

# The Carter Center and Election Observation: An Obligations-Based Approach for Assessing Elections

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## ABSTRACT

This article provides an overview of recent efforts by the Carter Center to establish an analytical framework for election observation assessments based in public international law. The authors argue that by basing the framework on international legal commitments that states have accepted freely, election assessments can be more transparent, objective, and acceptable to host countries. The authors also argue that an obligations based approach to election assessment provides a promising avenue for fostering consensus on the elements of democratic elections, as well as the assessment criteria used by observer groups. This article includes details of the practical tools used by Carter Center observation missions including the *Database of Obligations for Democratic Elections*, and forthcoming publications such as the Center's methodology handbook.

## INTRODUCTION AND OVERVIEW

**T**HIS ARTICLE PROVIDES A BRIEF OVERVIEW of an analytical framework developed by the Carter Center for assessing electoral processes against obligations in public international law. Because it is based on international legal commitments that states have accepted freely, we argue that an obligations-based approach to observing and assessing elections is more transparent, objective, and acceptable to host countries. In addition, we believe it provides the most promising avenue for fostering deeper consensus on the elements that comprise "international standards for democratic elections," as well as the underlying assessment criteria used by observer groups.

We begin with several general points about democratization, democratic elections, and the role of election observers, including criticisms and debates about observation missions. This is followed by a short summary of the Carter Center's

obligations-based framework and the database of obligations that was first introduced in 2010,<sup>1</sup> as well as our recent efforts to develop and pilot a set of reporting tools for election observers linked explicitly to obligations, which will culminate in several forthcoming publications, including a comprehensive methodology handbook, a variety of shorter reference guides, and related academic papers. The last section focuses on the key remaining technical and political challenges facing the Center's obligations-based approach to observing elections, particularly the challenge of how observers should compile findings on various parts of an electoral process into a final overall assessment.

## DEMOCRATIZATION AND ELECTION OBSERVATION

As a result of the end of the Cold War and several waves of democratization, there is now broad

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<sup>1</sup>See Davis-Roberts and Carroll, "Using International Law to Assess Elections," *Democratization*, May 2010.

international consensus that genuine democratic elections are essential for establishing the legitimate authority of governments and for allowing citizens to hold their governments accountable. With the exception of a few isolated cases (including the Vatican and several monarchies), virtually every country around the world has declared a formal commitment to democratic government, and a large number of countries have undergone transitions toward multiparty democracy.

Elections are an essential part of the broader and more complex process of democratic governance. They also provide a snapshot of the quality of a wide range of forces and conditions that are central to democracy. Election observers—when perceived as impartial and credible—can play an important role in shaping perceptions about the quality and legitimacy of electoral processes, with obvious implications for the democratic legitimacy of the government. Observer teams with a long-term presence which produce thorough, well-documented reports are trusted as providing relatively authoritative evaluations of an electoral process. In the end, the credibility and effectiveness of observers rests on the degree to which there is broad confidence and trust in their objectivity, professionalism, and comprehensiveness—much of which reduces to questions regarding their methodology and its implementation.

On these points, election observation missions have faced some criticisms over the last decade regarding questions of professionalism, accusations of double standards, and/or the use of different methodologies across groups. Similarly, observer missions are also criticized for not having a consistent record in reducing fraud, delivering better elections, and ensuring improvements in the quality of democracies over time.

In key respects, criticisms about varying levels of professionalism or double standards among observers miss the mark. It is true that there are now a large number of organizations that deploy teams of observers operating with low levels of professionalism and producing thin reports of questionable value. However, the core group of leading organizations associated with the Declaration of Principles for International Election Observation, endorsed in 2005, uses similar methodologies and produces high-quality professional reports.<sup>2</sup>

Similarly, some of the criticisms about impact are misplaced, reflecting a misunderstanding about the objectives of election observers and their limited

spheres of control. Credible and professional observer missions can produce thorough, accurate, and impartial analyses of electoral process along with recommendations for possible improvements. The presence of observers and their reporting and recommendations may reduce electoral malpractice or fraud, and/or lead to improvements in future elections. But these outcomes depend largely on the interests and actions of other local and international actors, and cannot realistically be attributed to election observers.

There remains, however, a need for additional improvement in the methodologies used by credible election observers—while the Declaration urges endorsers to harmonize methodologies, it does *not* address the question of “international standards” to which election observers often refer in their assessments. Many of the leading organizations have developed documents relating to international standards, but there is still not a uniform approach to documenting such standards or criteria for assessing elections. To address this challenge, the Carter Center has collaborated with other experts and observer groups to develop an obligations-based methodological approach. The sections below outline the core elements of the framework and some of the new reporting tools being developed.

### **PUBLIC INTERNATIONAL LAW: INTERNATIONAL OBLIGATIONS FOR DEMOCRATIC ELECTIONS**

Through the voluntary signature and ratification of international treaties and instruments as well as their membership in the community of states, countries have accepted a surprisingly large number of obligations under public international law regarding democratic elections and governance. An election observation approach built around this system of

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<sup>2</sup>The Declaration established consensus on the definition of the election observation, and provides guidelines for parameters of credible election observation missions, including the appropriate scope and duration of missions, and key conditions required for missions to be credible, including host country guarantees to ensure access to key persons and electoral information, freedom of movement, and freedom to issue public reports on findings. The Declaration not only provides guidelines for professional international observation, but also serves as a foundational document for a global community of observer groups that meets regularly to reflect on experiences and common challenges.

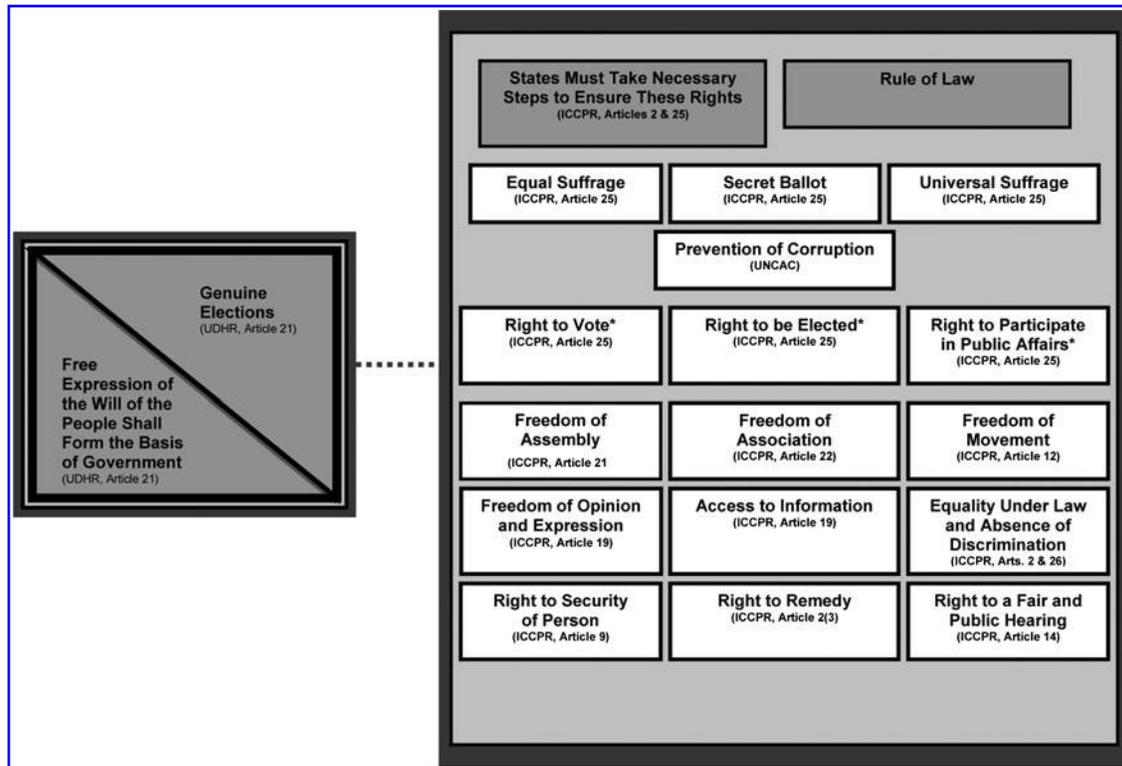


FIG. 1. International obligations for democratic elections.

obligations allows observers to articulate specific election standards based on state obligations. The objectivity and transparency of this approach can reassure host governments of the source of these standards, helping to address concerns about the professionalism and impartiality of observer missions, including charges of double standards. Likewise, an obligations-based approach provides a solid foundation for further efforts to harmonize methodologies and deepen consensus on election standards among observer groups.

With these goals in mind, the Carter Center worked with a group of experts and collaborating organizations over a two-year period to review more than 200 source documents in public international law relevant to various aspects of the electoral process. We identified 21 obligations and compiled direct text quotations from the relevant passages of the source documents into a comprehensive compendium. In 2010, an online database of the obligations—searchable by country, obligation, parts of the electoral process, etc.—was launched to facilitate public access and use by observer groups and others.<sup>3</sup> Figure 1, illustrates a two-level conceptual model of democracy obligations.

The small box on the left in Figure 1 represents the overarching macro-level obligations that states have to hold genuine and periodic democratic elections to enable a free expression of the will of the people. The box on the right includes 18 other obligations relating to a series of process-focused rights, and individual rights and fundamental freedoms which are essential for a genuinely democratic election. The 21 obligations are summarized in Figure 2 below.

The database of obligations includes international legal obligations, generally linked to a binding treaty source (e.g., the International Covenant on Civil and Political Rights, or ICCPR), as well as judicial interpretations of these obligations by relevant treaty bodies. In addition, the database includes “lower-level” sources such as non-binding instruments and other documents that serve as evidence of state practice. Since state practice that is followed consistently over time can become the basis of binding customary

<sup>3</sup>To access the Carter Center database, see: <<http://www.cartercenter.org/des-search/des/Introduction.aspx>>.

***The free expression of the will of the people*** – The popular will, freely expressed through genuine elections, must be the basis for legitimate political authority.

***Genuine and periodic elections*** – Twin obligations requiring that elections must provide a real choice and be held at reasonable intervals, in a context that protects other fundamental rights.

***The state must take necessary steps to ensure rights*** – States must take the steps necessary, in both law and practice, to give effect to fundamental rights.

***The rule of law*** – The principle of the rule of law, implicit in international human rights law, is an essential condition of the fulfillment of rights.

***Universal suffrage*** – The state should ensure that the broadest pool of voters is eligible to cast ballots, only restricted on the basis of reasonable and objective criteria.

***Equal suffrage*** – The weight or value of the votes of eligible voters should be equal.

***Secret ballot*** – Voting by secret ballot is recognized as critical for protecting free expression.

***Prevention of corruption*** – States should take steps to prevent corruption, including through the promotion of transparency measures.

***Every citizen has the right to participate in public affairs*** – Citizens have the right to participate in public affairs, including through civil society activities.

***Every citizen has the right to vote*** – Citizens have the right to vote, only restricted on the basis of objective and reasonable criteria.

***Every citizen has the right to be elected*** – Citizens have the right to be elected, only restricted on the basis of reasonable and objective criteria.

***Freedom of assembly*** – Everyone has the right to assemble, including candidates and voters, during campaigns. Restrictions must be prescribed by law and “necessary in a democratic society.”

***Freedom of association*** – Everyone has the right to free association, including the establishment of political parties and other organizations. Restrictions must be prescribed by law.

***Freedom of movement*** – Everyone has the right to free movement, and any restrictions on that right must be proportionate to the interests it is intended to protect.

***Equality before the law and absence of discrimination*** – States are obligated to ensure equality before the law and prevent discrimination in the exercise of rights and freedoms.

***Freedom of opinion and expression*** – Everyone has the right to freedom of expression, including the communication of information between voters and candidates and to contribute to campaigns.

***Access to information*** – Everyone has the right to seek and receive public information, helping to provide transparency in the electoral process.

***Right to security of the person*** – Everyone has the right to security of the person, including protection from arbitrary arrest, detention, and exile. This includes protection of voters, candidates, poll workers, and observers from coercion or intimidation.

***Right to an effective remedy*** – States are obligated to ensure an effective and timely remedy by a competent administrative, legislative, or judicial authority, including during an electoral process.

***Right to a fair and public hearing*** – Everyone has the right to a fair and public hearing, with cases heard publicly and expeditiously by an impartial tribunal.

FIG. 2. Public international law obligations for democratic elections.

international law, the lower-level sources can also be evidence of obligations. While observer missions usually base their findings primarily on obligations arising from treaties ratified by the host state, it is appropriate for them to consider

the full body of customary international law in their assessments.

As noted, the 21 obligations referenced above are relevant to various parts of the electoral process. Therefore, the database ties these obligations to the

<p><b>Legal Framework</b> – The laws and rules that regulate how the election is organized and conducted, which affects all other parts of the electoral process.</p> <p><b>The Electoral System and Boundary Delimitation</b> – The drawing of constituencies and means of converting votes into elected seats/mandates.</p> <p><b>Election Management</b> – The structure, mandate, and activities of the election management body in conducting elections.</p> <p><b>The Media</b> – The rights of journalists, as well as the ability of political contestants to equitably access the media, and receive fair media coverage.</p> <p><b>Candidacy and Campaigns</b> – The registration of candidates and parties, campaign finance, and the campaign activities of candidates and parties.</p> <p><b>Voter Education</b> – Voter education and voter information efforts provided by the state, political parties, or civil society.</p> <p><b>Voter Registration</b> – Regulations and activities related to voter registration, ensuring that eligible voters are able to participate.</p> <p><b>Voting Operations</b> – All election-day operations and associated preparations.</p> <p><b>Vote Counting</b> – Vote counting aggregation and tabulation processes through to the final results.</p>
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**FIG. 3.** The parts of the electoral process.

ten main parts of an electoral process as seen from the perspective of election observation missions.<sup>4</sup> A short summary of the ten constituent parts is provided in Figure 3 above.

### ASSESSMENT CRITERIA AND METHODOLOGY

While observers have been using appropriate questions to guide their data gathering, they have not consistently linked their questions and assessments to states' obligations for democratic elections. But, this is changing and in recent years many of the most experienced groups are incorporating obligations into their reports. Building on the obligations database, the Carter Center is developing a comprehensive methodology handbook with checklist and reporting templates linking assessment criteria directly to states' obligations. This will enable observers to systematically build obligations into their missions, focusing directly on the degree to which democracy obligations are met.

Table 1 provides a short example of the approach being developed. Using voter registration as an example, the table includes a partial list of the obligations that are most relevant to voter registration, each of which are paired with key indicators and sample analytical questions. Observation missions then

incorporate these concepts (in this case on voter registration) into more detailed checklists and reporting forms. Through the systematic collection of quantitative and qualitative data by observers deployed to assess registration and analysis by expert field staff, election observation missions gather detailed information about the voter registration process and assess the degree to which relevant obligations are being met. Observers can follow a similar methodology to assess each constituent part of the electoral process, referencing the obligations that are relevant for those parts of the process.

The analysis of such indicators and questions necessarily involves some subjective judgments. To ensure that assessments are as accurate and balanced as possible, several important methodological criteria should be followed. Some of the most important are to focus on both the frequency (i.e., "how many") and the significance (i.e., "how important or consequential) of instances of reported problems or irregularities. In addition, observers need to assess whether there is evidence suggesting that problems are the result of deliberate or intentional actions (vs. unintentional errors), and whether any systematic patterns can be discerned (e.g.,

<sup>4</sup>While some observer and election assistance organizations break the electoral process down into fewer or more constituent parts, the ten listed here (and used in the database) are consistent with common usage in the election community.

TABLE 1. VOTER REGISTRATION: OBLIGATIONS, INDICATORS, AND QUESTIONS

<i>Obligation</i>	<i>Key Indicators</i>	<i>Sample Analytical Questions</i>
<b>Universal Suffrage</b>	<ul style="list-style-type: none"> <li>• Voter registration promoted broad participation.</li> <li>• No unnecessary technical barriers that hinder participation by qualified eligible voters (e.g. fees).</li> </ul>	<ul style="list-style-type: none"> <li>• Were registration centers accessible to citizens?</li> <li>• Were registration locations publicized, located close to relevant populations? Ample hours of operation?</li> </ul>
<b>Equal Suffrage</b>	<ul style="list-style-type: none"> <li>• Safeguards in place to prevent multiple registration.</li> <li>• Voters list was accurate and up-to-date.</li> </ul>	<ul style="list-style-type: none"> <li>• Steps taken to prevent multiple registration?</li> <li>• Were challenges reviewed and a revised list posted?</li> </ul>
<b>Right to Vote</b>	<ul style="list-style-type: none"> <li>• The right to vote ensured through voter registration process; only reasonable limitations.</li> <li>• Voters list was accurate and up-to-date.</li> </ul>	<ul style="list-style-type: none"> <li>• Were eligible citizens registered without unreasonable restrictions or limitations?</li> </ul>
<b>Right to Participate in Public Affairs</b>	<ul style="list-style-type: none"> <li>• Citizen observers, candidates and parties are able to review the voter registration list.</li> </ul>	<ul style="list-style-type: none"> <li>• Were observers, party agents, etc., allowed adequate access to review the voter list at local stations?</li> <li>• Were copies of the full voter list available?</li> </ul>
<b>Equality and Absence of Discrimination</b>	<ul style="list-style-type: none"> <li>• Eligibility requirements for registration/voting are reasonable, and do not discriminate</li> <li>• As appropriate, special measures to ensure women, minorities, disabled, and others able to register.</li> </ul>	<ul style="list-style-type: none"> <li>• Were eligibility requirements reasonable, allowing citizens to register without unreasonable restrictions?</li> <li>• Are there special measures to promote registration of women, minorities, etc.?</li> </ul>
<b>Access to Information</b>	<ul style="list-style-type: none"> <li>• Citizens have access to public information regarding the registration process.</li> </ul>	<ul style="list-style-type: none"> <li>• Was information provided to the general public to educate on the registration process?</li> <li>• Did citizens have access to review the voter list?</li> </ul>
<b>Prevention of Corruption</b>	<ul style="list-style-type: none"> <li>• Policies and procedures in place to prevent, address and penalize acts of corruption.</li> </ul>	<ul style="list-style-type: none"> <li>• Are there regulations and procedures implemented to prevent, address, and penalize corrupt acts?</li> </ul>
<b>Freedom of Movement</b>	<ul style="list-style-type: none"> <li>• Free movement of citizens during registration process.</li> <li>• Displaced citizens have opportunity to be considered resident in their former place of residence.</li> </ul>	<ul style="list-style-type: none"> <li>• Are citizens, observers, and party members able to move freely during registration?</li> <li>• Are the displaced able to register in their home areas?</li> </ul>
<b>Right to Security of the Person</b>	<ul style="list-style-type: none"> <li>• State prohibits interference with registration, intimidation or coercion of potential voters</li> </ul>	<ul style="list-style-type: none"> <li>• Are there any acts of intimidation or coercion that threaten or undermine participation in registration?</li> </ul>
<b>Right to an Effective Remedy</b>	<ul style="list-style-type: none"> <li>• Effective and timely remedy available for violations of rights during the voter registration.</li> <li>• Clear timeline; resolution in time for election.</li> </ul>	<ul style="list-style-type: none"> <li>• Do citizens and parties have effective remedies available for violations during registration?</li> <li>• Are remedies provided in a timely manner?</li> </ul>
<b>State Must Take the Steps Necessary to Ensure Rights</b>	<ul style="list-style-type: none"> <li>• State takes the steps necessary to ensure effective registration process.</li> <li>• Voters register publicly displayed with adequate time for public review, objections and adjudication.</li> </ul>	<ul style="list-style-type: none"> <li>• Are key necessary steps taken to promote broad participation in registration process?</li> <li>• Is voter registration list available for public review, scrutiny, and adjudication of disputes?</li> </ul>

disproportionate numbers of problems in certain locations, e.g., areas that are strongholds of certain parties or where ethnic or other populations predominate). Throughout the electoral process, observers should analyze the obligations relevant to that part/phrase of the process and determine whether obligations are met fully or adequately, and whether problems result in a serious failure to meet obligations. The data and analysis from each phase can then be incorporated into the larger overall assessment.

### CONCLUSION: THE CHALLENGE OF REACHING OVERALL ASSESSMENTS

The main task for all observation missions is to compile observer reports and data in a systematic fashion throughout the electoral process and to arrive at an overall assessment that is accurate, balanced, and supported by evidence. With an obligations-based approach, observers can root their assessment criteria and overall findings in international legal obligations, and can include

recommendations about how future elections might better meet obligations.

Regardless of whether or not an obligations-based approach is used, the most difficult challenge is to evaluate the extent and significance of observed problems during various stages of the election, and to assess the degree to which they fundamentally undermine the integrity of the entire election and the final results. Such analysis raises the core question of how much weight or value to give to the various parts of the electoral process and the relevant obligations. Are certain obligations so fundamental to a democratic election, that any significant shortfall necessarily renders the election as failing to meet critical international standards? Are *all* of the obligations equally essential, or are some more important than others? Related and perhaps most important of all: Is it possible to develop a uniform weighting scheme that is meaningful and applicable cross-nationally to countries all around the world? These are critically important questions that require significant investments of time and resources to even attempt to address them adequately.

Based on direct experience observing many elections and engaging a range of election practitioners, our view is that while research should continue to consider the relative weights of obligations and electoral phases, at the end of the day, elections still need to be understood and assessed in their unique political and cultural context. That is, observers and stakeholders must apply a consistent set of obligations and standards when evaluating electoral processes, but also recognize that the relative significance of obligations is inextricably tied to the local context. While it is important to meet obligations during all stages of the electoral process, in some contexts one or more obligations might be reasonably deviated from without fundamentally undermining the overall process.

For example, consider the core obligation of the secret ballot. It is universally accepted that voting

by secret ballot is essential to ensure the free expression of voters, and to protect against pressure, intimidation, or vote buying. However, the significance of a systematic failure to ensure a secret ballot can vary markedly across contexts. Recent elections in Spain are reported by observers as having had frequent examples of failure to ensure ballot secrecy, but with little impact on the overall quality of the elections.<sup>5</sup> Similarly, Carter Center observers for the 2011 referendum in Southern Sudan reported common problems with ballot secrecy, but concluded that the problems did not fundamentally undermine the elections.<sup>6</sup> In political contexts characterized by intimidation, fear, or large-scale vote buying, failures to ensure secret balloting procedures can obviously result in fatally flawed elections.

Arriving at an overall assessment requires more than just an analysis of the degree to which an electoral process meets international standards. It is also necessary to consider several other factors, including the size of the margins of victory in the final results, and whether problems and failures to meet obligations are large enough to change—or have a significant impact on—the final results.

The challenge for election observers using an obligations-based framework remains one of ensuring that assessments are systematic, accurate, and supported by evidence. It is therefore essential that election observers, academic analysts, and other experts should continue efforts to address these issues.

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<sup>5</sup>See OSCE/ODIHR Election Assessment Mission Reports for the 2004 and 2001 Parliamentary elections.

<sup>6</sup>See Carter Center report: Observing the 2011 Referendum on Self-Determination in Southern Sudan.