access to key persons and electoral information, freedom of movement, and freedom to issue public reports on findings, among others.

Secretariat., and civil society organisations such as The Carter Center and the Electoral Institute for Sustainable Democracy in Africa, meet regularly to reflect on experiences and discuss common challenges.

While the *Declaration of Principles* included text urging endorsers to harmonise methodologies, it did not address the question of ‘international standards’ nor did it provide guidance on the criteria to use when assessing elections. Nonetheless, in the decade following the *Declaration of Principles*, international election observation organisations have progressively used public international law and human rights obligations as the basis for their election assessments. As a result, there is a growing recognition of a coherent body of public international law related to elections and electoral rights that serve as commonly-accepted international standards for democratic elections.¹² Importantly, this legal corpus includes many civil and political rights that, while not themselves explicitly electoral in nature, are relevant when considering elections as a cyclical process rather than a single event.¹³ Indeed, The Carter Center and most of the other leading election observation organisations have developed guideline documents relating to international standards to guide their work, further crystalizing election observation as a form of human rights monitoring.¹⁴

3. Public International Law as the Basis of Election Assessment

Public international human rights law – the set of treaties and rules between States and the international community – provides a valuable basis for developing assessment criteria for election observation for several reasons. First and foremost is that international obligations have been voluntarily agreed to by states themselves. Through the signature and ratification of

¹² These obligations and rights are found in international human rights instruments such as article 25 of the ICCPR, the African Charter on Democracy Elections and Governance, and the Inter-American Democratic Charter; Avery Davis-Roberts and David J Carroll, ‘Using international law to assess elections’ (2010) 17(3) *Democratization*; and David J Carroll and Avery Davis-Roberts, ‘The Carter Center and Election Observation: An Obligations-Based Approach for Assessing Elections’ (2013) Vol 12(1) *Election Law Journal*

¹³ Ibid. Carroll and Davis-Roberts outline 21 obligations relevant to elections, including: Genuine elections that reflect the will of the people; periodic elections; universal suffrage; equal suffrage; prevention of corruption; the right to vote; the right to be elected; secrecy of the ballot; freedom of association, assembly and expression; freedom from discrimination; equality between men and women etc.

¹⁴ Organisation of American States, *Methods for Election Observation: A Manual for OAS Electoral Observation Missions* (OAS 2007); The Carter Center, *Election Obligations and Standards: A Carter Center Assessment Manual* (The Carter Center 2014); European Union, *Compendium of International Standards for Elections* (4th edn) (European Union 2016)

international and regional treaties and instruments, as well as their membership in the community of states, countries accept and are bound by a surprisingly large number of obligations regarding democratic elections and governance.

Second, an international obligations-based approach to election assessment is aspirational in the sense that it recognises that all countries can improve their electoral processes to better protect rights and fulfil their obligations. Related, the body of public international law is constantly evolving and growing through both the development of, and agreement on, new treaties and legal instruments, as well as through new judicial decisions and treaty interpretations and the accumulation of established state practices.

Finally, public international law creates an objective and transparent basis for assessing elections. The text of legal instruments and the key sources are readily available and create a common language for discussions of election quality among a range of communities, including citizen and international observers, election administrators, and importantly human rights experts and bodies, and states themselves-

While the use of international legal obligations as the basis for standards to assess elections is now widely followed, its use is not without criticisms. Two key critiques stand out: one based on political considerations regarding conflict and stability; and the other relating to the broad and high-level nature of obligations, which limits their practical utility in terms of providing specific guidelines for state conduct on elections.

For many key international actors involved in difficult elections, especially in post-conflict states emerging from civil war and/or ethnic conflicts, by far the overriding concern is to take steps to ensure political stability and prevent outbreaks of violent conflict. In this view, the degree to which a country's election is held consistent with international human rights obligations and standards is not as important as an outcome that is politically acceptable to the key parties while avoiding violence. Senior officials in the UN and regional organisations tasked with mediating conflicts and assisting political transition understandably at times prioritise such political stability goals over (what is sometimes labelled "technical" electoral) concerns about human rights standards. Thus, a tension within understandings of election observation is exposed – is an election a political exercise, a means of ensuring the fulfilment of human rights, or both?

The second criticism is that obligations in public international law are generally stated at a high-level and hence, are frequently too broad to provide sufficient detail to guide state

behaviour on elections. In practice, many of the technical aspects of the electoral process, which directly affect the enjoyment of rights, involve consideration of more specific contexts and issues for which the high-level standards don't provide detailed guidance. This gap can present a very real problem for election observers and assistance providers who, given the highly contentious political environments in which they work, rely heavily on clearly articulated standards for their assessments and hesitate to make broad interpretations of human rights norms themselves. For instance, international human rights treaties focus on the right of access to information but do not address the good practice of many states to publish election results, disaggregated to the lowest level of tabulation. Relying on good practice and their experience, observers often recommend such transparency measures, but feel that their case would be bolstered by stronger language on such matter emanating from the UN and regional human rights systems.

So how can this gap be addressed? The keys to closing the gap between high-level obligations and the need for more narrowly focused electoral recommendations lie in the use of "good practice" and the focus on "follow-up" to recommendations for electoral reform. For many years now, the election observation community associated with the *Declaration of Principles* has been focused on the challenge of how to understand and increase the impact of observation, especially via more effective follow-up to election observation mission recommendations. To this end, observers have made efforts to craft recommendations that are more concrete, useful, implementable, and addressed to relevant specific actors.

In practice, many of the most useful recommendations are based on good practice derived from the broader experience of election experts, practitioners, and election management bodies, etc. While the relevant higher-level obligations do not provide such a level of specificity, the use of international law as the basis for assessments allows observers to link specific good practices to high-level obligations, as an example of state action to meet the high-level obligation. Over time, consistent good practice by states themselves can also cohere into customary state-practice obligations for democratic elections. Related, when recommendations are undergirded by good practices and international obligations, they can more easily be assimilated into the existing mechanisms for accountability at the international and regional levels, i.e., the UN and regional human rights systems.

4. International Election Observation and UN Human Rights Mechanisms

The international human rights community and the election observation and assistance community share common foundational principles and obligations for their work, firmly rooted in the framework of public international law and international human rights law. International observation is, in fact, conceptualised as a form of human rights monitoring. In addition, the two communities share common goals and methods of engagement on key issues. Both communities also focus on the need to proactively advance democratic rights and freedoms and do so through the monitoring and assessment of state performance, and neither have enforcement powers. However, there remains a divide between them.

For the human rights community, monitoring and assessment takes many forms, including through evaluative activities by national human rights and civil society organisations; through country visits of special rapporteurs or other special procedures mandate holders; through the review of states reports by treaty monitoring bodies; and through the newer UPR process. The outcome of this monitoring and assessment are recommendations to the State under Review (SuR) on how to better advance and promote fundamental rights and freedoms. These recommendations then become the basis for more concerted follow up in the months and years after the review process is complete.¹⁵

As outlined above, international and national election observation organisations similarly monitor and assess the states' ability to protect and advance fundamental rights and freedoms but focused more narrowly around the context of the electoral process. The principal output of observation groups are their reports and recommendations, based on data collected throughout the course of the observation mission, regarding the integrity of the election and how future elections can be improved and better protect and advance the rights of voters, candidates and other key stakeholders in the process.

In spite of these similarities, to date there has been very limited mutual engagement and communication across the two communities. Human rights mechanisms that exist to monitor and assess implementation and protection of a range of international human rights obligations have not so far regularly focused on electoral issues, as we will discuss below in more detail. At

¹⁵ See for example, the work of the CCPR Centre that organizes activities focused on the follow-up to UN Human Rights Committee Concluding Observations <<http://ccprcentre.org/follow-up-to-concluding-observations>> accessed 7 September 2017

the same time, international election practitioners have not fully harnessed the potential for engaging with human rights mechanisms or the experts and states involved in them.

While the ability of 'human rights regimes' to influence the behaviour of governments may be determined by a number of factors, including the degree of democratisation of the state in question, scholarship does indicate that ratification of treaties and engagement in the international human rights arena may influence domestic politics.¹⁶ As such, human rights mechanisms may provide a valuable new avenue for greater engagement with states and like-minded experts on the promotion and protection of electoral rights, as well as additional opportunities for implementation of election-related recommendations. In addition, they have the potential, ultimately, to help speed-up the development of new international law on elections.

In the following section, we explore how international and citizen observers can better engage with international human rights mechanisms, first briefly touching on the potential for greater collaboration with UN special procedures and treaty monitoring bodies, and then, focusing in greater depth on the benefits and challenges of greater engagement between the election assistance community and the UPR process.

5. Human Rights Mechanisms and Elections

Within the UN human rights system, there are three principal mechanisms mandated to monitor and report on human rights issues, including issues related to elections and electoral rights. These are the treaty monitoring bodies, the special procedures, and the UPR of the Human Rights Council (HRC). In addition, similar mechanisms exist in various forms at the regional level in Africa and the Americas. Each of these mechanisms has a slightly different mandate and approach, but all provide reports and recommendations on the promotion and protection of human rights. While in the past they have not focused extensively on election issues, such issues can and should fall within the scope of these mechanisms.

5.1 Treaty monitoring bodies

¹⁶ Emilie M Hafner-Burton, 'International Regimes for Human Rights' (2012) 15:265-86, *Annu Rev Polit Sci* <<https://doi.org/10.1146/annurev-polisci-031710-114414>> accessed 14 August 2017; Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009)

Six treaty monitoring bodies exist to interpret specific treaties, and monitor their implementation through review of regular state reports.¹⁷ Composed of independent experts, and serving in their personal capacities, the treaty monitoring bodies are the interpretive engine room of the UN human rights system. Issues on electoral rights are most broadly pertinent in the UN Human Rights Committee, which focuses on the International Covenant on Civil and Political Rights (ICCPR), but also may be addressed by other treaty bodies.

In addition to interpreting treaties in the context of specific country reports, the treaty bodies draft general comments or general recommendations, depending on the body, which serve as authoritative interpretations of their respective treaties. There are several general comments that directly address issues relevant to electoral processes and the broader human rights environment around elections.¹⁸

As part of the regular review of state reports on the implementation of the treaties, treaty bodies receive written submissions from civil society organisations. These shadow reports can provide additional information about the human rights situation in a specific country, some of which may contradict the report of the state. To date, there have been relatively few shadow report submissions from civil society organisations that observe elections, and partly for this reason the treaty bodies have issued relatively few observations and recommendations on electoral rights issues.¹⁹ Where they have focused on electoral rights, the treaty bodies have provided valuable jurisprudence, for example, on what constitutes a reasonable restriction on electoral rights.²⁰

5.2 Special procedures

Special procedures are independent experts, appointed by the HRC, with mandates to report on human rights, with a focus either on a specific theme or a specific country. They serve in their

¹⁷ These bodies include: the Committee on the Elimination of all Forms of Racial Discrimination (CERD); the Committee on the Elimination of Discrimination Against Women (CEDAW); The Committee on the Rights of the Child (CRC); the Committee on the Rights of Persons with Disabilities (CRPD); and the Committee on the Rights of Migrant Workers (CMW)

¹⁸ For example, General Comment 25 (57) UN Doc CCPR/C/21/Rev.1/Add.7 (1996); UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 23: Political and Public Life, 1997 A/52/38

¹⁹ The Carter Center has submitted a small number of reports based on its election observation mission findings to the Human Rights Committee.

²⁰ General Comment 25 is the most detailed example (n 16)

personal capacity on a pro bono basis. The special procedure may either be an individual – a special rapporteur or an Independent Expert – or it may be a working group of experts that represent each of the five UN regional groupings.

Special procedures undertake a range of activities including: undertaking country visits; responding to specific rights violations or broader human rights concerns through formal communications to a state; conducting thematic studies; contributing to the development of international human rights standards; and raising awareness. Every year the special procedures report to the HRC on their activities, and may also report to the UN General Assembly, depending on their mandate. With a range of tools at their disposal special procedures can adapt their response to a human rights issue as appropriate. In the past, special rapporteurs have focused on electoral issues, at times releasing thematic reports on elections or, in some cases, focusing on elections within a specific country.²¹ These reports can play an important role in the development of norms and standards regarding elections and can influence the behaviour of UN member states.²²

To date, however, there have not been regular exchanges between special procedures and the election assistance community. This may start to change following a recent 2016 workshop on *Human Rights and Election Standards*, co-hosted by the UN Office of the High Commissioner for Human Rights (OHCHR) and The Carter Center, which provided a number of practical recommendations for more regular interaction between Special Procedures and election practitioners. These recommendations included: scheduling in-country meetings between the special procedure and election observation mission or technical assistance organisation representatives; sharing reports and documents in advance of special procedures activities, so that election related issues can be addressed as appropriate; and considering ways that special procedures and elections practitioners might use the tools available to special procedures to highlight electoral rights issues.²³

²¹ UN HRC, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’, (2014), UNDOC A/HRC/26/30; UN GA, ‘Report of the Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association’, (2013), UNDOC A/68/299; UN GA, ‘Report of the Special Rapporteur on the Situation of Human Rights in Cambodia,’ (2012), UNDOC A/HRC/21/63

²² Marc Limon, and Ted Piccone. ‘Human Rights Special Procedures: Determinants of Influence.’ *Brookings Institution, Policy Report*, 2014

²³ The Carter Center, ‘Human Rights and Election Standards Summary of Proceedings’ <<http://electionstandards.cartercenter.org/at-work/hres/>> accessed 5 September 2017

5.3 Universal Periodic Review (UPR)

The UPR is a key human rights monitoring mechanism of the HRC. Created in 2007, the UPR involves a periodic review that is completed for each State every four to five years, using objective and reliable information regarding the state's fulfilment of its human rights obligations and commitments, and in a manner which ensures universality of coverage and equal treatment with respect to all states.²⁴ Unlike the treaty body mechanisms and the special procedures, the UPR is not conducted by independent experts, but by a working group, composed of the 47 member states of the HRC, with the ultimate goal of improving human rights in every country, recognising that every state can improve its human rights record.²⁵ To date, there have been two complete cycles of the UPR process, with each of the 193 member states now having been reviewed twice.²⁶

The UPR uses the full spectrum of human rights treaties and commitments as its basis, and unlike the treaty bodies, the member states are not limited in the scope of their review to issues, rights or obligations coming from a single treaty. The SuR is assisted by a three-State "troika," members of which are drawn by lot. The troika serves as a rapporteur for the SuR, and helps to facilitate an interactive discussion between the SuR and the member states.²⁷ During this discussion, member states may ask questions of the SuR and/or make recommendations for human rights improvements. At the end of each review, the troika will prepare a report summarising the discussion and the recommendations presented by member states, supported by the OHCHR. The working group will then adopt the report at a plenary session of the HRC, after receiving comments from the SuR, including their acceptance or note of the recommendations.

Due to the relatively broad scope of the review, the recommendations can touch upon a wide range of human rights issues, from the right to life and freedom from torture, to the right to

²⁴ UNGA, Res 60/251 (3 April 2006) UN Doc A/RES/60/251

²⁵ While the review is conducted by the Working Group, any Member State of the UN can join the discussion with the SuR.

²⁶ The reviews are conducted during the three regular sessions of the Human Rights Council that are held each year. The first cycle ran from 2008 – 2011. The second cycle began in 2012 and concluded in 2016. Approximately 48 countries are reviewed each year.

²⁷ This discussion is approximately three hours long, with Member states having only a few minutes to present their comments, questions and recommendations.

health, to the right and opportunity to participate in public affairs, including elections. To date some 57,686 recommendations have emerged from the two cycles of the UPR process.²⁸

According to the UPR Info database of UPR recommendations, the top five issues on which recommendations are made are international instruments (12,714 recommendations); women's rights (10,718 recommendations); rights of the child (10,112 recommendations); torture (4,529 recommendations); and justice (4,336 recommendations).²⁹ Recommendations coded by Professor Edward McMahon and UPR Info as specifically addressing elections are few – surprisingly a mere 343 of more than 57,000 recommendations, or less than 0.005 percent.³⁰ It should be noted that this number does not include the presumable thousands of recommendations related to other participatory rights relevant in electoral contexts, such as freedom of opinion and expression, freedoms of assembly and association, etc.³¹

Still, the fact that elections specifically receive so little attention in the UPR process should be a cause for some reflection. A review of the recommendations made regarding elections reveals some interesting trends.

First, since the very first session of the UPR where no election related recommendations were made, at least one recommendation about elections has been made at every subsequent session. Some 75 percent of recommendations regarding elections are made by the States in Western and Eastern Europe, Latin America and the Caribbean, while states in Africa have over the two cycles of the UPR received 77 percent of the recommendations.³² While this trend has largely continued, Figure 1 illustrates that in the second cycle, there was an increase in the number of recommendations in elections received by states in the Western European Group (WEOG), the Eastern European Group (EEG) and in the Group of Latin American and Caribbean Group (GRULAC) of states.

²⁸UPR Info, Database of Recommendations <www.upr-info.org/database/statistics/index.php?> accessed on 6 September 2017

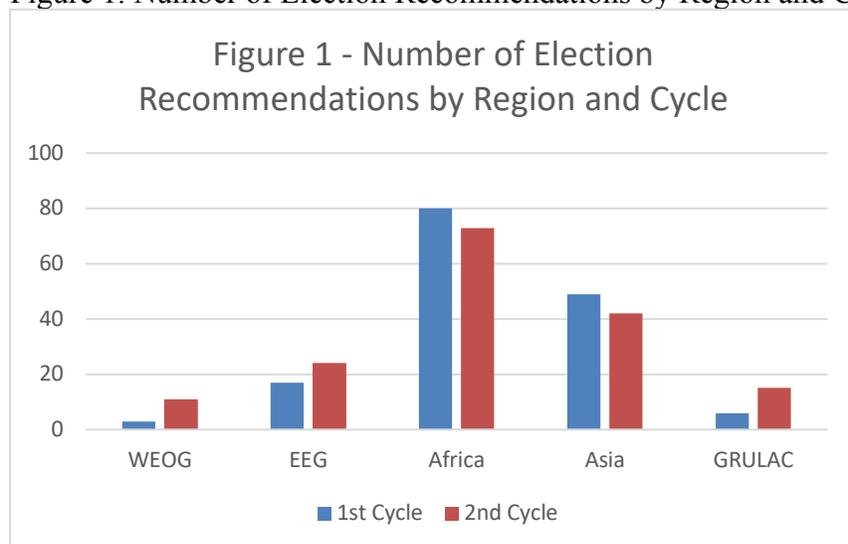
²⁹ Ibid

³⁰ Ibid

³¹ The UPR Info Database coding document does not state clearly what criteria is used to code a recommendation as election related. It appears to be based on whether they contain key words “elections” “electoral” “right to vote.” As a result, issues like political participation may be included in UPR recommendations without being tagged as being election related in the dataset.

³² Edward McMahon, ‘Elections and the UPR’, (Human Rights and Election Standards: The Universal Periodic Review and Elections Meeting, Geneva Switzerland February 2017)

Figure 1. Number of Election Recommendations by Region and Cycle³³



Second, there has

been a small increase in the number of recommendations regarding elections made between the first cycle of the UPR and the second cycle³⁴ – a number keeping with a general upward trend in the number of recommendations.³⁵

Third, of the 193 Member States that take part in the UPR process, 105 have received election-related recommendations, many of them receiving a single recommendation. Some 25 states have received five or more election recommendations across the two cycles of review. While the recommendations are not an indicator of electoral integrity, there does appear to be a correlation between a relatively high number of recommendations and the elections not being considered ‘free and fair.’³⁶ However, closer review of the recommendations themselves

³³ Data from UPR Info Database, < <https://www.upr-info.org/database/>> accessed 5 September, 2017

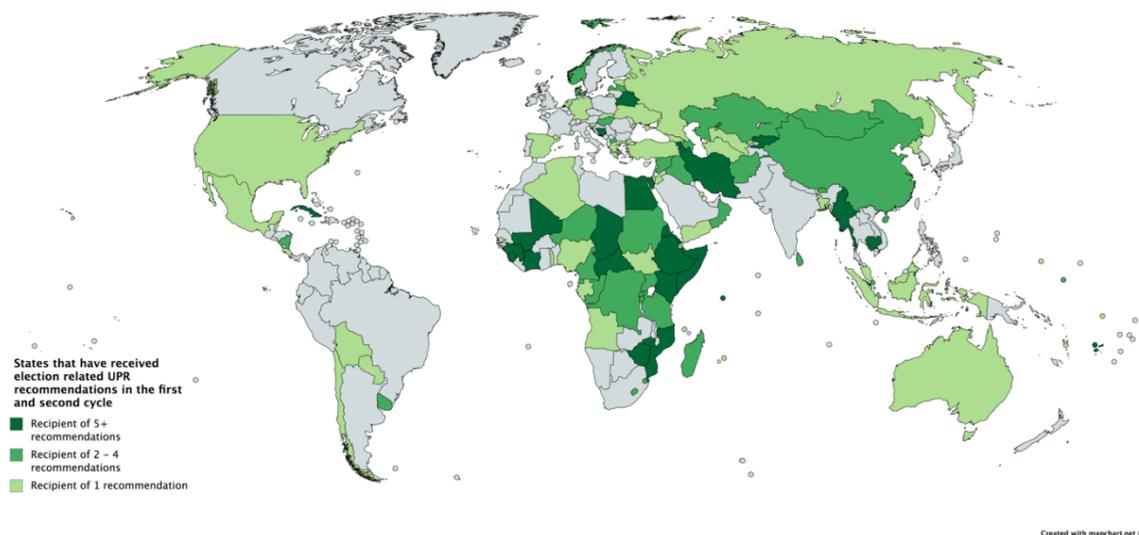
³⁴ Ibid

³⁵ It could be noted however, that the percentage of election related recommendations relative to the total number of recommendations made has decreased from 0.007 percent in the first cycle to 0.005 percent in the second cycle. This can be explained in part by the fact that the total number of recommendations increased from 21,355 in the first cycle to 36,331 in the second cycle.

³⁶ We reviewed nine of the top ten recipients of election recommendations against their scores in the Varieties of Democracy dataset (Guinea, Kyrgyzstan, Kenya, Belarus, Fiji, Ethiopia, Cambodia, Bosnia Herzegovina and Cote d’Ivoire), looking at the “Election Free and Fair” indicator. Assuming that Member States were largely considering the most recent elections relative to the time of review when developing their recommendations, these nine States scored between 0 (meaning not at all free and fair) and 3 (meaning that the elections were somewhat free and fair, that there were deficiencies but that they did not affect the outcome of the election). Between 2008 and 2016, the top six recommending States (Czech Republic, United States, United Kingdom, France, Norway and Canada) all received scores of above 4 (meaning that elections are free and fair, and that human error or logistical restrictions were largely unintentional and without significant consequence). There was a decline in score from 4 to 3 for the United States following the 2016 Presidential Elections.

indicates that states with higher numbers of election related recommendations generally fall into one of two camps. In some cases, the SuR will receive one or two recommendations on a wide number of issues, such as in the case of Guinea where recommendations have included the need to provide support to an independent election management body, the need to take steps to increase women’s participation and the need to facilitate the functioning of an independent judiciary. In other cases, the SuR may receive a large number of recommendations, but focused only on one issue. For example, Bosnia Herzegovina received eight recommendations regarding constitutional limitations on the right to participate on the basis of ethnicity. Figure 2 illustrates the geographic distribution of recipients of recommendations, including the number of election-related recommendations received.

Figure 2. Geographic Distribution of recipients of election related recommendations³⁷



Overall, election-related recommendations receive a slightly higher than average level of acceptance by SuR (266 or 77 percent of recommendations) than the overall UPR total of approximately 73 percent.³⁸

With this background in mind, what explains the relative dearth of election related recommendations within the UPR process? With elections only taking place every four to five years, McMahon posits that it may be that for many states, elections are not pressing enough to

³⁷ UPR Info (n 33)

³⁸ McMahon (n 32)

warrant recommendations during the UPR if they are taking place well-before or well-after an election process.³⁹ In review of the election-related recommendations, we have noted that the states that received the most election-related recommendations, either: held elections within about a year of the review process; have experienced highly conflictual elections; have been undergoing prolonged political instability; or have not held inclusive and meaningful elections for a long time.⁴⁰ Understanding that elections are not single-day events, but ongoing processes with many aspects that can directly impinge on fundamental rights and freedoms, may help increase states' willingness to issue recommendations on electoral issues regardless of where the UPR process falls within the electoral cycle. There is always something related to elections that can be reported on.

Another possibility is that elections may not be the first human rights priority of many recommending states.⁴¹ For some states, elections may not take priority in the review process. In an effort to not overwhelm the SuR and in recognition of the little time they have to issue recommendations in the UPR discussion process, states are increasingly limiting the number of recommendations they make to two or three, focused on a few priority issues. Since there are many issues presented in the state reports, report from the UN and the summary report of other stakeholders (civil society), states may decide not to prioritise elections because other issues are more pressing, such as extrajudicial killings. Other states have identified issues that they address to every state, such as the rights of women or persons with disabilities. In these cases, issues related to elections may fall by the wayside. Even for States like these that prioritise a single issue or on the rights of a specific marginalized group, having more election-related recommendations channelled into the UPR process, perhaps with inclusive elections serving as a cross-cutting theme, could help highlight the critical role of participatory rights for member states and their citizens. After all, UN member states have recognised democracy, good governance, and the rule of law as essential for sustainable development and the enjoyment of rights.⁴²

³⁹ Ibid

⁴⁰ For example, Bosnia Herzegovina, Guinea, Ethiopia, Kenya, Somalia and Myanmar.

⁴¹ McMahan (n 32)

⁴² UNGA, 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015) UNDoc/A/Res/70/1

McMahon also suggests that states may be wary of issuing recommendations regarding elections out of concern that by doing so, their own electoral processes will come under scrutiny during their next review.⁴³ That may be the case, however, it is also the case that the states that have issued the fewest recommendations on elections have received the most, and so should have little to lose in considering elections as part of the review process of other states.

It also may be the case that some states continue to view elections as a matter of State sovereignty and would prefer that criticism of elections be left outside the purview of the UPR process. It should be noted, however, that the UDHR and the subsequent ICCPR both include participation in public affairs, including elections, as a human rights issue subject to international scrutiny like other rights.

Finally, it could be that civil society organisations are not regularly including election-related issues in their submissions to the UPR process and/or that in the process of compilation of the civil society organisations' submissions, findings and recommendations regarding elections have been unintentionally overlooked or under-emphasised by the OHCHR.⁴⁴

Regardless of the above, it is clearly the case that to date the organisations best placed to submit information and recommendations about electoral processes to the UPR process – international and citizen observation groups – have failed to do so consistently.

5.4 Election observation reports and the UPR process

As outlined above, international and citizen election observation efforts bear some important similarities to the work of the human rights monitoring and assessment mechanisms. Election observation missions use data collected during the electoral process to evaluate the degree to which elections meet international obligations and standards found in public international law.

⁴³ McMahon (n 32)

⁴⁴ Unlike the treaty monitoring mechanisms or Special Procedures that can receive civil society submissions directly, in the case of the UPR, civil society organisations are required to submit a short report to the OHCHR. The OHCHR then summarizes all of the submissions from civil society into a single, short report that reflects all of the main points included in the civil society submissions and is shared with the UPR working group. This can be an incredibly difficult task. In some cases, the OHCHR may receive hundreds of submissions on a single country from civil society organisations. Julie Billaud, 'Keepers of the truth: producing 'transparent' documents for the Universal Periodic Review' in Hillary Charlesworth and Emma Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge University Press 2015)

With a focus on the electoral environment– including not only the technical aspects of the election, but also the enjoyment of a range of civil and political rights and freedoms– election observation groups have access to a great deal of information that, if submitted more regularly, could inform the UPR process. In addition, simply having a greater number of more regular submissions focused on the electoral process is likely to increase the number of states considering electoral issues and making recommendations on them.

Initial research suggests that the recommendations made by states are often influenced by the perspectives, information and themes put forward by civil society organisations.⁴⁵ A 2013 study analysed 2,448 civil society organisation recommendations to the UPR, to determine whether they were reflected in states’ recommendations, and if they were, whether they were reflected in a general fashion or in a specific fashion (where the exact language of the civil society organisation’s recommendation was used in the subsequent state recommendation).⁴⁶ The study found that about two-thirds or 67 percent of civil society recommendations were reflected in some fashion in state recommendations, and of these about 41 percent exactly reflected the recommendation of civil society organisations. Presumably, recommendations from international and citizen election observation organisations could be comparably influential if submitted more regularly.

5.5.1 The Carter Center and OSCE Submissions to the UPR

In the international election observation community, the two international election observation organisations that have submitted the most election observation reports and findings to the UPR are The Carter Center and the Organisation of Security and Cooperation’s Office of Democratic Institutions and Human Rights (OSCE/ODIHR). In the case of the Carter Center, election observation reports have been adapted to meet the OHCHR submission guidelines for civil society. On the other hand, the OSCE/ODIHR, a regional, inter-governmental organisation, is

⁴⁵ Lawrence Moss, ‘Opportunities for Nongovernmental Organisation Advocacy in the Universal Periodic Review Process at the UN Human Rights Council’ (2010) Vol. 2 Journal of Human Rights Practice 122

⁴⁶ Edward McMahon et al, ‘The Universal Periodic Review: Do Civil Society Organisation Suggestions Matter?’ (2013) International Policy Analysis, Friedrich Ebert Stiftung < www.upr-info.org/sites/default/files/general-document/pdf/mcmahon_fes_do_cso-suggested_recommendations_matter_en.11.2013.pdf> accessed on 1 March 2017

able to submit election observation findings without being subject to the same review and editing process required for non-governmental organisation submissions.

Although broad conclusions cannot be drawn because of the very small sample number of recommendations from these two organisations, it does appear that both organisations have been successful in having their recommendations reflected in State Recommendations. For example, The Carter Center recommended in its January 2016 submission on Sierra Leone that the SuR consider ‘revising and reintroducing the Gender Equality Bill for parliamentary consideration’.⁴⁷ Sierra Leone subsequently accepted a recommendation from the Maldives to ‘take temporary special measures to address gender equality and consider reintroducing the gender equality bill to Parliament.’⁴⁸ In its November 2015 submission on Nepal, The Carter Center recommended ‘expanding participation of women, Dalit and other marginalized groups in decision-making processes.’⁴⁹ This recommendation was reflected at a general level in recommendations made by Portugal, Nicaragua, Venezuela, Laos, Malaysia, Costa Rica, Sierra Leone, New Zealand, Mauritius, Timor L’este and Israel.⁵⁰

The OSCE/ODIHR also seems to be influencing the UPR process. Of more than 300 recommendations made by states on elections issues through both cycles of the UPR, some 39 focused on election observation, with states either recommending that the SuR implement the election observation mission findings (25 recommendations) or that they should facilitate the work of observers (14 recommendations). Of the former, 16 or almost two-thirds specifically recommended that the SuR implement the findings or follow the guidance of the OSCE/ODIHR.⁵¹

It seems likely that citizen observation organisations also could similarly influence the UPR process if they were to submit their findings and recommendations more regularly. Likewise, the increasing focus of states and international and national civil society on UPR recommendations, and their follow-up and implementation could in turn prove very beneficial to the work of citizen observation organisations. The same is probably true regarding recommendations emanating from other human rights monitoring mechanisms.

⁴⁷ OHCHR, ‘Sierra Leone’ (6 November 2015) UNDOC A/HRC/WG.6/24/SLE/3

⁴⁸ UPR Info, Database < <https://s.upr-info.org/2gCGSdI> > accessed 23 October 2017

⁴⁹ OHCHR, ‘Nepal’ (14 August 2015) UNDOC A/HRC/WG.6/23/NPL/3

⁵⁰ UPR Info, Database < <https://s.upr-info.org/2gDgosN> >, accessed 23 October 2017

⁵¹ Other recommendations mention the Commonwealth and the European Union.

6. Lessons learned so far

Scholarship on both election observation and human rights regimes share a focus on three main questions: (1) why do governments participate in a process that may expose irregularities?; (2) how do mechanisms of election observation and human rights regimes work?; and (3) are such mechanisms and regimes influential?⁵² The question of influence is particularly relevant to consideration of the relationship between election observation and human rights mechanisms.

Election observation organisations see their primary role as providing an impartial assessment of the electoral process to influence national and international perceptions about the integrity of election and to provide recommendations for future reform.⁵³ While initial research indicates that observation does influence perceptions of elections, and that observer recommendations (at least from regional organisations) are frequently implemented, many factors influence these outcomes, including political polarization, the focus of the recommendations, and even the wording of the recommendations.⁵⁴ Similarly, the degree of influence of the international human rights regime on the domestic policy of states is subject to a range of factors beyond ratification of a treaty, including the strength of the rule of law, and importantly, the relative strength of domestic civil society.⁵⁵

To take advantage of the potential presented by engagement with the human rights mechanisms, election observation groups will need to both adapt their methods and engage more effectively with an array of domestic civil society organisations. For example, to facilitate the interaction with human rights monitoring mechanisms, it is imperative that election observation organisations learn to “speak the same language” as the human rights community. In part, this means that reports and recommendations from observation groups need to be firmly rooted in international election obligations and standards that are drawn from international human rights

⁵² Hafner-Burton (n 16); Susan D Hyde (n 4); Judith G Kelley (n 4); Bush and Prather (n 8); Susan D Hyde and Nikolay Marinov, ‘Information and Self-Enforcing Democracy: The Role of International Election Observation’ (2014) 68(2) International Organisation

⁵³ Bush and Prather (n 8); Ferran Martinez i Coma, Allesandro Nai and Pippa Norris, *Democratic Diffusion: How Regional Organisations Strengthen Electoral Integrity*, <<http://www.oas.org/fpdb/press/FINAL-Democratic-Difusion-English-Exec.pdf>> accessed 7 September 2017

⁵⁴ Ibid

⁵⁵ Hafner-Burton (n 16); Beth Simmons (n 16)

law. Where possible, the link between observation mission findings and the obligations and standards should be made explicit.

Second, when submitting to human rights monitoring mechanisms, election observation organisations should not present their work in terms of the electoral cycle framework as is commonly the case, but instead should focus on the applicable human rights norms and standards. For most organisations, this will require a paradigm shift.

Third, it will remain a challenge for election observation organisations to make election-related recommendations appear as compelling as recommendations on other important human rights. To address this, election observation organisations need to underscore that the fulfilment of the right to participation in public affairs and elections is fundamental to the enjoyment of other rights.

Finally, citizen and international election observation organisations will need to be more familiar with the intricacies of the different human rights mechanisms which can be quite complex. Organisations working on election issues need to better understand how informal outreach to member states can increase uptake of election related recommendations, for example, through the sending of one-page summaries of civil society organisation submissions to the troika of states responsible for compiling information for the SuR.

Election observation groups will also need to work more closely with a range of domestic civil society organisations, some which focus on elections and others whose work may focus on different human rights issues. This may include, for example, providing information and support to civil society organisations conducting advocacy campaigns, or those that are consulted during National Mechanism for Reporting and Follow-up processes.⁵⁶

In addition, election observation organisations will need to consider how best to engage not only with the UPR process, but also with the treaty monitoring bodies and the special procedures. For example, in addition to submitting election observation reports to treaty

⁵⁶ National Mechanisms for Reporting and Follow-up (NMRFs) are state-sponsored mechanisms for coordinating reporting and following up on the implementation of the plethora of recommendations that they receive from various human rights bodies. See for examples, Beatriz Balban Chamorro, Shahrzad Tadjbakhsh and Ibrahim Salama, 'NMRFs – A Key State Structure for Effective Reporting, Coordination and Implementation of Human Rights Recommendations' (Universal Rights Group, 5 December 2016) <<http://www.universal-rights.org/blog/by-invitation/nmrfs-key-state-structure-effective-reporting-coordination-implementation-human-rights-recommendations/>> accessed 7 September 2017.

monitoring bodies, election observation organisations might engage with special rapporteurs on key issues around elections, helping to highlight where new international norms on elections might be most helpful.

7. Conclusion

Building stronger links between the election assistance community and human rights mechanisms, as outlined above, can provide an important means to address the growing challenge of closing political space. This is especially true as more and more states act to impose restrictions limiting democratic space and fundamental freedoms, i.e., laws constraining the ability of civil society organisations to form, receive funds, and operate, or laws otherwise curtailing the rights of human rights defenders and activists. The international human rights arena takes on even greater importance as a means of holding states accountable. In this context, election observation groups and human rights mechanisms can work together more effectively by using a common language, common standards for assessment, and similar working methods. With parallel efforts at the national, regional, and international levels, these activities can result in a much more robust system of accountability to advance democracy and human rights. Greater and more deliberate engagement by election observation group with the special procedures, treaty bodies, and UPR is a key step in this process.