

THE CARTER CENTER

Sudan

Submission to the U.N. Human Rights Committee

The Carter Center

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This submission summarizes the findings of The Carter Center's election observation mission to the 2010 elections in Sudan. It is submitted for inclusion in the review of Sudan's state report by the U.N Human Rights Committee.

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I. TITLE

Human Rights Issues Surrounding Sudan's 2010 Elections.

II. REPORTING ORGANIZATION

The Carter Center, a 501(c) (3) charitable organization, was founded in 1982 by former U.S. President Jimmy Carter and former First Lady Rosalynn Carter, in partnership with Emory University, to advance peace and health worldwide. A nongovernmental organization, the Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy and human rights; preventing diseases; improving mental health care; and teaching farmers to increase crop production. The Center, in partnership with Emory University, is guided by a fundamental commitment to human rights and the alleviation of human suffering; it seeks to prevent and resolve conflicts, enhance freedom and democracy, and improve health.

The Center believes that submitting this report to the Committee helps the international community and other stakeholders understand human rights issues surrounding Sudan's 2010 national elections.

The Carter Center's election observation activities in Sudan commenced in February 2008 with the establishment of an office. Twelve long-term observers were deployed in mid-2009 to observe the pre-election environment. This team was supplemented by 20 medium-term observers who arrived in November 2009 to monitor the voter registration process and visited 650 fixed and mobile registration centers in all 25 of Sudan's states. An additional 16 LTOs were then deployed for the remainder of the pre-election period (for a total of 28 LTOs). A team of more than 70 observers deployed in April 2010 around the polling and counting process, visiting more than 10 percent of the 9,500 polling stations during the national elections. The data collected by the observation mission forms the basis of this report.

III. EXECUTIVE SUMMARY

The April 2010 elections in Sudan were mandated by the 2005 Comprehensive Peace Agreement (CPA). They were intended to be instrumental in setting the stage for the referendum on South

Sudan's independence and corresponding negotiations, and were envisioned as a critical part of a broader democratic transformation. In the period between the CPA's signing and the holding of the national elections, political rights and freedoms were circumscribed, placing limits on political parties and civil society and fostering distrust between the ruling parties and the opposition in the North and South that was to prove central in undermining the inclusiveness and credibility of the elections.

The 2010 elections provided limited but important opportunities for opposition parties and civil society to engage in the political process and reconnect with their bases. The opposition parties in the North criticized the voter registration process and demanded a series of other reforms, including the lifting of restrictive security laws, ending National Congress Party (NCP) domination of the state media, reviewing the boundary decisions of the geographical constituencies and restructuring the National Elections Commission (NEC). The refusal of the Government of National Unity (GNU) and the NEC to meet these demands or to seriously engage with the parties led most of the northern opposition to launch full or partial boycotts of the election. The failure by the central government to advance democratic conditions sufficiently and guarantee political rights and freedoms at the start of the elections, coupled with the opposition boycott, resulted in an atmosphere of distrust among the major political parties, and an election in the North which was not very competitive in nature.

Although the election process was generally peaceful, *Carter Center observers found the process fell far short of Sudan's domestic and international obligations in many respects*: intimidation and violence in some areas of Sudan undercut inclusiveness; civic education was insufficient; the inaccuracy of the final voter registry prevented full participation in the process; insufficient materials were provided to many polling stations; the environment in Darfur did not support the holding of democratic elections; and the tabulation of votes throughout the country lacked important safeguards for accuracy and transparency. In addition, the NEC's administration of the elections lacked cohesiveness, as decisions and the implementation thereof were changed continually, and the Commission failed to meet several key deadlines. Moreover, the Commission was insufficiently transparent and lacked full independence from the central government, thereby undermining trust in the electoral process.

While election administration was originally envisaged to be highly centralized within the NEC, the body's lack of direction for its subsidiary bodies led to the often de facto autonomy of state High Election Commissions (HECs), but without the timely provision of necessary technical and financial resources. Poor coordination between the NEC and state HECs led to significant problems in the administration of key phases of the electoral process, including constituency delimitation, compilation of the voters' lists, training of polling and tabulation staff, the disbursement of funds from the NEC to the state bodies and the tabulation of results.

Participation in voter registration varied across Sudan and there were major problems related to the accuracy of the voters' list. These issues stemmed from a combination of factors, including insufficient civic education on voter registration, the failure to post the preliminary voter lists for public review in many areas, especially in the South, and the completion of the final voter registry only very late in the process, leading to delays in the delivery of the lists prior to polling.

The nomination process was reasonably smooth in most of the states; however the NEC's failure to coordinate with the state HECs resulted in long delays in finalizing the candidate lists and producing ballots. This in turn led to the late delivery of voting materials, which negatively impacted electoral operations. Incorrect ballots were delivered in some constituencies, resulting in a need for rerun elections. Voting was suspended in others until the proper materials could be delivered.

The election was conducted over five days of voting across the country. During this period, the election suffered from a range of operational problems: late delivery of and/or inadequate materials, inaccurate voter lists, incorrect or insufficient ballots, and a lack of consistency in procedures. The polling process lacked sufficient safeguards and transparency necessary to verify key steps and build trust in the system. During polling, observers reported various problems with indelible ink, ballot box seals, underage voters, and the identification of voters, particularly when certificates were issued as identification documents by popular committees at the polling stations. The context of weak civic education and training of staff, coupled with Sudan's high rate of illiteracy, provided election officials with numerous opportunities to

misrepresent voters' desires deliberately while assisting voters. Insufficient efforts were made to ensure that voters were empowered to make informed decisions. The procedure for voters to lodge complaints in the polling stations failed to provide adequate remedies.

The counting and tabulation of results was significantly flawed across Sudan and cast serious doubts on the accuracy of the results reported. Frequently the electronic system that was developed to tabulate results was only partially used or not used at all. In most states, the built-in electronic safeguards were either not used or ignored. In several data centers, it was discarded entirely in favor of an ad hoc manual tabulation. Procedures for handling forms and recording results were not followed, directly affecting results. The decision by the NEC to not release results disaggregated by polling station further weakened the transparency of the process and likely undermined public confidence in the election. The legal framework for elections failed to provide effective means for contestants seeking redress.

In Darfur, the continuing state of emergency, repression of civil liberties, ongoing conflict, and the limited participation of more than two million internally displaced persons (IDPs), did not permit an environment conducive to genuine elections. Carter Center observers were unable to access large parts of Darfur due to insecurity and in some cases were restricted from carrying out their duties. Violence continued and several IDP leaders in Darfur were arrested. Added to this, the counting and tabulation of results suffered serious irregularities. The elections in Darfur cannot be considered credible.

The limited competitiveness of the presidential elections and the overwhelming election of the dominant political forces to the National Assembly, coupled with the tightening of political space and freedoms of the press since the elections, underscore the challenges to democracy in Sudan.

IV. LIST OF ISSUES BY OBLIGATION

CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE ICCPR IS IMPLEMENTED (ART. 2)

The 2005 CPA establishes the overarching legal framework for Sudan. Additional domestic legal instruments governing these elections included the Interim Constitution of Southern Sudan, state

constitutions, the Political Parties Act, and 2008 National Elections Act. Moreover, through accession to and ratification of international treaties and incorporation of internationally recognized obligations into its Constitutional Bill of Rights, the Government of Sudan has committed itself to the protection of a variety of political and human rights essential to the conduct of democratic elections.

However, several key domestic laws that are still in force or that have been enacted since the CPA are overly restrictive and do not comply with Sudan's stated commitments. The 2009 National Security Service Act and the 1991 Criminal Procedure Code both contain provisions providing for detention without timely judicial recourse. In addition, state institutions, including the National Intelligence and Security Service and the Humanitarian Affairs Commission, have at times acted in disregard for legal protections in the Constitutional Bill of Rights and the National Elections Act, limiting the success of their application. These restrictive laws and the failure of state authorities to comply with their human rights obligations, contrary to the express provisions of the CPA, negatively impacted the electoral environment, in particular the campaign process, freedom of the media, and civil society participation.

REFUGEES, ASYLUM-SEEKERS AND INTERNALLY DISPLACED PERSONS (ARTS. 2, 12 AND 25)
Voter registration is widely recognized as one means of ensuring that the right to vote is fulfilled. Voter registration was organized by the National Elections Commission (NEC) in 18 countries, but in most countries overseas, registration did not exceed several hundred people. In total, just over 100,000 people were registered outside Sudan, with Saudi Arabia accounting for almost two-thirds of all overseas registrants. Legal restrictions requiring the possession of a valid Sudanese passport as well as a residency permit limited registration of Sudanese refugees. Due to these burdensome requirements for identification, large concentrations of Sudanese refugees were excluded from the electoral process.

Furthermore, the elections in the three states of Darfur cannot be considered credible for a variety of reasons. The 2009 census did not include an estimated 300,000 Darfuri refugees in Chad, and there were credible accusations that a large influx of non-Sudanese Arab nomads entered the territory just prior to the census, changing the demographics of the region. Moreover, it appears that many internally displaced persons (IDPs) were not counted either because

enumerators refused to enter the camps due to security concerns, or because IDPs refused to be counted for fear of losing rights to their land in their original places of residence. IDPs were further dissuaded by early efforts of armed groups to undermine the legitimacy of the census, which discouraged their participation.

STATES OF EMERGENCY (ART. 4)

At the time of the elections, the state of emergency was still applied throughout Darfur, restricting the necessary freedoms to hold an open and fully participatory vote. The 1997 Emergency and Public Safety Protection Act allows for restrictions on the freedom of movement in order to ensure the security of person. These “security measures” ultimately prevented a large number of eligible voters from participating in voter education programs and registration throughout Darfur. Carter Center observers confirmed instances in which voter education activities were disrupted by state authorities, particularly in Darfur, because the NEC failed to communicate in a timely fashion with the relevant authorities and ensure that restrictions on their freedom of movement were lifted.

The 1997 Emergency and Safety Act also authorizes the state to arrest and detain suspects for prolonged periods without specifying any charge, and has been used to repress civil liberties, including the participation of political parties from free and open campaigning. In particular, the Act was used to justify the obstruction of major rallies such as those held by the Sudan People’s Liberation Movement (SPLM) presidential candidate Yasir Arman. This continues to raise questions about the civil and political freedoms enjoyed by Sudan citizens during the elections, particularly in the Darfur region. The Government of Sudan should seek to address the ongoing insecurity that could obstruct the free movement of voters, while easing restrictions on rights and freedoms to create an environment in which all eligible voters have the opportunity to participate in pre-polling activities.

NON-DISCRIMINATION AND EQUAL RIGHTS OF MEN AND WOMEN (ARTS. 3, 25 AND 26)

The CPA guaranteed a minimum of 25 percent representation for women in the national, Southern Sudan, and state assemblies. The Carter Center welcomed this decision and the participation of Sudanese women in the electoral process, particularly the landmark event of the first woman to run for president. Besides the specific women’s list, however, there were low

numbers of women on the geographical and party lists. Moreover, the complexity of the list system was of concern because it biased the system toward larger parties. A direct-vote system with quotas may prove to be a better alternative in future elections. In general, the parties ran a small number of women in the geographical constituencies. No evidence was reported by observers of candidates being discriminated against because of their gender, though Carter Center observers saw SPLM candidate for governor Taban Deng Gai making derogatory comments about the capacity of an opponent in Unity state because of her gender

PARTICIPATION OF PERSONS WITH DISABILITIES (ARTS. 2, 25 AND 26)

During the 2010 elections, the Higher Electoral Commission adopted measures to guarantee political participation of persons with disabilities, running programs to raise awareness of voting procedures and providing escorts for voters with disabilities, failing which the task was undertaken by the head of the polling station, without any influence being brought to bear on the person being escorted to vote. Procedures for assisted voting are an important tool for the elections commission to help ensure universal suffrage. At the same time, if procedures are followed improperly, assisted voting can undermine both the secrecy of the ballot and infringe on the voter's choice. Both of these issues were witnessed by Carter Center observers in polling stations across Sudan. For example, in South Darfur, Unity, Central Equatoria, and Upper Nile State, the secrecy of the ballot was compromised for voters who required assistance, although observers predominantly felt that the loss of secrecy was not done with any intention of fraud or wrongdoing. In Lakes State and Northern Bahr al Ghazal, however, observers were present at polling stations where staff members were trying to unduly influence voter choice or even fill out the ballot of illiterate voters without asking them for their choice.

ASSISTED VOTING (ART. 25)

While many voters needed help understanding and filling out the ballot which slowed the process considerably, no evidence was reported by observers of candidates being specifically denied basic rights because of their ethnic origins, religion, or minority status. However, Sudan's many illiterate and partially literate voters encountered difficulties during polling that increased the processing time and made it difficult for them to find in the voter lists the station in which they were assigned to vote. Little effort was directed to ensuring that the country's illiterate population was fully informed about the election. The system of using symbols provided an

opportunity for the illiterate population to participate in the electoral process, despite the complex voting system. More could have been done by the electoral management bodies and political parties to communicate the meaning of the symbols for each type of election and disseminate examples of the symbols widely.

FREEDOM OF EXPRESSION, FREEDOM OF ASSEMBLY AND OF ASSOCIATION (ARTS. 19, 21 AND 22)

The U.N. Human Rights Committee has concluded that “freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected.” However, in Sudan these rights are subject to limitations determined by laws that may be overly restrictive. The Carter Center notes with concern the passage by the National Assembly of the Press and Publications Act and the Criminal Procedures Act, both of which contain insufficient guarantees for the protection of fundamental freedoms. In particular, the Criminal Procedures Act empowers the state to routinely limit the freedom of association and assembly, undermining the State’s commitment to protect these rights. The Organization of Humanitarian and Voluntary Work Act of 2006 also provided for unreasonable limitations to freedom of association. According to the act, nongovernmental organizations (NGOs) must obtain approval to operate from the general registrar of organizations, who is appointed by the president. This directly impacted the elections because in order to be accredited as a domestic observer organization, NGOs were required to have previously registered.

The 2009 Press and Publications Act provided for a Press Council with the power to suspend a newspaper for up to three days and prescribe conditions for the registration of journalists, distributors, and printers. The law failed to remove the offense of criminal defamation against the state, a provision that had the potential to limit debate during elections. On April 11, 2010, reporter Alhaj Warrag and Faiz Silaik, deputy editor-in-chief of Ajras Alhurria, a newspaper linked to the SPLM, were interrogated by authorities about an article written by Warrag. The National Intelligence and Security Service filed a complaint against the two journalists under Article 66 of the penal code, which prohibits the publication of false news, and Articles 24 and 26 of the Press and Publications Act, which provides for criminal liability for the editor-in-chief and severely restricts the scope of reporting for journalists, and they were charged with these offenses.

V. SUGGESTED RECOMMENDATIONS

- The government should revise the legal framework for elections and human rights to amend laws inconsistent with Sudan's obligations for genuine, democratic elections and civil liberties, as included in the Interim National Constitution, CPA, and regional and international treaties it has ratified. (*Art. 2*)
- The security services should only operate within their remit and ensure their actions do not result in intimidation or prevent candidates, parties or citizens from fully engaging in the electoral process. Appropriate sanctions for violations by security personnel should be firmly applied. Authorities should finalize security plans far in advance of election events so as to be fully prepared for eventualities. (*Arts. 4, 6, 7, 9, 10*)
- Voters should be issued durable and clearly filled out registration cards to improve the registration processing system, which should be transparent and consistently applied. Voter lists should be made public for review with sufficient time for challenges and revisions. (*Arts. 2, 12, and 25*)
- Voters should register and cast their ballots in the same location, with an increased number of locations to allow for the widest participation of eligible voters possible. (*Arts. 2, 12, and 25*)
- Political parties should engage in respectful and lawful campaigning. Party agents and representatives should act within their defined roles and should not interfere with the electoral process, while at the same time be provided with adequate protection from the authorities to carry out their duties. (*Arts. 19, 21, 22, and 25*).
- Future electoral commissions should improve logistical arrangements related to polling, and ensure sufficient voting materials are provided in advance of voting. Ballot papers and other sensitive materials should be procured from abroad. Elections should be reduced to the shortest number of days possible so as to reduce the security and logistical burden that accompany multi-day polling. (*Art. 25*)
- Electoral dispute resolution mechanisms should be strengthened, so that voters and candidates alike are provided adequate redress for their complaints. (*Art. 14, 9, 15*)
- Greater efforts should be made to guarantee the inclusion of all Sudanese and ensure that all branches of the government are committed to implementing tangible steps to this effect. (*Arts. 26 and 27*)

- There should be a broad-based national reconciliation process, as mandated by the CPA that includes all of Sudan's people as a means of engaging the broadest representation of society possible in the political process. *(Arts. 26 and 27)*
- The government should reach agreement with the Darfuri rebel groups and a broad-based representation of civil society to bring them into the political process, and provide for their representation in the country's political institutions. In order to enable a true democratic expression of the view of Darfurians, elections must be part of any future peace agreement. *(Arts. 26 and 27)*
- In order for genuine democratic development to be sustained in both the North and South, Sudan's governments should ensure that all democratic openings are expanded and deepened, and the country's national and international commitments to preserve fundamental freedoms are respected. Full recognition of human rights, democratic principles, and government transparency will help to reduce the mistrust that undermined the 2010 electoral process while providing a sound basis for the anticipated referenda and future elections. *(Arts. 26 and 27)*