

## 1. INTRODUCTION

- A. *The Carter Center's Democracy Program in Sudan:* The Carter Center Democracy Program opened an office in Khartoum in 2008, and then observed and reported on the political and electoral processes stipulated in the Comprehensive Peace Agreement, CPA; most notably, The Carter Center observed the national elections in April 2010 and the Self-Determination Referendum in January 2011. The Center's Democracy program maintained an office in Khartoum through 2014, observing and commenting on the elections in South Kordofan and the Popular Consultations in Blue Nile and South Kordofan. The Center did not deploy an observation mission for the 2015 elections.
- B. Although the election process in 2010 was generally peaceful, a *Carter Center observation mission found that 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. 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 challenges to democracy in Sudan. A subsequent expert mission that visited Sudan in 2014 explored the implementation of the recommendations from the Center's 2010 election report and found that while there was some recognition of the need for election reform, no significant steps had been taken.
- C. The Carter Center provides a set of recommendations below to improve future elections and referenda in Sudan. The recommendations included herein reflect the findings from Carter Center observers and core staff and draw from observations that were first issued in August 2010 after the election observation mission, and afterward during post monitoring of developments through 2014. The Center believes that submitting this report to the Committee helps the international community and other stakeholders understand human rights issues surrounding Sudan's national elections.

## 2. FINDINGS FOR CONSIDERATION

Based on its election observation missions in 2010 and 2011, and continued post-election assessment through 2014, the Center submits the following main findings for consideration.

- A. *Reconcile discrepancies between the national laws and international obligations*  
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. 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.<sup>1</sup> As a signatory to various human rights instruments, Sudan is bound to take steps to promote the full realization of various rights by all appropriate means including legislative action.<sup>2</sup>

B. Take measures to increase the participation of women

Equal participation is a cornerstone of a democratic society and as a signatory to the ICCPR and ICESCR, states have an obligation ensure and promote equal participation in public affairs.<sup>3</sup> The CPA guaranteed a minimum of 25 percent representation for women in the national, Southern Sudan, and state assemblies. The Carter Center welcomed this provision of the CPA 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 and ensure greater participation of women.

C. Guarantee accuracy in the voter registration process

Voter registration is widely recognized as one means of ensuring that the right to vote is fulfilled.<sup>4</sup> Voter registration is organized by the National Elections Commission (NEC) and in 2014, the NEC was seeking ways to implement a biometric voter registration system, which has yet to be fully realized. 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 in 2010. 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.<sup>5</sup>

D. Intensify civic and voter education efforts

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 has been directed towards ensuring that the country's illiterate population are fully informed about the election. The system of using symbols provided an opportunity for the illiterate population

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<sup>1</sup> International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, at art. 2.2. [hereinafter ICCPR]. See also International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976 [hereinafter ICESCR].

<sup>2</sup> ICESCR, *supra* note 1, at art.2.1. See also ICCPR, *supra* note 1, at art. 2.1 - 2.2.

<sup>3</sup> ICCPR, *supra* note 1, at art.3. See also ICESCR, *supra* note 1, at art. 3. See Human Rights Committee, *General Comment No. 28, Article 3*, HRI/GEN/1/REV.9, 2000, at para. 29.

<sup>4</sup> Human Rights Committee, *General Comment No. 25*, CCPR/C/21/REV.1/Add. 7, 1996, at para. 11.

<sup>5</sup> ICCPR, *supra* note 1, at art. 2, 12, 25.

to participate in the electoral process, despite the complex voting system. More could be 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.<sup>6</sup>

E. Guarantee freedom of movement

Freedom of movement is significant to the enjoyment of many civil and political rights including the the right to vote and participate in public affairs.<sup>7</sup> In Sudan, 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 2010, 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.<sup>8</sup> The Center’s assessment visit in 2014 noted that ongoing violence and conflict in multiple areas including Darfur, would have a negative impact on the electoral process by limiting free movement and participation in the electoral process, especially for internally displaced persons.

F. Guarantee freedom of expression and assembly

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.”<sup>9</sup> However, in Sudan these rights are subject to limitations determined by laws that may be overly restrictive. 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

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<sup>6</sup> ICCPR, *supra* note 1, at art. 25.

<sup>7</sup> Human Rights Committee, *General Comment No. 27*, CCPR/C/21/Rev.1/Add.9, 1999, at para. 1. *See also* ICCPR, *supra* note 1, at art. 12.

<sup>8</sup> ICCPR, *supra* note 1, at art. 4.

<sup>9</sup> Human Rights Committee, *General Comment 25 (57)*, General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, Adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996), at para.12.

during elections.<sup>10</sup> The Center's 2014 mission heard reports and viewed evidence of continued active censorship in the country, including the confiscation of certain editions of newspapers.

### **3. Recommendations for Consideration**

- 3.1. 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, which impact fundamental freedoms both electoral processes as well as more generally, as included in the 2009 National Security Service Act; the 1991 Criminal Procedure Code; the 2006 Organization of Humanitarian and Voluntary Work Act; the 2009 Press and Publications Act, and regional and international treaties it has ratified.
- 3.2. In order for genuine democratic development to be sustained, Sudan's government 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.
- 3.3. 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.
- 3.4. Voters should be issued durable and clearly filled out registration cards to improve the registration processing system, which should be transparent and consistently applied. In addition, a new voter registration process should be conducted to ensure an accurate registration list, including in Sudan's conflict zones.
- 3.5. Electoral dispute resolution mechanisms should be strengthened, so that voters and candidates alike are provided adequate redress for their complaints.
- 3.6. 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.
- 3.7. 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.
- 3.8. 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

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<sup>10</sup> ICCPR, *supra* note 1, at art. 19, 21, 22.

democratic expression of the view of Darfurians, elections must be part of any future peace agreement.

- 3.9. Reform of the NEC to ensure it is accepted by major parties as an independent body and can operate with financial autonomy and professional staff recruited based on merit.
- 3.10. Simplification of the electoral system to reduce the number of ballots needed (currently eight) and to address shortcomings in the system regarding the women's list and to increase women's participation as candidates.
- 3.11. New constituency delimitation is needed to address the establishment of three new states (Central Darfur, East Darfur, and West Kordofan) in Sudan. Districting could be particularly difficult in parts of Darfur, South Kordofan, and Blue Nile.