



SUDAN

FINAL REPORT

Executive and Legislative Elections

11-15 April 2010

EUROPEAN UNION ELECTION OBSERVATION MISSION

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I. EXECUTIVE SUMMARY

1. On the invitation of the Government of the Republic of The Sudan and the National Elections Commission (NEC), the European Union Election Observation Mission (EU EOM) was present in Sudan from 27 February to 18 May, 2010 for the Executive and Legislative elections held from 11 to 15 April. The mission comprised 147 accredited observers from 25 EU member states, as well as from Switzerland, Norway and Canada. They were joined on polling days by a mission of members of the European Parliament headed by Mrs. Ana Gomes. The mission was headed by Mrs. Véronique de Keyser, Member of the European Parliament. The Mission operated in accordance with the Declaration of Principles for International Election Observation.
2. These elections in Sudan marked a crucial step in the Comprehensive Peace Agreement (CPA), which brought decades of civil war to an end. They were the fifth competitive multi-party elections held since independence in 1956 and the first to be held in 24 years. They were long promised to the Sudanese people, but delayed since July 2009. The elections were supported by the international community as part of its commitment to the CPA and as a crucial step before the organization of a referendum in the South. They were conducted in a generally peaceful atmosphere, within a well-maintained security environment but with a number of incidents of harassment and intimidation.
3. The Sudanese people were asked to elect the President of the Republic of Sudan, the President of the Government of Southern Sudan (GoSS), the Governors of the 25 states, the Members of the National Legislative Assembly (NLA), the Members of the Southern Sudan Legislative Assembly (SSLA) and Members of State Legislative Assemblies (SLA). These six elections were held simultaneously using a mixed election system for legislative elections.
4. This resulted in having twelve different ballots for the voters in the south and eight for those in the north, a total of 1,268 different ballots. In addition, more than 72 political parties and 16,000 candidates were registered. Due to internal nomination controversies, particularly in relation to the selection of gubernatorial candidates, many high-ranking political party members chose to run as independents.
5. The legal framework in general provides a good basis for the conduct of elections, in accordance with international standards. It incorporates all the fundamental human rights which are relevant to elections, including the freedoms of expression and association, protection of personal liberty, and the right to vote and stand for election. However, the criminal and national security laws depart from those standards to such an extent that rights to express opinions and campaign were not respected.
6. Although many campaign activities took place without restrictions, the overall nature of the campaign was restrained, given the militarised political context and the unequal resourcing for the opposition. The campaign was dominated by the two ruling parties. In the north, the limited competition was the consequence of the late withdrawal by most opposition parties from presidential elections,

which diminished voter expectations. In the south, competition was greater but a less controlled environment led to more confusion, clashes and intimidation.

7. Electoral stakeholders did not have adequate and timely access to NEC rules and regulations because the NEC had failed to publish and communicate them on time. Moreover, late changes to NEC regulations fell short of national and international standards for safeguarding the transparency of the process. The NEC mechanisms initiating a dialogue with political parties and candidates were only partially established and maintained. There were repeated allegations of partiality made against the NEC by opposition parties.
8. The NEC did not publish the final list of polling stations, thus depriving both voters and observers of reliable and complete information on where voting would take place. The actual number of stations open for polling remains uncertain.
9. The Sudanese people are to be congratulated for the patience and forbearance shown on election days despite the challenges encountered. This was reflected in the 62% effective voter turnout. Polling was administered satisfactorily in 70% of the observed cases. However, noticeable disruption was observed in one third of the remaining 30%. Polling had to be extended for two days because of shortages, misprints and inappropriate deliveries of ballots and other election material in some parts of the country, particularly in Southern Sudan. Consequently, in 33 constituencies representing 20% of voters, polling had to be cancelled and re-runs held on 5 and 6 June. The decision to print presidential ballots only in Arabic meant there was a greater need for assisted voting, particularly in the south, than would have been the case if the ballot papers had been printed in both English and Arabic.
10. The voter register was established after a registration exercise which was held in 2009 and recorded 16,336,153 voters. A number of political parties and civil society organizations strongly criticized the registration process, further weakening public trust in its credibility. The late publication of the voter lists and their lack of accuracy during polling days justified those fears, as nearly 10% of the voters observed were refused ballots because their names were not on the voter lists.
11. The Sudanese laws protecting freedom of expression are undermined by security legislation which criminalises some critical publications by the media. The absence of a media broadcasting law jeopardises the proper development of audiovisual media. The media industry is developing but criticism of the government in the press is limited by a highly controlled advertising market, difficulties in accessing printing facilities and high taxation.
12. The media coverage during the electoral campaign was unbalanced in favour of the two ruling parties. However, the Joint Media Mechanism (JMM) provided the possibility of some media visibility to the parties which could afford to produce audiovisual clips.
13. A 51% of the entire electorate was composed of women, who comprised more than 50% of registered voters in fifteen states and 54% in Southern Sudan. The

quota reserving 25% of all legislative seats for women means that a minimum of 112 women are members of the 450 strong NLA, and 43 of the 170 strong SSLA. At least 12 women occupy seats in each 48-member SLA. Women, however, were few amongst the candidates in party lists and for geographical constituencies: 4% in the south and 7% in the north. There was one female candidate, Fatima Abdel Mahmoud, for the national presidency and very few prominent female candidates in gubernatorial contests.

14. There was a high level of participation by civil society through involvement in public awareness campaigns, commitment as party or candidate agents, and as domestic observers. There was extensive support available for voter information implemented by a range of civil society organizations. Transparency of the electoral process was enhanced through the overwhelming participation of candidates' agents. A wide variety of civil networks strived to ensure a substantial presence of domestic observers throughout polling and counting. A large number of international observers were deployed from 18 countries and bodies, including the European Union (EU), The Carter Center (TCC), the African Union (AU) and the League of Arab States (LAS).
15. Counting began in a satisfactory manner despite the massive numbers of ballots to be counted – several thousands of ballots per polling station. However, the process deteriorated due to the poor determination of the validity of ballots, incomplete reconciliation and erroneous calculations on the results forms. There was a low level of compliance with the obligation to display result figures at the polling stations. These incomplete figures could not be entered into the computerised system which was therefore abandoned by the NEC in favour of manual aggregation. This lack of transparency meant that many safeguards built into the system were bypassed; the whole process was delayed and became untrustworthy and results were untraceable.
16. The announcement of preliminary results based on those non-transparent manual aggregations was stalled further until preliminary presidential results were announced in tandem on 26 April. National Congress Party (NCP) candidate, Omar Al-Bashir, won 68.2% of the votes, and Sudanese Peoples' Liberation Movement (SPLM) candidate in Southern Sudan, Salva Kiir, received 92.9%. Results for the other elections, National Assembly, State Legislative Assemblies and Governors, show an overwhelming vote for the governing parties: NCP in the north and SPLM in the south, apart from one independent governor in Western Equatoria and small percentage for opposition parties in the assemblies.
17. A large number of northern and southern political parties declared their rejection of the results long before their announcement based on their assessment of the elections as rigged and fraudulent.
18. In the area of complaints, there was a serious lack of clarity, with insufficient detail in the law or rules and no formal process as to how complaints to the NEC were to be addressed. This lack of clarity combined with the confusion about the roles of the courts in formal appeals, and the roles of competent courts and

prosecutors on election offences, led to such an overlap of possible remedies as to constitute a failure to respect the right to an effective remedy

19. The election process is not yet completed. Elections will be held in two states, and there will be re-runs on 5 and 6 June in 33 constituencies plus 7 additional constituencies due to the death of one of the candidates.
20. This electoral process was highly complex in design, planning and logistics. Consequently it suffered from confusion in its preparation and implementation. Moreover, deficiencies in the legal and electoral framework in the campaign environment led the overall process to fall short of a number of international standards for genuine democratic elections. These shortcomings include lack of universal and equal suffrage, freedom of expression and the right to an effective remedy. There was also a lack of transparency in the performance of the election administration and the delivery of the results.
21. These elections have been marred by instances of worrying violence in the South and untraceable results that challenged their credibility. The presidential victories were announced based on less than 50% of the results, and results per polling station have not been published so far. Safeguards intended to ensure the integrity of the electoral process were abandoned. Despite this, these elections represent an important step forward in the political life of Sudan as they took place according to the CPA.
22. Detailed recommendations are set out at the end of this report, including the following, which are most crucial and urgent in the context of the upcoming referendum:
 - i. The election administration body should ensure a comprehensive, transparent and accurate voter registration exercise.
 - ii. The election administration should operate in a transparent and consultative manner.
 - iii. The election administration should introduce a method of voter identification free from the potentially biased influence of the Peoples Committees.
 - iv. The election administration should conduct aggregation exercises so as to ensure that polling stations' results are traceable, open for scrutiny and swiftly displayed on the internet.
 - v. There should be greater legal clarity on complaints and appeals processes so voters are guaranteed access to a legal remedy.
 - vi. Criminal offences related to the publication of information should have an available defence based on the public interest or the expression of an opinion.

II. INTRODUCTION

The 11-15 April 2010 elections in Sudan were the first multi-party elections in 24 years and constitute a key element of the power-sharing arrangements outlined in the Comprehensive Peace Agreement (CPA) signed in January 2005 by the National

Congress Party (NCP) and the Sudanese Peoples' Liberation Movement (SPLM)¹. Following an invitation from the Government of National Unity (GNU) of Sudan to observe the elections, the European Union established an Election Observation Mission (EU EOM). The EU EOM is independent from EU Member States, the European Parliament and the European Commission in its findings and conclusions. Its mandate was to conduct a comprehensive assessment of the electoral process in accordance with international principles for genuine democratic elections and the laws of Sudan. The Chief Observer was Véronique De Keyser, a Belgian Member of the European Parliament.

The EU EOM was deployed on 28 February. Its headquarters were located in the national capital Khartoum with a sub-office in Juba, Southern Sudan. The mission initially deployed observers to all 25 states of the country, but withdrew them from Darfur due to the inability to observe according to the EU election observation methodology as well as to security concerns.

The EU EOM was the largest international observation mission in Sudan, with 147 observers from 25 EU Member States plus Norway, Switzerland and Canada. The mission was joined by a seven-member delegation from the European Parliament, led by Ana Gomes. Because of the observation extending over the five election days, EU observers visited 2,291 polling stations, representing 13.6% of the total of 16,787² in the whole of Sudan, or 16.12% of the 14,211 in the 22 states observed. The mission observed through the opening, voting and closing processes. The EU EOM maintained observers across the country for the counting and aggregation, which took much longer than anticipated. The EU EOM issued its statement of preliminary findings on 17 April. The EU EOM closed its operations in Sudan on 18 May 2010.

The EU EOM wishes to express its appreciation for the cooperation and assistance it received during the course of its work from the Ministry of Foreign Affairs, the NEC, political parties, civil society organisations, the United Nations Mission in Sudan (UNMIS), the African Union/United Nations Hybrid operation in Darfur (UNAMID), the EU Delegation in Khartoum, representatives of EU Member States and other embassies, as well as the international technical assistance bodies³.

III. POLITICAL BACKGROUND

Political context

Since Sudan declared independence in 1956, political developments have been marked by military coups, protracted civilian conflicts and short-lived democratic governments formed after the multi-party elections in 1958, 1965/7, 1968 and 1986. The long-standing concentration of power and financial resources in a few urban centres, most notably in and around Khartoum, and subsequent marginalisation of

¹ The elections were the fifth multi-party elections following those held in 1958, 1965/7, 1968 and 1986.

² Figure as announced by the NEC on 10 April.

³ Electoral Assistance Division of UNMIS, the International Foundation for Electoral Systems (IFES) and the United Nations Development Programme "Support to Elections and Democratic Processes Project" and EU Technical Assistance to NEC.

other regions, has been a root cause of the conflicts in Southern Sudan, the Darfur region and in Eastern Sudan over the past decades. The country is furthermore divided along lines of religion, ethnicity, tribe and livelihood⁴, which have also shaped conflict patterns.

The CPA signed in 2005 after lengthy negotiations brought an end to the north-south conflict that lasted from 1956-1972 and 1983-2005. It also brought the SPLM into a power-sharing agreement with the northern NCP led government, which had gained power through a military coup in 1989. The post 1989-period was marked by banning of political parties and free media, re-islamisation of civil society and social structures. Many political leaders and activists and human rights defenders were operating either underground or from exile in neighbouring countries. The political environment in Northern Sudan is highly polarised and is still marked by severe distrust created through the decade-long repression of political pluralism, lack of transparency and accountability of the executives, as well as the solid security apparatus.

The CPA outlined a six-year Interim Period which began on 9 July 2005. During this period the two parties were to establish a new GNU and the southern Sudanese would obtain some regional autonomy through the creation of the GoSS. It also called for wealth-sharing, power-sharing, and security arrangements between the two parties, including a permanent ceasefire and withdrawal of troops.

The main provisions had three foci: national, Southern Sudan and the three transitional areas. The national CPA provisions included a programme of democratic transformation for Sudan such as a constitutional review, a new interim constitution, a national land commission and delegation of powers to the 25 state governments. As part of this transformation, general elections at all levels (national and Southern Sudan presidents, state governors, and national, Southern Sudan, and state assemblies) were to be held before the end of the fourth year of the Interim Period. These elected governments would oversee the CPA endorsed right of Southern Sudan to have a referendum on self-determination no later than January 2011. The CPA was therefore widely interpreted as a vehicle to re-establish political and civic rights across Sudan and to allow northern political parties, which had been banned for most of the 1990s, to operate freely.

The provisions relating to the three transitional areas recognise the special attention necessary to the frontline border areas of the conflict. The provisions included troop withdrawal, a final settlement of the boundaries of the Abyei Area, the establishment of a joint NCP-SPLM administration with special status within the north and the organisation of a referendum simultaneously with the referendum for Southern Sudan. In this referendum, residents of the Abyei area will decide whether the area retains its special status in the north or becomes part of the Southern Warrap state. In Southern Kordofan and Blue Nile states special power-sharing arrangements were also established with joint government structures and rotating governorships recognising the presence of both signatories in the areas. The

⁴ Religion-wise Sudan is 70% Muslim, 25% animist and 5% Christian; ethnically it is composed of Arabs and Africans. In terms of livelihood, researchers often distinguish between nomadic and sedentary groups.

CPA also stipulates that following national and local elections, Popular Consultations on the future governance structures of the two states are to be held, but left the format of the consultations open for discussion.

The implementation of the CPA was marked by delays and mistrust between the two parties, most clearly illustrated by SPLM temporarily withdrawing from the GNU in October 2007. Tensions in the three transitional areas of Southern Kordofan, the Blue Nile state and the oil-rich Abyei area were also running high as implementation of the CPA provisions for these places was lagging behind. Thus, fears for a CPA breakdown grew as fighting between elements from the Sudanese Armed Forces (SAF) and the Sudanese Peoples' Liberation Army (SPLA) broke out in November 2006 (Malakal), May 2008 (Abyei) and February 2009 (Malakal). Despite these peaks of tension, the two parties have so far managed to keep the peace process alive and avoided a return to conflict.

The elections preparations reflected this backdrop of convoluted CPA implementation, as well as distrust from the established northern political parties, who felt sidelined by the CPA. Furthermore, election preparation negotiations were to a large extent the result of compromises between the two CPA signatories; they did not reflect attempts to use the process as a tool for national reconciliation and inclusion and thereby for creating a broader ownership of the process. This partly reflected the fact that elections issues very often became linked to discussions on the Southern Sudan referendum on self-determination. Due to the lengthy negotiations, necessary milestones for the election preparations were missed at an early stage and when the elections were announced 10 months later than foreseen, many political parties questioned whether they were likely to take place at all.

Established northern political parties, often supported by the SPLM, expressed concerns at almost all stages of the electoral process. The criticism ranged from the National Elections Act, the appointment of the NEC, the expected reforms to laws, the census of 2008 and the related constituency delineation process, the voter registration exercise as well as the equal access to media and public funding. Those parties questioned the conduciveness of the overall political environment for democratic elections in northern Sudan, which most visibly was expressed by demonstrations in front of the National Assembly in the capital as well as in other northern towns on 7 December 2009⁵. In addition, many of the smaller opposition parties objected to the electoral system adopted given that it favours the biggest parties and provides little space for representation of the diversity of Sudanese society and culture. As such, the electoral system and the associated process did not represent the spirit of the CPA of creating inclusive government structures.

System of government

The new government structures set out in the Interim National Constitution and the Interim Constitution of Southern Sudan grant a very high level of autonomy to Southern Sudan, with parallel president, government and assembly. The power-

⁵ Several political leaders, including the SPLM Secretary General, were harassed and arrested.

sharing agreement has maintained a strong executive represented by the president, with a first and second vice-president at the national level. Some powers are vested in the individual president while others vest in the three-person presidency. In Southern Sudan the presidency consists of the president and a vice-president. The national president and the president of Southern Sudan are elected for five years, renewable once. All levels of government recognise the separation of powers into legislative, executive and judiciary.

The different legislatures, at national level composed of the National Assembly and the Council of States, with two members from each state appointed by the state assemblies, and at regional level the SSLA, have limited powers. The two interim constitutions treat Sudan as a federal state with executive powers placed with elected governors and state assemblies in each of the 25 states. The regional GoSS acts as the link between the GNU and the ten states of Southern Sudan. However, as the state economy depends on GNU and GoSS transfers respectively, there is a high level of dependency⁶.

Southern Sudan

After the CPA signature, the SPLM faced the immense task of establishing the GoSS regional and state structures and institutions. All indicators showed that recovery from one of Africa's longer lasting civil wars, providing the impoverished, war-affected southern Sudanese people with peace dividends, in a region that suffers from recurrent floods and had practically no infrastructure, would be a long term project. Lord's Resistance Army (LRA) incursions, ethnic clashes, internal misgovernance and financial mismanagement have affected stability and recovery efforts, as have the challenges associated with transforming an armed rebel movement into an accountable political force committed to democratic values.

The Darfur and the Eastern Sudan regions

Attempts to settle the conflict in the western Darfur region, which intensified in 2003, and the long-standing conflict in the eastern region, distracted attention from implementing core CPA provisions. While the CPA was widely celebrated in many parts of Sudan and contained several national reforms, Eastern and Darfurian groups felt that their concerns were overlooked. Due to international and internal pressure, separate peace agreements were signed for Darfur (May 2006) and for the Eastern region (October 2006) and while they contained some power-sharing aspects, including a reference to the general elections, the agreements were not perceived as being as far-reaching as the CPA. The Darfur peace agreement was only signed by one rebel movement, the Sudan Liberation Army - Mini Minawi, and despite several other negotiation rounds, an inclusive settlement is still not in place. In the absence of a political settlement and an environment conducive to the holding of elections, Darfur rebel movements demanded their postponement. The general view is that those

⁶ Sudan Public Expenditure Review. Report no. 41840, *World Bank* 2007

aspects of the Darfur and the Eastern Peace Agreements that address the root causes of the conflicts are yet to be implemented.

Key political actors

Sudan has a long political tradition and many of the political parties that contested the 2010 elections have existed since independence or even before. Sudanese political parties have usually been formed around tribal, social, religious or military leaders with strong regional constituencies. Shortly after the military coup in 1989, led by the current NCP leader Omar Al-Bashir, political parties, trade unions, newspapers and civil society organisations were banned; opposition leaders were harassed and jailed. Many parties joined under the banner of the National Democratic Alliance, created and operated by exiled leaders in Eritrea. In 1999 political parties were again allowed to operate, but many of their members faced continued restrictions of political freedoms. Several armed rebel groups and militias, with political or tribal affiliations, operate in Sudan.

The power-sharing agreements of the CPA gave access to the national and Southern Sudan legislatures for a wider group of political parties. Apart from the two signatories, nine other northern political parties and five southern political parties were represented in the National Assembly⁷. The power-sharing agreements of the Eastern Sudan Peace Agreement (ESPA) and the Darfur Peace Agreement (DPA) granted the signatories National Assembly seats, senior positions in the GNU as well as seats in state governments⁸.

There was some hope that the 2010 elections would restore key political freedoms and reduce the distrust between the traditional opposition parties and the two dominant parties, NCP and SPLM, but this failed to materialise, partly because required legal reforms came very late in the process. In September 2009, opposition parties and the SPLM met in Juba to set conditions for their participation in the election process, which led to the signing of the Juba Alliance declaration by 36 political parties. Despite being a forum for common strategising, the alliance did not succeed in presenting common executive candidates.

As all elections took place at the same time, the presidential elections had most attention. The national presidential elections were contested by 12 political party leaders, senior politicians and independent candidates. The two candidates for the Southern Sudan presidential elections are political party leaders.

⁷ The other northern parties represented in the post-CPA National Assembly are: The National Democratic Alliance, DUP, Umma R&R, Umma National Party, Umma Collective Leadership, Ansar al-Suna, the Muslim Brotherhood, Umma Party and National Congress. The other Southern parties are Union of Sudan African Parties (USAP), United Democratic Sudan Front (UDSF), United Democratic Front (UDF), Sudanese African National Union (SANU) and Southern Sudan Democratic Forum (SSDF). In the Southern Sudan Legislative Assembly, the Union of Sudan African Parties-1 (USAP1), Union of Sudan African Parties-2 (USAP2), United Democratic Sudan Front (UDSF), United Democratic Front (UDF), Sudanese African National Union (SANU) and Southern Sudan Democratic Forum (SSDF) were represented alongside SPLM and NCP.

⁸ The Darfur Sudan Liberation Movement (SLM) leader Minni Minawi was appointed as the senior assistant of the Sudanese president in August 2006 and three Eastern Front leaders took up state minister and presidential advisory positions in the GNU in August 2007.

National presidential elections

President Omar Al-Bashir has led Sudan since he took power in a military coup in 1989 and was nominated as NCP's presidential candidate without any opposition. President Al-Bashir came into politics through a military career and has led Sudan through a turbulent period of constant internal conflict, economic crisis and is now perceived as a moderate Islamist. Since Sudan started exporting oil in 1989, the economy boomed with impressive growth rates, but pro-poor investments have remained low. In March 2009, the International Criminal Court (ICC) issued an arrest warrant against President Al-Bashir indicting him for war crimes committed in Darfur.

There were speculations as to whether SPLM would field a presidential candidate, but the nomination of the deputy secretary general for SPLM's northern sector, **Yassir Arman** sent out competitive signals. Arman is a northerner and was active in politics as a law student before joining SPLM in the mid 1980s. Arman was a close ally to former SPLM leader Garang and has led the SPLM group in the National Assembly. He has spearheaded SPLM alliance building with the northern opposition parties and launched an active campaign strategy in the north.

The UMMA National Party leader and presidential candidate, **Sadiq al Mahdi**, is also leader of the religious Ansar sect. At the age of 30 years he was appointed prime minister of Sudan in 1967 and served another term after a successful election in 1986. Al Mahdi was ousted in the 1989 military coup and put under house arrest. He is an Oxford graduate and was active in the National Democratic Alliance. The UMMA party has split into several factions due to internal disputes, and while in July 2008 he rallied behind president Al-Bashir, during the ICC investigation, he later changed position.

The candidate of the Popular Congress Party (PCP), **Abdalla Deng Nhial**, is a Muslim southerner, a long serving senior politician in the PCP led by Turabi, who split with Al-Bashir's NCP in 1999. He is a teacher and university lecturer and served as Minister for Religious Affairs, Minister of Peace and Rehabilitation and governor in White Nile State before being dismissed after a dispute between Turabi and Al-Bashir in 1999.

The Sudanese Communist Party (SCP) candidate, **Mohammed Ibrahim Nugud** entered politics as a student and completed his economics studies in Czechoslovakia. As a full-time politician and author, Nugud has lived through difficult periods for the SCP in that he was appointed leader after the assassination of the former leadership in 1971 and went into hiding for 14 years. In 2009 he was re-elected General Secretary.

Hatim Alsir Ali is the candidate of the **Democratic Unionist Party-Original** (DUP) and a lawyer. He was appointed governor for the Nile State during the last months of the 1986-1989 government and dismissed just after the coup. He became a close adviser to the DUP party president, Sayed Mohammed Osman al-Mirgani, who also leads the Khatmia religious sect. He went into exile in the early 1990s and edited the opposition Ithadi newspaper from Egypt over the years 1992-2000.

The 2010 elections featured the first women candidate in a presidential race in Sudanese politics, **Fatima Abdel Mahmoud**, running for the Sudanese Socialist

Democratic Union (SSDU). A medicine graduate by background, Mrs. Mahmoud has a long political career behind her holding ministerial posts such as State Minister for Health and Federal Minister Social Welfare during the Nimeiri regime from 1969-1985. She has held several other women's leadership positions and has been internationally awarded for this work.

Southern Sudan presidential elections

The incumbent First Vice-President and President of Southern Sudan **Salva Kiir Mayardit**, was appointed leader of the SPLM in 2005 immediately after the death of former leader John Garang and is SPLM's presidential candidate for Southern Sudan. Like Al-Bashir, Kiir entered politics from a successful military career. To many southerners Kiir is a leader who led the CPA negotiations and steered through a severe budgetary crisis in 2009, but has been less decisive in promoting rule of law and democratic principles. Kiir is a Dinka and a devoted Christian.

In July 2009, **Lam Akol**, who had served as Foreign Minister in the GNU for SPLM, created his own party, SPLM-Democratic Change (SPLM-DC) in June 2009. Akol is a Shilluk academic. He supported the SPLA from Khartoum in the 1980s but disagreements with Garang led him, together with Riek Machar, to split from the main SPLA in 1991. The two factions reunited before the CPA negotiations. SPLM-DC promotes an agenda of anti-corruption, pro-poor development and is critical of the SPLM. Akol has been accused of being closer to NCP than to SPLM.

IV. LEGAL ISSUES

Constitutional and legal framework

The constitutional and political basis for the government structure in Sudan is the CPA of 2005 and the INC and ICSS which it put in place. These incorporate all the fundamental human rights which are relevant to elections into a Bill of Rights including the freedoms of expression and association, protection of personal liberty, and the right to vote and stand for election. The bedrock of electoral rights is Article 41 of the INC which provides for universal suffrage and voters' rights⁹.

Under the CPA the elections were to take place by the end of the third year of the Interim Period¹⁰. The INC translates this as not later than the end of the fourth year¹¹. That was July 2009 but the NEC postponed the elections to April 2010. The next electoral contest contemplated by the CPA is the referendum on self determination for Southern Sudan which should be held by a date six months before the end of the Interim Period; that is by 9 January 2011.

The CPA parties announced before the election that 40 extra National Assembly seats for Southern Sudan, and extra seats for Southern Kordofan and Abyei, would be

⁹ Article 30 of the ICSS reflects the same rights.

¹⁰ Article 1-8-3 of the Power-sharing Protocol.

¹¹ Article 216 of INC.

created and filled by nomination after the new assembly meets. This is the application to the electoral context of the practice of dealing with difficulties in the implementation of the CPA by negotiation between the CPA parties. This plan for extra unelected seats without legal basis, undermines the constitutional basis for the elections themselves, and creates a distortion in the relationship between population, constituencies and lists. It interferes with the equality of the ballot, equality among candidates, and the competitive aspect of the election.

The constitutional basis for the elections has been undermined by applying to the electoral context the practice of dealing with problems with the CPA through negotiation between the two main political parties. That approach has also been taken with the fundamental electoral architecture: the plans for 40 extra seats for Southern Sudan and extra seats for Southern Kordofan and Abyei in the NLA were superimposed onto the constitutional and legal framework, following a deal between the two ruling parties, and without a court decision by the constitutional court as was the case in Jazira State. This created a distortion in the relationship between population, constituencies and lists, and undermined the equality of the ballot, the equality between candidates and the competitive aspect of the election.

Universal and regional standards

Sudan has ratified the International Covenant for Civil and Political Rights which is the main source of international legal rights¹² in relation to elections, and the African Charter on Human and Peoples' Rights.¹³ These are incorporated into domestic law by Article 27 of INC. African regional standards also include the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa¹⁴ which sets out campaigning rights and the right to appeal to a judicial authority. Sudan has also signed¹⁵ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

Legal environment

During the CPA Interim Period laws were to be amended to be in conformity with the Bill of Rights in the INC and international obligations. However some laws in the north which are relevant to the legal environment at election time remain inconsistent with constitutional and international norms. Under the Criminal Act the offence of 'publication of false news'¹⁶ is used against journalists and editors in cases of political comment which should be covered by a public interest defence to respect the freedom of expression. In the Criminal Procedure Act¹⁷ there is a wide power

¹² In Article 25 ICCPR as explained in General Comment 25.

¹³ See annex.

¹⁴ Adopted at Durban, South Africa on 8 July 2002 by the OAU AHG/Dec.1 (XXXVIII). See annex.

¹⁵ 30 June 2008.

¹⁶ 1991, Section 66. The Penal Code 2008 in Southern Sudan has a provision at Section 289 which reflects media reporting in the public interest.

¹⁷ 1991. Section 127 gives this power and it was amended in 2009 so that consultation with judges or prosecutors was required. The Act of 2008 in Southern Sudan contains similar powers in Chapter XII.

vested in governors and state authorities to control meetings and demonstrations¹⁸. Furthermore parts of some post-CPA laws such as the Press and Publication Act 2009¹⁹ and the National Security Service Act 2010²⁰ restrict the freedom to campaign.

This latter Act was used by the Security Service on 15th May to arrest veteran political figure Turabi of the PCP and bring him to the special political office of the service in relation to statements he made since the election. Suspects can be held for 30 days without charge or judicial intervention. At the same time the paper *Ray el-Shaab* which published those statements was taken over by the Security Service and closed.

The Organization of Humanitarian Voluntary Work Act 2005²¹ applies a strict regime of control for civil society organizations including domestic observation bodies.

In addition further structures for restrictions on freedoms of movement, association and expression exist in the three Darfur states under the Emergency and Public Safety Protection Act 1997²². Altogether the problems with these laws mean that the legal environment in Sudan is not conducive to the exercise of the rights²³ necessary to campaign freely and express political opinions.

The National Elections Act and other relevant laws

The provisions of the NEA are consistent with international standards for the conduct of democratic elections. The NEC which it establishes has legal independence and very wide powers to run the processes of voter registration, delineation of constituencies, nomination of candidates and the timing and conduct of the elections. Voters must be Sudanese citizens, of sound mind, and entered on the electoral register.

The Act enshrines the principle of the equal treatment of candidates²⁴, a complete and unrestricted freedom of expression²⁵ for candidates and parties and a prohibition on the misuse of state resources²⁶. The declaration of final results of elections shall be made no later than 30 days from the date of the end of the polling²⁷. Furthermore the NEA provides for transparency during voting, counting and tabulation of final results which should be posted at polling stations.

¹⁸ This problem was acknowledged by the NEC in its reply published on 17 March to the memorandum from political parties.

¹⁹ This law provides for a special court to deal with prosecutions against the print media and there is a special prosecutor's office for that purpose. This law does not apply in Southern Sudan.

²⁰ Section 50 of the official Arabic language version makes clear that security service has wide police powers including power to detain for 30 days without judicial intervention. The official English language version is not the same. This Act applies throughout Sudan.

²¹ Often referred to as the NGO law. It does not apply in Southern Sudan where a similar registration system is applied on an administrative basis.

²² State of emergency has been in force since 2003 giving authorities very wide powers.

²³ General Comment 25, paras 12 & 25, Articles 9, 10 & 11 of ACHPR. See annex.

²⁴ Section 65(1).

²⁵ 'Subject to the provisions of any other law' Section 65(2).

²⁶ Section 69, such misuse is made an illegal electoral practice under Section 96.

²⁷ Section 82 (2) of NEA.

However the NEA is a framework law leaving many areas to be filled out later with regulations. That process of regulation making was not carried out properly. Some issues were not regulated at all, other areas saw regulations far too late²⁸, and the NEC used a variety of instruments of uncertain legal status. While the NEC introduced extensive guidelines on media behavior and a circular on campaign activities, it did not expand on important areas such as the processing of complaints and appeals and the aggregation of results. Also some actions of the NEC such as the circular on campaign activities, and the rules on voter registration of members of the armed forces²⁹, and the decision to hold the election beyond one day³⁰ may have extended beyond that body's power.

The INC and the ICSS guarantee³¹ the right to form and join political parties subject to conditions, including that no political party can contradict the CPA or INC in its manifesto, and such contradiction could result in a prohibition order from the Constitutional Court³².

Political party registration and activities are regulated by the Political Parties Act (PPA), which came into force in 2007 and established a Political Parties Affairs Council (PPAC). The legal recognition of political parties was strengthened by the decision of the Constitutional Court³³ overturning an instruction from the GoSS to state officials not to cooperate with the breakaway SPLM-Democratic Change (DC) party.

Electoral systems

Elections for the President of Sudan and the President of the GoSS are held under an absolute majority system, with a candidate having to get at least 50% plus one vote in order to win. Should no candidate achieve this result then a second round between the two candidates who received the highest numbers of votes would take place. All 25 State Governors, as well as 60% of the members of NLA, of the SLA and of the SSLA are elected using the simple majority system, in single member constituencies. In absolute numbers this translates into 270 members of National Assembly out of 450, 102 members out of 170 of SSLA and 749 out of 1242 members of state legislative assemblies. The remaining 40% of members in the NLA, the SSLA and the SLAs are composed of those elected from closed party lists and women's lists, using a system of proportional representation with a 4% threshold. The proportional system incorporates two distinct provisions, namely, a closed party list reserved for women of 25% of all elected seats; and a general closed party list for 15% of all elected seats.

The territory of Sudan is divided into 270 constituencies for the National Assembly elections and into 749 state/geographical constituencies for the State

²⁸ Such as the NEC decision made just before the elections on ceilings for campaign expenditure.

²⁹ Rules of 24 October 2009 allowed registration at place of posting rather than place of residence.

³⁰ Section 74 (1) of NEA says voting shall take place in one day unless there are substantial reasons to extend. When setting the time frame on 23 January, the NEC did not show the substantial reasons for three days of voting.

³¹ INC Art. 40(2) an ICSS Art. 29(2) state "...shall be regulated by law as is necessary in a democratic society".

³² Art. 40(3) of INC.

³³ CC/CD/172/2009 of 17 January 2010 with one dissenting judgement.

Legislative Assemblies. In Southern Sudan, there are 57 NLA constituencies, 102 SSLA constituencies and 290 geographical constituencies in the states. As a result of the multiplicity of elections taking place simultaneously in all of these constituencies together, 1,268 different ballot papers were created. Voters in the north cast 8 ballot papers to express their preferences while voters in Southern Sudan cast 12 ballot papers. This means that a polling station in Southern Sudan with 1,000 voters had to anticipate dealing with an unmanageable amount of up to 12,000 ballots, while a polling station in the north, with 1,200 voters, faced counting 9,600 ballots.

Boundary delimitation

The NEC conducted the demarcation of geographical constituencies, based on the 2008 census results, and announced the formation of the geographical constituencies on 3 August 2009. Data from the census was extremely controversial and was disputed by many electoral stakeholders who argued that the census results were manipulated to inflate population numbers in the north, thus inflating the number of NLA constituencies in the north. In response to this controversy, political agreements were reached in advance of the April elections to allocate 40 extra seats to Southern Sudan as well as extra seats for Southern Kordofan and Abyei in the National Assembly³⁴.

The NEA established the method which entailed the division of the entire national population by the number of single mandate seats for the National Assembly (270) in order to establish a national dividend or quota. The population figure for each state was then divided by the dividend in order to determine its seat entitlement. The population quota, designed to achieve equal legislative representation, was repeatedly exceeded. This is in clear violation of the principle of equality of the vote³⁵.

When draft boundaries were delimited, 885 objections were filed, 400 of which were accepted and 485 rejected. In Nile State, for example, it was reported that 25 objections were submitted to the State High Committee (SHC) by three political parties, with 16 accepted³⁶. In total 58 appeals were subsequently filed before the National Supreme Court of which five were approved, two relating to National Assembly and three to State Assembly constituencies. Allegations of gerrymandering in favour of NCP were levelled by opposition political parties in a number of other states, including Khartoum, Kassala and Northern State. In Jazira State, a court decision demanded a re-conducted constituency delimitation, which raised the number of constituencies from 48 to 84³⁷. Finally, a political agreement between the two signatory parties to the CPA resulted in the decision to redo the census exercise in Southern Kordofan, and subsequently required not only a delay to the gubernatorial election but also to the state legislative elections³⁸.

³⁴ See section 'Political Background' of this report.

³⁵ ICCPR, Article 25, HRC General Comment No. 25, par 21. In Jonglei some constituencies' population size was up to 32% below the national average, whilst in others even up to 52% above the country-wide dividend.

³⁶ Nine of these objections were filed by the UDP, four by UNP and three by NCP

³⁷ For further details, see section 'Legal Issues' of this report.

³⁸ For further details, see section 'Political Background' of this report.

Legal framework for the media

Both interim constitutions³⁹, the media section of the NEA, the regulations of the National Election Commission and the code of conduct guarantee freedom of expression and provide sufficient provisions for the election period. Specific provisions for equal access, equal treatment and media campaigning rules are set in Section 66 of the NEA. In comparison with previous legislation the 2009 Press Law (PL) is certainly an improvement for the press industry: pre-print censorship is abolished and the suspension of a paper has a time limit. However the NEA and the PL refer to state security article (65.3 NEA and 24 and 26 PL) and thus trigger the application of Section 66 of the Criminal Act Law on publication of false news.

In the south there is legislative vacuum, indeed the Media Bill composed of the Right to Information (RTI) Bill, the Southern Sudan Broadcasting Council (SSBC) Bill and the Independent Media Authority (IMA) Bill, was submitted to the Parliament in September 2009 and is awaiting final approval. Currently, media regulation relies on the provisions in the ICSS and general guidelines from the Ministry of Information and Broadcasting of the GoSS. In addition to that, during the election period, the media have been regulated by the Code of Conduct for Professional Media and Circular on Campaign Activities, both issued by the NEC.

V. ELECTION ADMINISTRATION

Structure and composition of the NEC

The NEC was established on 25 November 2008 pursuant to the NEA, to run the elections. It is composed of nine commissioners, selected and 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 NLA. The Commissioners, just two of whom are full-time members, are appointed for a term of six years. By law, the NEC is financially, administratively, and technically independent and must perform its functions and duties independently, impartially and transparently without any interference.

The Southern Sudan High Committee (SSHC) in Juba and the 25 State High Committees (SHC) operate under the NEC. The NEC appoints Returning Election Officers in the whole of Southern Sudan and in each state as well as Constituency Election Officers (CEOs) in each state/geographical constituency to organise and conduct voter registration, polling and counting of ballots.

Policy-making and communication-policy

Although the NEC was established as far back as November 2008, various stakeholders expressed a broad range of concerns at the lack of preparedness for

³⁹ Article 39 of the INC guarantees the freedom of expression and the ICSS also guarantees the freedom of expression in Article 28 and emphasizes the need to defend it through Article 4.3.

elections that took place in April 2010. The NEC was reported to be understaffed, reluctant to accept external expert advice and extremely late in formally adopting important procedural and operational decisions. The complexity of the arrangements necessary to implement the election system, with eight or twelve ballots in different parts of the country, and achieve the timeframe for the elections, constituted a serious challenge for the NEC.

Overall, there was a serious lack of access to NEC rules and regulations, due to its failure to publish and communicate them to electoral stakeholders in a timely manner. This was the case with the late publication of the list of polling stations, of voter lists, and of the late decision on public funds allocated to parties. In addition, late changes to the NEC Regulations, such as the written instruction, during the aggregation process, to temporarily suspend the dual data management system and to focus on manual tabulation of polling station results, fell short of national and international standards for safeguarding the transparency of the process⁴⁰.

The NEC mechanisms for political party and candidate dialogue were incompletely established and maintained. This contributed to the repeated allegations of partiality made against the commission by opposition parties.

Voter registration and voter lists

The INC outlines the right of citizens to vote. The NEA regulates that right, with the qualifications that a person must be a Sudanese citizen, at least 18 years of age, of sound mind and registered in the Electoral Register. The NEA⁴¹ requirements for entry in the electoral register include residence in the geographical constituency for a period of at least three months before the closure of the register and possession of a personal identification document, or a certificate authenticated by the local People's Committee, or traditional authority.

Voter registration was conducted between 1 November and 7 December 2009, encompassing a total of 16,336,153 Sudanese citizens, with 11,655,513 in the northern states and 4,680,640 in Southern Sudan. This is equivalent to 79% of the estimated electorate eligible to participate in the elections by reference to the 2008 census. This aggregate figure masks a significant statistical difference between the south, where 108% of the estimated electorate was registered, and the north, where 71% of the estimated electorate was registered. In addition, over 100,000 Sudanese were registered abroad at embassies including Saudi Arabia (67,754), Libya (9,490) and the United Arab Emirates (8,484)⁴². According to the NEC statistics, the registration of women exceeded the 50% mark, helping to meet national and international commitments⁴³ on the participation of women. Domestic and

⁴⁰ A definition of best or good practice is to be found for instance in the 'Guidelines for the Legal Framework for Elections of the Organisation for Security and Cooperation in Europe' (OSCE), stating "*the legal framework should be structured so that it is readily accessible to the public, transparent, and address all the components of an electoral system necessary to ensure democratic elections*".

⁴¹ Section 22 (2)

⁴² Please refer to the annexed table of official registration figures provided by the NEC.

⁴³ INC, Art.32 (1) and 41(1); UN ICCPR, Art.3; AU Protocol to the ACHPR, Art.2. For further details, see the relevant section 'Participation of Women' of this report.

international election observation groups, as well as political parties, reported serious problems with the conduct of the registration, including use of proxy registration that was forbidden by the law.

Another concern of electoral stakeholders was the partisan behavior of the Peoples Committees⁴⁴ and the traditional authorities, responsible for providing identification certification to persons without identification cards. Many of their identifications seem to have reflected party allegiances or were available in bulk to allow large numbers of registrations in a way that could facilitate false identifications. Besides, the question of where police and the military registered to vote was challenged, because they could be used to swing results in some constituencies⁴⁵.

The establishment of the national electoral register became subject to numerous allegations of mismanagement and of multiple and proxy registration, made by political parties and civil society organisations. Some 1,300 objections were made⁴⁶, and a small number of amendments followed. In the absence of a comprehensive country-wide auditing exercise and the timely publication of the final voter lists, the inclusiveness and accuracy of the voter lists used during the polling days were challenged by political parties and civil society. According to the EU EOM's observation, nearly 10% of voters were refused the vote because they were not found on the voter lists and were therefore disenfranchised.

Registration of Internally Displaced Persons (IDPs) and Refugees

The NEA did not establish any special arrangements for voter registration or voting by IDPs despite the presence of nearly five million of them in the country and Sudan's commitment to international standards regarding universal suffrage⁴⁷. In the absence of such special arrangements, there was a risk of disenfranchisement of IDPs. Similar concerns related to the 420,000 Sudanese who are currently refugees in neighbouring countries. While the NEA provides for registration outside the country, it does not address the voting rights for refugees who are not in possession of a valid passport and a valid resident visa in the host country.

Voter lists

The procedure for the registration of voters began with manual recording of personal information in a registration book. Copies of the pages of these registration books were sent to a central data-centre, where the data was entered in a database and the final voter lists to be used on election day, would be a printed out from that database. Printouts of the preliminary voter lists were to be displayed during the exhibition and objections phase, from 10 December 2009 to 10 January 2010, but these preliminary lists were not computerised in some states by 10 December, due to a lack of IT equipment and the brevity of the time frame. As a result, voters could only

⁴⁴ Peoples Committees represent local administration in the North. Their members were often present outside the registration centres and polling stations to provide identification proof to voters lacking photo ID cards.

⁴⁵ Indeed police and military personnel had the opportunity to register either where they were stationed or at their home pursuant to a NEC circular of 24 October 2009.

⁴⁶ NEC press conference on 10 April.

⁴⁷ UN Guiding Principles on Internal Displacement, Principle 4.

file objections based on the actual manual registration books. In addition, the lack of data for identifying citizens on the computerised voter register did not allow for any meaningful cross checking of double or multiple registrations. Despite a provision in the National Electoral Act that the electoral register must be finalised three months before elections take place, the Final Voter List (FVL) was not prepared and published as so stipulated. There was, consequently, a failure to engage in a proper audit of the voters register. Nevertheless, according to the NEC, some 1,300 objections were entered and a small number of amendments were made.

Subsequently, as became very apparent during election days, the national Electoral Register and the subsequent voter list established on state level for each and every polling station were not comprehensive, accurate and all-inclusive⁴⁸.

Preparation for polling

The number of polling centers and polling stations set up for these elections remained uncertain until after publication of the preliminary results. Despite the technical advice provided to the NEC, referring to the good practice of allocating some 600 eligible registered voters to one polling station, and despite initial estimates of some 21,200 polling stations to be established across the country⁴⁹, the last official figure provided by the NEC on 10 April, one day before the beginning of polling, referred to 16,787 polling stations⁵⁰.

Recalling that 15,828 voter registration centers were used to facilitate the enrolment of the electorate, the numbers of polling centers (10,230) and of polling stations (16,787) clearly do not match those locations used for voter registration. This posed a considerable challenge to provide effective and accurate information to the electorate as to the specific location at which they would cast their ballots.

The reduced number of polling stations resulted in an average number of 1,189 voters assigned to one polling station in the north, and 977 voters per polling station in the south, figures which deviated from the internationally recognized standard best practice of 700 voters per polling station⁵¹.

Pursuant to United Nations (UN) Security Council Resolution 1590 (2005), the UN was mandated to support and guide the parties to the CPA in the conduct of the elections. UNMIS collaborated with UNDP in offering technical support for electoral

⁴⁸ On the numerous implications of such insufficiencies, be referred to the sections 'Polling' and 'Counting and Results' in this report.

⁴⁹ The number of polling stations envisioned by the NEC gradually decreased in the weeks prior to the actual polling period, from 17,914 (09.03.2010), to 16,525 (20.03.2010) to 16,502 (23.03.2010) and then increased again to 16,775 (04.04.2010). This latter figure was then used by UNMIS, UNAMID and UNDP to plan for the operation of delivery support to the NEC, providing for trucks and airlifts of election material to the SHC and polling stations in the most remote, hardly accessible areas.

⁵⁰ Amongst which 10,751 were established in the north and 6,036 in the South. All figures referred to were provided by the NEC over the weeks directly to EU EOM.

⁵¹ An example of a station with a high number in the north is that of Northern Kordofan which had an average of 1,189.39 voters assigned to one polling station in that state, while in the south an average of up to 977.46 voters was assigned per polling station in Lakes State.

operations, infrastructure and logistics, and voter information and civic education⁵². While the NEC and the GNU retained the sovereign authority in all policy matters related to this election, much of the preparations were conducted by UNMIS.

UNMIS led the United Nations electoral assistance programme in Sudan, which consisted of provisions for policy advice and technical support to the NEC. In this respect UNMIS co-chaired two electoral committees with the NEC, one on political aspects and one on technical aspects of the election. In addition, UNAMID played a supporting role to UNMIS, supporting the electoral process through logistical support, police training, and public information.

The international community's support to the electoral process was mainly channelled through the UNDP "Support to Elections and Democratic Processes Project", which provided technical assistance to the NEC and also led the coordination of international donor assistance. UNDP support to elections was channelled through a "basket fund" of USD 83.5 million. The EU, the biggest donor, is contributing 12.5 million Euros to the basket fund.

Finally, USAID provided some USD 95 million to the support of the 2010 election, but also to the 2011 referenda and public consultation processes. Their funds were channelled through implementing partners, such as the International Foundation for Electoral Systems (IFES), which had received USD 25 million to support the NEC and procure election materials, in particular the election kits. The National Democratic Institute (NDI) received funds to support civic education and voter information campaigns as well as domestic observation, implemented by national and local civil society organisations. The International Republican Institute (IRI) supported, in political party training, focusing on political parties' polling observers⁵³. Others, like the Friedrich Ebert Stiftung, also provided support to civil society organisations for civic education and voter information, and domestic monitoring, while International IDEA offered political party training in Khartoum, funded by the UNDP.

The complexity of ballot papers

Ballot papers were delivered to Southern Sudan in packs of 700 and to the north in 900, based on original figures of voters anticipated per polling station. The NEC later determined that the numbers of voters per polling station would require packs of 1,000 ballot papers in the south and 1,200 in the north, so all the ballot papers had to be repacked at state and constituency levels, work which continued almost until polling began. In addition to delays in the delivery of ballot papers, misprinted ballot papers were spotted in a few places, but most misprints were not noticed by NEC staff until after the polls had opened. The ballot paper for the election of the President of the Republic of Sudan was printed only in Arabic, which posed a problem for the vast numbers of voters who cannot read Arabic, particularly in the south. NEC undertook to display a notice at polling stations which would contain a copy of this ballot paper

⁵² For some detailed elaboration on civic education and voter information, please see the sections Civic Education, Voter Information and Civil Society Involvement ' and 'Media – NEC Civic Education' of this report.

⁵³ In the north, IRI facilitated such training opportunities through the PPAC.

in English as well, but this was little in evidence during the elections. It emerged that the presidential ballot papers had been printed in Sudan, a process not observed by party/candidate agents or observers, which undermined some trust in the integrity of this ballot paper.

The highly complex mixed electoral system required 1,268 different ballots. The artwork for these ballots was finalized only at a very late stage. In consequence, the lack of effective quality-checks not only caused the late detection of misprints, as was the case for the national legislative geographic constituency ballots in the White Nile State⁵⁴, but it also caused numerous electoral irregularities due to the late discovery of missing ballots, insufficient number of ballots delivered and wrong ballots identified only after opening of polling stations⁵⁵. Besides, numerous polling stations across the country suffered from insufficient deliveries of election materials, such as the official complaints forms, form No.7 and other worksheets, report forms, booklets and manuals issued by the NEC. Some polling stations also lacked sufficient equipment, such as tables, chairs, polling booths, ballot boxes etc to allow for the orderly layout of polling stations and assure the secrecy of the vote⁵⁶.

Consequently, in 33 constituencies representing 20% of voters, polling had to be cancelled and re-runs held on 5 and 6 June.

VI. REGISTRATION OF PARTIES AND CANDIDATES

Political parties

Long established political parties protested the formalization of procedures by the Political Party Act as they perceived it as a control instrument. As a compromise, such political parties were asked to provide only basic documents to conform to the formal registration procedures. Additionally 52 political parties registered with PPAC, bringing the total number of registered political parties to 84 ahead of the 2010 election.

To date the PPAC has mainly focused on registration and training of political parties on content of the PPA and on electoral procedures. Registration procedures and timelines were clear and the general provisions did not raise issues of concern; however, powers of access to search political party premises seem out of proportion. Several political parties have shared that they do not consider the PPAC neutral but their attempts to create a Code of Conduct for political parties in 2009 failed mainly

⁵⁴ On the eve of 10 April, the EU EOM observers in Khartoum reported from the printing house that the ballot papers for two national assembly geographical constituencies in White Nile state, which were initially printed in the UK, were found to be misprinted, namely incorporating incorrect candidates' symbols. The ballot papers for one constituency were reported to have never been delivered. Subsequently, the total number of ballot papers to be re-printed in Khartoum and to be re-distributed to the White Nile state, where the opening of numerous polling stations was (subsequently) delayed on 11 April or were even opened only on 12 April, was around 800,000.

⁵⁵ For further elaboration on the impacts of such operational and logistical obstacles, please see sections 'Polling' and 'Counting and Results'.

⁵⁶ Direct observation findings regarding the insufficient availability of non-sensitive and sensitive election material during polling and counting are provided under the section 'Polling' of this report.

due to that lack of trust. Purportedly in an attempt to assess the impact of training⁵⁷, the PPAC fielded observer teams during the 2010 elections. Such observation activities could confuse roles between independent observer groups and a partisan, regulatory body.

The existence of the PPAC meant that NEC did not consult and engage with the main stakeholders of the elections, political parties, in particular in a situation where many calls for building trust and confidence into the process were made.

Candidate nomination and registration

The candidate nomination period of 12-22 January 2010 was formally announced by NEC on 28 December 2009. The decision to hold all elections at the same time resulted in 72 political parties presenting as many as 16,290 registered candidates. In addition to this 1,385 independent candidates were registered. For the executive levels 12 candidates registered for the national presidential race, two candidates for the presidential race in Southern Sudan and another 183 entered the competition for the 25 governor positions.

The requirement for a number⁵⁸ of supporters' signatures from different areas caused appeals to the Supreme Court at the stage of nominations to the office of President of the Republic. Two presidential candidates, Fatima Abdel Mahmood and Munir Sheikh Al-Din were refused by the NEC as they had not provided the required number of supporters' signatures from states in the south. On appeal to the Supreme Court they were both allowed on the ballot. Another candidate, Mohamed Elhassan Al-Sufi, was refused by the NEC for similar reasons but failed on appeal to the Supreme Court and later to the Constitutional Court. There were also challenges to the candidacy of presidents Al-Bashir and Kiir. A case to the Constitutional Court made the point that the nomination requirements for the office of President were too onerous but this case was dismissed⁵⁹.

For the legislative elections, 4,553 candidates competed for the 450 National Assembly seats, which were proportionately twice as many as the 824 candidates who signed up for race of the 170 seats of the SSLA. The largest number of candidates - 10,727- registered for the 1,242 seats in the 25 state assemblies. All election candidates from all levels were required to confirm that they would respect, abide by and enforce the CPA⁶⁰.

Smaller parties faced obstructions from other parties or state authorities, which prevented them from filing registrations. This was never legally challenged⁶¹, in a serious breach of international standards and Sudanese constitutional rights. The

⁵⁷ Interview with the PPAC legal adviser and the 7 April press statement that 'The Commission of the Political Parties' Affairs Council announced that it will take part in the election observation process by deploying 200 observers throughout Sudan'.

⁵⁸ FN Section 42 (1) of NEA requires 15,000 seconders from at least 18 states, with no less than 200 from each state, for candidates for the presidency of the Republic.

⁵⁹ Mamoud Shaarani v Al Bashir (Petition No CP/CC/41/2010).

⁶⁰ Art 218 of INC and Section 103 of NEA.

⁶¹ Three potential Southern Sudan Democratic Forum candidates were arrested in Raja and held back preventing them from filing their official registration papers.

internal candidate nomination processes reflected the nascent state of internal political party democracy and challenges associated with choosing candidates on criteria such as party loyalty and merits, local leadership roles as well as popularity. While some parties delegated the decision to state level and constituency committees, most of them were faced with difficult choices, and final leadership decisions encouraged non-selected individuals to run as independents. These difficulties were particularly evident for the selection of NCP and SPLM governor candidates. In northern Sudan, participation of independents did not result in such tense races as in Southern Sudan.

Late withdrawal of candidates

Although a large number of political parties fielded candidates and maintained that they would participate in the elections, earlier threats of boycotts among northern opposition parties resurfaced in early March. Juba Alliance/National Consensus parties submitted a memorandum to the NEC on 4 March and, as they felt that their concerns were largely disregarded in the NEC's reply, several presidential candidates went ahead to submit a memorandum to the Presidency demanding rectification of irregularities and an audit of the NEC. At this point, two smaller opposition parties, the Sudanese Communist Party as well as the UMMA Reform and Renewal, decided to withdraw from the elections. In parallel the two CPA parties failed to reach agreement on referendum plans and on the concerns raised in the memorandum from the northern presidential candidates. Tensions reached a point where SPLM withdrew its national presidential candidate and from the elections in Darfur. A few days later, SPLM's northern sector decided to withdraw from all elections in the north. Following internal consultations, the UMMA National Party followed suit.

The withdrawals reflected a combination of growing frustration, political bargaining, attempts to de-legitimize the electoral process, and lack of preparedness and means to engage effectively in competition with a dominant long-term incumbent. While opposition parties in the south repeatedly expressed concerns over restrictions to their campaign activities, none of them withdrew from the elections.

The NEA stipulates that, to be effective, withdrawals should happen 45 days before the first day of polling⁶². However, NEC's decision setting an earlier date of 12 February was not well received among political parties.

The withdrawn candidates remained on the ballots and the last-minute discussions over participation or withdrawal confused voters and left them with no real choice.

⁶² Section 49, for executive elections; Section 61, 30 days for assembly elections. In the 4 March 2010 memo submitted by the Juba Consensus forces to NEC, they objected NEC's interpretation of NEA art. 49 and 61.

VII. ELECTION CAMPAIGN

Overview of the campaign

The official campaign period was eight weeks from 13 February to 9 April 2010. The presidential elections dominated since the beginning, followed by the gubernatorial campaigning and the more isolated events by high profile national politicians visiting their constituencies. The campaign environment reflected that many political parties had faced constraints in reaching out to their traditional, as well as potential new constituencies, while the two CPA signatories benefited greatly from their role as incumbents and dominant political actors. With 72 political parties registered there was an expectation of political diversity, which declined as the unlevel playing field in campaigning became clear and was further reduced when established parties and candidates withdrew from the elections in the north.

Despite fears of election related violence, the campaign environment was less tense and largely reflected a restrained approach to avoid confrontations. NCP and SPLM had large security services at their disposal. EU observers noticed examples of harassment and intimidation during the campaign period. There were incidents of violence and harassment of political party members, often by security sector agents, in Sennar, Northern Bahr el Ghazal, Upper Nile, Central and Western Equatoria states⁶³. A clear pattern of obstruction to opposition and independent candidates' campaign activities emerged in the South, despite the fact that several political parties signed up to a Code of Conduct facilitated by the African Union in early March. In northern Sudan, SPLM claims that one of the reasons that it decided to withdraw its national presidential candidate from the race, was the intimidation and harassment suffered by its members as well as possible violence in the event of a second round⁶⁴. The legal limitations referred to in the NEC circular on campaign activities did not in practice hinder access by parties to public spaces and rallies.

The dominating campaign themes focused on delivery of basic services, livelihoods and income opportunities as well as maintaining peace in Sudan. In Southern Sudan the referendum was also frequently raised. The sensitive issue of the International Criminal Court indictments rarely appeared in the northern campaigns. Apart from the presidential candidates, very few others organised larger rallies. Instead, most campaign activities concentrated on smaller-scale events and speeches, singing and dancing, placing electoral posters on buildings and in public spaces, and door-to-door activities.

Campaign financing

Most political parties said that they financed their campaign activities through small-scale contributions from members and supporters or from their own funds. The NEA indication of public financing for political parties did not fully materialise. The

⁶³ This includes harassment of independent candidates as well as alleged obstruction of the campaign activities by Southern opposition parties such as UDSF and SPLM-DC.

⁶⁴ SPLM and northern opposition party interviews and Sudan Tribune 13 April article 'SPLM boycott preserves social peace in Sudan – Arman' <http://www.sudantribune.com/spip.php?article34741>

GoSS, responding to pressure, allocated partial assistance to some southern political parties half way through the campaign. The GoSS agreed to allocate 5 million SDG for six southern political parties. However, only 3 million SDG were transferred to the account of one of the political party leaders who was then tasked with distributing the money⁶⁵. The lack of transparency, the criteria applied for the allocation of funds, as well as their late distribution undermined the objectives of public financing of political parties.

The decision on campaign expenditure ceilings by the NEC on 27 March came only two weeks prior to the first day of polling⁶⁶, and presented such high ceilings that it was close to meaningless. The fact that NEC has no capacity to verify campaign financing and that the PPAC does not look further into political party financing than acknowledging receipt of an annual audit statement, means that in practice there is neither audit nor sanction for the spending by the two dominant parties.

Arrests and detentions

The active presence of security agents during campaign, polling, counting and aggregations days was intimidating. The harassment and arbitrary arrests of political party agents and activities clearly constitute breaches to key international standards and Sudanese constitutional rights⁶⁷.

VIII. MEDIA

Media environment

The media industry faces difficulties with poor wages⁶⁸, limited journalistic skills and training⁶⁹ and lack of equipment while the narrow advertising market limits media development. The Journalist Union (JU) has the power to grant the status of Chief Editor, issues press cards, and defends the journalists but does not enjoy a good name amongst journalists because of its ties with the government.. The Union of Journalists of Southern Sudan operates in the south of the country but has a very limited role.

The chief editor is legally responsible⁷⁰ for breaches by any journalists who belong to the newspaper. There is a special media prosecutor for the Press and Publications Office. The most recent cases were against the acting chief editor of the newspaper *Ajras Al Hourya*, Faiyez Elsleek, and the journalist Alhaj Warrag for the

⁶⁵ EU observers interviews with Southern Sudan political party leaders April 2010.

⁶⁶ Political parties' expenditure was fixed at 15 million SDG, presidential candidate expenditure at 17 million SDG, Southern Sudan president at 7 million SDG, governors at 800,000 SDG, geographical constituencies' candidates at 700,000 SDG, and 50,000 SDG for party and women's lists.

⁶⁷ EU observers report from states such as Khartoum, Northern Bahr el Ghazal, Blue Nile, Kassala, Gedaref, Sennar, Unity, Lakes, Central Equatoria, Western Equatoria and Upper Nile.

⁶⁸ The average wage of a journalist is 700 SDG, (350 to 400 SDG) for a beginner and Chief Editor can get up to 3,000 SDG.

⁶⁹ Often the media provide to their journalists training such as *Blue Nile TV* and the paper *Al Sahafa*.

⁷⁰ Section 24, Press and Publications Law.

offence of court “spreading false news”. The accusations were lodged by the National Intelligence Security Services and the cases are still pending.

In Southern Sudan there is no press law, nor is there any criminalisation. Nevertheless freedom of the press is violated by the authorities and SPLM through harassment and intimidation. At regional level there is strong control from the local governments over journalists on the local state-owned radio stations. In Unity State journalists have been forbidden from freely attending and covering public rallies. In Western Equatoria they were threatened and not allowed to freely report and inform on election issues.

The EU EOM observed indirect financial and logistical constraints, such as lack of access to the advertising market⁷¹ and to printing facilities, blocking imported paper in customs, and difficulties with distribution. For newspapers which supply their own services⁷², advertising operations, distribution network or printing facilities, the problem they face is high taxation⁷³ on paper, ink and revenues⁷⁴.

There is close control over state owned TV channels in Sudan. In the north the Sudanese Radio Television Corporation (SRTC) including *Sudan TV* covers most of the urban audience. The *South Sudanese TV* (SSTV) broadcasts in Southern Sudan and is controlled by the GoSS. A TV network composed of 18⁷⁵ state owned TV stations, owned by both governments, covers urban areas within the individual states. Due to the lack of TV equipment this medium has a limited impact in Southern Sudan.

The law does not allow private TV channels, but the lack of broadcasting laws leaves room for negotiations. This is the case for *Blue Nile TV* established in 2004 through a contract between *Arab Radio* of the United Arab Emirates and *SRTV*.

The Sudanese radio environment has seen rapid growth since the frequencies were opened in 2005. Radio is the most popular and widespread medium throughout the country with local and regional channels owned by states and by government media corporations comprising around 62% such as *Omdurman* (SRTC), *Southern Sudan Radio* (SSR), controlled by the GoSS, and 25 FM or AM state-owned stations that have a limited coverage. The private sector runs countrywide, regional and local radio stations broadcasting a variety of programmes with social, religious or community subjects in different languages. The highest radio concentration is in Juba and in Khartoum while other states like Jonglei⁷⁶ hardly have any. The states in Southern Sudan receive significant international assistance, such as journalist training or building the local communities’ radio networks⁷⁷. *Radio Miraya*⁷⁸, funded by the

⁷¹ The newspapers *Ajras Al Hurra*, *Ray Al Shaab*, *Al Ayam* and *Al Sahafa* were totally banned from advertising revenues.

⁷² This is the case of the newspapers *Al Sudani* and *Al Sahafa* is planning to do the same in one month.

⁷³ The press industry faces income taxation that corresponds to commercial activities. law on taxation Chapter III article 9,1,2,3.

⁷⁴ In 2009 the paper *Al Sahafa* negotiated the incomes from 600,000 SDG to 300,000 SDG, while in 2008 they paid 30,000 SDG

⁷⁵ The figure varies from one source to another but the EU-EOM survey of the media landscape found 18 TV channels owned by states.

⁷⁶ Opened their first radio services on 3 April 2010

⁷⁷ The *Sudan Catholic Radio Network*, composed by seven radio stations in the south is one example.

⁷⁸ A Swiss Foundation Hironnelle initiative

United Nations, is the best equipped radio station operating freely and, since March 2010, covers the whole country.

Most Sudanese newspapers are published in Khartoum, 47 newspapers in Arabic and five in English. Some of these have a clear political line and some others are considered independent. In the north the papers *Al-Ayyam*⁷⁹, *Al-Sahafa*⁸⁰ and *Al-Sudani* enjoy a high readership and are considered independent, as are *The Citizen* and *Juba Post* in the South. Nevertheless even these newspapers are regulated and practice self-censorship out of fear of government harassment. In Southern Sudan print media publishes in English and suffers from a lack of infrastructures, such as printing houses or proper roads, forcing them to print in Khartoum, in Uganda or in Kenya, causing serious delays in delivering the papers to the readers. In Sudan newspaper readership is estimated from low to medium⁸¹.

The development of information technology has an important impact for a growing social media. The importance of the internet is understood by all. The government monitors internet communications; the political parties used the mobile network in their communication strategy to reach voters during the electoral campaign. The users widely reported on elections days, posting videos on YouTube.

With the growing radio network and the high demand for new TV channels, the absence of any broadcast media legislation⁸² does not allow the development of audiovisual media. The Media Law establishes the National Press Council (NPC) as the print media regulatory authority, with high powers⁸³. The internet is a very popular medium, over which the government exercises control using the 2007 Cyber Crime Act. There is no special tax status for media organisations and the taxation system treats them as commercial companies.

The NEC and the media

The NEC Joint Media Mechanism (JMM) was established to provide free and equal air time to presidential and gubernatorial candidates (110 minutes in total) and 30 minutes for each of the 72 political parties on state owned media outlets. The political parties were responsible for producing their own video and or audio clips in whatever format they wished, but could not be aired live. Despite some political obstructions⁸⁴, equal access was provided to all political contestants⁸⁵. All participating presidential candidates received equal time with the exception of three

⁷⁹ 20,000 copies circulation

⁸⁰ It has 29,000 copies circulation emerged in 2005 from three newspapers, *Al-Horiya*, *Al-Sahafi Al-Duwali* and *Al-Sahafa*.

⁸¹ Three main reasons: first, one copy cost 1 SDG will be read by at least four to five people; second, in the street the paper vendor practises a rental fees that allows a reader to read the front page and an article costing between 10 to 15 piastres; and third, all the main newspapers have an website allowing urban users to read on line.

⁸² A Broadcast Law has been drafted and no action has been taken since then.

⁸³ The Press Council is lead by Ali Shommo Chief of the PC, retired Army Colonel and the General Secretary Elobied Ahmed Almoranh.

⁸⁴ The NEC Media Mechanism Committee was challenged by the opposition parties requesting the cancellation of the media mechanism and the formation of a new media council that includes all 72 political parties.

⁸⁵ The SPLM withdraw their participation in the equal access program alleging that the NEC edited their initial video production while the NEC alleged that Yassir Saeed Arman never provided his recording.

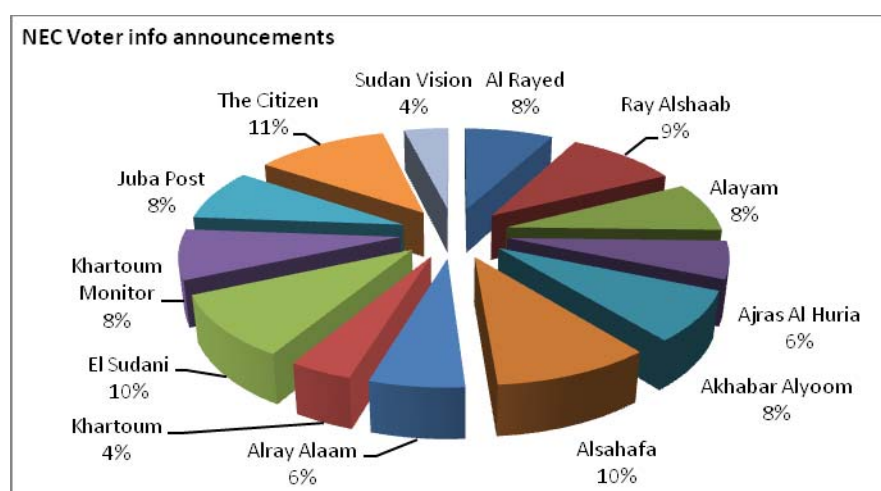
candidates who failed to provide a recording to *Sudan TV*. Even if the broadcasting was free of charge, the minor political parties did not get coverage as they were not able to produce their own material because of lack of funds. Also in many states the publicly owned media required a participation fee⁸⁶ which is a clear breach of the NEC rules and many parties could not afford it. The government's failure to provide funds for electoral campaign purposes and the parties' own unpreparedness affected their media participation.

In the south the JMM lacked organisation and support from the NEC in Khartoum; it started late and lasted only three weeks. Not all political parties provided their recorded programmes to the TV stations; only the SPLM, SPLM-DC and the PCP were able to record their contributions and they were broadcasted only once.

NEC voter information and civic education

The NEC voter information was well covered by the observed media panel, TV, printed press, local and national radios, while in the countryside the voter information was available under traditional means of communication, storytellers, songs, drama, theatre and murals by local artists. The local radios were very active for civic education purposes and many good initiatives were taken, such as locally produced programs focusing on what an election is and how to vote. Many languages were used to disseminate the civic education material with cascade training.

In total the TV coverage for civic education received 19%, the equal access program 24%, the evening news 25% while the remaining 32% covered equal treatment, talk shows, political ads, special election programmes and press reviews.



Blue Nile TV disseminated the most NEC civic education with 32% while the state owned *Sudan TV* covered the share of 11%, *Alshrooq* 14.5% and local *Khartoum TV* 6%. The EU EOM observed subliminal NCP messages on NEC civic education

⁸⁶ The TV stations requested for production purposes between 50 to 250 SDG.

posters, which showed the three NCP symbols in the background of the main visual key message. Another interesting observation on *Sudan TV*, at the end of each NEC civic education message, a voice-over stated that voters should vote for “*the strongest and most honest*” candidate, which was the slogan in one of the various posters of the candidate President Al-Bashir.

Media monitoring results

While the public broadcasters provided equal access for political contestants throughout the election campaign, the broader media campaign was unbalanced. On prime time evening news in public service electronic media, the coverage was disproportionate. On *Omdurman Radio* the NCP was afforded 47%, SPLM 12%, while all the other parties were afforded in total 41% of airtime. The state capital radios provided 82% for the NCP, the SPLM received 4% and all other parties 14% of total coverage of the news bulletin.

The printed media extensively covered the elections periods but apart from *Al Ayam* and *Ajras Al Hurriya* the coverage was very partisan. In the total coverage of the printed press both presidential candidates received most space with 56% for Omar Al-Bashir, 16% for Yasser Arman, leaving 28% for all the other candidates. *South Sudanese TV* (SSTV) devoted more than 90% of its election coverage to the ruling party SPLM, while *South Sudan Radio* (SSR) gave the SPLM national presidency candidate Yasser Arman 73 % of the coverage against 13 % to the incumbent candidate Omar Al-Bashir. The coverage was more balanced in the private radio stations, 48 % to Omar Al-Bashir and 42 % to Yasser Arman. In the GoSS presidential race state owned and private radio devoted more coverage to the ruling party candidate Salva Kiir, respectively 84% and 92%.

Private radio stations provided coverage to other parties but with most airtime allocated to the main party. Print media were more balanced, also covering SPLM-DC and NCP campaigns. Moreover, these two parties along with SPLM are the only ones that used paid advertisement in the print media. The candidate Al-Bashir used static and mobiles displays extensively in Khartoum. The TV broadcaster *Al-Jazeera* organised two political shows with the NCP, UMMA, DUP-Or, SPLM, PCP and SCP before the elections and one after.

Except SPLM and NCP, the lack of communication strategy and funds forced smaller parties to conduct limited media campaigns. The ceiling established for campaign expenditures 18 days before polling did not act as a limitation on the use of media by any political parties.

Moratorium and the tone

Four breaches were observed of the silent period and four additional breaches during the polling days. *Al Rayed* newspaper published during four consecutive days (10 to 13 April) header advertisements in all the pages in favour of Omar Al-Bashir.

In the south, one serious case of hate speech occurred in Western Equatoria⁸⁷ that led to the arrest of polling staff by the police and to threats against EU EOM observers who had to be relocated.

The tone of the campaign deteriorated with the very aggressive speeches from Al-Bashir against international observers. The landmark was the publication on *Al Ray Shaab* newspaper on 4 and 7 April editions on which NCP⁸⁸ and PCP⁸⁹ leaders exchanged hate speech. From that date on the tone was less aggressive, during elections days it was milder and despite strong critical reporting after the publication of the results, the tone remained smooth.

IX. PARTICIPATION OF WOMEN

Equality before the law, without discrimination as to sex, is enshrined in Article 31 of the INC in Sudan. The reality, however, is that female participation in public life has long been limited by culture and custom in the society of Sudan. Women occupy only 2.1% and 2.9% of decision-making positions in national and state ministries respectively⁹⁰. While the state has not ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), commitments to equality under the CPA and related documents offer, positively, a transformative potential for gender in Sudan, a potential which has begun to be realised during these elections.

The voter registration process resulted in the registration of large numbers of female voters, with women comprising more than 50% of registered voters in the fifteen northern states, giving a figure of 51% of the entire electorate as female. In Southern Sudan 54% of the registered electorate was female.

Women as candidates

The quota of 25% of women for all legislative seats means that, at a minimum, 112 women are now members of the 450 strong NLA; 43 are members of the 170 strong SSLA; and there are 12 women's seats in each State Assembly with 48 seats⁹¹. Women, however, were few among the candidates in party lists and for geographical constituencies, comprising around 4% of such candidates in the south and 7% in the

⁸⁷ The author, the State Governor made a strong statement on the local state owned radio the 10th and 11th heavily accusing the NEC for the problems on the electoral machine.

⁸⁸ El Fateh Ezzeldan stated that: "we are going to eliminate all of them (leaders of the PCP), we will chopped the head of Hassan Turabi and all party leaders, the members of the Popular Congress Party will be arrested, put into jail as we did before and we will close the newspaper"

⁸⁹ Ibrahim Sanussi (candidate and one of the leaders of the PCP) stating on El Ray Shaab 7th April edition "the head of Turabi is like el Bashir, if you kill him, we will kill the president. If you kill any of our party members, we will kill one of yours".

⁹⁰ Figures courtesy Ahfad University for Women

⁹¹ The Assemblies of three states have a larger number of seats

orth⁹². There was one female candidate for the national presidency and prominent female candidates in some gubernatorial contests⁹³.

Many aspirant female candidates, in Southern Sudan in particular, failed the literacy tests to permit nomination⁹⁴, with one such case reaching the Supreme Court of Southern Sudan.

Women in election administration

There are in total 125 members of the SHC in all 25 states. Of these, the total number of women is 16, representing just 12.8%. This figure can further be broken down to reveal just five female SHC members in the north of Sudan: in Khartoum, White Nile, Northern Kordofan, Blue Nile and Red Sea; while nine of the ten SHCs in the south have one woman, with Warrap having two. There is also one female member of the SSHC. The higher figures in the south can be attributed to the specific provision in the ICSS on female participation. The EU EOM observed female percentage of polling staff was 29% in the north and 14% in the south.

X. PARTICIPATION OF CIVIL SOCIETY

Civic education, voter information and civil society involvement

An attribute of citizenship identified in the INC is the right to vote. In order, however, for citizens to be able to exercise this right in a meaningful way civic education is required, as well as information about the specifics of the electoral process⁹⁵. Civil society organisations were entitled and mandated for the first time in Sudan's historic track towards active citizen participation in public affairs⁹⁶. There was extensive support available for voter information which was implemented by a range of CSOs⁹⁷ north and south.

Domestic Election Observation

A significant opportunity was offered to civil society actors to engage in the process through electoral observation by 20,278 domestic observers who represented 232 civil society organisations. In the south civil society is of recent birth, and has limited strength and little space within which to operate, while in both north and south a heavy regulatory framework has inhibited growth in this sector.

⁹² The quota system is only open to women who can secure selection onto a party list. There is no opportunity for an independent candidate to compete for a seat within the women list.

⁹³ Five in the south and four in the north.

⁹⁴ See under "Complaints and appeals pre-election period"

⁹⁵ UNHRC Committee Gen. Comment No. 25, para. 11: "Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community."

⁹⁶ ICCPR, Art. 25(1)

⁹⁷ Those in the north were FES, IDCS, MUBADIROON, SAHDCG & WIG; those in the south were MS SUDAN, SSF, SCC, SKILLS & HARD

Domestic observers were found in 65% of polling stations observed during polling. There were some incidents of harassment of observers in Southern Sudan by security and intelligence officials. For instance all domestic observers in the constituency of Kator South in Juba were removed from polling stations on 13 April, arrested, detained and released, while there were similar incidents in Western Bahr el Ghazel, Western Equatoria and in Unity.

The south based Sudanese Network for Democratic Elections (SuNDE) and the northern Sudanese Group for Democracy and Elections (SuGDE)⁹⁸ issued their common observation findings on 24 April simultaneously in Khartoum and in Juba, declaring that there were significant flaws in the election process at polling stations and concluded that the electoral process did not meet citizen's expectations and failed to fully embrace democratic principles.

The second biggest domestic election observation network in Southern Sudan, the Sudan Domestic Election Monitoring and Observation Programme (SUDEMOP), issued a press release on 25 April, recalling the severe delay in disclosing preliminary election results.

On 18 April the north focused Consortium of the Civil Society Organizations Working on Elections (TAMAM) issued a report assessing mainly the pre-polling phase of the electoral process and suggesting a list of recommendations to enhance future election management bodies and electoral processes.

International Election Observation

A number of international election observation bodies were present in Sudan and from a number of countries, China, Russia, Japan, the USA, Brazil, and Malaysia.

Following the preliminary statement issued by the EU EOM Chief Observer on 17 April, The Carter Center (TCC) Election Observation Mission, that the elections in Sudan "fell short of international electoral standards" and listed some of the major irregularities, such as the insufficient quality of and sometimes absence of voter lists, the misprinting, missing and misallocations of ballot papers, but also the various cases of intimidation and harassments.

Regional international governmental organisations also issued their preliminary findings during polling days, namely the League of Arab States (LAS), Intergovernmental Authority in Development (IGAD) and the African Union (AU),

The AU also incorporated 12 recommendations, including the suggestion "*to manage and administer future elections in such manner to command confidence from all parties*". The Sudan Troika Joint Statement of the Sudan Elections, issued by the Norwegian and British Embassy together with the US State Department, stated that the voting had been reasonably peaceful with significant participation, but shared serious concerns about weak preparations and reported irregularities.

⁹⁸ The only country-wide alliance of civil society organisations conducting election observation who deployed over 2,000 observers in all 25 states.

The assessment issued by the Russian special envoy to Sudan, stated that technical flaws only occurred at the polls but did not impact the integrity of the process as a whole and concluded that the elections in Sudan should be judged by African and not by European standards.

Finally, the Report of the Japanese Election Observation Team encourages the NEC to address the complaints and believes that is necessary to verify if they could affect the credibility of the elections.

XI. COMPLAINTS AND APPEALS

The highest court in Sudan is the Constitutional Court in Khartoum which has wide powers to review and strike down laws. Under it there are separate structures in north and south of Supreme Court, Courts of Appeal, General Courts and local courts of three levels. Electoral appeal jurisdiction is focused in the National Supreme Court in Khartoum.

The independence of the judiciary in Sudan in dealing with election cases, which are so closely related to the political process, was doubted by the great majority of the lawyers and political party representatives, who shared with the EU EOM their experience of the complaints and appeals processes. This perception contributed to the very low number of persons bringing such cases.

Pre-election period

For the earlier stages of the electoral process the NEA provided for judicially chaired committees to look into voter registration, and appeals into the court system in relation to constituency boundaries and nomination of candidates. The Chief Justice in Khartoum and the President of the Supreme Court in Juba designated competent judges and courts for those stages. According to figures supplied by the judiciary in Khartoum, at these stages there were 27 appeals about candidacy for executive office⁹⁹ of which three were successful. There were 58 appeals on boundary demarcation of which three were successful and altogether 8,933 cases across the country when voter registration objections are included. The Supreme Court of Southern Sudan accepted jurisdiction in an appeal from the competent court relating to candidates who had been rejected by that court on the grounds of illiteracy.

Objections on Polling Days

The General Election Rules provided for a complaint procedure for agents of parties and candidates at polling stations using a Form 7. There were no forms provided for voters¹⁰⁰. This form required the polling station chief to seek a resolution and if one was not found the form went onwards to the polling centre. EU EOM observers found that these forms were not available at a substantial number of polling

⁹⁹ See above under Registration of Parties and Candidates for some of these cases.

¹⁰⁰ One party indicated that 8000 Form 7 had been used, but the NEC itself had no figure

stations during the polling days. There was no specific provision for follow up on these forms so they were treated by the NEC as if they were general complaints and the complainant might later be directed by the NEC to the competent court or the Supreme Court. A distinct problem with the forms was that they identified state and constituency but not polling station so later investigation would be very difficult. In reality therefore there was no effective system for logging or following up on objections arising at polling stations.

Electoral Offences

During the election days there was an extensive use in some states, particularly in the south, of the wide criminal jurisdiction in Chapter 10 of the NEA. Criminal complaints of electoral offences were brought to the police and then to the special prosecutors designated by the Minister for Justice¹⁰¹ and cases sent to the competent courts which had to deal with the cases within 48 hours. Designated judges and prosecutors were trained to deal with these cases during the period around polling, but police, prosecutors and political stakeholders at state level applied that jurisdiction inconsistently across the country.

Some prosecutors and judges took the view that after polling day criminal complaints about earlier events could no longer be received but that is not set out in the law. In some areas these offences were hardly used at all while across the south there were many reports of arrests. Some of those were under this criminal jurisdiction but most were detentions by the SPLA or security services using powers under the National Security Services Act. In Central Equatoria State 15 NCP members were convicted of offences of bribery, forgery and impersonation during polling, and two year sentences were imposed on them. In Western Equatoria State a pregnant woman was convicted of voting twice and received a two year sentence. Also in Western Equatoria the CEO of Gangura County was sentenced to two years in prison for having had an additional ballot box in his possession. These cases were all dealt with almost overnight and the defendants did not have access to legal counsel. While central authorities indicated that appeal provisions applied this is not clear from the law, and some local officials took the view that there was no appeal.

In Red Sea state there was a lot of court activity. A video appearing to show ballot stuffing by polling staff was at first denied by the NEC until investigation caused it to be acknowledged¹⁰². This led to charges of forgery and election offences against polling staff.

Also in Red Sea state a charge proposed by a prosecutor against an NCP supporter of kidnapping 12 other party agents during polling was overturned on appeal by the chief prosecutor in the area¹⁰³. Meanwhile a candidate who took photos during aggregation of alleged forgery of results forms by electoral staff was told by

¹⁰¹ There was a designation order from the Ministry for Justice about special prosecutors made on 8 February 2010 with detailed timelines.

¹⁰² While the matter was under investigation the U Tube website on which this video appeared was blocked by Sudanese authorities under the Cyber Crime Act 2007.

¹⁰³ The 12 agents complained about this result to the Minister of Justice.

the prosecutor that NEC approval was required before the charge could proceed, although the law does not contain any such requirement.

In Khartoum ten people associated with a Darfur group were convicted within 24 hours of arrest for an offence related to distributing leaflets which advocated a boycott of the elections. This was dealt with by the competent court using ordinary criminal laws.

Appeals to Supreme Courts

The National Supreme Court jurisdiction¹⁰⁴ in appeals does not arise until preliminary declarations are made, and then aggrieved parties or candidates have seven days to appeal. There is no provision for individual voters to bring court appeals. Some candidates for state assembly seats had difficulty in ascertaining the precise date of the preliminary declaration in their constituencies and found their court appeals struck out as being out of time. After an appeal is lodged the court must reach its decision within two weeks. Since the NEA sets down a latest date for final declarations at 30 days after the end of polling, the delays with counting and aggregation in this election reduce the time for court consideration of these appeals substantially.

Up to 16 May there were 183 appeals taken, 101 dismissed and two cases were successful. In a large number of these cases the court sought further information from the NEC which in turn sought it from the relevant SHC¹⁰⁵. This chain of information did not work very well and in two cases the court described the NEC as weak and not transparent. On 27 May, by which date all elections should have been long disposed of, there was information still outstanding from the NEC in ten cases. The appellants themselves are not privy to the communications between the court and NEC agencies and did not have, in the cases observed, an opportunity to respond to the NEC information. These non transparent proceedings do not constitute an effective remedy. An appellant who wished to go further to the Constitutional Court would not have access to the full record of why he failed in the National Supreme Court. In addition at least four aggrieved candidates have gone directly to the Constitutional Court. In election cases the Constitutional Court allows applicants sight of information from the NEC and gives opportunity to respond.

The National Supreme Court is a court of law only, which does not usually try matters of fact or hold oral hearings. The law does not state whether the court can take those steps in election appeals. However, finally in late May the court decided to hold a hearing to examine SHC witnesses in a case about a gubernatorial contest in Southern Sudan. Equally there is no clarity in the law on the remedies available through the court if irregularities are found or as to whether a court can order a complete or partial recount. These gaps create great difficulties for appellants, and indeed for the court, when important decisions have to be made in a very narrow time frame. In particular the court refused to deal with cases alleging any electoral offence or misconduct explaining that it had no criminal jurisdiction and that the appellant

¹⁰⁴ Section 81 of NEA.

¹⁰⁵ For further information on these cases see Legal Annex 2

must go through the competent court, or seek an order of invalidation from the NEC. This was not set out in the NEA so the crucial jurisdictional choice of going to the competent court or collecting evidence for the Supreme Court was not clear to parties or candidates in advance.

Complaints to the NEC

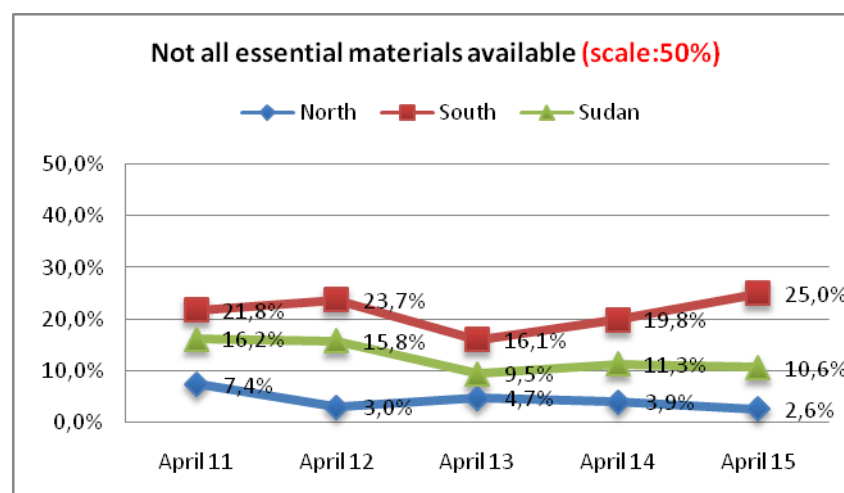
Many formal written complaints were made to the NEC either directly to the commission or to the state high committees. Also complaints made by use of Form 7 in polling stations were treated by the NEC in the same manner as other complaints. The NEA or rules did not set out any formal mechanism for dealing with these complaints. Some state high committees made decisions on complaints and if they did not feel able to do so, they sent the issue to NEC with a recommendation. In the south lawyers were deployed from the GOSS to assist state high committees with the task of dealing with complaints.

XII. ELECTION DAYS

The EU EOM observed most comprehensively the opening, re-opening, polling, daily and final closing, counting, the delivery of election material and aggregation of preliminary results across Sudan, establishing and analyzing nearly 3,000 quantitative observations and some hundred qualitative, spot and incident reports. The polling was assessed as good in 70% of the instances observed. The counting observed was generally assessed in nearly 60% to be conducted in a good manner, without ignoring the repeatedly observed inadvertence of the polling staff, including disputable decisions on the validity of ballot papers. The integrity of the process, however, began failing at the point of the reconciliation and determination of the official results at polling stations.

Opening and voting

The opening of the polling stations took place in a generally calm manner where observed by the EU EOM, without major incidents of intimidation.



The voting was administered satisfactorily in 70% of the instances of observation, with noticeable disruptions in a third of the other instances observed. In the absence of sufficient time for effective quality checks, numerous polling stations were unable to open for polling on time. Misprints of some ballots, including missing candidates' names and incorrect symbols, together with misdeliveries of electoral material in some parts of the country caused delays in opening, temporary suspensions of polling and continuation of polling in the absence of one of the twelve or eight necessary ballots. These difficulties required an extension of polling by two days. They also accounted for the declaration by the NEC on 15 April of a re-run of 33 constituencies' election on 5 and 6 June, together with the already delayed elections for LSAs for Jazira and Southern Kordofan States, and governor in the latter.

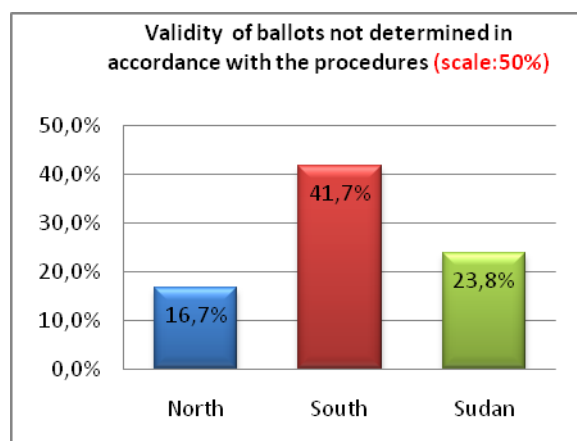
In an overwhelming majority of cases observed political party and candidate agents were consistently present over the five polling days, as well as domestic observers found to be present in over 65% of the instances observed during all the five polling days, strengthening the transparency of the process.

Final closing of the polling activities was marred by the great difficulties experienced by the polling staff in addressing the complexity of the required forms.

Counting

The EU EOM observed the counting in 42 polling stations and in all cases agents of at least two different political parties or independent candidates were present. In 40% of all polling stations observed in the south and 30% in the north the number of ballots retrieved from the ballot boxes did not equal the required multiple of the total number of voters' names crossed-out after receiving ballots. The reconciliation of all ballots was carried out inaccurately in 46% of cases in the south and 30% in the north. These accumulated deficiencies laid the foundations for the numerous irregularities observed during aggregation of results at state level.

The number of voters who cast their ballots according to the voter lists was almost never established, and in many cases could not have been established as the management of the voter lists had been so chaotic during polling. In some polling stations, staff tried to abide by the voter lists, however defective, while in others they responded to defective lists by allowing anyone to vote and in some other cases new names were recorded in writing.



The two elements of the counting process which were particularly problematic were the determination of the validity of votes and the completion and management of forms.

The determination of the validity of ballots cast was not carried out in accordance with procedures in 42% of instances in the south and 17% in the north; this includes

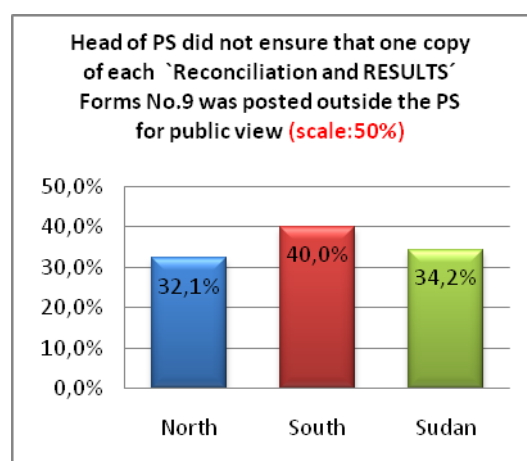
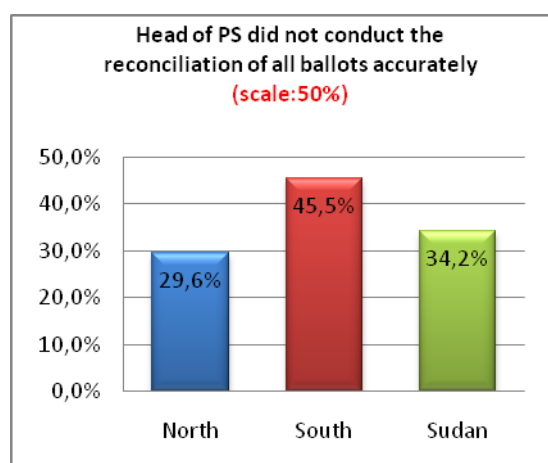
indicators such as the absence of polling staff, without the acquiescence of party agents and domestic observers, or wrongly ignoring the clear indications of the intention of voters. Mistaken beliefs that the tick had to be entirely within the circle, or that the mark had to be in the shape of a perfect tick or a perfect cross, were widespread.

Polling staff struggled to complete the forms correctly, discrepancies were widely observed, particularly in the results form (Form No.9) that was not properly completed in 32% of the cases, with many containing errors and figures that did not add up. A copy of the results form was not posted outside the polling stations for public view in 40% of the instances in the south and 32% in the north.

Concluding the counting exercise, sensitive election material was not packed in the tamper-evident bags as per procedures in 30% of polling stations in the north and 11% in the south.

The delivery of results and sensitive election materials to the aggregation centres in the states was interrupted in many places by the actions of polling staff, protesting at the lack of payment¹⁰⁶, and by security forces interfering in the process in the south.

The clear establishment of polling station results was undermined in some states in the south¹⁰⁷, as numerous polling stations were merged together into single counting centres, which made it very difficult to follow the progress of results from single polling stations.



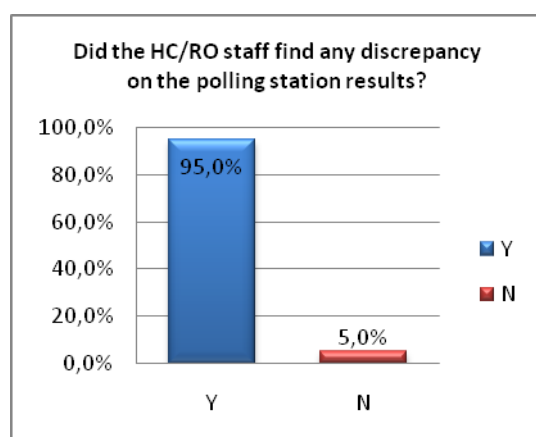
UNMIS flights were used in many places in the south to retrieve results and materials, and in some places flights had to leave without collecting the results again due to the refusal of polling staff to surrender the documents prior to payment. In Northern Bahr el Ghazal it was reported that some ballot boxes had been detained by the SPLA.

¹⁰⁶ See final paragraph under 'legal issues' above.

¹⁰⁷ Northern Bahr el Ghazal, Lakes and Jonglei States.

Aggregation of results

Preparations for aggregation at data centres were not made in time with the result that, on 16 April centres in just four of the ten states in the south were adequately equipped, while staff was not in place in a single southern state. This meant that, with counting already underway, staff still had to be recruited and trained in the operation of a new system. Besides, the NEC confirmed that the design and dissemination of the software of electronic results data management system to the SHCs was only finalised on 15 April.



The aggregation process began very slowly and proceeded in a highly time consuming manner¹⁰⁸. The electronic aggregation was largely abandoned as officials struggled to manually aggregate results for executive elections that facilitated the declaration of presidential results. The results forms (Form No. 9) arrived at the aggregation centres with discrepancies in 95% of the cases and were received by the officials of the SHCs and Returning Officers.

In the absence of political parties and civil society organisations¹⁰⁹ for most of the aggregation process, this Mission is the only election observation body having consistently observed these stages of the electoral process.

In 42% of the instances, results forms were received at the aggregation centres outside the tamper-evident bags. CEOs and data entry clerks tried to reconcile figures on these forms by altering them to fit the computerised programme, using data which no longer reflected the results obtained at polling stations¹¹⁰. Overall, the aggregation of preliminary polling station results was not in accordance with procedures in over half of the cases. This was most often caused by forcing the figures to fit the computerised programme, with, in some cases, some political pressure to alter the results. There have been very few instances of results being set aside to be rechecked or recounted.

In recognition that, at some state aggregation sites, the lack of sufficient IT equipment resulted in the unilateral aggregation exercise, using excel sheets – without blind or peered double data entry – the reconciliation is hardly traceable. In other cases, due to the insufficient human resource capabilities and/or inadequate IT resources available, truly manual tabulation exercises were conducted and paper sheets have been transmitted via fax to the NEC's data management centre in

¹⁰⁸ Referring to the technical meeting of the NEC with the international election advisors, held on 22 April, the data management system for the consolidation of the polling results was not functional by 22 April in all states except Blue Nile and Western Bahr el Gazal.

¹⁰⁹ In 95% of the period observations, EU EOM recorded that political party agents and candidate representatives were not present; the same applied, as of writing, to domestic election observers but for some small presence of SuDEMOP in the South.

¹¹⁰ Observed in Unity, Warrap, Upper Nile; alleged in Northern Bahr el Ghazal

Khartoum, again without the possibility to follow, record and, in the case of political party agents and candidate representatives, request official explanations in cases of imposed modifications of results.

Aggregation work in Eastern Equatoria was suspended on 19 April due to the arrest of three members of the SHC, while the SPLA has intervened in aggregations in Eastern Equatoria, Jonglei and Unity States. In many instances, due to the lengthy period of aggregation and to other inefficiencies, data entry staff were unable to find all of the results forms which had been submitted to them.

The EU EOM observed in 75% of the cases that the SHC and Returning Officer did not provide public access to the aggregation results established on state level. In total, EU EOM observers assess that, in 63% of all periodic observations, the aggregations process was conducted in a poor or very poor manner. The access for the EU EOM to observe aggregation activities was obstructed in varying degrees in four states.

Intimidation and harassment

Election authorities have become increasingly subject to intimidation, harassment, threats and violence¹¹¹. In recognition of the rising political tensions especially in states of Southern Sudan where the gubernatorial elections are highly contested, the EU EOM received notable reports on cases where inappropriate pressure is being applied to election officials at state level to alter results to favour incumbent SPLM candidates. In particular such incidents are reported from Central Equatoria, Western Equatoria and Unity state. The Mission observed the anxiety of the members of the SHCs, Returning Officers and results data management officers, recounting instances of arrest, detention or fear and flight of election officials.

Reports of intimidation and harassment of polling staff and party agents, as well as reports of election-related violence, continue to accumulate across Southern Sudan. In Unity State, Peter Nyok Lual, the campaign manager of the independent gubernatorial candidate Angelina Teny, was arrested and beaten up by security forces. Following an announcement of results in that state, clashes took place between the supporters of the two leading contenders for governor and three people were shot dead. In Western Equatoria, two members of the SHC and their families were threatened by armed groups that they would suffer serious consequences unless they altered results in favour of SPLM. There were other similar reports in many states. Since the declaration of results in Jonglei State there have been two significant instances of violence fomented by supporters of George Athor, defeated gubernatorial candidate, with 8 being killed in the first incident and 50 reportedly killed in the second.

¹¹¹ The burning of two separate lots of results, and the ballot papers on which they are based, in Western Equatoria on 21 April clearly contributed to the raising suspicions amongst various electoral stakeholder of the possible illegal, even criminal interference in the establishment of preliminary results.

XIII. RESULTS

Declaration of re-runs

On 16 April the NEC publicly declared the list of those Legislators elected in those state and national geographic constituencies in which only one contestant was registered and where, therefore, no popular vote was required¹¹². In response to the misprinting, misallocation and absence of many required types of ballots the NEC has declared that 33 geographic constituency legislative elections are to be repeated on 5 and 6 June¹¹³. As of 16 May two further re-runs had been ordered by the National Supreme Court, to take place within 60 days of the court's order.

Serious concerns arise, with regard to the re-runs in accordance with the NEA¹¹⁴ and the official NEC declaration of 15 April, about the requisite funding, since no such provisions were reportedly incorporated into the NEC budget or the financial support made available by the international donor community.

Preliminary presidential and other results

On 26 April the NEC announced the presidential preliminary results, giving candidate Al-Bashir 68.28% of the votes which, being over 50% plus one of the valid votes, would declare him elected subject to appeals¹¹⁵. In the Southern Sudan elections candidate Kiir received 92.9% of the valid votes, again winning the election subject to appeals¹¹⁶.

In the absence of a breakdown of results by polling stations which would verify the validity of aggregations, the EU EOM concludes that the presidential results were declared on the basis of less than half¹¹⁷ of the properly aggregated results forms. Proceeding with declarations on the basis of such limited and untraceable figures makes those formal declarations completely unreliable and casts doubts on all the other electoral declarations.

As declarations were made, for the other elections, NLA, SLAs and Governors, they showed an overwhelming vote for the governing parties, NCP in the north and SPLM in the south, apart from one independent governor in Western Equatoria and small percentage for opposition parties in the assemblies.

¹¹² The officially declared elected future legislators on state, Southern Sudan and national level are enlisted in the annex.

¹¹³ The states affected by the need for re-run elections are Khartoum (with 5 national geographic constituencies and 1 state constituency), West Darfur (1/3), North Darfur (2/1), Red Sea (3/1), Northern Kordofan (1/2), Upper Nile (0/1), River Nile (1/2), Jonglei (1/0), Gadarif (2/2), Sinnar (1/3), Kassala (1/0). See Annex.

¹¹⁴ Article 107

¹¹⁵ The one appeal launched was dismissed as being out of time, thus the president of the republic will be declared on the basis of those figures.

¹¹⁶ One outstanding appeal by rival candidate Lam Akol.

¹¹⁷ On April 25 only 65,529 of the expected 158,344 results forms had been entered in the database, 97,955 on 3 May, and 148,262 on 13 May.

XIV. RECOMMENDATIONS

The following recommendations are offered for consideration and action by the Sudanese authorities, NEC, GoNU and GoSS, political parties, civil society and the international community. They address all stages of the electoral process with the aim of bringing it into compliance with international standards for genuine democratic elections, such as universal and equal suffrage, freedom of expression and the right to an effective remedy, and to ensure transparency in the performance of the election administration and the delivery of the results.

Constitutional and institutional issues

1. Executive and legislative elections at all levels should not be conducted simultaneously in the future.
2. To achieve an environment conducive to democratic elections, freedom of movement, association, assembly and expression should be respected with any restrictions being limited, proportional and only for reasons of strict necessity; such reasons should be transparently conveyed.

Election law framework

3. No additional members should be admitted into the NLA without constitutional change in advance, as any such change will undermine the elected nature of the NLA. It must be subject to the highest scrutiny for consistency with the democratic basis of the constitutional order and with Sudan's international commitments.
4. The legal immunities for the NEC and its members in the NEA should be reviewed and replaced by a defence of fair attempt to carry out the NEC functions properly.
5. The law should be amended to require detailed polling station results to be swiftly displayed on the internet in accordance with best international and regional practice.

Voter registration

6. The establishment of the Electoral Register and the voters lists should be:
 - i. subject to a professional and transparent auditing exercise;
 - ii. displayed effectively and in a timely manner to the public;
 - iii. reviewed and revised continuously and comprehensively to identify and eliminate inaccuracies, multiple entries and records of ineligible, ghost or deceased voters.
7. In preparation for future elections, the NEC should consider implementing the following practices:

- i. the introduction of voter cards with the voters' photographs.
- ii. widely publicising the display period of the draft electoral register; it should be available at multiple sites within a constituency, and the process of correction should be accessible and efficient.
- iii. giving all voters clear information on their individual registration details, including electoral roll serial number and allocated polling station and location. The obligation of the authorities to provide this information cannot be delegated to political parties.
- iv. voters should be made fully aware of their rights and opportunities through an extensive voter education programme conducted ahead of the registration display period and election day, particularly targeting groups traditionally marginalised from the process, such as women and young people.

Candidacy

8. The requirement of literacy and soundness of mind should be narrowly defined to exclude as few citizens as possible from standing as candidates.

Political and campaign environment

9. The NEC should establish a Code of Conduct for Political Parties and Contesting Candidates through consultation with political parties and civil society organisations. Enforcement mechanisms should be established and consistently adhered to. The Code should include legally mandated proportional sanctions in case of non-compliance.
10. The Code of Conduct for Political Parties and Contesting Candidates should include a requirement for election contenders not to use public resources for campaign purposes. Clear instructions should be issued and enforced to ensure that state officials do not interfere in the election process and that state assets are not used to the advantage of any party or candidate. Any impropriety should be immediately responded to and should include a penalty for those responsible.
11. The financial limitation on election expenses of individual candidates should be reviewed. Each candidate and party should be obliged to publicly detail expenditures and sources of funds received. Consideration could be given to any non-compliance resulting in an obligation for the candidate or his/her party to pay back an increased sum to the original amount not disclosed.
12. Consideration should be given to provision of state funding as well as indirect funding (such as free time on public television and radio) to provide a more equal playing field and to reduce dependency on wealthy contributors. Clear and transparent rules for such funding should be established and consistently applied.

13. Agents for contesting candidates should be trained to take a stronger oversight role. For example, agents should know how to file complaints, how to report election offences and should ensure that they receive a copy of the polling station's results forms.

Election administration

14. The election administration should be reformed in order to effectively decentralise its administration in States, providing the necessary human and financial resources.
15. It should submit regular public reports and be accountable to the National Assembly for its activities, to ensure that all of its responsibilities are fully implemented.
16. It should include necessary professional staff and skills, independent from political parties, and establish an appropriate structure to manage the process:
 - i. By establishing departments dealing with legal issues and complaints, logistics/operations, training, and voter information and implementation of expenditure ceilings and work management plans for each activity;
 - ii. By detailing the timing and sequencing of the election process and producing operational plans to be implemented by the NEC.
 - iii. By undertaking continuous, institutionalized consultation with stakeholders, in particular with political parties and civil society down to constituency level.

Transparency

17. In order to achieve the necessary scrutiny and transparency, the NEC should consider developing transparency in all of its operations, in particular on its website which should be further developed and kept fully up-to-date. It should in particular address the following as a priority:
18. Making public a schedule of its meetings, all resulting decisions and all internal instructions issued.
19. Collecting information from states and constituencies (for example complaints lodged, polling station locations, polling station results) to be centrally gathered on the internet, as well as at the local level.
20. Making all election related documents at all levels of the election administration available to the public, without undue administrative burden.
21. Ensuring that agent and observer scrutiny is provided for by issuing specific regulations and guidelines, and through training of staff.

22. Consulting regularly with observer groups.

Polling and results

Improvements to the polling and the establishment of results should include:

23. Pictorial voter cards to provide evidence of identity.
24. Consideration of absentee voting in order to reduce the disenfranchisement of IDPs, nomads, migrant workers and temporarily displaced persons. This would limit the special provisions so far established for the registration and polling of security agents and would reduce the fear that registration in temporary places for IDPs would have negative consequences.

A review of NEC regulations and procedures should be undertaken and amendments made accordingly:

25. The list of polling stations, their exact locations, and assigned voters should be made public a minimum of one month before election day. Subsequent changes to polling station sites and allocations should only be made in exceptional circumstances, with any change requiring a written public explanation.
26. The establishment of polling centres and polling stations should aim at the reduction of the distance that voters have to travel on election days.
27. All forms should be reformatted to ensure that they contain complete information and are easy to use and submit electronically for fast and complete data compilation at the central level.
28. Amendments to polling procedures should ensure that reconciliation is effective, i.e. that the number of names marked in the voter list be reconciled with the number of ballot papers issued.
29. The NEC should instruct all polling staff that the determination of validity of ballots is solely based on the evidence of the will of the voter when marking the ballot.
30. All responsible electoral staff should be fully under the central management and fully accountable to the NEC in the application of a clear policy on causes for quarantining and removing from quarantine, and allowing re-counts or cancelling of whole or partial results. The process of auditing quarantined ballots or results should be treated as a counting process for the purpose of transparency and observation rights.
31. Standardised checking of the accuracy of polling station results forms is to be undertaken during the aggregation process.

32. In order to guarantee the transparency of the establishment of election results, copies of the polling station election results should be made available to political party agents, candidate representatives and domestic observers.
33. Future aggregation and declaration exercises should be conducted in such ways so as to be easily followed by all electoral stakeholders. This could include the announcement of results as they are received at the aggregation centre, prior to their being entered for tabulation, as well as the ongoing announcement and publication of results for each constituency at the aggregation venue.
34. The NEC should use one single computerized system to enter results, with the necessary safeguards.

Interference of security forces

35. The Chiefs of Staff of the military and police should issue and enforce orders to their personnel not to interfere in any way with the conduct of polling, counting, aggregation or the storage or transportation of ballots beyond the narrow requirements of security as set out by the NEC. This is particularly relevant in South Sudan.

Procedures for complaints and appeals

36. Appeals should be sent to a special panel of legal figures from the current and former judiciary and the legal experts inside and outside Sudan.
37. The role of receiving, investigating, assessing and responding to electoral complaints should be dealt with by a special legal body linked to, but separate from, the NEC. International involvement in that body at the highest level should contribute to greater credibility
38. All complaints should be promptly assessed and investigated where required:
 - i. A system for management of all complaints lodged at all levels of the election administration should be provided by law.
 - ii. Protocols/agreements should be developed with other state agencies to clarify roles and responsibilities in the complaints process, particularly with regard to investigations.
 - iii. Investigation of a complaint should not be undertaken by a person originally responsible for the implementation of the action subject of complaint.
 - iv. Full records of complaints, responses, decisions and outcomes to be made available by the NEC for immediate scrutiny. All court records related to electoral complaints should be retained by the NEC or separate complaints body.
 - v. For complaints relating to election results, the law should clarify the power to undertake re-counts and re-polls wherever necessary in order to

- speedily address alleged problems in an efficient manner, without recourse to cumbersome and costly legal channels.
- vi. The category of those permitted to file election appeals should be expanded, to include political parties, civil society organisations and voters.
 - vii. Public information and training for political party and candidate agents and election staff on how to use the complaint and appeal process should be developed.
 - viii. Jurisdiction on election appeals should be accessible in all parts of Sudan.

Strengthening the freedom of the media

39. All criminal offences related to the publication of information should have an available defence based on the public interest or the expression of an opinion.

Participation of women

40. Female candidates and elected representatives should be provided with assistance and training. Initiatives should be created to raise awareness of the importance of women's participation among both men and women in political parties.
41. Political parties should give a sufficient proportion of their leadership and decision-making positions to women.
42. A gender policy should be adopted and a senior person should be made responsible for its implementation, with the aim of increasing women's participation in electoral processes and at all levels within the election administration.
43. The NEC should take special measures to provide more female staff.
44. The NEC should maintain a gender-disaggregated database of election-related information including the number and proportion of female registered voters by state, and a state level comparison with their share of the population.

Electoral observation

45. Coverage by domestic observers should include a greater number of polling stations and the aggregation process, as well as focusing on other parts of the process, such as voter registration and campaign finance.
46. The Sudanese Code of Conduct for electoral observation should be changed to comply with international standards for election observation.