



**ELECTION OBSERVATION MISSION  
SUDAN, PRESIDENTIAL, GUBERNATORIAL AND LEGISLATIVE, APRIL 2010**

**PRELIMINARY STATEMENT**

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**Executive Summary**

The Carter Center commends the Sudanese people for the generally peaceful polling process to date and urges that the remaining stages of counting, tabulation, and posting of results be carried out transparently and accurately. In addition, the limited political opening around the elections should be expanded to ensure respect for Sudan's constitutional human rights and fundamental freedoms, and leaders from all parties should engage in genuine dialogue to address the key challenges facing Sudan.

While it is too early to offer a final overall assessment, it is apparent that the elections will fall short of meeting international standards and Sudan's obligations for genuine elections in many respects. Nonetheless, the elections are important as a key benchmark in the Comprehensive Peace Agreement (CPA) and because of the increased political and civic participation that has occurred over the last several months. Ultimately, the success of the elections will depend on whether Sudanese leaders take action to promote lasting democratic transformation.

Despite their observed weaknesses, the elections are a CPA benchmark and their conduct allows the remaining provisions of the agreement to be implemented.

At the invitation of Sudanese authorities, The Carter Center began assessing the electoral process in 2008 and deployed 12 long-term observers in late 2009. During the voter registration period in November and December 2009, the Center deployed an additional 20 observers, and for April 2010 polling, the Center organized an observation team with more than 70 observers who monitored the process in all 25 states in Sudan.

The electoral process is ongoing with counting and tabulation likely to last for several more days, followed by the posting of results. The Center's observers will continue to monitor these processes to their conclusion.

The main findings of the Center's mission to date are as follows:

- The April 2010 elections in Sudan were mandated by the 2005 Comprehensive Peace Agreement (CPA) and were envisioned as a critical part of a broader democratic transformation.
- Unfortunately, many political rights and freedoms were circumscribed for most of this period, fostering distrust among the major political parties.
- In the campaign period and run-up to the 2010 elections, however, there was a limited but important political opening that provided opportunities for opposition parties and civil society to engage in the political process. After a long period of dormancy, Sudanese parties and civic groups across the country began to mobilize.
- Most of the opposition parties joined together to demand the reform of laws and the lifting of restrictions of political freedoms and several major parties ultimately withdrew from the election shortly before election day. Although all candidates remained on the ballots, there was little competition in the race for the presidency and reduced competition in other races.
- The polling process on April 11-15 was largely peaceful and orderly. Despite confusion and significant logistical challenges, polling staff and voters in most areas displayed remarkable commitment, patience, and tolerance. Voters turned out in good numbers to cast their ballots, but with varying levels of participation across the country. The Sudanese people are to be commended for their civic spirit, pride, and hospitality.
- Notwithstanding these generally positive features, Carter Center observers noted important flaws and found that the process fell short of Sudan's obligations and related international standards in a number of respects.
- Sudan's legal framework is contradictory and does not ensure adequate respect for essential political rights and freedoms prescribed in Sudan's constitution, including freedoms of expression, assembly, and association.
- Although the voter registration process resulted in broad but uneven participation across the country, it was undermined by a series of critical shortcomings. Preliminary lists were not consistently posted for adequate public review, especially in the South, and the status of the final voter registry and list of polling stations remained uncertain. The Carter Center has recently received an electronic copy of the complete list and will attempt to ascertain if any of these changes were designed to assist particular political parties.

- On election days, voters faced a range of operational and logistical problems: late delivery of and/or inadequate materials, incomplete or inaccurate voters lists, incorrect or insufficient ballots, ballots with inappropriate languages, and a lack of consistency in procedures. These problems were partially alleviated by the extension of voting time by two days.
- Further, the electoral process lacked sufficient safeguards and transparency necessary to verify key steps and build confidence and trust in the process. Our observers reported problems with ink, ballot box seals, and the process of identifying voters, including the process of verifying voters' identity when registration certificates were issued by popular committees at the polling stations, as well as reports of underage voters casting ballots.
- There were large numbers of illiterate voters, and some evidence of election officials deliberately misrepresenting the desires of some voters.
- The elections in the South experienced a high incidence of intimidation and the threat or use of force. There were numerous instances of the Sudan Peoples' Liberation Army (SPLA) intimidating voters and being stationed too close to polling stations. State interference in the campaigns of opposition candidates was widespread in the South.
- The continuing state of emergency, repression of civil liberties, and ongoing conflict in Darfur did not permit an environment conducive to acceptable elections. Given the limited participation of internally displaced persons (IDPs) in Darfur in the census and voter registration, much of the population was left out of the process. Carter Center observers were unable to access wide areas of the region due to the security situation. While the areas they monitored were largely peaceful, they reported serious technical and procedural violations during the polling.
- In the months ahead, Sudanese political and civil society leaders from across the political spectrum should reaffirm their commitment to core democratic values. Sudan's government must ensure that the democratic opening is expanded and deepened. Full respect for human rights, democratic principles, and transparency will help to heal the mistrust that has detracted from the electoral process.
- It is important for Sudan to draw lessons from this election to ensure that the upcoming referenda and popular consultations do not have the same flaws, both technically and politically. Our Center and other international observers will have recommendations to assist in reaching this goal.

## **Background**

In June 1989, the National Islamic Front (NIF) and forerunner of the present ruling National Congress Party (NCP) overthrew the democratically elected government headed by Prime Minister Sadig Al-Mahdi and for a period banned all political parties and political activities. In the following 16 years, fundamental civil and political freedoms were curtailed and civil society

was restricted, while the civil war being fought between North-South hampered both the political and economic development of Southern Sudan. On Jan. 9, 2005, the National Congress Party-led Government of Sudan signed the CPA with the SPLM, thus ending a 22-year conflict. The CPA stipulated the holding of national elections in Sudan to cement the country's democratic transformation and to put in place accountable governments in northern and Southern Sudan to oversee the January 2011 referendum on self-determination for the people of Southern Sudan. While there have been tentative steps at political liberalization, the CPA's promise of democratic transformation has not been fulfilled. The conflict in Darfur and an ongoing failure to address marginalization in South Kordofan, eastern Sudan, and other regions have also weakened the dividends of peace promised by the CPA.

The Carter Center election observation mission has been in Sudan since February 2008 following an invitation from the leaders of the Government of National Unity and the Government of Southern Sudan. Twelve long-term observers were deployed throughout Sudan in advance of the election to assess election preparations. The Center deployed an additional 20 medium-term observers in November and early December 2009 to assess voter registration. In early April 2010, the Center augmented its long-term observer presence with the deployment of more than 70 short-term observers to observe the balloting, counting, and tabulation processes for April's national elections. The Carter Center observation mission was led by former U.S. President Jimmy Carter; former Algerian Foreign Minister and member of the Elders Lakhdar Brahimi; Justice Joseph Sinde Warioba, former prime minister of Tanzania, former judge for the International Tribunal for the Law of the Sea, and former judge on the East African Court of Justice; and Carter Center President and CEO Dr. John Hardman.

Carter Center observers continue to assess the conclusion of counting and vote tabulation and will remain in Sudan to observe the post-election environment. These elections were assessed against Sudan's Interim National Constitution, the 2005 Comprehensive Peace Agreement, the National Elections Act, the Political Parties Act, as well as Sudan's international treaty obligations. The Center's observation mission was conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct that was adopted at the United Nations in 2005 and has been endorsed by 35 election observation groups.

**This statement is preliminary; further statements may be released after the conclusion of the counting and results reporting period. A final report will be published after the end of the electoral process.**

## **Statement of Preliminary Findings and Conclusions**

### ***POLITICAL BACKGROUND***

Sudan held its first competitive multiparty elections 21 years after the National Islamic Front (NIF), the predecessor of the National Congress Party (NCP) overthrew the elected government of Sadiq Al-Mahdi and for a period banned all political parties and activity. Elections in 1996 and 2000 failed to meet basic international standards for a genuine electoral process, and several parties boycotted the process. The signing of the January 2005 Comprehensive Peace Agreement (CPA) between the NCP and the Sudan Peoples' Liberation Movement (SPLM) ended the 22 year-long North-South civil war. The CPA established a six-year interim period during which a Government of National Unity (GNU) composed of the NCP (holding 52 percent of National Assembly seats), SPLM (28 percent), and other parties (20 percent) governed.<sup>1</sup> The interim period concludes with a referendum on self-determination for Southern Sudan.

The CPA included separate protocols for Abyei, which will hold a referendum simultaneously with Southern Sudan on whether to remain linked with the north or become part of a new Southern state. In addition, the agreement provided for popular consultations in South Kordofan and Blue Nile to be conducted by newly elected state assemblies regarding their status in either Northern or Southern Sudan. Prior to the holding of referenda in Southern Sudan and Abyei, the CPA also called for national elections at six different levels of government to ensure that the ballots for independence were presided over by democratically elected officials.

To prepare for the elections, Sudan conducted a census in April 2008, for which results were released in May 2009. Following objections to the accuracy of the census, an agreement was reached in early March 2010 between the NCP and the SPLM to provide Southern Sudan with 40 additional seats in the National Assembly, Abyei with two, and South Kordofan with four. In the case of South Kordofan, the parties agreed to review the census and voter registration results in preparation for the state assembly and gubernatorial elections that should be held before June 11, 2010. This deal between the SPLM and NCP on National Assembly seats and the South Kordofan State Legislative Assembly was subsequently endorsed by the National Elections Commission (NEC), but has yet to be considered by the National Assembly. Concerns related to the census elsewhere in Sudan, particularly in Darfur and the east, were not resolved.

### ***LEGAL FRAMEWORK***

The Carter Center has based its observations and preliminary findings on Sudan's domestic legislation and political commitments relating to the electoral process, as well as its international human rights obligations. This preliminary statement details the degree to which Sudan has upheld its commitments and provides initial recommendations for future electoral processes.

The Comprehensive Peace Agreement (CPA) of 2005 establishes the overarching legal framework for Sudan. Additional domestic legal instruments governing these elections include the Interim National Constitution, the Interim Constitution of Southern Sudan, state constitutions, all envisaged by the CPA, and the National Elections Act 2008. In addition, through accession to, and ratification of, international treaties<sup>2</sup> and incorporation of internationally recognized obligations into its Constitutional Bill of Rights,

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<sup>1</sup> In the newly-established Government of Southern Sudan, the SPLM was allotted 70 percent of the seats in the Southern Sudan Legislative Assembly, the NCP 15 percent and other political parties were allocated 15 percent.

<sup>2</sup> Sudan has acceded to the International Covenant on Civil and Political Rights (March 18, 1986), the International

the Government of Sudan has committed itself to the protection of a variety of political and human rights essential to the conduct of democratic elections, including freedom of expression, assembly and association.<sup>3</sup>

The National Elections Act establishes a progressive and comprehensive electoral framework for Sudan's elections, and lays a foundation for credible elections that is bolstered by the broad protections for human rights established in the Constitutional Bill of Rights. However, several key domestic laws which are still in force, such as the 1991 Criminal Law and Criminal Procedure Act,<sup>4</sup> which have been enacted since the CPA, such as the Organization of Humanitarian and Voluntary Work Act 2006,<sup>5</sup> the National Security Act 2009<sup>6</sup> and the Press and Publications Act<sup>7</sup> are overly restrictive and do not comply with Sudan's stated commitments.

In addition, state institutions including the National Intelligence and Security Service and the Humanitarian Affairs Commission have at times acted in disregard for these protections and limited the success of their application. These restrictive laws and the failure of State authorities, both in the North and South to comply with their human rights obligations, contrary to the express provisions of the CPA, negatively impacted on the electoral environment, in particular the campaign process, freedom of the media, and civil society participation.

### ***Elections System***

The electoral system, as established within the National Elections Act, is highly complex and has led to confusion among the public and significant problems in its implementation. The electoral system calls for executive elections (president of the Republic of Sudan, president of Southern Sudan and governors) and three levels of legislative elections (the National Assembly, the Southern Sudan Legislative Assembly, and the state legislative assemblies). The elections to the presidency of Sudan and Southern Sudan both require an absolute majority (50% + 1 vote) of votes cast. Gubernatorial elections are simple majoritarian contests. Elections to all assemblies use a combination of majoritarian and proportional representation systems. Sixty percent of seats were designated for single member geographical constituencies and 40 percent were elected from closed party lists of which 25 percent were reserved for women and 15 percent for political parties. For the seats chosen by both the women's list and the party list, the d'Hondt system

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Convention on the Elimination of Racial Discrimination (March 21, 1977), International Covenant on Economic, Social and Cultural Rights (18 March 1986), and ratified the Convention on Rights of Persons with Disabilities (April 24, 2009), the African Charter on Human and Peoples' Rights (February 18, 1986) and the Arab Charter on Human Rights (May 22, 2004). In addition, Sudan is signatory to the United Nations Convention against Corruption (January 14, 2005), the African Charter on Preventing and Combating Corruption (June 30, 2008), and Protocol 1 of the African charter on Human and Peoples' Rights on the Rights of Women (June 30, 2008).

<sup>3</sup> The International Covenant on Civil and Political Rights (ICCPR), Article 25, requires in part that "Every citizen shall have the right and the opportunity...(a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors." Further, the United Nations Human Rights Committee, General Comment 25, paragraph 12 has established that, "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected."

<sup>4</sup> These laws provides for detention without arrest and without timely judicial recourse. The latter also provides for limitations to freedom of assembly.

<sup>5</sup> It requires NGOs to register and report on their activities, limiting their freedom of association.

<sup>6</sup> The National Intelligence and Security Services are provided with broad and imprecise monitoring and surveillance powers and ability to detain individuals without timely judicial recourse.

<sup>7</sup> The law provides that the Press Council has the power to suspend a newspaper for up to three days and will also license press companies and prescribe conditions for the registration of journalists, distributors and printers.

of proportional representation was used with a requirement that parties obtain at least four percent of votes cast in order to be allocated seats. However, given that the seats will be allocated on the basis of state wide constituencies, true proportionality is unlikely to be obtained.

### ***Election Management Body***

An independent and impartial electoral authority that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuine democratic election, and that other international obligations related to the electoral process can be met.<sup>8</sup>

The election management body, the National Elections Commission (NEC), was established to administer elections impartially, transparently and independently, but it did not always meet these objectives. The commission has nine commissioners who were appointed by the president with the consent of First Vice-President Salva Kiir, who could reject proposed candidates, but could not propose alternatives and with endorsement by two thirds of the National Assembly. A chairperson and deputy were then appointed from the commission by the president, again with the consent of the first vice president.

Although this appointment procedure does not guarantee an independent election management body as required by international best practice,<sup>9</sup> the NEC commission was selected by consensus among the political parties. Both government and opposition parties nominated several candidates. The president and first vice president then negotiated a slate of commissioners, whose names were considered en masse and passed by unanimous consent in the National Assembly.

The commission established a number of subsidiary bodies including 25 state high elections committees (SHCs) and a high elections committee for Southern Sudan (SSHEC) whose authority was not well delineated in the founding regulations. The SSHEC was nominally responsible for the supervision of the election of the President of the Government of Southern Sudan, the election of the Southern Sudan Legislative Assembly, and the coordination between the SHCs in Southern Sudan and the NEC. However, most Southern SHCs reported directly to the NEC during the electoral process.

The NEC has broad ranging powers, duties and responsibilities for all aspects of the election process, including the power to take executive measures. The Ministry of Interior and National Intelligence and Security Services (NISS) control over security services, however, restricted the NEC's mandate, for example, decreasing the number of security personnel made available to guard polling stations, resulting in the reduction of polling sites.

### ***Boundary Delimitation Process***

Upon the announcement of the disputed census results in May 2009, the NEC created all of the geographical constituencies within 30 days as required by law. This was not enough time to carry out such a complex and politically sensitive exercise. The NEC delegated the drawing of the constituencies to the SHCs. However, clear instructions were not provided as to how the exercise should be undertaken, resulting in wide variations across the 25 states. The boundaries of the constituencies are vague, unmapped and difficult for observers and election officials to comprehend. Some areas, such as in North Darfur, were not included in any constituency, and therefore their inhabitants may not be represented in the National Assembly, contrary to international commitments.<sup>10</sup> Concerns regarding the boundary

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<sup>8</sup> UNHRC , General Comment No. 25 para. 20

<sup>9</sup> ICCPR, Article 25, HRC General Comment No. 25, par 20.

<sup>10</sup> ICCPR, Article 25, HRC General Comment No. 25, par 21 requires that “all the drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group

delimitations resulted in numerous complaints to the NEC.

The law provides that the total population in each district should not deviate from the national dividend<sup>11</sup> by “plus or minus” 15 percent.<sup>12</sup> However, in practice this variance was frequently exceeded and in Jonglei the variance was as great as 32 percent under the national dividend and 52 percent over it. This violates the principle of equality of the vote required by international standards.<sup>13</sup>

### ***VOTER REGISTRATION***

In advance of the general elections, Sudan conducted a voter registration exercise in November and December 2009. The Carter Center deployed 32 medium and long-term observers to assess voter registration and the broader political and electoral environment across Sudan. The Carter Center mission observed voter registration activities in more than 650 fixed and mobile registration centers in all 25 states across the country. The delegation was drawn from 21 countries.<sup>14</sup>

According to the NEC, approximately 79 percent of eligible Sudanese were registered inside the country, or 16.4 million people of the estimated electorate of 20.7 million. Twelve of Sudan's 25 states fell short of the NEC's registration targets. Participation in some states in Southern Sudan exceeded 100 percent of the total eligible voting population as estimated by the 2008 national census, casting doubts on the accuracy of one or other set of figures. Only 71 percent of the eligible population of Northern Sudan registered. The Carter Center found that voter registration successfully reached citizens in most areas of the country, despite significant logistical and security challenges, and serious shortfalls in civic education.<sup>15</sup> Registration officials diligently worked to overcome logistical challenges and administrative shortcomings.

According to the NEC, women's participation in voter registration exceeded 50 percent, a substantive step towards improving the inclusiveness of the electoral process and meeting Sudan's national and international obligations to ensure universal suffrage and protection from discrimination.<sup>16</sup>

The registration figure as a percentage of the census figures varied considerably, from 64 percent in Northern State to 190 percent in Unity state. Low registration figures in North, South and West Darfur of 65, 67 and 69 percent of census figures, respectively, are also worrying, particularly as a large number of IDPs were not included in the 2008 census.

In an effort to enfranchise Sudan's diaspora, voter registration was also conducted in a number of countries abroad. Unfortunately, due to the burdensome requirements for identification, large concentrations of Sudanese refugees were excluded from the electoral process. Voter registration rates were low in overseas locations with just over 100,000 Sudanese citizens participating. The Carter Center commends encourages Sudan to strengthen mechanisms for registration and voting of citizens abroad in

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and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.”

<sup>11</sup> This is defined in the National Elections Act 2008 Article 38 (b) as the result of the division of the total population of Sudan by the number of seats designated to the National Assembly to represent the geographical constituencies.

<sup>12</sup> Variance between constituencies should be kept to a minimum to respect the equality of the vote.

<sup>13</sup> ICCPR, Article 25, HRC General Comment No. 25, par 21.

<sup>14</sup> Observers were from Cameroon, Canada, DR Congo, Egypt, Ethiopia, Germany, India, Ireland, Italy, Kenya, Mozambique, the Netherlands, Norway, Palestine, Serbia, Spain, Uganda, the United Kingdom, the United States, Zambia and Zimbabwe.

<sup>15</sup> TCC Statement on Sudan's Voter Registration, December 17, 2009

<sup>16</sup> The Interim National Constitution of the Republic of Sudan 2005, Article 32 (1), Article 41 (1); UN ICCPR, Article 3; AU, Protocol to the AfCHPR, Article 2.

advance of future elections.

The NEC failed to provide clear and specific guidance to protect the civil and political rights of the displaced and ensure they could exercise their right to register to vote, as required by international norms.<sup>17</sup> Of the large numbers of IDPs in Darfur, a limited percentage reportedly registered. Registration levels in the camps were low in part due to concern that registering in the camps would prevent the displaced from returning to the land from which they had fled and the presence of armed groups that oppose the elections. Several IDP camps were not visited at all by registration teams including Kass and Kalma camps.

During the registration process, The Carter Center observed a number of activities that undermined public confidence in the process. For example, representatives of the SPLM and NCP directly participating in registration activities including NCP members collecting the slips of newly registered voters. Although this collection of slips is technically not a violation, the activity continued until the eve of the election and created confusion among the voters. Registration receipts were also observed to be traded and sold in some areas. Registration officials frequently failed to inform registrants about the need to securely keep their registration receipts. The election management authorities at the national and state levels could have taken steps to prevent political parties from engaging in these practices and provided the voters with access to information about the function of voter registration slips.

The NEC should have emphasized the importance of public review of the voter registry after the publication of the provisional voter list, as obliged by Sudan's international commitments, and to improve the accuracy of the roll.<sup>18</sup> Moreover, there were insufficient checks on the data entry of registrant records, raising questions about the overall accurateness and comprehensiveness of the voter register. At the end of the registration period, the NEC failed to build confidence in the voters' register by not finalizing the full voters' list nation-wide and not making it widely available to political parties and national and international observers for thorough examination and audit.

The challenges and delays in finalizing the voters list led to widespread problems on voting days that threatened to undermine the integrity of the entire process. Further, it appears that the list now in use varies substantially from the list originally circulated to political parties and other actors.

#### ***VOTER EDUCATION***

Voter education efforts are necessary to ensure an informed electorate which is able to effectively exercise their right to vote.<sup>19</sup> Given the complexity of the polling process, the absence of a recent democratic tradition and the high level of illiteracy in Sudan the need for voter education was particularly relevant to this election. However, The Carter Center noted with concern that in practice these efforts were significantly limited, hampered by an electoral Commission which failed in its responsibility to provide education and an environment where controls are such that they make organizing and holding voter education events difficult.

Internationally recognized good practice clearly indicates that impartial and consistent voter education is the primary responsibility of state organs, chiefly the election management body, and not that of political

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<sup>17</sup> Article 25 ICCPR, Article 23 ACHR, Article 13 AfCHPR, Article 24 ArCHR, as reflected in Principle 22 1 (d) of the Guiding Principles on Internal Displacement, developed by Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis M. Deng.

<sup>18</sup> ICCPR, Articles 2 (3) and 25, HRC General Comment No. 25, par 11, African Union, Protocol to the African Charter for Human and Peoples' Rights (AfCHPR) on the Rights of Women, Article 25.

<sup>19</sup> United Nations Human Rights Committee, General Comment 25, paragraph 11

parties.<sup>20</sup> Throughout the period of observation The Carter Center noted instances in which voter education activities were disrupted by state authorities, particularly in Darfur, because the NEC failed to communicate in a timely fashion with the relevant authorities and ensure that restrictions on their freedom of movement were lifted. Such limitations on the function of these bodies impeded voter education efforts by non-state actors and potentially further limited the information available to Sudanese voters concerning the electoral process.

While some civil society organizations conducted voter and civic education activities, their lack of experience in democratic exercises resulted in a limited impact of these activities. In addition, the institutional weakness of political parties hindered their ability to provide sufficient voter education to party members.

It is widely recognized that voter education may employ symbols or photographs in an effort to increase the breadth of its impact and make such educational measures accessible to illiterate voters.<sup>21</sup> However, the good intent of these measures appear to have been undercut in Sudan, where the NEC conducted voter education initiatives which used the same slogan as the incumbent President and published education materials featuring a tree, the symbol of the incumbent NCP party. The use of this slogan and symbol created a high potential for confusion or conflation between educational efforts and campaigning.

#### ***CANDIDATES, PARTIES AND THE CAMPAIGN ENVIRONMENT***

The right of individuals to participate in public affairs, including through the establishment of and free association with political parties and participation in campaign activities, is protected by international principles and fundamental electoral rights.<sup>22</sup>

Northern opposition parties, which had been excluded from the government for several years, initially welcomed the national elections because it gave them an opportunity to re-connect with their political bases. Some 72 political parties nominated candidates in the elections, although only two parties, the NCP and SPLM, had sufficient financial and human resources to contest the elections in many constituencies. In spite of some instances of intimidation and detention, the nominations process was generally free and characterized by the emergence of a large number of independent candidates, mostly originating from the SPLM and to a lesser extent, the NCP.

However, there were significant obstacles to running a competitive campaign. Opposition parties in northern Sudan have experienced many| years of government repression and are hampered in their ability to compete with the ruling NCP. At the same time, they have failed to develop their bases. In the five years since the signing of the CPA, the Government of National Unity failed to advance democratic conditions inside the country or to guarantee important political freedoms, such as freedom of assembly and freedom of the media.

Opposition parties, some of them acting within the loosely organized Juba Alliance,<sup>23</sup> demanded the

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<sup>20</sup> See, for example, *United Nations Human Rights and Elections*, paragraph 87, and the Southern African Development Community Parliamentary Forum, *Norms and Standards for Elections in the SADC Region*, para. 3.2, The African Charter on Democracy, Elections, and Governance (Signed June 30, 2008) Article 12(4) also requires signatories to “implement programmes and carry out activities designed to promote democratic principles and practices and consolidate a culture of democracy...integrate civic education in their education curricular and develop appropriate programmes and activities.”

<sup>21</sup> United Nations Human Rights Committee, General Comment 25, paragraph 12

<sup>22</sup> ICCPR, Art. 25(a); ICERD, Art. 5(c); CEDAW, Art. 7(b), UNHRC General Comment 25, para. 26

<sup>23</sup> The Juba Alliance, later referred to as the National Consensus Forces, consisted of the SPLM-North, the Umma

reform or freeze of various security laws. This demand was not accepted by the government, but it did promise to not apply them during the campaign. In addition, the northern opposition parties in a memorandum of March 6, 2010 questioned the lack of transparency, impartiality, and independence of the NEC. The Juba Alliance members withdrew from the NEC-established media council after complaining of bias, although in the final days of the campaign the NEC agreed to increase the number of non-government members. They further complained about the failure of the NEC to place limits on campaign expenditures and thus to remove the vast discrepancies in funds utilized by the NCP compared to the other parties (with the exception of the SPLM). This too was agreed to by the NEC, but with only five days left before voting the gesture was rendered meaningless. The northern opposition parties also complained about voter registration violations, the use of government property for campaigning purposes of the NCP, and demanded that the state of emergency in Darfur be lifted and that the government reach a peace agreement that permitted armed groups in Darfur to participate in the election.

Four of the six largest Juba Alliance parties – the SPLM, Umma National Party, Sudan Communist Party (SCP), and the Umma Reform and Renewal Party – announced that conditions did not favor a free and fair election. Although the legal deadline for withdrawal from the elections had passed, parties withdrew their candidacies from the elections in all of northern Sudan, including the presidential race, in the final days of the campaign. Remaining in the race were the Democratic Unionist Party (DUP) and the Popular Congress Party (PCP). This seriously undermined the competitive nature of the election. Names of all candidates remained on the printed ballots.

Although the campaign period was largely peaceful, isolated acts of violence against candidates occurred. A SPLM incumbent candidate for a SSLA seat in Unity was killed in Southern Sudan, an Umma Party candidate for State Assembly in South Darfur was shot while travelling in a convoy with the Secretary-General of the Umma Party, and a NCP candidate in Khartoum North was killed. No evidence was forthcoming to prove that these crimes were politically motivated.

During the campaign period, in February 2010, the NEC and Sudan's Ministry of Interior issued a circular on campaigning activities that required at least 72 hours notice to authorize any political campaign events held in public venues. The circular was more conservative than the directives issued by the Ministry of the Interior in its September 2009 decision regarding the practice of electoral activities, as the new circular required parties to submit notification of campaigning events held on their own premises. Several political parties appealed to the NEC to permit them to hold election-related activities in public places after notifying the relevant security committees instead of applying for approval and to forego notification for activities on their own premises, but these requests were not accepted. Political parties reported that these regulations were applied inconsistently across the states and that, in practice, parties often had to report to several security agencies rather than a single authority.

The Center observed examples of the Government of Southern Sudan and Sudan's Peoples' Liberation Army (SPLA) hindering the campaign of the SPLM-Democratic Change (SPLM-DC), the United Democratic Front (UDF), Southern Sudan Democratic Forum (SSDF) and other opposition parties. In some cases SPLA soldiers were witnessed tearing down the posters of non-SPLM candidates. State authorities in Western Equatoria, Unity State, and Northern Bahr El Ghazal interfered with the holding of rallies by opposition candidates. Security conditions in Darfur and in areas of Eastern Sudan restricted campaigning.

Governors have the power to control public meetings under the Criminal Procedure Act 1991. Both the Criminal Procedure Act of 1991 and National Security Forces Act of 2009 provide for arrest and

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Party, Sudan Communist Party, Umma Reform and a number of smaller parties.

detention without timely judicial recourse.

Efforts were made by former South African President Thabo Mbeki to gain the political parties' acceptance of a party code of conduct. Although parties did not agree on a similar code in the north, it was accepted by the opposition parties in the south and the Government of Southern Sudan. However, given the subsequent abuses by state authorities of SPLM-DC and other parties, which were signatories of the code, its implementation was less than universal.

Limitations on the freedom of speech were observed. Umma Party leader Sadiq al-Mahdi was accused of inciting hatred in a pre-recorded speech that was refused to be broadcast on state radio, a decision endorsed by a sub-committee of the NEC, although the Center found no evidence to sustain the charge. The NEC required parties and candidates to pre-record their campaign programs for its approval before being aired.

The Elections Act permits the governments to provide state funding for political parties. The national government did not do so. Conversely, in early March, the Government of Southern Sudan provided 5 million SDG to 13 political parties in the South who had raised the issue at an African Union summit on the code of conduct. GoSS mandated the distribution of this funding, to two political parties, however, rather than by government authorities, resulting in some parties never receiving public financing.

The Elections Act prohibits the use of state resources by candidates, without paying for their use. Yet the Center observed multiple instances of the use of State vehicles by incumbents. The law also provides for the imposition of a campaign spending ceiling by the NEC for all elections. On April 3, the NEC announced that the maximum expenditure for a candidate for the presidency would be 17 million Sudanese pounds, the Southern Sudan government presidency, 7 million Sudanese pounds and other offices lower amounts.<sup>24</sup> In announcing the spending limit so late in the campaign and setting the limit at such a high multiple of the average income per person per year in Sudan, the NEC failed to give effect to the purpose of a campaign spending ceiling.<sup>25</sup>

### ***Media Environment***

International obligations related to the media and elections include freedom of expression and opinion and the right to seek, receive and impart information through a range of media.<sup>26</sup> Although The Carter Center did not conduct comprehensive media monitoring for the 2010 elections in Sudan, the following observations are offered.

Sudan's National Election Act of 2008 Articles 65, 66 and 98 provide for equal distribution of time for candidates and political parties in accordance with the rules and regulations of the media channels and press during the electoral campaign period. The Elections Act states that every candidate or political party shall enjoy unrestricted freedom of expression, presentation of its campaign program and access to information in the exercise of campaigning rights.

Although pre-press censorship has officially ended, certain subjects could not be freely discussed in the

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<sup>24</sup> The ceiling for gubernatorial races was set for 800,000 Sudanese pounds, individual parliamentary seats, 700,000 Sudanese pounds and party list and women's list expenditure, 50,000 Sudanese pounds.

<sup>25</sup> ICCPR, Articles 2 (3) and 25, HRC General Comment No. 25, par 19, provides that reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.

<sup>26</sup> ICCPR, Art. 19

media and the media did not tackle issues considered sensitive that might provoke the government. Numerous newspapers and individual journalists faced court cases and condemnation by the National Press Council, the state press regulator appointed by the Presidency. Another inhibiting factor is that much of the media is directly or indirectly controlled by the government and the NCP or its allies.

Candidates were given equitable access to state radio and television during periods set aside for party broadcasts, but other programming gave disproportionate coverage of time to NCP candidates who also held senior government positions. Two radio stations in Juba were briefly closed down by security agents because of objections to their political broadcasts.

### ***ELECTION ADMINISTRATION***

By giving precedence to security over transparency, the NEC has not always shared relevant information with nor given necessary access to the parties or observer groups. This problem was particularly evident in the production of ballot papers when the printing was started without notice being given to the parties or observers who were only permitted limited and pre-scheduled access. Upon the arrival of sensitive materials, the NEC warehouses were only open to observers once at a public event, after which they were sealed, thus giving rise to understandable suspicions by the public at large. This lack of transparency risked undermining a crucial element in the election process.

The Carter Center observed that elections administration was carried out inconsistently throughout the country. The NEC failed to anticipate and provide for logistical challenges in many parts of the country, particularly in the south. Darfur experienced particular problems because the election was held under state of emergency laws, prevailing insecurity, and with a large number of internally displaced persons (IDPs) living in camps. An additional problem was the varying capacity and resourcing, both financial and technical, of the state high elections committees (SHCs). Several SHCs, particularly in Southern Sudan, reported delayed receipt of funding from the NEC to support electoral activities and training, as well as the delayed receipt of essential electoral materials.

### ***Delivery and Distribution of Materials***

The delivery of electoral materials was hampered by inadequate, inconsistent and late planning by the NEC. Delays and changes in the decision of the number of polling centers and stations negatively impacted the procurement, delivery, and distribution of sensitive materials critical to the conduct of the polls. A late start in the more than 1000 ballots also led to challenges in their printing and delivery to polling stations. Faced with major logistical problems, international technical assistance providers assumed a critical role in the delivery of essential materials.

### ***VOTING***

The voting process is the essential foundation of the obligation to provide the free expression of the will of the people through genuine, periodic elections. Certain participatory rights must be fulfilled in order for the voting process to accurately reflect the will of the people. Foremost among these are the right to vote, to participate in public affairs, and to enjoy security of the person.<sup>27</sup> The state must take all necessary steps to ensure such rights are fully protected and awarded to all citizens in an equal and non-discriminatory manner.<sup>28</sup>

The Carter Center deployed a delegation of over 70 short-term observers from 23 countries to Sudan to

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<sup>27</sup> International Covenant on Civil and Political Rights, Arts. 2, 25(a) and 9

<sup>28</sup> The State must take necessary measures to give effect to rights enshrined in the treaty to which they are party. Such rights include the right for all citizens to be treated in an equal and non-discriminatory manner. ICCPR; Art. 2(2); International Convention on the Elimination of all forms of Racial Discrimination, Art. 1.

observe the April 2010 national elections, building upon the Center's long-term monitoring presence in the country that began in February 2008.<sup>29</sup> Carter Center observers were present in all 25 of Sudan's states, as well as the district of Abyei, and monitored the pre-count, balloting, and counting phases of the electoral process, with plans to remain in Sudan to observe the tabulation of votes, announcement of results, and post-electoral processes.

By the evening of April 15, observers from the Carter Center visited more than 1050 polling stations across all areas of the country or approximately 6 percent of all polling stations (according to the latest NEC figures). Approximately 51 percent of the polling stations monitored by Carter Center observers were in rural areas while 49 percent of the polling stations were located in urban areas.

In many ways, the Sudanese people are to be commended for their widely peaceful participation in Sudan's first national elections since 1986. Moreover, the NEC deserves credit for administering an extremely complex election, requiring the transport of thousands of tons of materials and the participation of approximately 16,000 candidates on multiple ballots for multiple races in Africa's largest country.

Nevertheless, reports from Carter Center observers provided evidence that a series of technical and political problems compromised the integrity of the ballot for many Sudanese voters across the country. An illustrative sample of some of these logistical issues includes the delay in the arrival of key materials, problems with the indelible ink, misprints and errors in ballot papers, and poor communication between the National Elections Commission and State High Committees, as well as between State High Committees and Polling Centers. Moreover, serious problems with the quality of the voter registry, the uneven use of identification across Sudan, and widespread intimidation severely undercut the inclusiveness and credibility of the national polls, and all three areas will need substantial correction in any future electoral exercise.

Technical difficulties have had a major impact on the acceptability of the polling process leading to the erosion of many of the standard checks and balances which secure the integrity of an election. In many locations the safeguards to prevent multiple voting or fraud were not correctly utilized, reducing voter confidence in the electoral process. A list of issues encountered during the Center's observation mission are summarized in greater detail below:

### ***Ballot Papers***

The NEC Final Distribution list of March 23 determined that polling would take place in 9,650 polling centers containing 16,502 total polling stations. Polling stations were required to be open between the hours of 8am to 6pm over three days, April 11-13. The election timetable indicated that all materials necessary for polling would be delivered to polling centers by April 9.

The start of polling was marred by challenges in the production and distribution of the correct ballot papers and accurate voter lists, presenting the NEC with its biggest logistical and operational challenge. On the first day of polling, April 11, Carter Center observers reported that a substantial number of polling centers were either opening late or not opening at all due to partial delivery or non-delivery of essential materials, particularly ballot papers. In White Nile, observers reported that no polling took place before 12.00 noon due to the fact that two sets of ballot papers were reprinted on the evening of April 10 and had yet to arrive. In Kauda, South Kordofan, the Center's team observed a widespread problem with the late

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<sup>29</sup> The following countries were represented on the TCC EOM: Algeria, Austria, Canada, Democratic Republic of Congo, Egypt, Germany, Iraq, Italy, Ivory Coast, Jordan, Lebanon, Liberia, Netherlands, Palestine, South Africa, Somaliland, Switzerland, Tanzania, Tunisia, United Arab Emirates, United Kingdom, United States of America, Zimbabwe.

delivery of voting materials to polling centers, which resulted in 48 out of 51 polling centers not opening on time in the area.

In a significant number of polling centers, particularly in South Sudan, ballot papers for some of the races were either missing or delivered to the wrong location. Observers stated that this was the case in Central Equatoria, Eastern Equatoria, Jonglei, Abyei, Warrap, Unity, Gezira, Kassala, South Kordofan and West Darfur. Despite this problem some polling centers decided to commence polling without these ballot papers, processing large numbers of voters before suspending voting to await delivery of the correct ballots. In a number of instances, ballot papers were incorrectly printed with either candidate having been omitted or the wrong party symbol next to the candidate's name. There were also numerous reports of the delivery of an insufficient number of ballots for the number of registered voters at a given site. Although many of the problems related to ballot papers were resolved by the second day of polling, this problem contributed to a loss in voter confidence in the electoral management bodies and also likely resulted in the disenfranchisement of numerous voters who were unable to cast ballots for all of the levels of government.

### ***Voters List***

Observers also reported the election management bodies' incomplete and in some cases incorrect delivery of voter lists. Although problems with the voters lists were not uniform across the states of Sudan, the flaws in the voter registry were clearly observed to be a nationwide problem and were likely the single biggest reason that voters were disenfranchised. Observers reported large numbers of voters who were unable to find their names on the voter lists, due to language problems, incorrect or misleading alphabetized names, or simply because of general confusion about how names on the voter registry were allocated to given polling stations. In many cases, voters who were told that their voter registration center would also be their polling station during the registration process in November were misinformed by election officials.

Carter Center observers witnessed voters being turned away who had registration slips but could not find their name on the voters list in every state of Southern Sudan as well as North Kordofan, South Kordofan, Gezira, Blue Nile, and West Darfur. In most cases when voters were being turned away, there was little evidence of them being advised or instructed as to which polling center was the correct one. At some stations the electronic voter lists were abandoned in exchange for the original paper lists, or simply, as in Warrap, lists were given up on altogether.

In a number of polling centers where voters presented their registration slips and the identifying officer could not find their name on the voter registry, the identifying officer noted their name and number and allowed them to vote. This was observed in Central Equatoria, Eastern Equatoria, and Warrap state. While this likely meant that voters who would otherwise have been excluded from the voting process were able to participate, this also opened the door for multiple voting should the voter abuse the use of their registration slip at several polling stations in a given constituency.

Problems with the voters lists represented the most significant setback to the electoral process and likely led to the disenfranchisement of substantial portions of the eligible electorate and could affect the representativeness of the outcome of the local polls. The NEC's delay in finalizing the electronic voter registry was a major contributing factor to the problems experienced during polling. Further analysis is needed to see the extent of the problems with the voter registry on a state-by-state basis.

### ***Identification Problems***

According to the NEC regulations, voters were allowed to cast a ballot as long as their names appeared on the voter registry and they were able to document their identity. However, many observers reported

instances in which voters provided no identification document and other checks from an identifier were not requested. In other cases, certificates of confirmation of identity, presumed to be from a local Popular Committee, were accepted without clear verification. At many sites visited, party agents participated in identifying voters with registration slips or voters whose identity appeared questionable.

The team observed many instances of people who did not have IDs of any kind attempting to vote. The problem was further exacerbated by the observation of Popular Committee's issuing ID certifications on a partisan basis. In some cases, notably North Darfur, observers noted that certifications given by popular committees were scribbled on torn sheets of paper without any other form of ID.

In Kassala, Red Sea, White Nile, Nile State, and Darfur observers noted numerous examples of under-age voters who were allowed to vote at times in a seemingly organized fashion. In several cases, observers were able to directly confirm with the underage voter that they did not possess a valid identification and registration card. In several other cases, in particular Unity State and Western Bahr al Ghazal, observers reported that presumed underage voters ran from the polling station before they could be confirmed as being ineligible.

### ***Participation of Illiterate Voters***

Sudan's many illiterate and partially literate voters encountered difficulties during polling which increased the processing time and made it difficult for them to find the station in which they were assigned to vote in the voter lists. Little effort was directed to ensuring that the country's illiterate population was fully informed about the election.

While the use of symbols is an international best practice, particularly in countries with high rates of illiteracy, in the case of these elections, they exacerbated the complexity of the balloting due to the system of multiple ballots and long candidate lists. In addition, many candidates and parties did not understand the value of these symbols. Similarly, the weak system of voter education failed to communicate the meaning of the symbols for each type of election.

The Carter Center welcomes the NEC's directive to allow those voters who needed assistance in marking their ballot to select someone to help mark their ballots. These steps to offer impartial assistance are in line with international standards.<sup>30</sup> However, there were many allegations that helpers abused their trust and marked ballots contrary to the wishes of the voter.

### ***Assisted voting***

Procedures for assisted voting are an important tool for the elections commission to help ensure universal suffrage. At the same time, if procedures are followed improperly, assisted voting can undermine both the secrecy of the ballot and infringe on the voter's choice. Both of these issues have been witnessed by Carter Center observers in polling stations across Sudan.

In South Darfur, Unity, Central Equatoria, and Upper Nile State, the secrecy of the ballot was compromised for voters who required assistance, although observers predominantly felt that the loss of secrecy was not done with any intention of fraud or wrongdoing. In Lakes State and Northern Bahr al Ghazal, however, observers were present at polling stations where polling staff were trying to unduly influence voter choice or even fill out the ballot of illiterate voters without asking them for their choice. Many voters needed help understanding and filling out the ballot which slowed the process considerably.

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<sup>30</sup> UNHRC General Comment 25 para. 20

### ***Integrity of Ballots***

Serialized seals are standard election materials to prevent the tampering of the content of a ballot box. However the use of seals has been uneven across Sudan with observers noting their absence in a number of locations, particularly in Southern Sudan within the states of Lakes, Western Bahr al Ghazal and Unity. In several cases, observers reported incorrect usage of the non-serialized seals upon ballot boxes, including two cases in Lakes State whereby a ballot box of unused ballots was improperly secured and may have been subject to fraudulent ballot box stuffing.

Observers in Northern Sudan have also taken note that green, un-serialized seals, intended to tie bags, were used to secure the voting hatch of the ballot box in several states, exposing them to potential tampering. This usage was observed in South Kordafan, Gedaref and most widely in Darfur. Polling station staff were in some cases unaware of they were improperly sealing the ballot boxes. By failing to properly secure the tops of ballot boxes while the materials were stored overnight, the polling staff hurt perceptions of the credibility of the vote in those areas.

### ***Indelible Ink***

There have been many verified reports of the indelible ink being easily removed from voters' fingers after a day or two. In some instances, this may have been caused by a failure of the polling staff to shake the bottles to prepare the ink or the inadvertent addition of the packing silicate which caused the ink to dry out. The use of indelible ink is an important safeguard to ensure that multiple voting does not occur, and coupled with problems with the voter registration list, the failure of the ink weakened the checks on multiple voting.

### ***Political Party Agents***

Carter Center observers reported numerous irregularities and problems with intimidation, harassment, and a lack of access for political party agents to the voting process. It should be stressed that this occurred with particular frequency in Southern Sudan. In one polling station in Lakes State, political party agents were asked to be 100 meters away from the polling station, although SPLM agents were subsequently invited back into the polling station to monitor the vote. Polling station staff turned away DUP political party agents in Hameshkoreb in Kassala State, barring them from monitoring any part of the voting process. Carter Center observers reported seeing restrictions placed on political party agents in Sennar state whereby only one agent was allowed inside the polling station at a time, in contradiction to the electoral regulations. Observers learned of the arrest of political party agents in the states of Central Equatoria, Unity State and Northern Bahr El Ghazal.

### ***Intimidation***

The extent of subtle or forceful intimidation observed was deeply problematic. Highly inflammatory comments made by President Bashir while campaigning in Red Sea and Al Gezira, in which international observers were threatened were contrary to the Elections Act, as well as the Memorandum of Understanding between the Center and the Government of Sudan, and called into question the commitment contained in the CPA to have international observation.

Intimidation was reported in many states observed and was carried out by security agents in both plain clothes and uniform, army, party agents, party members or county commissioners. Voters, candidates, polling staff, party agents and observers were the targets of such intimidations. Most actions seemed to be locally motivated, rather than centrally controlled, but the overall effect on free elections is worrying.

Particularly problematic was the presence of plain-clothes men who identified themselves as 'public security', 'county intelligence' or just 'security' and took an active part in the voting process. The SPLA showed force in some areas, replacing polling station security or marking ballots. The SPLM made its

presence felt in some polling stations and in one case, intimidated domestic observers. Polling staff was arrested, threatened or beaten up in a number of states, as were party agents and candidates.

The Southern Peoples' Liberation Army (SPLA) had a visible presence at polling stations in White Nile and Lakes State; in Northern Bahr el-Ghazal soldiers marked ballot papers and forcefully replaced police and party agents at polling stations. Polling staff was marking ballots on behalf of one party in Northern Bahr el-Ghazal and Warrap State. Party agents took an active interest in how voters voted in Lakes States and Upper Nile.

In Unity State, domestic observers reported being intimidated by SPLM. In at least one case, a Carter Center observer and staff member were harassed. County commissioners harassed polling staff and voters in Unity and Lakes States; polling staff was arrested in Kassala. Candidates or party agents were arrested, intimidated or beaten in Central Equatoria, Eastern Equatoria, Northern Bahr el-Ghazal, El Gezira, Unity and Port Sudan.

### ***Commitment of Electoral Staff and Extension***

On April 12, the NEC announced that due to the problems associated with the first day's polling, voting would be extended nationwide by two days to Thursday April 15. This was a positive step made by the National Elections Commission that allowed additional voters in Sudan to exercise their right to vote.

Despite the many logistical problems and the real political issues faced by many polling staff, Carter Center observers reported many cases of the staff at polling stations demonstrating exemplary commitment to their work and an impressive fortitude to continue their work during the two-day extension of polling and in many cases under circumstances of delayed compensation and minimal food and drink provided. In addition, Sudanese electoral officials in some cases were subject to intimidation and threats, and their work to continue the process of administering Sudan's national elections should be congratulated.

### ***COUNTING AND TABULATION***

The legal provision requiring the immediate publication of results at polling stations is welcome. However, the lack of a requirement to publish final results broken down by polling station is contrary to international best practice.<sup>31</sup> The Carter Center urges the NEC to publish final results broken down by polling station in order to enhance confidence in the results.

It is hoped that the HECs and NEC will complete the counting and aggregation of results as speedily as possible and respect the time periods provided in the National Elections Act. Transparency is essential at this stage of the process. TCC observers will remain in country throughout the counting and results aggregation, announcement of results and beyond, and will also observe the complaints and appeals process.

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<sup>31</sup> The best practice of posting detailed election results disaggregated to the polling station level can be extrapolated from paragraph 112 of UN *Human Rights and Elections* which requires that "The process for counting votes, verification, and reporting of results and retention of official materials must be secure and fair." ICCPR, Articles 2 (3) and 25, HRC General Comment No. 25, par 20 provides that there should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes. Publication of final results broken down by polling station is prerequisite for this scrutiny.

Of ongoing concern was the fact that at the start of counting three state committees in Southern Sudan still did not have equipped results centers with the proper software installed on their computers. Moreover, nine state committees had not yet recruited nor trained results' center staff.

Without these operators, the state elections committees will have no way to speedily provide compiled results, and the burden of work may easily overwhelm already fatigued electoral staff. Election results that are severely delayed are a potential flashpoint for the serious escalation of electoral disputes amid perceived or real cases of electoral fraud.

### ***DARFUR***

Given the political context in Sudan, the electoral process cannot be judged solely on technical grounds. This is particularly pertinent to Darfur, where conflict, displacement, and insecurity still dominate the lives of millions who live in the region. Although Darfur's overall security situation has somewhat improved, the reach of the Center's observation in Darfur was restricted due to security considerations. In North Darfur, a number of IDP camp leaders were arrested. However, it is evident that the government's ongoing state of emergency, the continued displacement of an estimated 2.7 million persons from their areas of origin, and intermittent armed conflict in Jebel Marra, were factors that severely compromised the electoral environment. Lingering concerns over the equity of the 2008 census process and the uneven voter registration process that saw low participation across all three states of Darfur also contributed to a weaker process. The boycott of almost all political opposition cannot be ignored. The confidence of many parties and citizens in the legitimacy of a process occurring in a region still in constant turmoil was absent.

Despite these factors, significant technical effort was made to prepare for elections in Darfur, and in South Darfur, the Center's observers have judged that from a technical perspective the election was reasonably successful. However, throughout Darfur, a failure to educate voters was apparent. Irregularities in ballot distribution and problems with the voters' lists were observed, disenfranchising many. With respect to Darfur, the Center cannot endorse elections in the region as meeting national or international standards.

### ***ELECTORAL DISPUTE RESOLUTION***

Efficient electoral dispute mechanisms, including, as necessary, the provision of a fair and public hearing before a tribunal, are essential to ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process.<sup>32</sup> In failing to provide for an effective remedy regarding possible violations in key areas of the electoral process, Sudan's electoral dispute process falls short of international standards.

Under the Elections Act any registered voter in a geographical constituency could correct or challenge the details of the voter list within seven days from the publication of the electoral register. However, lack of awareness on the right to inspect and challenge the lists led to a low number of challenges submitted. Because most of the printed voter lists in Southern Sudan were not finalised until well after the deadline on 16 January, the SHCs used the manually written registration books to display the names on the electoral register. As a result, 8,933 challenges were made on the basis of the handwritten lists but this could not be compared to the final electronic lists. Therefore, there was no way to verify the effectiveness of the remedy. No mechanism for complaint about incorrect exclusion from the voter register is provided in the legal framework. This a clear breach of the right to an effective remedy.<sup>33</sup>

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<sup>32</sup> International Covenant on Civil and Political Rights Art. 2(3), UNHRC General Comment No. 32, para. 18

<sup>33</sup> ICCPR, Article 2 (3).

According to the NEC, 885 complaints were filed regarding constituency delineation, of which 400 were accepted in the published Final Report of Boundaries. The 2008 Act provides for appeals to the Supreme Court against final determinations by the NEC regarding constituency delineation. Fifty-eight appeals were lodged of which five were allowed. Allegations have been made that those complaints that were accepted, were not implemented on the ground. As no clear details of the constituency delineation were ever published, there was no way to verify the effectiveness of the remedy.

Appeals to the Supreme Court are also provided for against refusal to register candidates and eight such appeals were made regarding candidacy for the presidency, two of candidacy for the presidency of Southern Sudan and sixteen for candidacy for governors.

On polling days a voter, party or candidate could lodge complaints to the head of polling stations. A special form was provided for this purpose (Form 7). The Head of Polling was required to try to resolve the complaint immediately. Requests for a recount could only be made at the polling centers before the declaration of results. There are no provisions provided for an order of a re-aggregation of results, an important omission and a denial of an effective remedy for potential violations in the aggregation process.

After the declaration of provisional results only a candidate or party can appeal the result to the Supreme Court and must do so within seven days. The Court must decide the appeal within fourteen days.

While interlocutors have expressed concern regarding the independence and transparency of the judiciary, to date it has carried out its functions in a timely manner in accordance with the law. The Carter Center will continue to observe the complaints and appeals process until the declaration of final results.

#### ***CIVIL SOCIETY AND DOMESTIC OBSERVATION***

An international commitment that every citizen has the right to participate in the public affairs of their country establishes the right of all citizens to freely participate within civil society and domestic observation organizations.<sup>34</sup>

The Carter Center supported the work of civil society groups in both Northern and Southern Sudan to observe the polls. Election monitoring by non-partisan civil society organizations is an important way for citizens to take part in democratic processes, serves to safeguard the process, and provides important information regarding the integrity of the process as well as recommendations for improving the process.

Northern Sudan had one of the most developed civil societies in Africa and the Middle East. Southern Sudan, meanwhile, was weak and dominated by tribal chiefs and churches. The Organization of Humanitarian and Voluntary Work Act of 2006 has been particularly detrimental to the development of civil society in Northern Sudan. According to the act, non-governmental organizations must obtain the approval of the General Registrar of Organizations, who is appointed by the president. In order to be accredited as a domestic observer organization, NGOs had to have previously registered.

The election gave rise to the creation of several domestic observation networks in both northern and southern Sudan, The most active were TAMAM, al-Khatim Adlan Center for Enlightenment and Human Development, the National Civic Forum, and the Sudanese Group for Democratic Elections (SuGDE) in the North and the Sudan Domestic Election Monitoring and Observation Program (SuDEMOP) and the Sudanese Network for Democratic Elections (SuNDE) in the South. Together these organizations deployed approximately 8,000 observers across Sudan. According to the NEC, 10,286 Sudanese observers received accreditation to observe the elections. The Carter Center welcomes the efforts on the

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<sup>34</sup> International Covenant on Civil and Political Rights, Art. 25(1)

part of the electoral authorities to open the process to Sudanese observers, who were present during the polling, in 82 percent of the centers visited by TCC international observers.

Despite this opening, civil society organizations experienced significant challenges in the accreditation process as a result of delays within the NEC, a lack of clarity in the accreditation requirements, inconsistency in the way in which requirements were applied, and the late release of accreditation badges to organizations. Furthermore, some national observers experienced obstacles in access to the polling process, although these obstructions appear to be localized and not systematic.