Disputed Votes, Deficient Observation

The 2011 election in South Kordofan, Sudan

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The Rift Valley Institute

The Rift Valley Institute (www.riftvalley.net) is a non-profit research, education and advocacy organization operating in Sudan, the Horn of Africa, East Africa and the Great Lakes. The Institute works with communities, institutions and individuals to bring local knowledge to bear on political and economic development, support regional capacity for research and training, document indigenous culture and promote human rights.

Summary

The disputed gubernatorial election in South Kordofan, Sudan, in May 2011 was one of the key triggers of a conflict that has since engulfed large parts of the state, giving rise to atrocities that, according to the Office of the UN High Commissioner for Human Rights (OHCHR), may amount to war crimes and crimes against humanity (OHCHR, 2011). Domestic and international election observers deemed the vote a success, but the present study, based on the analysis of reports from the three election observation organisations that covered the election, finds significant deficiencies in the observers' approach.

The mandate of election observers is to help build confidence in the electoral process. In South Kordofan this was not achieved. Critical lessons of Sudan's past electoral history were overlooked, and in a rush to judgement international observers prematurely endorsed the contentious poll. The small margin of victory for the candidate of the National Congress Party (NCP), Sudan's ruling party, combined with numerous observed irregularities was an indication that greater caution should have been applied by observers in their endorsement of the result. Caution would have been appropriate even without clear evidence of systemic irregularities in the voting. Moreover, a comparison of the gubernatorial elections and the two proportional representation votes that were conducted concurrently reveals incongruities that suggest the gubernatorial result may have been manipulated.

It may no longer be possible to establish the truth or otherwise of the opposition accusation of vote-rigging in South Kordofan, but the limitations of the observation missions have an important bearing on future peace negotiations. Any settlement of the conflict is likely to involve a demand on the part of the Sudan People's Liberation Movement, Northern Sector (SPLM-N), for some form of power-sharing and a renewed process of democratic representation. International involvement in such a future process will need to account for the errors of the past and develop a more rigorous and better-informed monitoring regime.

1   Introduction

1.1   Disputed votes in South Kordofan

Since early June 2011 South Kordofan has been in a state of war. The May 2011 legislative and executive elections, measured by their success in maintaining peace and achieving democratic transformation, were a failure. Contested polls and the breakdown in relations between the National Congress Party (NCP) and the Sudan People's Liberation Movement, Northern Sector (SPLM-N) contributed significantly to the outbreak of conflict across the state and the consequent humanitarian catastrophe.

Asserting electoral legitimacy is crucial to the NCP. On the basis of the election results, the NCP claims a democratic mandate to rule. On this basis it justifies the current military action against the SPLM-N. But the conduct of the election was contentious even before the campaign and polling began; and the result, a narrow victory on the part of the incumbent NCP governor was immediately

rejected by the SPLM as rigged (BBC, 2011). Nevertheless, the elections was endorsed both by national and international observers. It was deemed 'peaceful and credible' by international observers from the Carter Center and an 'improvement' over Sudan's 2010 national elections by national observers from the Sudanese Group for Democracy and Elections (SuGDE) and the National Civic Forum (NCF) (SuGDE, 2011, p. 2; NCF, 2011, p. 2; Carter Center, 2011d, p. 1).

The vote was close. The official results give the incumbent NCP governor Ahmad Muhammed Harun slightly more than a one per cent margin of victory (6,500 votes) over his former deputy, the SPLM's Abdulaziz Adam al-Hilu. In the legislature, despite both parties winning similar shares of the vote, the NCP recorded a decisive victory, taking 33 seats to the SPLM's 21. With a clear majority of seats—assuming the new legislature is convened—the NCP caucus will be in a position to override any objections from SPLM members and will thus be free to pursue the legislative agenda it desires.

The Government of Sudan welcomed the result of the election. On 23 June President al-Bashir announced, 'the NCP has won 22 geographical constituencies against 10 constituencies for the SPLM. Therefore, it was natural for us to win the post of the state governor' (Xinhua, 2011).[1] On 16 June the Sudanese Embassy in Washington DC asserted that there was 'wide international endorsement of the elections as free, fair and transparent' (Embassy of Sudan in the United States, 2011).

It is possible to make a different judgement. The results show important statistical inconsistencies that went unexamined by the observers. The SPLM lost the gubernatorial race, but it actually won the most votes overall. It also won a majority of votes in two concurrent elections conducted under proportional representation. Unusually high rates of invalid ballots in certain constituencies went unexplained. And the observers, despite their endorsements, chronicled a succession of procedural and technical errors. The Carter Center, the only international body involved in observation of the elections, argued that these were not systemic irregularities and that they would therefore not invalidate the results (Carter Center, 2011d, p. 1). Yet this assertion is misleading: the margin of victory (6,500 votes) amounted to considerably less than the 30,000-plus ballots that were discarded as invalid. In such a close vote, systemic irregularities did not need to occur in order to put the final tally in doubt. Irregularities in less than one per cent of all ballots cast would be liable to have produced a different outcome, giving victory to the opposing party.

Ahmed Harun's victory cannot, therefore, be definitively established statistically. Separate judgements were called for: on the conduct of polling on the one hand and the tabulation and processing of results on the other. Greater attention should have been paid to weaknesses in the processing of results, particularly as such failures are known to have been a feature of the 2010 elections (Carter Center, 2010a, p. 1, 2010b, p. 2, p. 3; EU EOM, 2010, p. 44–46).

In the Carter Center's report on the South Kordofan election the impact of problems in voter registration and constituency demarcation is played down. And its recommendation that complainants seek recourse in Sudan's electoral complaints system contradicts the Center's own report on the 2010 national elections in Sudan, where this system was judged to have 'failed to meet Sudan's constitutional...obligations' (Carter Center, 2010b, p. 52).

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[1] Given the roughly even split in overall votes between the NCP and SPLM, President al-Bashir's statement

A more careful verdict on the part of the observer groups would not necessarily have changed the course of events in South Kordofan. But the verdict on the election has a wider significance. The election was the final chapter in the process of attempted democratic transformation prescribed in the Comprehensive Peace Agreement (CPA) (GoS/SPLM, 2005, Protocol on Power Sharing, art. 1.4). It thus has a historical importance both for north and south Sudan, and offers a lesson for the unresolved issues that remain in Kordofan and other areas of the country in the post-CPA era.

This paper offers a statistical analysis of the 2011 election and a critique of the findings of the election observer missions (EOMs) deployed to South Kordofan.[2] The people of South Kordofan have paid a high price for the failure of the election. Negotiations to end the present conflict will need to acknowledge its problematic aspects if there is to be a chance of a resumption of the democratic process and a successful electoral process in 2015, when the next election is nominally due.

2   Examining the results

2.1   A narrow victory

The analysis offered in this study pursues the implications of two key observations: first, that a small margin of victory in any election has inherent uncertainties; and second, that incongruities between the gubernatorial results and the results from the two proportional representation votes suggest that the results could have been manipulated.

The NEC's final results show the NCP's Harun winning with a narrow margin of about 1.5 per cent of all votes cast (1.6 per cent of all valid votes cast), or precisely 6,500 votes. This figure is equivalent to less than a quarter of the 31,608 ballots that were discarded as invalid (see Table 1). In contrast, the scale of Omar al-Bashir's and Salva Kiir's victories in the national election of April 2010 left little doubt that they won their contests for President of Sudan and President of South Sudan respectively, notwithstanding the serious problems in the tabulation of results reported by most national and international EOMs (Verjee, 2010, p. 47). Harun's win in South Kordofan is less convincing.

Table 1. Final results from the South Kordofan gubernatorial race, May 2011

	Votes	Share	Differential
Ahmad Harun (NCP)	201,455	46.08%	n/a
Abdulaziz Adam Al-Hilu (SPLM)	194,955	44.60%	6,500 (1.49%)
Telefon Kuku (independent)	9,130	2.09%	185,825 (42.51%)
Invalid ballots	31,608	7.23%	n/a
Total votes cast	*437,148*	*100.00%*	*n/a*

Source: NEC, 2011b

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[2] This paper uses the NEC's final results for analytical purposes. The accuracy of the published data (in for example, transcription and data entry) may itself be a source of error and cannot be independently verified.

In a narrow race, the magnitude of otherwise marginal problems is increased. In a vote where the margin of victory was well within the count of invalid ballots, it is not necessary for irregularities to be systemic in order for these to be consequential, putting the final tally in doubt. (Another possibility exists, of course: that there were systemic irregularities, but that these went unobserved.)

A vote swing of little more than 3,000 votes from the NCP candidate to the SPLM candidate, from Harun to al-Hilu, would have produced a different winner. To affect the outcome, irregularities in less than one per cent of all ballots cast, or alternatively, in only four of the state's 666 polling stations, is all that would have been required.[3]

In the absence of direct evidence, this caution would be hypothetical. But there is ample evidence of irregularity, documented in the reports of the observers themselves. For example, the NCF reported that all 1,704 voters in Al Dambaloya, a station in Northern Abyei constituency 32, were prevented from voting (NCF, 2011, p. 2).[4] This number of potential votes represents more than half the necessary swing vote in this election. The northern Abyei constituency recorded the lowest turnout in South Kordofan, with only 22 per cent of registered voters casting ballots, giving some credence to the allegation that voting was artificially suppressed. Northern Abyei is firmly under the control of the NCP. Those who did vote in constituency 32 overwhelmingly chose Harun. Why, it may be asked, were Al Dambaloya voters prevented from participating in the poll?

The Sudanese Group for Democracy and Elections (SuGDE) reported that in five per cent of the 90 stations it observed, 'individuals were permitted to vote without their names being on the voter list,' although only a few people were actually seen to abuse the process in this way (2011, p. 11). In three stations, SuGDE observers witnessed vote buying (2011, p. 3). In nearly six per cent of stations it observed, 'voters were allowed to vote for someone who was not present, but again, incidents were isolated' (SuGDE, 2011, p. 12).[5] The Carter Center confirmed the same problem, noting that observers 'did report a small number of cases where party agents…distributed voter registration slips of absent voters to unregistered citizens, thus facilitating illegal proxy voting' (Carter Center, 2011d, p. 2).

The Carter Center also reported an incident of suspected ballot box stuffing in Muglad (constituency 29, polling committee 5), but discounted this as the only incident of its kind observed (Carter Center, 2011d, p. 15, fn. 32). While this affected a relatively small number of voters, it occurred in a heavily pro-Harun constituency. As election observation is based on sampling, a single incident suggests that such activity could have occurred elsewhere.

Additionally, the Carter Center observed that multiple voting could have taken place:

> In 58 per cent of polling centres observed, the staff failed to check voters' hands for ink before allowing them to vote. In a similar percentage of polling stations the identification officer failed to ask the voter for identification...or have the voter confirmed by an identifier,

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[3] With 642,555 total registered voters and 666 polling stations, each station averages 965 voters. Four stations of this size amount to 3,860 voters.

[4] The Carter Center did not deploy observers to this constituency and did not express a view on this alleged incident (according to correspondence between the author of the present study and a Carter Center representative, June 2011).

[5] The text of SuGDE's statement is inconsistent with data in graphs of the statement. Statistics referenced here are taken from the graphs.

to prove they are the person named on the voter registry and as provided for in the procedures...[which] represented a setback for the integrity of polling. (2011d)

Other problems were recorded, too: 'In about 15 per cent of polling stations visited by Carter Center observers, party agents were inappropriately involved in the voting process, including directing parts of the process, and in some cases accompanying voters into the voting booth'. This is later elaborated as 'in some cases providing unauthorized and inappropriate assistance to voters to mark their ballots' (Carter Center, 2011d, p. 4 and p. 14).

All of these incidents indicate that there were sufficient problems to affect the small number of ballots required to alter the outcome. It is possible that the observers deemed that the malpractice was attempted equally by NCP and SPLM supporters, or that such manipulation favoured the defeated SPLM, as the Carter Center concluded with respect to party agent behaviour (Carter Center, 2011d, p. 5). But this cannot be established statistically. It is erroneous to suggest that the absence of 'systemic' issues meant that the results were above reproach.

2.2   Invalid ballots and the Kuku vote split

One explanation for the SPLM's loss in the gubernatorial contest is a simple vote split: that is, one of the other candidates for the governorship, former Sudan People's Liberation Army (SPLA) commander Telefon Kuku, acted as a spoiler, taking critical support from mainstream SPLM candidate al-Hilu.[6] This assumes that Kuku supporters, in a two-candidate race, would have systematically preferred al-Hilu to Harun.

On aggregate figures, this explanation seems plausible. Had Kuku's 9,130 votes gone to al-Hilu, the SPLM would have won. But examined on a constituency level, Kuku's tallies do not appear to factor. In no constituency did votes for Kuku tip the vote for either Harun or al-Hilu. In all constituencies there were fewer votes for Kuku than there were invalid ballots. Only in Kuku's home area of Boram (constituencies 16, Northern Al Boram and 17, Southern Al Boram) and constituency 25, Kaddam, did he gain more than 5 per cent of the vote.

The results in these constituencies where Telefon Kuku gained a significant number of votes raise other questions. In both Northern Al Boram and Kaddam, the number of invalid ballots recorded was more than double the state average shown in Table 2. (Kaddam was not visited by Carter Center observers during polling, but one SuGDE observer was deployed to this area.[7])

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[6] For further discussion of Kuku's effect on the election, see Verjee, 2011, p. 5.
[7] Correspondence with a Carter Center representative, June 2011. Other constituencies to which the Carter Center did not deploy observers include Meiram, Northern Abyei, Assonout, Southern Al Boram and Hibeila and Dalami.

Table 2. Comparison of invalid votes cast in the South Kordofan gubernatorial election in constituencies 16 and 25, May 2011

Constituency	Votes cast	Valid votes	Invalid votes	Harun	al-Hilu	Kuku	Per cent invalid votes
Northern Al Boram (16)	10,367	8,681	1,686	1,038	7,051	592	16.26
Kaddam (25)	9,727	8,147	1,580	6,882	783	482	16.24
State average (all 32 constituencies)[8]							7.53

Source: NEC, 2011c

A 16 per cent rate of ballot rejection is unusually high, particularly given trends across the state.[9] Neighbouring Southern Al Boram recorded just 8.41 per cent invalid ballots. The observers offered no explanation as to why these constituencies were so affected. In Northern Al Boram, al-Hilu was the leading candidate; Harun won in Kaddam, but Kuku's strength is the uncontrolled variable in both instances. It is possible that Kuku actually obtained more votes, but that these were discounted by biased election officials. Or that advantage for either of the two leading candidates was suppressed by Kuku supporters. There may be another explanation. It is impossible to know without a further audit of the votes. If the average rate of invalid ballots had occurred in these areas, an additional 1,753 votes would have counted towards the gubernatorial result.[10]

2.3 Vote distribution: a comparison with the proportional representation contests

Further questions about the validity of the gubernatorial results are raised by a comparison with the other electoral contests that took place concurrently in South Kordofan. As the only other elections to be contested across the state, the elections for the political party and women's list ballots (both by proportional representation) provide the best basis for comparison with the gubernatorial race. In these votes, seats are allocated proportionally, roughly corresponding to the share of total votes obtained by a party state-wide. Parties present ranked lists of candidates, who gain office based on their position on the list, in line with the number of seats their party wins. In a reversal of the outcome of the gubernatorial contest, Tables 3 and 4 show that the SPLM took more votes overall in both races, defeating the NCP by a margin of roughly two per cent of all votes cast, nearly 7,500 votes in the women's list contest, and nearly 9,000 votes in the party list ballot.

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[8] The rate of invalid ballots was calculated by dividing the average rate of invalid ballots across all 32 constituencies. The overall rate of invalid ballots for the gubernatorial election is 7.23 per cent.

[9] While there is no international consensus on an acceptable rate of invalid ballots, the Institute for Democracy and Electoral Assistance recorded an average of three per cent invalid votes per election. For a more detailed discussion of this question see Aldashev and Mastrobuoni, 2010.

[10] A total of 20,094 votes were cast in constituencies 16 and 25 (10,367 plus 9,727). Had the state-wide average rate of invalid ballots of 7.53 per cent occurred, 1,513 invalid ballots would have been cast in these two areas. In practice, the total number of invalid ballots was 3,266 (1,686 plus 1,580), for a difference of 1,753 (3,266 minus 1,513).

Table 3. Final results of the political party election of the South Kordofan legislative elections, May 2011

	Votes		Differential	
SPLM	191,582	43.90%		n/a
NCP	182,751	41.88%	8,831	2.02%
Umma	9,635	2.21%	173,116	39.67%
DUP (Original)	8,913	2.04%	722	0.17%
Muslim Brotherhood	7,629	1.75%	1,284	0.29%
DUP	3,162	0.72%	4,467	1.02%
SPLM-DC	2,524	0.58%	638	0.15%
Total valid votes	*406,196*			*n/a*
Invalid votes	30,185	6.92%		n/a
Total votes	*436,381*			

Source: NEC, 2011b

Table 4. Final results of the women's list election of the South Kordofan legislative elections, May 2011

	Votes		Differential	
SPLM	193,891	44.51%		n/a
NCP	186,422	42.80%	7,469	1.71%
DUP (Original)	11,559	2.65%	174,863	40.14%
Umma	11,079	2.54%	480	0.11%
DUP	4,319	0.99%	6,760	1.55%
Total valid votes	*407,270*			
Invalid votes	28,330	6.50%		
Total votes	*435,600*			

Source: NEC, 2011b

Table 5 shows that the SPLM's share of the overall vote remains fairly consistent in all three races. Equally, the NCP's vote in the two proportional votes is steady. Since the proportion of invalid ballots does not vary significantly between contests (between 6.5 and 7.23 per cent), the statistics suggest that supporters of Umma, the Democratic Unionists, Muslim Brotherhood and other third-party contestants moved en masse to support the NCP's Harun at the expense of the SPLM's al-Hilu.

Table 5. Comparison of gubernatorial and proportional races of South Kordofan elections, May 2011

	Gubernatorial race		Political party list		Women's list	
	Votes	Share (%)	Votes	Share (%)	Votes	Share (%)
SPLM	194,955	44.60	191,582	43.90	193,891	44.51
NCP	201,455	46.08	182,751	41.88	186,422	42.80
Others	9,130	2.09	31,863	7.30	26,957	6.19
Invalid	31,608	7.23	30,185	6.92	28,330	6.50
Total	*437,148*	*100.00*	*436,381*	*100.00*	*435,600*	*100.00*

Source: NEC, 2011b

In the absence of any sort of opinion polling, it is impossible to establish voter preferences independently of the poll. But given the antipathy felt towards the NCP by many opposition party supporters, it is odd that the SPLM did not gain much more than a thousand votes in the gubernatorial contest over its best performance in the women's list proportional race (from 193,891 to 194,955) whereas by comparison the NCP was able to pick up about 15,000 more votes (from 186,422 to 201,455).

Harun's personal popularity or name recognition may account for some of the bump. But another possibility is manipulation of the gubernatorial results, denying victory in the election's biggest race to the state's most popular party (as judged the basis of the proportional contests)

2.4   Even votes, lopsided legislature

One further question from South Kordofan's election is how, despite similar levels of numerical support, the NCP won 22 geographic constituencies to the SPLM's 10. For the Carter Center the answer was straightforward: '[a]lthough both parties polled fairly evenly overall, SPLM support was in a smaller area, where it won heavily, whereas the NCP won more constituency seats but with a lower margin' (2011d, p. 2).

But there is more to the story. Almost a third of constituencies—10 out of 32—failed to comply with the requirement of the National Elections Act that 'the total population in each geographical constituency shall not exceed the electoral dividend or the national dividend in each case by more or less than fifteen percent' (GoNU, 2008, Art. 38b). With a population of 2,514,320, the state's electoral dividend is 78,573, which means a constituency may have a population no larger than 90,358 (+15 per cent), and no smaller than 68,323 (-15 per cent). (The electoral dividend is a mathematical ideal for the number of citizens residing in a given, demarcated constituency. Respecting the figure ensures that each elected assembly member represents approximately the same number of constituents. It also ensures that each constituency has a roughly similar number of prospective voters for registration.)

Table 6 shows the affected constituencies. Four were won by the SPLM. Six went to the NCP. The population of three of the SPLM-won constituencies substantially exceeded the state's electoral dividend. Four of the NCP-won constituencies were smaller than the electoral dividend. This implies that in affected areas, the SPLM vote was distributed more inefficiently, to the advantage of the NCP. In contrast, the NCP needed fewer votes to win in areas with smaller populations, again to their advantage. Poorly demarcated constituencies were not a deciding factor in the balance of power in the legislature; the proportional representation elections moderated the results of the geographic vote. But a fairer demarcation of constituencies might have denied the NCP the 60 per cent supermajority of seats it now holds.

Table 6. Geographic constituencies not respecting population limits, May 2011

Constituency	2010 census population	Deviation from electoral dividend limits	Seat won by
Kalogi (7)	55,200	(13,123)	NCP
Kojeira (29)	66,375	(1,948)	NCP
Eastern Kadugli (11)	66,736	(1,587)	NCP
Algoz North (21)	66,890	(1,433)	NCP
Meiram (31)	96,956	6,598	NCP
Al Abassiya (1)	99,427	9,069	NCP
Western Kadugli (10)	65,532	(2,791)	SPLM
Solara (19)	96,986	6,628	SPLM
Om Dorein (12)	100,655	10,297	SPLM
Hibeila (20)	101,742	11,384	SPLM

Source: NEC, 2011a

3 Evaluating other observer findings

3.1 Understating problems with voter registration

Given Harun's narrow victory, irregularities in the voter registry become much more significant. The NEC organized a new voter registration process in South Kordofan from 24 January to 12 February 2011. At the final count, 642,555 voters were registered across the state.

In its 29 March statement on voter registration, the Carter Center's headline conclusion was that registration was 'low' compared to the registration exercise conducted in 2009 for the April 2010 elections (Carter Center, 2011a, p. 1). Still, Center observers recorded that

> registration staff consistently failed to ask where the citizen was residing (registrars inquired at 26 percent of centres visited), their length of residence in the area (nine percent of registrars), and whether the registrant had previously registered to vote in another area (reported at only one centre visited by observers). (Carter Center, 2011a, p. 6)

These problems sound familiar. The Carter Center had observed of the 2010 elections that 'there were insufficient checks on the data entry of registrant records, raising questions about the overall accuracy and comprehensiveness of the voter register' (Carter Center, 2010b, p. 28). In 2011, the same things happened again. Not only was there room for multiple registrations but given

> the huge number of names to process on the voter registry, and many similar names, it is unlikely data entry staff could accurately identify and eliminate possible duplicates while processing the data. (Carter Center, 2011a, p. 7)

In the light of known difficulties with the 2009 registration exercise (Verjee, 2010, p. 41), this development was more serious than suggested in the South Kordofan report.

SuGDE did not observe voter registration because of financial constraints (SuGDE, 2011, p. 4), but it expressed concern at the inadequate management of the voter registration process. Although it could not establish a link between the failings of registration and the vote's outcome, SUGDE reports expressed concern about the potential disenfranchisement of voters (SuGDE, 2011, p. 2). The NCF had a limited observer presence for registration, and said little about possible problems with the registry in its post-vote statement on 12 May.

In late February, the SPLM and seven opposition parties filed a petition against perceived irregularities in the voter roll. The NEC found no evidence of forgery, but both the Carter Center (2011a, p. 9) and SuGDE (2011, p. 9) reported that 16,000 names were subsequently removed from the voter list in Muglad.

The Carter Center commended the NEC's responsiveness to these grievances and its efforts to provide an effective legal remedy, but it criticized the lack of transparency on the adjudication and investigation of the complaints in its 29 March report on voter registration (Carter Center, 2011d, p. 10). A representative explained:

> [the Carter Center] was not given access to observe the investigation or deliberations made by the NEC, thus we cannot give an opinion on the [NEC] decision [on the petition]. As we did not observe the discrepancy directly, we do not have an opinion on the petition. This is the reasoning behind the final paragraph [of the statement, cited above] calling for more transparent adjudication in future. However, the Center met with party representatives from the NCP, SPLM and other opposition parties, all of which accepted the final voter registry.[11]

Acceptance of the final registry by all political parties avoided, at least temporarily, further dispute in the electoral process. But political acceptance is not the same thing as technical accuracy. The latter should have been the concern of the observers. No EOM expressed—or could express given the resources they allocated to observation of registration—a definitive view on the credibility of the voter list.

3.2   The distinction between polling and results tabulation

Both SuGDE and NCF issued statements before election results were announced on 15 May. Both were careful to express reservations along with their evaluations. NCF stated:

> It is important to note that at this time the process is still ongoing and an overall assessment will have to wait until the process has been completed, including completion of the tabulation of results as well as the filing, review, and resolution of any complaints'. (2011, p. 1)

SuGDE also offered a caveat: 'SuGDE emphasizes that it concluded its observations on May 5' (2011, p. 1), that is to say the day after polling ended.

In addition to its statement on voter registration, the Carter Center made further statements on the electoral process on 28 April, 9 May and 18 May. Polling ended on 4 May; but its 9 May statement did not comment on the polling process. The 18 May statement, which included an overview of the

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[11] Correspondence between the author of the present report and a Carter Center representative, June 2011

results at gubernatorial and legislative level, combined comment on the polling exercise with comment on the aggregation, tabulation and processing of results and the Center's finding of credibility applied to all parts of the electoral process.

The conclusion largely neglected a key lesson of Carter Center observation of the national elections in Sudan in 2010. On 17 April 2010, the Center issued a positive statement on the elections. By the time of its statement on tabulation on 10 May, however, its view had shifted. And in its final report on these elections, in December 2010, the judgement was harsh: '[a]nother critical shortcoming in the elections was tabulation, which was severely disorganized and susceptible to manipulation … counting and tabulation of results were badly flawed across Sudan and cast serious doubts on their accuracy' (Carter Center, 2010b, p. 2 and p. 4).

In the case of the 2010 elections, judging tabulation to have lacked credibility, the Carter Center concluded:

> While the NEC designed an electronic tabulation system that contained numerous safeguards for data entry, the process was generally not followed as prescribed. This prevented key verification steps from occurring and compromised the accuracy of the results. In some cases, officials resorted to manual tabulation and ignored the NEC's planned data security measures. Frequently, the electronic system that was developed to tabulate results was only partially used or not used at all. (2010b, p. 4)

It should have come as no surprise that tabulation was also the most contentious phase of the vote in South Kordofan (Carter Center, 2011d, p. 2). But in 2011 the Center downplayed it, noting only that

> …election officials appear to have chosen not to use the official database developed to handle the preliminary results. The database is programmed to reject results where the numbers do not reconcile and these results would then be quarantined and investigated before they could be entered. This process was bypassed by the SHEC, thus removing an important safeguard that can highlight anomalous results. (2011d, p. 17)

Given the vastly improved technical administration of the 2011 elections in South Kordofan, there was less excuse than in 2010 for abandoning set procedures and systems. Yet the observers of the South Kordofan elections limited themselves to considerably milder strictures:

> The entry of the results into the formal database, which would quarantine non-reconciling results, would have indicated whether the problem was due to a procedural error or manipulation of the results. The integrity of the process would have been stronger had the formal database been utilized. (Carter Center, 2011d, p. 18)

3.3 Ignoring past recommendations

Finally, both the Carter Center and SuGDE suggested that any electoral disputes resulting from the election in South Kordofan be pursued through judicial process. On 9 May the Carter Center called on all contesting parties and candidates '…to seek recourse to potential electoral disputes through established legal channels' (2011c, p. 1). SuGDE issued a similar call: '[t]he Group urges all parties…to deal with all disputes through appropriate legal mechanisms' (2011, p. 2).

On first glance, these would appear to be reasonable recommendations. But as recently as December 2010, the Carter Center itself had made extensive critical comments on the flaws in the legal framework for the elections:

> Sudan's legal and electoral framework for the 2010 general elections, while in some cases offering certain freedoms and protections, was overall contradictory in its design and implementation due to pre-existing repressive legislation, some of which originated well before the CPA. (Carter Center, 2010b, p. 15)

> The NEC's handling of complaints failed to meet Sudan's constitutional, international, and regional obligations to provide a legal means to overturn illegitimate results. (p. 52)

> The legal framework does not ensure adequate respect for the essential political rights and freedoms prescribed in Sudan's constitution, including freedoms of expression, assembly, and association as well as the right to an effective remedy for violations. (p. 59)

And on 28 April 2011 the Carter Center noted widespread mistrust of the system: '[t]he majority of candidates, their campaigners and community leaders spoken to…mistrust that any complaints they bring will be adequately dealt with by the judicial authorities' (Carter Center, 2011b, p. 10).

It is hardly surprising that aggrieved parties did not pursue legal challenge to the votes. The Carter Center's earlier conclusions on the inadequacies of legal complaint processes confirmed the futility of such an exercise. And thus a disputed election has given way, not to a legal contest, but to a brutal war.

Glossary of words and acronyms

CPA	Comprehensive Peace Agreement (2005)
DUP	Democratic Unionist Party (opposition party in the Republic of Sudan led by Galal al-Dugair)
DUP (Original)	Democratic Unionist Party, (opposition party in the Republic of Sudan led by Muhammad Othman al-Mirghani)
EOM	Election observation mission
EU	European Union
GoNU	Government of National Unity of the Republic of Sudan (from 9 January 2005 to 9 July 2011)
GoS	Government of Sudan (prior to 9 January 2005 and since 9 July 2011)
GoSS	Government of Southern Sudan (from 9 January 2005 to 9 July 2011)
NCF	National Civic Forum (civil society domestic observer network, established for the 2010 national elections, operating in the Republic of Sudan)
NCP	National Congress Party (ruling party of the Republic of Sudan)
NEA	National Elections Act (2008)
NEC	National Elections Commission
SHEC	State High Elections Committee
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement (prior to 9 July 2011, junior party in the GoNU and contesting party in the South Kordofan elections; since 9 July, 2011 ruling party of the Republic of South Sudan)
SPLM-N	Sudan People's Liberation Movement, Northern Sector (opposition party in the Republic of Sudan led by Malik Agar)
SPLM-DC	Sudan People's Liberation Movement-Democratic Change (opposition party in the Republic of South Sudan led by Lam Akol)
SuGDE	Sudanese Group for Democracy and Elections (civil society domestic observer network, established for the 2010 national elections, operating in the Republic of Sudan)
Umma Party	National Umma Party (opposition party in the Republic of Sudan led by Sadiq al-Mahdi)

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2011

Disputed Votes, Deficient Observation: The 2011 election in South Kordofan, Sudan
By Aly Verjee
Deficient observation of the 2011 election in South Kordofan—and premature endorsement of its results by observation missions—make it hard to tell whether or not SPLM claims of fraud were justified, making resolution of the armed conflict more difficult.

2010

Update to *Race Against Time* By Aly Verjee,
This update to a previous report summarizes the challenges facing the referendum process in the final year of the Comprehensive Peace Agreement in Sudan.

Race Against Time: The countdown to the referenda in Southern Sudan and Abyei By Aly Verjee
Published on the eve of voter registration for the referendum in South Sudan, *Race Against Time* analyses the unresolved procedural problems and technical difficulties threatening the self-determination process. The report includes timelines, a guide to electoral bodies, comparisons with referenda elsewhere and a bibliography of legislative documents. Also available in Arabic.

2009

Electoral Designs By Marc Gustafson
A guide to Sudan's electoral system—one of the most complex in the world—and its effects on the distribution of power. Analyses government documents to reveal errors and ambiguities in the demarcation of electoral districts, and warns of the challenge these pose to the conduct of elections.

Elections in Sudan: Between a rock and a hard place By Justin Willis
This briefing paper, submitted to the UK Associate Parliamentary Group on Sudan, discusses the challenges facing the international community in the lead-up to the April 2010 elections in Sudan. The paper follows up issues raised by an earlier publication, *Elections in Sudan: Learning from Experience.* Also available in Arabic.

Elections in Sudan: Learning from Experience By Justin Willis, Atta el-Battahani and Peter Woodward
This report examines Sudan's history of elections, and asks why it was that despite the apparent success of 1953, multi-party elections have not produced the kind of stable yet dynamic government in Sudan that the secret ballot is intended to encourage. Also available in Arabic.