



University of Juba

Assessment of the Electoral Framework Final Report

Sudan

November 2009

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While there are serious challenges to holding elections in Sudan as planned in April 2010, it will be the last opportunity to bring some level of pluralism to the country ahead of the southern independence referendum foreseen for January 2011. However, to make the upcoming elections meaningful, the Government of Sudan needs to fully respect freedoms of expression, association and assembly in law and its implementation.

The election administration should apply the laws in a way that provides as much space as possible for political parties to campaign efficiently, in order to level the playing field somewhat. It should also ensure a maximum of transparency throughout the electoral process.

Given cumbersome electoral systems with voters receiving up to 12 ballots, there is a serious risk the elections may fail on logistical grounds. There is consideration of only holding elections to executive positions while postponing those to legislative bodies. However, that would do little to promote pluralism and would strengthen the already powerful executive branches of government further. A simplification of the electoral systems may be a more appropriate solution.

An Election with Serious Challenges

The Sudanese elections scheduled for April 2010 represent one of the most significant electoral challenges in recent years. Sudan is impoverished, has poor infrastructure (with many parts of the country inaccessible during the rainy season), low literacy rates (with no language understood countrywide), and is home to almost five million internally displaced persons. Serious ongoing security issues include: the simmering conflict in Darfur, now characterised by low-level violence amongst numerous armed groups and the army, rather than systematic military action; frequent tribal clashes in the south causing significant casualties and serious tension in the areas whose status is contested by the north and south.

At the political level, the implementation of the 2005 Comprehensive Peace Agreement (CPA) between north and south has been fraught with difficulty and suffered from many delays. The Sudan People's Liberation Movement (SPLM) accuses the National Congress Party (NCP) of having manipulated the recent population census in order to inflate the number of inhabitants in the north and hence representation in the National Assembly, as well as influencing wealth-sharing. At the time of writing this report the refusal of the south to accept these results could jeopardise its electoral participation, and thus ultimately undermine the whole process.

A degree of political pluralism exists in the sense that the NCP is no longer the sole party – the SPLM also plays an important political role in state institutions with reserved seats in the national and other legislative assemblies and by holding the first Vice Presidency. However, both parties are dominant in their respective areas: since 1989 the NCP and its forerunners have ruled the north – effectively as a one-party state, while in the south the SPLM is dominant due to its status as the ‘party of liberation’. With the election fast approaching, there are few signs of vibrant multi-party activity or pluralistic political debate. Some national laws pre-dating the CPA still have to be amended to comply with the Interim National Constitution allowing for democratic activities.

As if these challenges were not enough, the April 2010 elections are overshadowed by the potential referendum on the independence of Southern Sudan, which according to the CPA, should be held no later than January 2011. In case of secession, the elected institutions would lose their relevance to a degree, though it should be borne in mind that the Interim Constitution of Sudan makes provisions for the continuing functioning of these institutions.¹

...but Elections are an Opportunity

The CPA sought to address the root causes of the long-standing north-south conflict, in particular the concentration of power and wealth in the north and the marginalisation of the periphery. Despite all the challenges, the upcoming elections are an opportunity to address these causes by broadening political participation and inclusion. If there is a momentum for opening the electoral process, it is within the framework of the CPA. The agreement provides basic elements for democratic elections and the international community is providing significant support. The south in particular should have an incentive to hold truly democratic elections, as a precursor to a credible referendum process. After the referendum, this momentum is likely to subside in the north and the south alike.

Are Elections Logistically Feasible within the Current Electoral System?

The electoral arrangements foreseen are complex and questions arise as to their logistical feasibility. An electoral process that collapses in parts of the country would be a very bad scenario, potentially triggering instability and possibly violent conflict.

1 Articles 69.2., 118.2. of the Interim Constitution provide for the continuation of the Presidency and the National Assembly in case Southern Sudan becomes independent.

The problem lies in the number of elections scheduled in conjunction with the electoral systems chosen. The Sudanese will be called to vote for a number of different offices and institutions at once: The President of Sudan, the National Assembly, the President of the Government of Southern Sudan, the Southern Sudan Legislative Assembly, and Governors and assemblies for the 25 states of Sudan. The electoral system for the assemblies has three different elements comprising: single member-districts, a party list-based proportional system reserved for women and a general party list-based proportional system. Consequently, voters in the south will receive 12 ballot papers while those in the north will receive 8 ballot papers.

Sudan suffers from a high illiteracy rate (40%) and the majority of Sudanese have never voted. The election administration will be required to design, print and accurately distribute 1,268 different types of ballots to the electoral districts, in a country where many state capitals are not easy to reach and only have limited access to electricity, communications or internet. The multiple ballots will be sorted and counted in polling stations, many of which will have no electricity and might lack suitably trained polling staff.

Reportedly the government parties consider simplifying the process² by only holding the elections for the Presidents of Sudan and Southern Sudan and the State Governors. Indeed, this would lessen complications and avoid the difficulties stemming from the census dispute, but it would do little to broaden political representation. Moreover, the executive branch has long enjoyed a dominant position, and if legislative elections were postponed, its position would be further strengthened as they would be the only elected, and hence truly legitimate, branch of government. The assemblies' elections could however be simplified by adopting an election system based on proportional representation.³ This could also resolve the dispute over the census.

Generally adequate Electoral Legislation

While there are serious concerns about the general respect for political rights and the logistical arrangements for the elections, the electoral legislation provides a generally adequate framework and is mostly in line with international standards for elections. However, many important issues still require additional regulation by the National Elections Commission (NEC) and the Election Act would benefit from a general review to address inconsistencies.

² 'Parties in Government of National Unity call for Deferment of Legislative Elections', Al-Rai Al-Aam, 12 November 2009.

³ This is elaborated in the chapter on 'Electoral System'.

According to the Election Act, the NEC is appointed by the President with the consent of the first Vice President. This gave a role to the SPLM in the appointment process. There was a consensus in Parliament on the NEC's composition. The NEC appoints High Committees (HC) to each state and for Southern Sudan, as well as Returning Officers. Their relationship to the High Committees is not entirely clear.

The dispute over the accuracy of the recent population census has been the most contentious aspect of the electoral preparations until now because the respective population data was used to delimit the electoral districts and the number of seats of each area. If the population figures for the north are inflated, as claimed by the south, it will be under-represented vis-a-vis the north. Any significant inaccuracy would violate citizens' electoral rights, namely the equality of the vote. The NEC completed the delimitation of districts, taking the reasonable view that electoral deadlines needed to be respected and in any event the dispute could only be resolved politically.

Every Sudanese citizen who is 18 or older has the right to vote in the elections. However, the registration of voters will be complicated by the fact that most residents have no official documents proving their age or citizenship. The law does not adequately deal with the issue of voting arrangements for the estimated 12 per cent of the population who are internally displaced.

The legislation provides only basic rules on campaigning and the NEC will need to adopt more detailed regulations. At the outset of the election process, opposition parties are at a significant disadvantage compared to the long-ruling NCP, and to an extent the SPLM in the south.

Positively, the Election Act provides for transparency during the voting, counting and result aggregation phases by permitting political parties, non-partisan domestic groups and international organisations to deploy observers, and also by providing for the publication of detailed election results. The legal arrangements for filing appeals against election results are incomplete. This is a concern given that this could be a sensitive electoral phase in a conflict prone environment.

Key Recommendations

- The elections will not approximate a genuinely democratic process if political parties cannot campaign freely and if the media are censored or censor themselves because of the threat of sanctions. The government of Sudan needs to fully respect the freedom of expression, as well as the freedoms of association and assembly. To create a level-playing field for all contestants as much as possible, significant state funds should be made available to the parties.
- The NEC should use the latitude granted by the Election Act to improve equal campaign opportunities for the parties, for example by declaring the longest possible campaign period (70 days) and by adopting media regulations that give parties more opportunities to communicate their messages. The NEC's regulations on voting, counting, vote aggregation and results publishing should ensure the greatest possible transparency.
- There needs to be a rigorous assessment of whether the electoral systems are logistically feasible. A significant simplification may still be possible.

More detailed recommendations are included in this report.

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Constitutional and Political Context

1. Country Overview

Sudan is Africa's largest country by size. It straddles the Sahel and Sub-Saharan Africa. According to the recent, albeit disputed, census its population is some 39 million. The UNDP's Human Development Index gives Sudan a low ranking on a range of indices, and adult literacy is estimated at around 60%.⁴

Since independence, gained in 1956, Sudan has experienced prolonged periods of un-elected military or otherwise authoritarian rule and enjoyed just three short periods of elected civilian government (1956–1958, 1965–1969 and 1985–1989). The current president, Omar Hassan al-Bashir, came to power in a military coup d'état in 1989.⁵

The differences between Sudan's ethno-religious groups and the north's periodic attempts to forge a national identity based on Islam and Arab nationalism have been major obstacles to national unity. Further southern grievances included its significant underdevelopment compared to the north, and the question of whether Sudan should be a unitary or federal state. Armed hostilities began even before independence, and despite periods of peace, Sudan's recent history has been marked by prolonged conflicts. More recent disputes over ownership and exploitation of natural resources including oil deposits in the south and north-south border areas have complicated long-term resolution of these conflicts.

The 1972 Addis Ababa agreement ended the first north - south civil war, but it fell apart in the last years' of the Numayri regime (1969–1985) and fighting resumed in 1983, leading to an extensive war, not only between north and south, but also among various southern armed groups. The war devastated the south and is estimated to have cost the lives of almost two million people⁶ and displaced over four million southerners⁷, many of whom moved to Khartoum and countries neighbouring the south.

The second north - south war ended in 2005 with the signing of the Comprehensive Peace Agreement (CPA) under international mediation, by the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A), which had become the dominant political-military force in the south. The CPA resulted in a power-sharing arrangement between the northern National Congress Party (NCP) and

⁴ Overall Sudan ranks 150th of 182 countries with particularly low ratings on education, 168th of 177 in gross enrolment ratio and 126th of 151 on adult literacy (2007 data reported in the 2009 UNDP Human Development Index).

⁵ General Abboud held power between 1958 and 1964 and Colonel Numayri between 1969 and 1985.

⁶ U.S. Committee for Refugees, 2001.

⁷ Internal Displacement Monitoring Centre, Factsheet Sudan.

the SPLM for a transitional period of six years. New elections should have been held before July 2009 but were postponed until April 2010. The philosophy underpinning the CPA was the creation of a 'new Sudan', based on a more democratic and inclusive form of rule, with powers devolved from the centre to Southern Sudan and the 25 states of Sudan. The vexed issue of applying Shar'ia was resolved by making it the 'source of legislation' only in northern states.⁸

The transitional period was meant to 'make unity attractive'⁹ to all Sudanese before the referendum on independence of the south, which is foreseen in the CPA to be held no later than January 2011. While for many reasons its implementation has been delayed, the CPA has not been derailed. The NCP-SPLM power-sharing has given Sudan a degree of political pluralism, but the NCP still largely controls the north and the SPLM largely controls the south.

The CPA's promise of a 'new Sudan' was overshadowed by developments in Darfur, where in 2003 a long-standing conflict escalated into war, pitting rebel groups against the army with significant involvement of government-sponsored Arab militia, the Janjaweed, which became notorious for targeting civilians in operations of ethnic cleansing. Figures for the number of people killed are controversial, but in 2008 the UN indicated that up to 300,000 may have died as a result of the conflict.¹⁰ Currently there are nearly 2,7 million internally displaced persons (IDPs) in Darfur, a large number of Darfur refugees in Chad, and an additional two million inhabitants continue to be directly affected by the conflict. In March 2009, President Bashir was indicted by the International Criminal Court on charges of war crimes and crimes against humanity in Darfur. While the extent of violence has significantly decreased compared to earlier years, the situation in rural areas remains insecure with sporadic clashes between government forces, Janjaweed and rebel movements. Killings, rape and banditry are widespread.

According to the recent census, the population of the three states is some 7.5 million or about 20 per cent of Sudan's total population. The electoral significance of Darfur is thus very high. At the time of writing this report, it is unclear how meaningful elections could be held in Darfur. Indeed, there is a real concern that elections there will resemble elections in the south during the years of the north - south war, with deputies being elected by small electorates in the cities and towns, while the larger rural

⁸ Article 5. 1. Interim National Constitution.

⁹ Chapeau of the Comprehensive Peace Agreement.

¹⁰ The UN's Under-Secretary for Humanitarian Affairs and Emergency Relief Co-ordinator told the UN Security Council in New York in April 2008: »A study in 2006 suggested that 200,000 had lost their lives from the combined effects of the conflict, (...) That figure must be much higher now, perhaps half as much again.« He indicated that the figures were an extrapolation.

population and IDPs could not participate. Once published, the voter registration data from Darfur should be carefully compared to the census results.

2. The Comprehensive Peace Agreement, the Darfur and Eastern Sudan Peace Agreements

The CPA provides the outline of the 'new Sudan' and its provisions have been incorporated into the Interim National Constitutions (INC); even where not expressly so, they are considered to be part of the INC.¹¹

The CPA provides for an interim period of power-sharing until the holding of elections, foreseen for: the President of the Republic of Sudan, the President of the Government of Southern Sudan (GoSS), the 450-seat National Assembly, the 170-seat Southern Sudan Legislative Assembly (SSLA), the State Assemblies and Governors of the 25 states.

While the CPA institutionalised power sharing between the two former belligerents, elected institutions at all levels were seen as key components of an inclusive, representative and democratic new Sudan. The elections should have been held by July 2009¹², but all aspects of the electoral preparation have been delayed: the Election Act was adopted in July 2008, two and a half years behind schedule and the National Election Commission (NEC) was appointed only in November 2008. The NEC announced elections for February 2010 but due to delays in organising the census and publishing the results, the election date was revised to April 2010.¹³

While it is positive that CPA milestones have been achieved at all, the extent of the delay is critical, because the rainy season could set on at any time after April, complicating the organisation of the process and risking to significantly reduce participation in large parts of the country, in particular the south. This could become a serious problem in case of a second round Presidential election. If elections were postponed until after the rainy season, they would take place only a few months before the referendum in the south, further undermining the logic of 'making unity attractive'.

The importance of the elections goes beyond the north - south conflict, because it provides for devolution of power to elected positions and assemblies across the country.

¹¹ Article 225, INC.

¹² Protocol on Power-sharing, signed in Naivasha on 26 May 2004.

¹³ On 22 November 2009, the National Elections Commission announced a postponement of the first election day by seven days to 11 April 2010 as a result of the extension of the voter registration period by seven days to 7 December 2009.

However, while the CPA framework has worked to a degree, the peace processes in Darfur and the east have not met with success.

The DPA was stillborn, because it was only signed by one of the factions of the Darfur rebel groups, the Minni Minawi group of the Sudan Liberation Movement/Army (SLM/A).¹⁴ It was not signed by the SLM/A leader Abdul Wahid, or by Khalil Ibrahim who leads the Justice and Equality Movement. Given that the Minni Minawi faction has not disarmed it is unlikely to register as a political party for the elections.¹⁵ With the conflict unresolved, the other armed groups have rejected the holding of elections before a comprehensive settlement is reached. These factors, combined with the probable exclusion of most IDPs from the process, mean elections in Darfur are unlikely to lead to the creation of representative institutions there.

The east of the country experienced low intensity conflict until the signing of the Eastern Sudan Peace Agreement in 2006. This area remains profoundly underdeveloped, the humanitarian situation is dire and the implementation of the agreement has been so slow as to be qualified by some as “almost moribund.”¹⁶

3. The State Institutions

According to the CPA and the Interim National Constitution, the Republic of Sudan has a decentralised system of government.¹⁷ It provides for a national executive branch, a legislature and judicial organs.

3.1. The Executive

The executive is composed of the Presidency of the Republic and the Council of Ministers. The Presidency consists of the President, the first Vice President and second Vice President. Article 51.1. of the INC states that “there shall be partnership and collegial decision-making within the Presidency in order to safeguard stability in the country and implement the [CPA].” According to the INC, the Council of Ministers is appointed by the President, after consultation within the Presidency. Until elections are held, the Presidency is composed of the two CPA parties.

¹⁴ It was signed between the Government of Sudan and the Sudan Liberation Army/Minni Minawi faction on 5 May 2006 in Abuja.

¹⁵ Article 14 Political Party Act would preclude the registration of an armed group.

¹⁶ Humanitarian Policy Group, quoted by the Internal Displacement Monitoring Centre, “Sudan: 4.9 million IDPs across Sudan face ongoing turmoil”, 27 May 2009.

¹⁷ “The Republic of the Sudan is an independent, sovereign State. It is a democratic, decentralized, multi-cultural, multi-lingual, multi-racial, multi-ethnic, and multi-religious country where such diversities co-exist.” (INC, Art.1. 1.).

The incoming President will be elected for a five-year term, and one additional term if re-elected. According to the CPA, in the case that a northerner is elected President, the President of the Government of Southern Sudan shall *ex officio* be the first Vice President of Sudan. Should the incoming President be a southerner, he/she should appoint a first Vice President from the north, upon the recommendation of the party that won most seats in the north (INC. Art. 62. 2.). The President appoints the second Vice President from the north.

The President is vested with significant powers, tempered in some areas by the need for co-operation with the first Vice President. He or she may initiate constitutional amendments and legislation, signs laws and summons, adjourns or prorogues the National Legislature. With the consent of the first Vice President, the President may declare war, if they decide that the country is under attack by external forces, although such a declaration is “legally enforceable” only with the approval of by the National Legislature (INC, Art. 213). Similar legal arrangements exist for declaring a state of emergency “in case of an imminent danger” (Art. 210. 1.). It appears that many executive tasks are divided between spheres of influence in the north and south respectively, in particular in the area of law enforcement.

Following a consultative process between the President and the first Vice President, a Government of National Unity (GoNU) was formed and tasked with implementing the peace agreement. The Interim Constitution stipulates that it be composed on a power-sharing basis with 52 per cent of appointees from the NCP, 28 per cent from the SPLM, 14 per cent from other northern political forces and 6 per cent from other southern political forces (Art. 80).

3.2. The Legislative

The National Legislature is composed of two chambers: The National Assembly and the Council of States. The National Assembly consists of 450 members. Pending the elections, National Assembly members are appointed by the President in consultation with the first Vice President according to the same power-sharing ratio as for the Council of Ministers, but 3 per cent of the NCP members should be southerners and seven per cent of the SPLM members should be northerners. The Council of States is composed of two representatives from each of the 25 states of Sudan. The representatives sitting in the current Council were appointed by the President after consultation within the Presidency; in the case of the representatives of states in Southern Sudan, upon the recommendation by the President of the Government of Southern Sudan. After the 2010 elections, the states’ legislative assemblies will each

elect two representatives to the Council of States.¹⁸ Both Chambers sit separately and each adopts its own internal regulations. Both have a five-year term commencing from the date of their first sitting.¹⁹

Article 91. 1. of the INC provides that “the National Legislature represents the will of the people and shall foster national unity, exercise national legislative functions, oversee the National Executive, and promote the decentralized system of government.” The Assembly has the competence *inter alia* to initiate and pass general legislation and approve the annual national budget, while the Council has the competence *inter alia* to initiate legislation regarding the decentralised system of government and issues of interest to states as well as approving the President’s appointment of Justices of the Constitutional Court.

As far as legislative – executive relations are concerned, the National Assembly has the right to oversee the Executive, discusses addresses by the President, can impeach the President or the first Vice President and can summon national ministers to present reports on their or the government’s performance. It can also recommend to the President the removal of a minister.

Interim provisions establish that in the event of a southern vote in favour of independence “the seats of the members and the representatives of the Southern Sudan in the National Legislature shall be deemed to have fallen vacant and the National Legislature, being so reconstituted, shall complete its tenure to the next elections” (INC, Art. 118. 2.).

The National Legislature can amend the INC and approve amendments affecting the CPA. This shall be done “by three-quarters of all the members of each Chamber of the National Legislature sitting separately and only after the introduction of the draft amendment at least two months prior to deliberations. (...) Any amendment affecting the provisions of the CPA shall be introduced only with the approval of both parties signatory to the CPA” (INC, Art. 224).

3.3. The Judiciary

The Judiciary is composed of the Supreme Court, the National Courts of Appeal and other courts. According to the INC, judges are independent. The President of the Republic “appoints holders of constitutional and judicial posts in accordance with the provisions of this Constitution and the law” (INC, Art. 58. 1. c.) and “the chief of Justice of the Republic of the Sudan, who is the head of the National

¹⁸ The Council will have two members with observer status representing the contested Abyei region (INC, Art. 85.).

¹⁹ INC, Art. 90.

Judiciary and the President of the Supreme Court, shall be answerable to the President of the Republic for the administration of the National Judiciary” (INC, Art. 123. 4.).

The 1989 coup “opened up a situation in which the judiciary’s independence was significantly undermined. The implementation of a new Islamic Constitution led to the extension of NCP influence over the judiciary, which is now widely seen as poorly trained and corrupt. (...) An independent judiciary has yet to develop in the south, though some training is being undertaken.”²⁰

3.4. Institutions of Southern Sudan

The Government of Southern Sudan (GoSS) is established according to the Interim Constitution of Southern Sudan (ICSS), which must conform to the Interim Constitution of Sudan. The ICSS notes: “The primary responsibilities of the [GoSS] shall be to promote good governance, development and justice, exercise authority in respect of Southern Sudan and the states of Southern Sudan, act as the link between the National Government and the states of Southern Sudan and to ensure the protection of rights and interests of the people of Southern Sudan” (Art. 162).

The President of the Government of Southern Sudan is elected for five years with one additional elected term possible. He or she appoints a Vice President²¹ and the Council of Ministers, which should be approved by the unicameral parliament, the Southern Sudan Legislative Assembly (SSLA), which consists of 170 members.

The current members of the SSLA were appointed by the President of the Government of Southern Sudan based on the following power-sharing formula: 70 per cent from the SPLM, 15 per cent from the NCP, and 15 per cent from other Southern Sudan political forces (ICSS Art. 94. 2.).

The Judiciary of Southern Sudan is composed of the Supreme Court of Southern Sudan, Courts of Appeal and other courts.

²⁰ Bertelsmann Stiftung, Bertelsmann Transformation Index 2008 - Sudan Country Report, page 7.

²¹ To be approved by a two-thirds majority of all members of the Assembly, Interim Constitution of Southern Sudan, Art. 107. 1.

3.5. Institutions of the States

According to the INC, the states' executives should be headed by directly elected Governors. Pending their election, the INC provides that Governors are appointed by the President in consultation with the first Vice President. Governors in Southern Sudan are appointed by the President of the GoSS in consultation with the Vice President of the GoSS. The Governor of one state in Southern Sudan and the Deputy Governor of another state of Southern Sudan should be NCP nominees.

In the northern states, the following pre-election power-sharing formula applies to the composition of states' assemblies: 70 per cent of members from the NCP, 10 per cent from the SPLM and 20 per cent from other political parties. In Southern Sudan, the SPLM's and NCP's shares are reversed (INC Art. 184).

4. Electoral History

Sudan has held many elections since independence²² and the right to vote for women was introduced in 1965. However, past elections suffered from serious shortcomings, such as omitting large parts of the potential electorate from the registers (particularly in Southern Sudan), inequalities in the voting weight²³ and generally no participation of Southern Sudanese outside the cities. Yet, a number of elections were held in relative freedom and resulted in pluralistic outcomes (1958, 1965, 1968 and 1986).

Since the 1989 coup d'état, there have been three elections or referenda: in 1996 the government sought democratic legitimacy in elections for President and for the National Assembly in flawed conditions. Of the 400 seats in the Assembly, only 225 were contested in elections; 125 deputies were appointed and 50 seats were reserved for the NIF. There were reports of manipulation in all phases from voter registration to voting and counting.²⁴ In 1998, a referendum was held on a new constitution to formalise the post-1989 power arrangements.²⁵ The most recent elections were held in 2000. These were somewhat more pluralistic, but the main opposition parties boycotted the polls and the south did not participate. According to official results President al-Bashir was re-elected with 86 per cent of the vote amid widespread claims of fraud.²⁶

22 The history of past elections and lessons learned can be found in a study by the Rift Valley Institute: 'Elections in Sudan: Learning from Experience', 2009.

23 Until recently there existed reserved seats for graduates.

24 Page 222, 'A History of Modern Sudan', Robert O. Collins, (Cambridge 2008).

25 The adoption of a new Constitution allowed for a 'managed liberalisation' which was considered an attempt to improve Sudan's image without allowing genuine competition for political power.

26 Page 28, Rift Valley Report, *ibid*.

Previous elections usually employed a plurality voting system in which candidates were elected in single-member districts, on the first-past-the post basis. In 2000, an element of proportional representation was introduced with reserved seats for women based on lists. This feature was retained in the CPA (see Chapter on the electoral system).

As Sudan has a high birth rate and has not held elections for nearly ten years, for many Sudanese the 2010 elections will be the first opportunity to vote. Most people living in the south have never voted and many appear reluctant to register to vote for the upcoming elections.²⁷

5. Political Parties

The political landscape in the north is dominated by the National Congress Party (NCP) headed by President al-Bashir. The NCP, an offshoot of the Muslim Brotherhood, was formed in 1998 to succeed the National Islamic Front (NIF). Initially, it was dominated by al-Turabi, but in 2000 he was expelled from the party following a power struggle with President al-Bashir. In October 2009, the NCP congress confirmed al-Bashir as party chairman and presidential candidate. The NCP is the 'party of power' in the north, and reportedly is intertwined with state structures with NCP supporters benefiting from state-run businesses and privatisations.²⁸

The Sudan People's Liberation Movement (SPLM) is the political arm of the Sudan People's Liberation Army (SPLA) and dominates the politics in Southern Sudan. The SPLM's Chairman, Salva Kiir, is the President of Southern Sudan and the first Vice President of Sudan. In the past, the SPLA was considered to be dominated by the Dinka tribe. It was strengthened in 2002 by the integration of the Sudan People's Defence Force of Riek Machar, another armed faction, drawn from Nuer tribal groups. The SPLM is split between those who seek a democratic transformation of the whole of Sudan ('new Sudan') and others who want independence for Southern Sudan. Reportedly the 'new Sudan' wing of the SPLM may be interested in an alignment with northern opposition parties in the coming elections, while those only interested in independence may prefer an alliance with the NCP, in order to steer the CPA process towards the referendum without upsetting the existing political balance.²⁹

²⁷ 'Kiir declares public holiday to mobilize for voter registration', Sudan Tribune Website, 7 November 2009.

²⁸ Interviews conducted in Sudan in May and September 2009.

²⁹ For a detailed analysis of possible political alignments ahead of the elections, see: 'Sudan's Comprehensive Peace Agreement: Beyond the Crisis', International Crisis Group, 13 March 2008.

There are a number of opposition parties, some of which have deep historical roots. All were severely weakened by 20 years without a genuine democratic process. The Umma party, which is among the oldest, has its origins in the 19th century Islamic Ansar movement. The party won the last competitive elections held in 1986.³⁰

Sadiq Al-Mahdi, the Ansar's spiritual leader and Umma party leader served as Prime Minister from 1986 to 1989. The Democratic Unionist Party (DUP) also has roots in the late 19th century, through its affiliation with the Khatmiyyah Sufi order, which competed with the Ansar movement. Muhammad Uthman al-Mirghani, the spiritual guide of the Khatmiyyah, is also leader of the DUP. The party has been weakened by division and currently there are a number of other parties with 'DUP' in their name.

In 2000, al-Turabi, the former leader of the NIF, founded the Popular Congress (PC). The party describes itself as a national party not based on regionalism or sectarianism, but based on the "unilateral doctrine of devotion to God." In its programme, the PC declares: "It is inappropriate for the purpose of religion or the authority of believers to restrain the freedoms of the people, while God has created them free, even as to their choice of belief in Him."³¹ The Sudanese Communist Party (SCP) competed with the religious parties since Sudan gained independence. Though well-organised, it is not thought to have a mass following. In the 1986 elections, the SCP gained two seats in the National Assembly. The Sudan African National Union (SANU) was founded in exile in 1962, promoting federalism in a united Sudan. It later supported the peace agreement of Addis Ababa and endorsed the CPA. SANU has four members in the current Southern Sudan Legislative Assembly.³²

6. Human Rights Context

Despite progress in a few areas, the general human rights context is not conducive to democratic elections. Beyond the grave human rights violations of the Darfur conflict and the significant violence in Southern Sudan, there is little political pluralism and media freedom in the north. A number of old laws regulating human rights issues have not been amended to reflect commitments under the CPA and the INC, raising questions regarding the willingness of the authorities to create a tolerant environment in the run up to the 2010 elections.

³⁰ On the quality of the 1986 elections, see Rift Valley Report, *ibid*, page 25-27.

³¹ 'Basic Order' of the Popular Congress, see: http://www.popularcongress.org/Order_en.htm

³² For more on the parties' profiles see a resource created by the Friedrich-Ebert Foundation and the University of Khartoum: <http://www.electionnaire.org/>

6.1. Freedom of Expression and Freedom of the Media

Sudan does not guarantee freedom of expression and the media. The country ranks very low on comparative indices: 148th of 175 countries and territories on the 2009 'Reporters Without Border Press Freedom Index' with a downward tendency, and 170th of 195 countries and territories on Freedom House's 2008 Global Press Freedom Index. While there is some pluralism in the print media, its reach is limited. Electronic media remain under state control.

The UN Human Rights Committee reported that freedom of expression has been curtailed by "pressure, intimidation or aggression" against journalists by state agencies.³³ According to human rights groups, the government "continues to oppress opposition" and "stifle the free flow of information."³⁴ In particular, pre-publication censorship has limited media freedom. While President al-Bashir announced in September 2009 that censorship would cease, he warned the media not to cross "red lines", otherwise they would be subject to "harsh sanctions".³⁵ Indeed, the President explicitly called on journalists to exercise self-censorship.³⁶

It was hoped that the new 'Journalism and Press Publications Act', signed into law on 5 July 2009, could play an important role in allowing parties fair media access in advance of elections. There are however serious concerns about some of its provisions. A recent report by a media consortium promoting freedom of expression notes: "amongst the most draconian measures in the Act are the power to arrest and detain journalists for long periods without recourse to the courts, the power to impound and dismantle newspaper printing presses and equipment and the power to impose hefty fines and sanctions against the media and journalists (...)."³⁷ A Media Council under the control of the Presidency will evaluate performance of press institutions, grant licenses and set professional qualifications and requirements for registration of journalists. According to the African Centre for Justice and Peace Studies, *de facto* the freedom of expression has been further curtailed in recent months and newspapers have been forced to cancel issues.³⁸

Beyond the legal restrictions and actual obstructions, the media also suffer from serious practical limitations, in particular a lack of financial resources and trained staff. The print media has little reach beyond

33 Concluding remarks by the UN Human Rights Committee on 26 July 2007 in response to Sudan's report to the Committee on the implementation of the ICCPR.

34 Human Rights Watch, 'The Way Forward – Ending Human Rights Abuses and Repression across Sudan', October 2009.

35 "Sudan president lifts censorship but warns from 'exceeding red lines', Sudan Tribune, 28 September 2009.

36 *ibid.*

37 'Mapping the Void, a State-by-State media assessment report on South Sudan and Selected Northern States', Consortium on Promoting Freedom of Expression and Civil Society Involvement in Developing of Democratic Media Legislation in Sudan, Nairobi, August 2009.

38 "Crackdown on freedom of expression and association ahead of elections", press release on 17 September 2009 by the African Centre for Justice and Peace Studies.

Khartoum and a few state capitals. Radio provides the main source of information for most Sudanese. There are however only a few non-government radio broadcasters, transmitting in FM in Khartoum and the Southern part of the country. Of these, Radio Miraya is perhaps the most popular.³⁹ Some international stations, such as the BBC and Radio Monte Carlo can be received on long wave frequencies.

There are also concerns regarding the media situation in Southern Sudan. Article XIX, an international NGO, has reported “government censorship and interference”⁴⁰, and as in the north, the media suffer from serious practical and financial limitations.

6.2. Freedom of Association

The adoption of the Political Parties Act (PPA) in February 2007 and the establishment of the Political Parties Affairs Council (PPAC) in November 2008 were significant events. By law the PPAC should be an independent body. Its eight members are nominated by the President of the Republic and their appointment must be confirmed by a two-thirds majority of the National Assembly.

The PPAC is registering political parties throughout Sudan, as well as receiving and investigating complaints. It issues rules and regulations necessary to enforce the PPA. Parties must meet a number of conditions to be registered including: its manifesto should not contradict the CPA or the Interim Constitution; its leadership at all levels should be democratically elected, and it “shall not engage in or incite violence, promote communalism or hatred among ethnic, religious or racial groups” (PPA, Art. 14).

By mid-October 2009, the PPAC had registered 76 parties.⁴¹ Of these, 25 parties had existed before the adoption of the PPA and were registered without examination.⁴² The applications of the others were vetted to ascertain compliance with the PPA.⁴³ The legislation makes no provision that parties’ names should not be the same or similar⁴⁴, and there are many ‘splinter parties’ which have a similar name, to the party from which they split. This could cause confusion among voters.⁴⁵

39 It is managed by UNMIS in co-operation with the Swiss ‘Fondation Hironnelle’.

40 ‘Concerns on Respect for Freedom of Expression in Sudan’, Submission to the United Nations Human Rights Committee, June 2007, Article XIX.

41 United Nations Security Council, ‘Report of the Secretary-General on the United Nations Mission in Sudan’, 21 October 2009, p. 6.

42 In line with article 4 PPA.

43 Interview on 3 September 2009 with Hashim Mohd Elsayed, Secretary General of the PPAC

44 It only mentions that the logo should not be ‘identical’ to that of another party, see article 20.

45 There are for example three parties, which include the name ‘Democratic Unionist Party’ (DUP): The ‘DUP’, which joined the government in 1997, the ‘DUP – the original one’ and ‘Unified DUP’.

The PPAC will need to function transparently if it is to establish itself as an independent and impartial body. The Carter Center called on the PPAC to publish all complaints it receives from parties and their decisions on the complaints.⁴⁶

While the PPAC has registered parties without major issues, the work of political parties on the ground is often impeded by state agencies. The African Centre for Justice and Peace cited a number of recent incidents where parties' gatherings were broken up or their offices raided.⁴⁷ The Carter Center expressed its concerns about "continuing reports of harassment of observers and political party and civil society activity, including instances involving some of the Center's own international observers in Kassala, Eastern Sudan, as well as domestic election observation training activities supported by the Center in the same state."⁴⁸ After 20 years of NIF/NCP dominance, opposition parties are only re-emerging and struggle with very limited resources, while the NCP benefits from its dominance in state institutions and the economy.⁴⁹

6.3. Other Fundamental Rights

Of the legal reforms, the proposed changes to the National Security Law are among the most contentious. The law is considered of key importance in ending repressive practices by state agencies. While there have been long discussions on the draft of a new security law, the National Assembly has not been able to agree a text. The SPLM recently accused the NCP of discussing one draft with the SPLM, while submitting another to the Council of Ministers. Among the most contentious provisions of the draft law are those relating to extra-judicial arrests.

46 "Carter Center notes Progress in Electoral Preparations, but expresses Concern over Electoral Delays and Peace Agreement Implementation," Press Release of 20 August.

47 Ibid, footnote 38

48 "Carter Center Concerned about Voter Registration Process and Obstacles to Observer Accreditation," Press Release, 2 November 2009.

49 p. 12, Sudan Country Report, Bertelsmann Transformation Index 2008

Analysis of the Legal-Administrative Framework for Holding Elections

1. Relevant International and CPA Standards for Elections

Sudan acceded to the International Covenant for Civil and Political Rights (ICCPR) in 1986. Rights provided by the ICCPR include the right to vote and stand for election (Art. 25). This assessment of the Sudanese electoral framework is based on a detailed General Comment on article 25 by the UN Human Rights Committee (UN HRC).⁵⁰ The UN HRC has the jurisdiction to monitor states' respect for the ICCPR and the General Comment constitutes the authoritative interpretation of article 25 of the ICCPR. Sudan has also ratified the African Charter on Human and Peoples' Rights in 1986, which includes the right to participate freely in the government either directly or through freely chosen representatives (Art. 13). Electoral rights are also enshrined in the CPA with the Naivasha protocol (point 1.6.2.11.) providing for the 'right to vote', using the language of article 25 ICCPR.

2. Election Administration

The National Election Act (hereafter Election Act) establishes the National Election Commission (NEC) as an independent election management body. The NEC "shall ensure and guarantee the enjoyment by all citizens without discrimination the exercise of their political rights to nominate and freely express their will in secret ballot in every periodic elections or referendum (...)" (Election Act, Art. 10. 1.).

The NEC regulates and supervises elections and referenda, with the exception of the referendum on the independence of Southern Sudan⁵¹ and the referendum on Abyei's status,⁵² which will be administered by specific Referendum Commissions.

According to article 10 of the Election Act, the NEC will, inter alia: prepare, update and keep the voters' register; determine the boundaries of the electoral districts; issue general rules of elections and referenda and take the necessary executive measures; determine measures to ensure "the order, freedom, justice and secrecy in the performance of registration and polling" (paragraph 2. g.), adopt its annual budget and the budgets for specific elections and referenda, and "perform any other functions necessary to conduct the elections or referendum" (paragraph 2. t.).

⁵⁰ General Comment Nr. 25, 1996.

⁵¹ Machakos Protocol between the Government of the Sudan and the Sudan People's Liberation Movement/Army, July 2002 and INC.

⁵² Protocol between the Government of the Sudan and the Sudan People's Liberation Movement/Army on the Resolution of Abyei conflict, 26 May 2004 and INC.

The NEC, which is based in Khartoum, is composed of nine Commissioners, who are appointed by the President of the Republic with the consent of the first Vice President and the approval of two thirds of the members of the National Assembly. The NEC was approved by consensus in the National Assembly. The President, with the consent of the first Vice President, appoints the NEC Chair and Deputy Chair, from amongst the NEC's members. Commissioners are appointed for a term of six years, renewable once. The NEC takes decisions by majority vote of members present, so long as it has reached a quorum of at least five members. In the event of a tied vote, the Chair has the casting vote.

The NEC elects its Secretary General by a two-thirds majority vote. The Secretariat General is responsible for running the executive, administrative and financial activities of the NEC. By mid October 2009, the staffing of the NEC remained below what is required to manage the massive electoral process.⁵³ Deficiencies in the process of delimiting the electoral districts were regarded as a consequence of the NEC's understaffing.

The NEC has an independent budget and "shall be financially, administratively and technically independent, and shall perform its functions and duties independently, impartially and transparently without interference from any body in its affairs, business or functions, or limitation of its power" (Election Act, Art. 5).

A commissioner can be removed by the Presidency⁵⁴ for "repeated absence for five ordinary consecutive meetings" (Election Act, Art. 8), based on a report by the Chair or his/her deputy. The Presidency may also remove a commissioner, including the Chair and Deputy Chair for "partiality or incapacity related to the functions" (Election Act, Art. 8. 2.), as determined by a committee of judges to be formed by the NEC Chair or Deputy Chair, with a two-thirds majority vote.

The NEC appoints the High Committee of Southern Sudan (HCSS) and 25 High Committees at the level of the states. The High Committees are responsible to the NEC for administering and supervising the elections at level of Southern Sudan and the states. They are independent from national and sub-national executive and legislative bodies.

⁵³ Report of the Secretary-General on the United Nations Mission in Sudan, Security Council, 21 October 2009.

⁵⁴ Somewhat oddly, while the President appoints the NEC with consent by the first Vice President, the removal of a Commissioner is decided by the whole three-member Presidency.

In Southern Sudan, some expected that the HCSS would have jurisdiction to supervise the High Committees of the ten states located in Southern Sudan in all elections. This is not the case however. While the HCSS is responsible for supervising the elections of the GoSS President and SSLA “in coordination with the NEC and the States High Committees in Southern Sudan”⁵⁵, it is not responsible for direct supervision of the High Committees in Presidential, National Assembly, Governors’ and States Assembly elections. The NEC’s ‘Delegation of Power’ makes clear that this is the NEC’s responsibility.⁵⁶ In practice however, this division of authority may not function fully along these lines, for example on issues of public order in the south, the Southern Sudan Ministry of the Interior will be the primary interlocutor and the HCSS is likely to have better links to the Ministry than the NEC.

The HCSS and the 25 High Committees each have five members. The Election Act provides that committee members should be “known to be independent, experienced, non-partisan and impartial” (Election Act, Art. 18. 1.). The appointment of the committees was completed in May 2009. Some observers have raised concerns regarding inadequate resources and training of the High Committees and some opposition parties have expressed doubts about the independence, non-partisanship and impartiality of some High Committee members.⁵⁷

In addition to the High Committees, the NEC will appoint a Returning Officer for Southern Sudan and each state, as well as Election Officers in each single-member district to undertake voter registration and “to organise the conduct of the polling, sorting and counting of elections and referendum” (Election Act, Art. 20. 2.). It is not clear how the Returning Officers’ tasks differ, if at all, from the High Committees’ role of ‘administering and supervising’ the elections; the chain of command between these bodies is also unclear.⁵⁸ To complicate matters further, each High Committee can, with the approval of the NEC, form temporary branch committees in each single-member district or an “election centre” and “determine in writing their functions and powers” (Election Act, Art. 19).

55 Art. 2. A. of the NEC’s ‘Delegation of Powers. The High Committee at the Level of Southern Sudan’, 23 April 2009

56 *ibid*, Art. 3 provides that the “High Committee at the level of Southern Sudan shall be directly responsible to the NEC and shall exercise its powers and functions delegated to it under the supervision of and in compliance with the decisions, orders and directives of the NEC. It shall not interfere with the powers and functions of the states High Committees in any manner with the exception of the coordination functions delegated to it by the virtue of this Order”.

57 For instance, on 2 July, the Umma Party, the Popular Congress Party and the Communist Party in South Darfur rejected the nomination of the Election High Committee accusing them to be pro-NCP.

58 The NEC’s ‘Delegation of Powers’ to HCSSs does not mention Returning and Election Officers.

The NEC appoints a ‘Chief’ at every polling centre in each constituency as well as a ‘Chief’ for every branch polling centre (hereafter: polling station) “to carry out polling, sorting and counting processes” (Election Act, Art. 20. 3.).

The Election Act provides for the appointment of High Election Committees in Southern Sudan and in each of the 25 states of Sudan by the NEC. The NEC shall also appoint Returning Officers and Election Officers. In addition, the High Committees can form branch committees in election districts. Their relationship and specific competencies is not clearly set out in the Election Act and needs to be clarified by the NEC.

3. Electoral System

The Election Act establishes the same electoral system for all elected legislative bodies (National Assembly, Southern Sudan Assembly and States’ Legislative Assemblies) and similar electoral system for all elected executive posts (President of the Republic, President of the Government of Southern Sudan, State Governors).

3.1. Elections for Executive positions

To be elected as President of the Republic or President of the Government of Southern Sudan, in the first round, a candidate requires an absolute majority of votes (at least 50 per cent + 1 valid vote). If none of the candidates receive this number of votes, the two highest scoring candidates compete in a second round, which should be held within 60 days. In the second round, the candidate who obtains the highest number of votes is declared elected. The State Governors are elected in a single round, with the highest scoring candidate winning.

3.2. Elections to Legislative Bodies

The National Assembly, the Southern Sudan Legislative Assembly and the State Assemblies are elected on the basis of a parallel electoral system as follows:

- 60 per cent of seats form single-member election districts using the First-Past-The-Post system (FPTP);
- 25 per cent from closed party lists reserved for women candidates and seats allocated by proportional representation (PR) at the level of each of the 25 states⁵⁹ ; lists must obtain at least four per cent of the valid votes, in order to win seats (threshold);

⁵⁹ For the SSLA, at the level of the ten states of Southern Sudan.

- 15 per cent from closed party lists at the level of the 25 states⁶⁰ with seats allocated by PR; a four per cent threshold applies.

Voters have one vote for each 'component', i.e. three votes in each election for a legislative body. For the two proportional components, seats are allocated in relation to the proportion of votes received per list (votes received divided by electoral dividend) with the method of the largest remainder used to allocate the remaining seats.

The lists (for women and the general ones) are 'closed', meaning that candidates win in order of top to bottom without a possibility for voters to express preferences for individual candidates. Given the complexity of holding multi-level elections in one day or over a few days, it is positive that the electoral systems used are the same or similar, as this makes it easier for voters and election workers to understand them. However, there are serious doubts whether the electoral set-up is manageable given Sudan's huge logistical challenges.

Voters receive a separate ballot for each election and each 'component' of an election to the three levels of legislative body. In the south of the country, voters will be required to mark 12 ballot papers, in the north 8 ballots. The election administration would have to design and print 1,268 different ballot papers (see annex 3) and deliver them accurately to often remote and inaccessible locations. The counting of 12 different ballots could be extremely time-consuming, which might cause or exacerbate post-electoral tension.

60 For the SSLA, at the level of the ten states of Southern Sudan.

Electoral Systems - Required Ballots

	Executive Posts	Legislative Bodies
Sudan	President 50% +1 of valid votes. If not, second round run-off between two highest-scoring candidates.	National Assembly ('Lower House')* 60% of seats Single-Member Districts, First-past-the Post (FPTP); 25% of seats proportional elections from party lists at the level of the states, reserved for women candidates; 15% of seats proportional elections from party lists at the level of the states.
Southern Sudan	President 50% +1 of valid votes. If not, second round run-off between two highest-scoring candidates.	Assembly of Southern Sudan 60% of seats Single-Member Districts, First-past-the Post (FPTP); 25% of seats proportional elections from party lists at the level of the ten states of Southern Sudan, reserved for women candidates; 15% of seats proportional elections party lists at the level of the ten states of Southern Sudan.
25 States of Sudan	Governor One round, simple majority.	State Assemblies 60% of seats Single-Member Districts, first-past-the post (FPTP); 25% of seats proportional elections from state-wide party lists, reserved for women candidates; 15% of seats proportional elections from state-wide party lists.

*The Council of States, the second chamber of the National Legislature, is indirectly elected.

There is some discussion of a 'Plan B', should it become apparent that the electoral systems are unmanageable or that the NCP and the SPLM are unable to find a political solution to the issue of the contested population census results. Some have proposed to hold the elections for executive offices first, while postponing the elections for legislative assemblies. While this may provide a short-term solution, it would do little to broaden political representation. Moreover, the executive branches have long enjoyed a dominant position to the near exclusion of all other political forces, and if legislative elections were postponed, the executives' position would be further strengthened as they would be the only elected, and hence truly legitimate branch of government.

A better option may be a significant simplification of the legislative elections by dispensing with the majoritarian component and introducing a full PR system.⁶¹ A voter in the north would then have to mark four ballots, a voter in the south six ballots. The number of ballot types would be reduced from more than 1,268 to 54. This solution could also solve the census dispute as far as it relates to elections and address some problems of IDP voting.⁶² To maintain the women quota there could be a requirement to place women candidates on fixed positions on party lists. The drawback of this option would be that if elections were not held in some regions, such as parts of Darfur, the overall results would be affected,⁶³ and voters may be unfamiliar with list-based election systems.

3.3. Delimitation of Electoral Districts

According to the law the boundaries of the 270 single-member districts for the National Assembly elections will be determined as follows: The total population will be divided by 270 to establish the national dividend (a divisor). The population in each state (according to the census) will then be divided by the dividend to establish the seat entitlement of each state.⁶⁴ Once the entitlements are determined the NEC shall delimit the boundaries of each district based on three criteria:

- First, no district should cross state boundaries;
- Second, the total population of each district should not deviate from the national dividend by “more or less” than 15 per cent (Election Act, Art. 38. b.);
- Third, geographical features, population distribution, physical movements and local administrative boundaries should be taken into account.

The delimitation of electoral districts in Southern Sudan and the States follows the same logic *mutatis mutandis*.

The provisions on district delimitation are in line with international standards in that they seek to ensure a reasonable equality in the weight of each vote.⁶⁵ There may however be a logistical challenge if the electoral districts for the various legislative assemblies cross each other, rather than being the same.

61 This is not a comment on the respective merits of PR versus majoritarian elections. There are good arguments against and in favour of either and there are no international standards mandating a particular election system. The issue here is only which system may be logistically feasible.

62 If the whole country was one electoral district, the question of whether IDPs votes count at their former or actual residency would not pose itself.

63 The Election Act does not contain provisions on how to deal with incomplete election results. The NEC could decide to ignore incomplete results as long as they do not affect the overall outcome in analogy to article 83 Election Act, which states that the election of a candidate would be invalidated by the NEC in the case of: “non compliance by the candidate with the provisions of this Act relating to the elections, in a manner that may affect the results of the elections (...)”

64 The law does not indicate which method should be used to determine the allocation of seats to electoral districts once no state full-fills the dividend any more.

65 Deviations of plus or minus 15 per cent are generally regarded as acceptable, because exact equality is impossible to achieve.

This could be avoided if the number of seats distributed through the First-Past-The-Post-System (FPTP) for the Southern Sudan Legislative Assembly could be evenly divided by the number of FPTP seats of the National Assembly in Southern Sudan and similarly: If in a given state the number of FPTP seats for the state assembly could be evenly divided by the FPTP seats of the National Assembly which are distributed in that state.

The NEC is required to publish “its review of the boundaries of the geographical constituencies in the Gazette or other mass media” (Election Act, Art. 39). The NEC must also submit its review to the President, the President of the Government of Southern Sudan, the Governors, members of legislative assemblies and the political parties, who may submit objections or alternative proposals to the Commission within 30 days.

The delimitation of constituencies took place from mid June until the end of July. Reportedly the process was carried out by the High Election Commissions, which were not well prepared for the task. Some populated areas were not covered at all, while others were delimited without regard to actual population. It appears in some districts the population/seats ratio deviated by more than 15% from the average.⁶⁶ The NEC distributed the electoral district delimitation data as a CD-ROM to the institutions and the political parties. Some parties complained that they did not receive the CD-ROM. In response, the NEC extended the complaints period by one week, which was positive. Some parties complained that because they could not circulate freely in the country they had no means of verifying the proposed district delimitation on the ground. More than 500 objections were filed against the delimitation. The Election Act foresees that appeals against the final delimitation report can be lodged with the Supreme Court within two weeks of its publication. The Courts shall decide ‘expeditiously’ (Election Act, Art. 40).

3.4. The Census and Equality of the Vote

A national census of the population of Sudan was conducted from 22 April to 6 May 2008 as mandated by the CPA.⁶⁷

The SPLM disputes the census results, although they had previously been approved by the Presidency, of which the SPLM is a part. The SPLM is confident that the census was correctly conducted in the south, but questions three elements of the northern census: First, the huge increases of the population of South Darfur since the 1993 national census, despite the on-going conflict and the refusal of many

⁶⁶ Interviews in Khartoum in September 2009.

⁶⁷ See Annex 1 for the census results.

Darfur IDPs to participate in the census enumeration. Second, the significant increase of Arab nomads along the north south border and in northern Sudan. Third, the number of some 500 000 southerners registered in the north, when the SPLM believes there to be several million.

As previously noted, the census results determine states' share of the population and entitlement to seats in the National Assembly. Under the CPA the SPLM has 28 per cent of seats in the Assembly. According to the census, the south constitutes about 21 per cent of the population, and hence will have only around 21 per cent of the seats in the incoming assembly. At the time of writing, the controversy over the census has yet to be resolved.

There should be a rigorous assessment of whether the elections are logistically feasible with the complex election systems used. If this is not the case, a significant simplification of the election systems is possible, potentially allowing elections to all executive positions and legislative bodies as planned.

4. Right to Vote and Voter Registration

A Sudanese citizen aged 18 years or older, of 'sound mind' and enjoying all civil and political rights is eligible to vote, provided that he or she is registered as an elector.

Eligibility to register to vote requires: residency in an electoral district for a period "not less than three months before the date of closure of the register" (Election Act, Art. 22. 2. a); no registration in another electoral district and provision of "a personal identification document or a certificate authenticated from the People' Committee at the Locality or the native or traditional administrative authority" (Election Act, Art. 22. 2. b).

The overwhelming majority of the Sudanese population has no identification papers.⁶⁸ The NEC permits persons to be registered if two witnesses ascertain the identity and the age of a voter.⁶⁹ There are concerns about the political impartiality of local administrative and traditional authorities, and whether they will be sufficiently objective during the registration of voters. Local authorities will play a key role in issuing identification papers and certificates at the time of the registration.

⁶⁸ Though numbers vary, according to the Deputy Chairperson of the NEC, it is estimated that at a maximum one million Sudanese have valid identification papers.

⁶⁹ NEC, Manual on Voter registration Procedures, National Elections, Sudan 2010. Chapter 4, Paragraph 1 C. A. "Identifiers: Registration staff members can act as identifiers if they are from the constituency area. B. In a case where there are no identifiers, or they were available but could not identify the applicant, the applicant can bring a witness, provided that this witness is one of the following categories: religious leader; Imam, Priest, Vicar or Minister. Umda or Sheikh or Head Chief (Sultan) or Sub Chief of the village. Head or member of people's committee."

Sudanese living abroad, can register for elections for the President of Sudan and referenda, if they have a passport and a valid resident visa. This does not address the situation of refugees (see below chapter on IDPs and Refugees).

The electoral register must be established or revised three months before an election or referendum takes place. Otherwise it should be updated once per year. A registered voter may submit a written objection within seven days from the publication of the electoral register to correct the details of his or her entry or to challenge the registration of another person in the following cases: the person is dead; has moved to another location; has not attained the age of eighteen; has not yet resided three months in the concerned electoral district; is not a Sudanese citizen at the time of registration; has been registered in another geographical constituency; or is not of sound mind (Election Act, Art. 24. 1.).

While the law includes the possibility of correcting entries for persons who have been registered, it does not provide for objections or appeals against non-inclusion in the provisional voter list. Presumably anybody who can prove with a registration slip that he or she has been registered can ask for inclusion if his or her name was omitted. It would be appropriate to also allow complaints by persons who claim that their non-registration was due to mistakes by the election administration, for example where a registration center did not open in time.

Objections against the voters' register can be made within seven days of the publication of the register. Objections are filed with a committee, which is appointed by the Returning Officer. The Committee is chaired by a Returning Officer. The Election Act does not establish which other persons may be appointed to the committee. "The returning [...] officer shall, within fifteen days immediately after determination of all objections, publish a list of names of persons whose details were corrected or to be deleted from the electoral register for inspection." (Election Act, Art. 24. 2.). Any registered voter whose entry on the register has been corrected or deleted based on a decision of the Committee has the right to object by submitting a signed declaration to the Returning Officer, who decides the case. The Returning Officer should amend the final list accordingly. Presumably the Returning Officer should review the merits of the objection, but the Election Act (Art. 24. 3.) is not clear on this point.

The procedures for filing and deciding objections appears rather convoluted and could result in decisions by a quasi-judicial body (the committees are chaired by judges), being overruled by a Returning Officer,

an official of the electoral administration. It would be preferable if the committee would give a right to be heard to all those concerned (the person filing the objection as well as the person on the list being objected to) and then make a final decision.

In some cases it would be appropriate to allow complaints and appeals by voters who were not included in the voter list.

The role of judges in addressing objections against the provisional voter register should be strengthened and the process should be simplified, making sure that all sides have a chance to be heard.

5. Right to Stand for Elections: Candidates and Party Lists

Candidates for all elections must sign an authenticated certificate stating that they shall respect, abide by and enforce the CPA. According to the Election Act, all applications to register party lists or candidatures should be filed with the NEC. Given that these will amount to thousands of requests, the NEC could consider delegating these tasks to the High Election Commissions for nominations in their areas of responsibility.

5.1. Executive Positions: President of the Republic, President of the Government of Southern Sudan and State Governors

Candidates for the office of President of the Republic, President of the Government of Southern Sudan and Governors need to be Sudanese by birth, of sound mind, be at least 40 years of age, literate and without convictions for offences involving honesty or moral turpitude. The NEC may request whatever evidence it deems to be necessary to establish that candidates meet the criteria (Election Act, Art. 41).

The provisions for registration of candidates to executive offices are generally in line with international standards, although the requirement that they be ‘born’ Sudanese creates a distinction between those who are entitled to citizenship by birth and those who acquire it by naturalisation. According to the UN Human Rights Committee such distinctions “may raise questions of compatibility with article 25 [of the ICCPR]”⁷⁰

Candidates are required to present supporting signatures of registered voters, as follows: a presidential candidate requires 15,000 signatures from at least 18 states with no less than 200 voters from each state, a candidate for President of the GoSS requires 10,000 signatures of registered voters from at

⁷⁰ UN HRC, General Comment on Art. 25, point 3. In the case of Kuwait, the UN HRC recommended that a similar discrimination be abolished; see Paragraph 29, Concluding Observations by the UN HRC on Kuwait’s State Report, 27 July 2000.

least seven states in Southern Sudan with no less than 200 voters from each state, a governor candidate needs 5,000 signatures of registered voters from at least half of the localities of the state.

Signature requirements are generally used to ensure that candidates have a degree of public backing, to prevent frivolous candidatures and to help ensure that there are not too many candidates on a ballot, which could confuse voters and require large ballots. The requirement of a geographic spread for signatures avoids that candidates solely rely on support in big cities or traditional allegiances in a given region, such as ethnic, tribal or kinship links.

When specifying the forms for signature collections (Election Act, Art. 42. 4.), it would be useful if the NEC also clarified the rules according to which it will verify signatures and how it will deal with invalid signatures (for example duplicates). In some countries, signature requirements have led to serious controversies and abusive activity to obstruct candidates from registering. To avoid any problems in this regard, the NEC should encourage candidates to collect signatures well beyond the minimum requirements.

In addition to signatures, the legislation requires candidates for executive offices to pay deposits.⁷¹ The deposits will be returned to the candidates who receive at least 10 per cent of the valid votes cast or withdraw their candidacy up to 45 days before election. The deposits required are relatively high in the Sudanese context and may present additional obstacles for women wishing to run for these positions.

Candidates also need to submit signed certificates of their assets and liabilities as well as those of their spouses and children. The NEC will set out the timeframe for candidate applications, which by law ought to take place in a period 90-60 days before Election Day.⁷²

Objections against the registration of any candidate can be made to the NEC. There is no fixed timeframe for ruling on objections although the Election Act requires the NEC to take decisions expeditiously. The NEC shall then publish the names of all registered and rejected candidates, detailing the reasons for rejections. Within seven days, the rejection of a candidacy can be appealed to the Supreme Court.⁷³

⁷¹ The deposits are 10,000 Sudanese Pounds (approximately 2,700€) for candidatures for President, 5,000 (approximately 1,350€) for candidatures for candidates for President of Southern Sudan and 2,000 (approximately 540€) for candidates for Governor.

⁷² The 90-60 days time line for candidate registrations conflicts with the possibility of having an election campaign of up to 70 days, given that candidatures should be determined before the beginning of the campaign period.

⁷³ Article 46 of the Election Act only mentions 'the Court'. According to article 3 of the Election Act, this means the Supreme Court.

The Court has seven days from receiving an appeal to decide the case. Following the appeals process, the NEC publishes the final list of candidates.

Candidates affiliated to a political party must use the party's symbol. Independent candidates can choose from a list of symbols prepared by the NEC. Symbols are an important element to allow illiterate voters to choose a candidate without need for assistance.

Candidates may withdraw from an election up to 45 days before the day of the election. This deadline is important as it lessens the likelihood that ballots may require re-printing. If a candidate dies before or during election day, the NEC postpones the elections and allow new nominations of candidatures, while the previous nominations remain valid. If there is only one candidate for a post, he or she is declared elected after the closing of the nomination period (Election Act, Art. 51). This provision could open the door for abuse, such as intimidation of other potential candidates not to register or to withdraw.

5.2. Candidatures for the National Assembly, Southern Sudan Legislative Assembly and State Legislatures

The candidature requirements for members of the legislative assemblies are similar to those for the elected executive posts, except that candidates must have reached 21 years of age and do not have to be 'born' Sudanese; naturalised citizens are also eligible, and criminal convictions only preclude a candidature if they were in the seven years prior to nomination. Members of the Legislative Assemblies should resign before the elections if they want to register as a candidate for any Legislative Assembly election.

Any political party is entitled to present candidates for the elections to the National Assembly, the Southern Sudan Legislative Assembly or State Legislative Assemblies, either in single-Member-Districts or on party lists. Independent candidates can run in the single-member districts,⁷⁴ but there is no provision that they can submit lists, either individually or as a group. Candidates may only register for one Legislative Assembly election. For example, they cannot stand at the same time for National Assembly elections, as well as elections to the Southern Sudan Legislative Assembly. Moreover, they cannot register at the same time as an independent candidate in a single-member district and on a party list.

74 Independent candidates shall be supported by no less than 100 registered voters of the respective electoral district for National Assembly, 50 registered voters in the respective electoral district for the SSLA and 25 registered voters in the respective electoral district for the State Legislative Assembly. Candidates on party lists do not need to be supported by signatures.

The law does not seem to preclude however registration as a party-sponsored candidate in a single-member district and on a list at the same time.

The deposits for the nomination to the single member constituencies are modest, and are not likely to act as a barrier to candidacy.⁷⁵ The appeal processes for candidates to legislative assemblies whose applications were rejected are similar to those for elections to executive positions. Candidates may only withdraw up to 30 days before the day of polling. In the event that a candidate in a single member district dies before the close of the polling, the NEC will postpone the polling in that district and set a new polling date within 60 days.

In the interest of transparency and legal certainty, the NEC should publish a regulation or guidelines on the procedures and criteria used for checking supporting signatures for candidacies.

6. Election Campaigning, Campaign Financing and Accounting

The Election Act contains few provisions regarding election campaigning,⁷⁶ leaving the NEC to further regulate the issue. The NEC shall announce the official election campaign period, which should be between 30 and 70 days long. The law does not specifically state the purpose of a campaign period, although presumably equal media access should be guaranteed during that time. Given that in the north all opposition parties are at a systemic disadvantage to the NCP, the NEC should determine the longest possible campaign period, in order to give these parties some space, for example through equal media access.

The law specifies that during the campaign the public authorities should treat all contestants equally and that all contestants enjoy freedom of expression, including the right to present campaign programmes. It is hoped that outside the campaign period, state authorities respect political rights as well, because the rights to free expression, free assembly and free association are not 'time limited'. The law provides that no candidate or party should make use of state resources, except if these are paid for at a realistic rate and offered to all contestants on an equal basis. No campaign events may be held after the campaign period ends; 24 hours before the polling day.

⁷⁵ 100 Sudanese Pound (approximately 27€) for the National Assembly, 50 Sudanese Pound (approximately 14€) and 25 (approximately 7€) Sudanese Pound for the State Legislative Assemblies.

⁷⁶ Election Act, Articles 64 - 70.

Candidates and parties may finance their election campaigns from different sources, including: member contributions; donations made by candidates; financial support provided by the central government, the GoSS, and state governments to all parties and candidates on an equal basis; donations and contributions from 'other sources' should be approved by the NEC. Foreign funding is prohibited.

Given the suppression of political parties in the past, the (re-)emerging parties have relatively few members. Therefore, the NEC should clarify expeditiously which 'other sources' of donations and contributions are permitted for parties' and candidates' campaigns. In order to start creating a level-playing field, the state should provide significant funds for parties for their campaigns.

According to the Election Act the NEC should fix expenditure ceilings for the campaigns, based on reasonable criteria, such as geographical size of the constituency being contested. The law provides no details on how ceilings are determined for parties, which compete at several levels of the elections. Each candidate or political party should submit accounts of its campaign finances to the NEC within 30 days of the declaration of final results. While it is an electoral offence not to submit the report in time without acceptable excuse (Election Act, Art. 99), there is no sanction for exceeding the campaign expenditure limits. This should be provided for in order to enhance compliance with electoral rules. In the interest of transparency, the NEC should publish the campaign funding and expenditure accounts submitted by the candidates and the parties, and establish procedures for their audit.

The Election Act provides only basic rules on election campaigning, leaving further regulation to the NEC. Given that most political party life is only now re-emerging after 20 years of suppression, parties should be granted significant state funding to run electoral campaigns. The NEC should define the longest possible campaign period of 70 days, so that the new parties can have some benefits, such as greater media access and equal coverage.

The NEC should publish the parties' reports on campaign donations and expenditure after the elections and provide for their audit. The law should be amended in order to provide for sanctions if parties overstep the campaign financing limits.

7. Access to Media during Elections

The Election Act stipulates that candidates and political parties “shall be afforded access to and use of all means of communication media” (Election Act, Art. 66.1.). The provision applies to ‘all media’ and does not distinguish between public and private media, while the subsequent paragraphs of article 66 only refer to public media.

As far as public media outlets are concerned, article 66. 2. states that: “Rules shall specify the necessary measures to guarantee the rights of all candidates and political parties participating therein in the use of public media on the basis of equality and equal opportunities, and to prevent any kind of discrimination between them in the coverage of electoral campaign news.”

The terms ‘equality’, ‘equal opportunity’ and ‘no discrimination’ would mean that the state media should cover each party and candidate in the same manner. Given that recent elections were not democratic and that the current legislature is based on a negotiated power-sharing formula, applying the principle of strict equality is more appropriate than applying the principle of ‘equitable’ access.⁷⁷ Nevertheless, it will be a significant challenge to apply the principle of equality where there are more than 70 registered parties.

The NEC in conjunction with the state media are charged with preparing a “comprehensive programme to guarantee the equal use” (Art. 66. 3.) of the public media by all parties⁷⁸, in consultation with the parties. Given that the state media has no recent history of independence and impartiality, the NEC should have the lead role and adopt regulations in this field, in line with article 66.2.

The Election Act is not explicit on the period during which media regulations should apply, although presumably this is for the entire campaign period. It also makes no provision for filing complaints on the media’s coverage of candidates’ and parties’ campaigns. Therefore, the NEC should also provide regulation for filing media-related complaints. Whichever body would be responsible for these should be given full media monitoring capacity and should act on findings of the media monitoring.

The controversial Journalism and Press Publication Act could limit media’s willingness of covering all contestants equally. According to article 26 of the Act, journalists should: “refrain from disseminating

⁷⁷ Equitable access means that more significant parties, for example those with parliamentary representation, receive more coverage.

⁷⁸ The paragraph does not mention candidates, which is a gap. There would need to be rules on dealing with the Presidential candidates and advantages of incumbency.

any matter that contradicts religion, good beliefs, traditions (...). Respect and protect public moralities and good conduct (...) as well as not to violate core principles of public attitude". Sanctions and penalties for infringement of the articles of the Act range from apologies to fines and can result in an editor-in-chief's "criminal liability for whatsoever published on the newspaper" (Art. 24).

The NEC should adopt detailed regulations on coverage of political parties and candidates in the state media. It should also adopt a regulation on complaints related to coverage of candidates and parties.

8. Polling Procedures

The Election Act states that "the Commission shall lay down the necessary rules for the conduct of polling and the details of its procedures, provided that polling for any election or referendum shall take place in one day except where the Commission decides to extend such period for substantive reasons, and in a manner that guarantees the free and secret vote for all voters" (Election Act, Art. 74. 1.). At the time of writing of this report, the NEC has not issued detailed procedures for voting. The rules ought to detail opening/closing procedures, verification of ballot boxes and election materials, counting, completion of polling protocols, and other key polling procedures.

The NEC publishes the locations of polling centres. The Election Act does not indicate the minimum/maximum number of voters per polling station. This issue will have to be examined carefully by the NEC since voters will have to cast 8 or 12 ballots according to the current arrangements. The NEC has conducted a mock exercise and estimated that voters require on average 18 minutes to complete the voting operation with eight ballots. Experts of the United Nations Mission in Sudan (UNMIS) estimate that 200 voters could be processed per day per polling station. To reach that number, approximately six polling booths per station would be required. According to UNMIS, "as many as 100 000 polling stations [may be required] and implying the need to recruit and train more than half a million polling staff"⁷⁹, although it appears that this is based on polling taking place in one day, which may not be the case.

There is no provision for voting by persons physically unable to reach the voting centres, such as war wounded, the aged or infirm, hospitalised persons, and those in detention that have not been convicted.⁸⁰ This will *de facto* disenfranchise persons unable to attend polling stations on polling day(s).

⁷⁹ Report of the Secretary-General on the elections in Sudan, United Nations Security Council, 28 July 2009.

⁸⁰ General Comment 25 (ICCPR) provides : '(...) Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising he right to vote'.

After the end of the voting period, votes are counted immediately in the polling station. Votes are valid as long as a voters' choice can be 'reasonably ascertained without any doubt' (Election Act, Art. 77). Counting should continue without interruption until all votes have been counted. The Chief of the polling station declares the results and posts them at the polling centre before informing the Chief of the polling centre of the results (Election Act, Art. 76. 9.).

Before the declaration of results in a polling station, political party and candidate agents can demand a recount⁸¹ in cases where the numbers of official forms do not add up, where there are reasons to believe that the count has been interfered with, or where mistakes may have occurred. A recount can also be demanded if the difference between the results of two candidates or party lists is less than five per cent.⁸² This last provision is odd because the fact that the results of two contenders are within five per cent is a mere mathematical occurrence without particular relevance, given that the results of one polling station only makes up a small part of the overall results. The provision could give rise to unnecessary and time-consuming recounts for no compelling reason.

The polling committee chief delivers the entire official polling material to the chief of the polling centre. The further processing of results is not regulated in the election act and left for further regulation by the NEC (Election Act, Art. 79). It is possible that the elections will be held over several days, in which case the secure storing of ballot boxes would be a significant challenge.

The subsequent process of aggregating polling centre results at higher levels and the publishing of results should be regulated by the NEC in the same spirit of transparency that characterises the counting phase. Candidate and party agents, observers and journalists should be allowed to attend all stages of the aggregation of results. All polling results from the lowest to the highest levels should also be posted on the internet. Given the serious instability that often follows elections that lack transparency and public confidence in the results, a transparent process of accounting results is a vital component in maintaining public confidence and reducing the risk of post-election unrest.

Beyond counting, the Election Act does not set out how the polling results are aggregated by higher level election bodies, leaving the issue for NEC regulations.

The NEC should follow the Election Act's spirit of transparency by permitting all agents and observers full access to the aggregation process at all levels, by providing them with official result tally sheets,

⁸¹ The Election Act also mentions 'aggregation', presumably not in the sense of aggregating results from various polling stations, but rather in the sense of adding up the results of the count in one polling station.

⁸² The three reasons for recounts are listed in Article 78. 3. of the Election Act.

and by publishing all results at all levels on the internet.

A transparent process of counting and aggregating official results will be a key element in retaining public confidence in the process and lessening the risk of post-electoral unrest.

9. Domestic/ International Election Observation

The law provides for observation of polling and counting of votes by agents of candidates and political parties.⁸³ Observers are entitled to visit polling and counting centres at any time without prior notice and be present at the opening and closing of ballot boxes. Observers have the right to “submit questions and objections” (Election Act, Art.104.1.) Agents of candidates and political parties can request recounts or re-aggregation of results in certain cases. However, generally observers shall not interfere with the work of the election administration.

In addition to parties, the Election Act also provides for election observation by judges, civil society organisations, the press and the media among others and calls on the NEC to invite or accept applications from foreign countries and international organisations. The NEC has adopted a regulation on observation⁸⁴, which details accreditation procedures and a code of conduct for observer, and has signed a Memorandum of Understanding with one international observer group.⁸⁵

The legal framework for observation appears to be in line with standards on international election observation.⁸⁶ It would be useful if the NEC defined the notion of ‘attending’ and ‘observing’ the polls in more details to ensure that lower-level election bodies give proper access to observers. Election observers should have the right to receive official copies of the minutes, as well as of all official forms certifying the results. Given that many polling centres will not have copy machines, official forms should be prepared with multiple carbonated sheets.

The law is silent on election observation beyond polling and counting. Observers should have the right to follow the work of the election management bodies in preparing the elections and in the resolution of all election processes beyond polling day e.g. post election complaints and appeals. The NEC issued a regulation on observation of voter registration, but The Carter Center experienced some difficulties in observing this phase.⁸⁷

⁸³ Election observation is regulated in articles 104 and 105 of the Election Act.

⁸⁴ The regulation is published on the NEC website: http://nec.org.sd/new/eng_doc/se_sec.pdf

⁸⁵ “Carter Center announces Agreement with the Government of Sudan, the National Elections Commission and the Government of Southern Sudan on Election Observation”, 20 August 2009.

⁸⁶ See the UN-sponsored Declaration of Principles for International Election Observation from 2005.

⁸⁷ “Carter Center concerned about Voter Registration Process and Obstacles to Observer Accreditation”, 2 November 2009.

The provisions on domestic and international election observation are generally sound. However, election observers should have a right to receive official copies of all relevant forms, including minutes and sheets that are certifying the results.

Observers should have the right to follow the work of the election management bodies in preparing the elections and in the resolution of all election processes beyond polling day.

The NEC should further elaborate observers' rights to observe all election phases.

10. Election Offences

The Election Act includes a number of election offences, including: bribery to influence somebody's "electoral conduct and behaviour" (Art. 87), "undue influences" (Art. 88) such as violence or threats to influence somebody's electoral behaviour, falsification or theft of election material (including falsification of counting forms or aggregation of results), obstruction of election officials, impersonation, infringement of the secrecy of the ballot, misuse of state resources and false statements and defamation. The clause on defamation is vague⁸⁸. The punishment for these offences is either imprisonment for six months to two years, or a fine, or both, to be determined by a court.

Outside the chapter on offences there is an additional general provision stating that "(...) whoever commits any contravention to the provisions of this act shall be punishable (...)" (Election Act, Art. 111). The purpose and reach of this very general provision is not clear.

11. Complaints and Appeals

The Election Act provides for complaints and appeals in relation to the demarcation of electoral districts, voter registration and the nomination of candidates.⁸⁹ However, there does not appear to be an explicit provision for filing 'general' complaints to the NEC, e.g. against unfair treatment of a party of candidate during the campaign, although some articles could be interpreted as giving the NEC the authority to address such complaints, for example in the context of supervisory role (Art. 10. 2.).

Specific decisions and acts of the NEC can be appealed to courts, but the Election Act does not contain a general right of appeal against any act by the NEC. The Election Act is silent on whether it is possible to lodge complaints against decisions by lower-level election bodies with the NEC. Based in its supervisory

⁸⁸ "Defames another person....knowing that such statements are false or has reasons to believe that such statements are false, with the intention to mislead voters" Election Act, Art. 94. e.

⁸⁹ For details see the relevant chapters above.

role, the NEC should adopt a regulation specifying the procedures.⁹⁰ This could include a mechanism of complaints against decisions by any election body to the next higher-level election body.

As far as the invalidation of election results are concerned, the NEC is authorised to annul the election of a candidate⁹¹ in three cases:

- Non-compliance of the candidate with provisions of the Election Act in a way that may affect the results;
- The elected person is different from the one who won the elections;
- That a candidate has committed or agreed to corrupt practices or any other offence under the Election Act.

The provision on invalidation is problematic for a number of reasons:

- If results cannot be ascertained because the numbers do not add up (for example when turn-out is beyond 100 per cent), elections should be invalidated. The act does not provide for such an eventuality;
- If the 'elected person is different from the one who won the elections', there is no need for invalidation. It would suffice to declare the real winner of the elections;
- If a candidate 'has committed or agreed to corrupt practices', elections should only be annulled if he/she won the elections;
- The law only appears to address cases where one candidate's election is invalidated, however in the case of the party list elections, any election manipulation in favour of one list or the invalidation of votes for one list would affect the overall election;⁹²
- The grounds for invalidation focus on wrong-doing by candidates and do not mention possible wrong-doing by election officials or others.

⁹⁰ The NEC's Manual on Voter Registration indicates that complaints can be lodged at the next higher level of the election administration all the way up to the NEC.

⁹¹ The law does not mention the invalidation of a whole list.

⁹² For example if a candidate's election is invalidated because he used bribery, the votes he/she received could have as well been received by any other party list. Only a complete repeat election could remedy such a situation.

NEC decisions to invalidate “elections in Northern Sudan” can be appealed to the Supreme Court (Election Act, Art. 84.1.)⁹³ by any aggrieved person, while NEC decisions to invalidate elections in Southern Sudan can be appealed to the Supreme Court of Southern Sudan (Art. 84.2.).

As far as the declarations of results (rather than invalidations) by the NEC are concerned, any party or candidate participating in the elections may appeal these to the Supreme Court (Election Act, Art. 81), within seven days of the publication of results. The Court shall decide within two weeks, its decision being final (Art. 82). The Election Law provides no criteria for the Court decision. Article 83, which deals with invalidation (see above) only addresses invalidations by the NEC. According to the Election Act, the NEC should publish final results, taking into account any court decisions. Given the number of elections and candidatures, the Supreme Court could be easily overburdened in a disputed election process and unable to meet the deadlines. According to the Election Act the NEC should publish ‘final results’ (Election Act, Art. 82), taking into account any court decisions.⁹⁴

According to article 2 ICCPR every person should have the right to an effective remedy against possible violations of ICCPR provisions, such as the right to vote under article 25. However, the Election Act only permits parties and candidates to appeal against the results, but not voters.

The Election Act only regulates some aspects related to complaints and appeals. There are no provisions for complaints against acts of lower-level election bodies. The NEC should issue a regulation specifying the relevant procedures.

Given that Sudan is a conflict prone country, there may be significant political tensions should any post-election appeals be filed. However, the legal provisions on what issues can be appealed to a court are in general quite narrow and the provisions on filing appeals against election results are not sufficiently clear and detailed. The legislation should be amended and clarified to address all possible types of appeals and provide greater clarity regarding the invalidation of results by the NEC and by the courts. Short of that the NEC should publish guidance on how it intends to apply the rules as regards invalidations of results. The law only permits parties and candidates to appeal against results. Voters should have the same right.

93 Article 84 mentions ‘the court’; article 3 indicates that the meaning of ‘the court’ in the law, means the Supreme Court.

94 The mentioning of ‘final results’ in article 82, suggests that the NEC should publish preliminary results beforehand, which can be appealed to courts.

12. Internally Displaced Persons, Refugees

As a result of the long civil war between north and south and the Darfur conflict, there are almost 5 million Sudanese who are internally displaced (IDPs). There are more IDPs in Sudan than in any other country. The majority are displaced within Darfur and southerners who now are in the north. The Election Act makes no specific provision for voting by IDPs.

	Estimated Number	Current Locations	Former Residence
IDPs	4,9 million ⁹⁵	Mainly Darfur and Khartoum states	Darfur and Southern Sudan
Refugees from Sudan	Est. 420,000 ⁹⁶	Chad, Central African Republic, Uganda, Kenya, Ethiopia, Egypt	Darfur and Southern Sudan

According to the Election Act, Sudanese citizens who are eligible to vote shall be registered in an electoral district where they have been resident for three months or more, have an identification document or get a certificate from local committees or traditional authorities and have not been registered in any other district. IDPs may not fulfil any of these conditions. Even if they do have three-months residence in the area of their displacement, they may not want to vote in their place of current residence, but rather for candidates contesting elections in the place of their origin, as they may have a stronger nexus there and may wish for an opportunity to have a say on its political future. Indeed for fear of being de-linked from their places of origin, many IDPs from Darfur did not participate in the population census.

Voting by IDPs for candidates competing in the districts of their origin is however organisationally extremely complicated. If IDPs cannot safely travel to their home districts, theoretically they could cast their votes on ballots of the districts of their origin in the districts of their new residence, but this would lead to considerable logistical complications and opening the door to abuse. In camps where large groups of IDPs can be clearly identified as coming from one particular electoral district, it may be possible to organise voting and counting in the camps and to communicate the results to the electoral district. This may however require an amendment of the Election Act and would create un-equal treatment.

⁹⁵ Internal Displacement Monitoring Centre, figure for the beginning of 2009. Given that internal displacement from conflicts in Southern Sudan is estimated at 250,000 this year, the IDP population of Sudan may be beyond 5 million.

⁹⁶ UNHCR estimate from January 2009.

It is estimated there are 420,000 Sudanese refugees in neighbouring countries. About half are from Darfur, currently in Chad. Sudanese living abroad can register to vote in presidential elections if they hold a valid 'resident visa' (or similar). Obviously, refugees are unlikely to be in possession of residence visas and the Election Act makes no special provision for voting abroad.

There are no specific provisions in the Election Act on voting by the almost 5 million Internally Displaced Persons. Some may be able to vote at the place of their actual residence, rather than the place of their origin. Yet, for many, especially in Darfur, this deepens their sense of displacement. Organising voting by IDPs in the place of their actual residence for candidates and parties at the places of their origin would be a way to address this problem but would greatly complicate the electoral process.

The estimated 420,000 Sudanese refugees will not be able to vote unless they return to Sudan. While this is a concern, organising voting outside Sudan for refugees would be a significant challenge.

Annex 1:

5th Sudan Population and Housing Census - 2008

Population Distribution by State of Enumeration, State of Birth and State of Usual Residence

	Enumeration	State of Birth	Usual Residence
All States	39 154 490	39 154 490	39 154 490
Northern	699 065	948 340	707 356
River Nile	1 120 441	1 239 635	1 110 869
Red Sea	1 396 110	1 328 499	1 381 946
Kassala	1 789 806	1 760 450	1 783 076
Al-Gadarif	1 348 378	1 266 735	1 339 679
Khartoum	5 274 321	3 148 606	5 098 442
Al-Gezira	3 575 280	3 679 758	3 563 676
White Nile	1 730 588	1 844 555	1 735 714
Sinnar	1 285 058	1 343 955	1 291 395
Blue Nile	832 112	805 507	829 434
Northern Kordufan	2 920 992	3 264 130	2 934 872
Southern Kordufan	1 406 404	1 688 337	1 421 505
Northern Darfur	2 113 626	2 278 819	2 111 559
Western Darfur	1 308 225	1 504 770	1 305 082
Southern Darfur	4 093 594	4 187 747	4 084 371
Upper Nile	964 353	965 549	956 285
Jonglei	1 358 602	1 388 165	1 350 992
Unity	585 801	556 987	574 016
Warrap	972 928	1 004 478	973 748
Northern Bahr-EI-Ghazal	720 898	749 234	720 836
Western Bahr-EI-Ghazal	333 431	300 200	322 962
Lakes	695 730	707 775	696 952
Western Equatoria	619 029	634 758	615 473
Central Equatoria	1 103 592	951 379	1 072 970
Eastern Equatoria	906 126	869 802	909 169
Not reported	-	357 068	229 896
Not born in Sudan	-	379 252	32 215

Source: Republic of the Sudan, Ministry of Council of Ministers, Central Bureau of Statistics: www.cbs.gov.sd

Annex 2:

Timetable adopted by the National Election Commission

Electoral Activities	2009	2010
Constituency demarcation		
Constituency demarcation	10 June - 9 July	
First Publication of constituency demarcation	10 July	
Objections period to constituency demarcation	12 July - 10 August	
Consideration of objections and proposals by NEC	10 August - 15 August	
Second publication including amendments of geographical constituencies	16 August	
Submission of objections to courts	17 - 30 August	
Courts decisions on geographical constituencies boundaries	31 August - 6 September	
Preparation of final draft of boundary constituencies	7 - 12 September	
Voter registration		
Preparation for registration and training	13 September - 31 October	
Registration period	1 November - 7 December	
Preliminary publication of voter register	10 December	
Objections to the register	10 -16 December	
Consideration of objections to the register	16 - 20 December	
Publication of amendments of the register	21 December	
Objections to amendments of the register	22 December - 5 January	22 December - 5 January
Consideration of objections to amendments of the register		6 - 8 January
Final register published		11. January
Candidate registration		
Submission of candidates' applications		12 - 22 January
Closing date of nominations		23 January
Publication of candidates names		26 January
Appeals to courts by candidates whose nominations were rejected		26 January - 1 February
Courts decisions		2 - 8 February
Final publication of candidates' names		10 February
Last day for withdrawal of nominations at all levels		12 February
Campaigning		
Election campaign period		13 February - 9 April
Polling, sorting and announcing of results		11 - 18 April
Polling, sorting and announcing of results		

Annex 3:

Ballot types

Presidency	1
State Governors	25
South Sudan Government Presidency	1
National Assembly (total seats : 450)	
Single Member Districts (for 60% of the seats)	270
Party Lists at States' Level (each State one electoral district)	25
Women Lists at States' Level (each State one electoral district)	25
State Assemblies *	
Single Member Districts (for 60% of the seats)	749
Party Lists at State Levels	25
Women Lists at State Level	25
South Sudan Legislative Assembly (total seats: 170)	
Single Member Districts (for 60% of the seats)	102
Party Lists at States' Level (each of the 10 States one electoral district)	10
Women Lists at States' Level (each of the 10 States one electoral district)	10
Total	1268

*All states have 48 seats (29/12/7) with the exception of Southern Kordofan with 54 seats (32/14/8) and Khartoum with 84 (50/21/13) for single member constituencies, women's list and party list respectively.

Annex 4:

Map of Sudan



Map No. 3707 Rev. 10 UNITED NATIONS
April 2007

Department of Peacekeeping Operations
Cartographic Section

Democracy Reporting International

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