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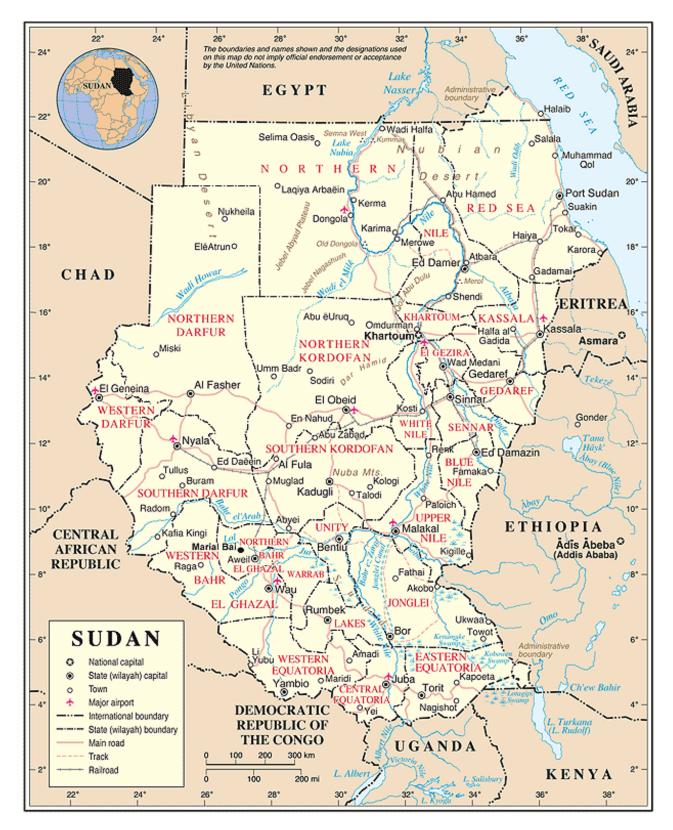
# Race Against Time

## The countdown to the referenda in Southern Sudan and Abyei

Aly Verjee

Source: UN Department of Peacekeeping Operations (2007)

# Race Against Time

The countdown to the referenda
in Southern Sudan and Abyei

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October 2010

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# Author's note and acknowledgements

The situation in Sudan is volatile. This report is based on field research in August and September 2010 and subsequent external tracking of the referenda process. It reflects the state of play in October 2010, when the report was finalized. Thanks to my colleagues at the Rift Valley Institute, particularly John Ryle and Christopher Kidner, for their support during this project, to those who spoke so frankly and reflectively during the research, and to those who provided corrections and critical readings of successive drafts.

# About the author

Aly Verjee was Deputy Director of the Carter Center's international election observation mission in Sudan from its inception in early 2008 to January 2010. He has worked in Sudan since 2005 and is currently an independent analyst specializing in the contemporary politics of Sudan and the Horn of Africa. He has also been involved with international support for electoral processes in Afghanistan, the Democratic Republic of the Congo and Somaliland.

# The Rift Valley Institute

# Sudan's electoral and referenda legislation and organizing bodies

## Southern Sudan referendum

**RHC**

Referendum State High Committee. The five-member organizing committee established in each of the ten states of Southern Sudan, responsible for the logistics and implementation of referendum-related activities at the state level. RHCs were appointed in August 2010, and report directly to the SSRB in Juba.

**SSRA**

Southern Sudan Referendum Act. Governing legislation for the Southern Sudan Referendum, passed by the National Assembly in late 2009.

**SSRB**

Southern Sudan Referendum Bureau, seated in Juba. A five-member subsidiary committee of the SSRC and the referendum counterpart to the SSHC. The chair of the SSRB, Chan Reec Madut, is the deputy chair of the SSRC. The SSRB is directly responsible for supervising the activities of the ten RHCs in Southern Sudan, and has primary responsibility for managing the logistics of referendum operations in the south.

**SSRC (or RC)**

Southern Sudan Referendum Commission, seated in Khartoum. The nine-member temporary organizing commission for the Southern Sudan referendum mandated by the SSRA and appointed by the Presidency of the Republic. Chaired by Mohamed Ibrahim Khalil, with Mohamed Osman al-Nijoumi serving as secretary-general. Responsible for interpreting the SSRA and determining referendum policy decisions, and responsible for organizing referendum operations in northern Sudan and overseas. Established in July 2010.

## Abyei referendum

**AARA**

Abyei Area Referendum Act. Governing legislation for the Abyei Area Referendum, passed by the National Assembly in late 2009.

**AARC**

Abyei Area Referendum Commission. The nine-member organizing commission for the Abyei Area Referendum mandated by the AARA. The commission's composition is determined by the Presidency of the Republic. Yet to be established. To be located in Abyei.

## 2010 elections

**NEA**

National Elections Act. Governing legislation for Sudan's 2009 voter registration and 2010 national elections, passed by the National Assembly in July 2008.

**SHC**

(Elections) State High Committee. The five-member organizing committee established in Sudan's 25 states, responsible for the logistics and implementation of election-related activities at the state level. SHCs were appointed in June 2009, and reported directly to the NEC in Khartoum.

**SSHC**

Southern Sudan High (Elections) Committee, based in Juba. A five-member, subsidiary committee of the NEC, chaired by the late Caesar Arkangelo. Was responsible for coordinating the elections in Southern Sudan, but largely sidelined by the NEC.

**NEC**

National Elections Commission, seated in Khartoum. The nine-member permanent organizing commission for Sudan's national elections mandated by the NEA and appointed by the Presidency of the Republic. Chaired by former vice-president of Sudan Abel Alier, with Galal Mohammed Ahmed serving as secretary-general. Established in November 2008.

# Summary and recommendations

### The self-determination process in Sudan is in peril.

Voting in Sudan's two referenda, in Southern Sudan and Abyei, is due to begin on 9 January 2011. This date is specified in the 2005 Comprehensive Peace Agreement (CPA) and in the referendum acts that were passed as part of the process established by the CPA. At the start of November 2010, just ten weeks remain before the deadline. Preparations for voting are far behind schedule. Statements by the Government of Southern Sudan (GoSS) have made it clear that, from the point of view of the Sudan Peoples' Liberation Movement (SPLM)—one of the two signatories to the CPA and the dominant party in the GoSS—adherence to the 9 January date is non-negotiable. The UN Security Council has underscored the importance of holding the referenda on time and of ensuring adherence to international standards. But relations between the SPLM and the National Congress Party (NCP), the two parties to the CPA, have become acrimonious; public statements are confrontational; resolution of disputes has been repeatedly delayed. On the side of the NCP (which formed the Government of Sudan at the time of the CPA, and is now formally part of a Government of National Unity in partnership with the SPLM), delays are used as a stalling and spoiling tactic; on the SPLM side, they have been the result of a lack of planning. Both kinds of delay threaten the process.

### The two referenda are the most critical events in the contemporary history of Sudan.

Despite the intermittent antagonism of the NCP, a timely and successful conclusion to the self-determination process in Southern Sudan and in Abyei could be a vindication for both signatories to the CPA, and for its international guarantors. It would open the way to normalization of relations with Western donor countries and international institutions and enable peace between two likely new states in Sudan. Failure could mean a return to war.

### There are four key areas of dispute.

The key areas of dispute in both referenda are voter eligibility, voter registration procedures and border demarcation. In the case of the Abyei referendum there is also continued dispute over the appointment of the referendum commission. The first three of these areas present technical challenges that are exacerbated by the delays resulting from political disputes between the parties.

### It is too late to implement the referenda in full accordance with referendum laws.

For a credible vote to take place on time the parties need to agree on a modification of the registration and voting arrangements. In practical terms this has already happened. But the two referendum commissions now need to act with unprecedented speed. Without an

improved level of cooperation between the parties and a faster resolution of disputes it will be extremely difficult to achieve a credible vote in the time remaining. To increase the chances of organizing the referenda in time, the technical and logistical challenges need to be clearly distinguished from the diplomatic challenge of resolving delays caused by disagreements between the parties.

## Major technical challenges confront the referenda commissions.

Voter registration for the southern referendum is now due to begin on 14 November. There are as yet few structures or personnel in place to implement the registration process or the polling. And no procedure has been announced for counting or recording the votes or managing the results. These are technical challenges that have been exacerbated by political delays. Even with an agreement between the parties to modify the provisions of the referenda laws, there is barely time for registration: for procedural decisions to be taken and acted on and for registration itself to take place. All these stages could also be subject to dispute between the parties. Decisions still need to be made—and action taken—by the referenda commissions on the criteria for eligibility, on the timing and duration of the registration period, on the question of how southern voters are to register in northern Sudan, and on which systems will be adopted to ensure that the voter register is accurate.

## Physical demarcation of the entire north–south boundary is not practicable before the referenda.

Physical demarcation of the boundary between north and south Sudan, as prescribed in the CPA, has not yet begun. The CPA does not require demarcation as a precondition for the referenda and the stated position of the SPLM is that it can be postponed until after the vote. At various points, the stated position of NCP officials has been that demarcation must be completed beforehand. To accept this stated NCP position on demarcation would mean it would not be possible to hold the referenda on time.

## The referendum in Abyei faces additional political obstacles and delays.

The problems in Abyei are even greater than those facing the referendum in the south. Negotiations between the two parties are deadlocked; violent confrontations have already taken place in Abyei town. Both parties agreed to the findings of the Permanent Court of Arbitration (PCA) on the boundaries of Abyei, but the NCP has demanded demarcation of the boundaries on the ground before the referendum takes place. And more recently the NCP appears to have reconsidered its acceptance of the findings of the PCA.

NCP representatives have demanded postponement of the Abyei referendum. And there is disagreement on voter eligibility. The referendum act specifies residence in the Abyei Area as the criterion, to include Ngok Dinka and other residents. The NCP demands the inclusion of the Misseriya population, either in its entirety, or the part that spends the dry season in the Abyei Area; the SPLM insists that only the permanently resident population, almost all Ngok Dinka, be included. Finally, there is a deadlock on the naming of the members of the Abyei

referendum commission. Unless they are named by mid-November it will not be practicable to hold the Abyei referendum on time.

## Postponement of the Abyei referendum is undesirable but may be unavoidable.

Renegotiating the date of the Abyei referendum would be a risky strategy, even assuming agreement from the SPLM. It would compromise the CPA by giving in to pressure from the NCP and have unpredictable knock-on effects on the referendum in the south. And it would risk an indefinite postponement of the Abyei referendum. But the referendum in Abyei is so far behind and the dispute over the process so far from resolution that delinking it from the date of the referendum in the south may be necessary in order for the southern referendum to proceed on time. An agreement on postponement of the Abyei referendum would need to resolve all the outstanding issues: the boundary demarcation; the appointment of members of the referendum commission; the question of voter eligibility and residency; and issues of public security. Resolution of the disputes over Abyei could be advanced by the appointment of international members to Abyei's referendum commission and the use of the 2008 census data to resolve the argument over residency.

## Postponement of the southern referendum would not solve the problem.

Given the high political stakes and the gravity of the technical challenges, there have been suggestions that both referenda should be delayed pending resolution of procedural and other issues. The referenda commissions have the power to postpone polling 'for any compelling situation'. The CPA, however, has no provision for a delay. And the SPLM has explicitly ruled it out. Even if the process were delayed by mutual agreement, removing the pressure of the existing timetable would not necessarily mean that the time gained would be put to good use. A delay will not ensure success. This can only be achieved by a readiness on the part of the NCP to accept that the referendum must happen, and a willingness both on the part of NCP and on the part of the SPLM, as the Government of Southern Sudan, to face up to the technical challenges.

## A referendum without the participation of the NCP would lack international recognition.

In the event of a breakdown of negotiations between the parties the possibility has been raised at the UN Security Council by the President of Southern Sudan of a referendum organized by the SPLM/GoSS without the participation of the NCP. Such a referendum could take place in the south only. It would effectively disenfranchise southerners resident in the north. Although it is not entirely precluded by the provisions of the CPA, a referendum conducted under these conditions would be unlikely to gain full international recognition or promote national consensus. It would also not be possible for the SPLM/GoSS to organize it by the 9 January deadline.

**To have credibility, the referenda need to be conducted to a higher standard than the 2010 elections.**

Unlike elections, the referenda are unique and unrepeatable events. The flawed elections of 2010 encouraged cynicism among Sudanese regarding the electoral process. The conduct of the elections does not augur well for the referenda. The failures and abuses of the electoral process included over-centralization on the part of the NEC, absence of standardization in voting procedures, lack of transparency in polling and selective publication of voting figures. For the results of the referenda to have credibility in the eyes of the Sudanese electorate, particularly northern Sudanese, the referenda commissions need to establish a higher standard than that achieved by the electoral commission in the 2010 elections. Training of staff and the establishment of consistent management need to be prioritized in the short time that remains. Administration should be less centralized. Commissioners should be full-time. Delegation needs to be more effective. For purposes of verification the publication of disaggregated voting figures is important. Technical flaws could provide an opening for rejection of the results, since in the event of a win for the secession vote, the results are likely to be disputed by the NCP.

**International observers can learn from their performance in the 2010 elections.**

International observation is of critical importance in establishing the credibility of the referenda and international recognition of its results. The role of observers is not just to observe the polls, but to ensure fairness in registration and a conducive atmosphere for the campaign and the vote. This may include combating rumours with officially endorsed, eye-witness reports. Observers deployed during the 2010 elections in Sudan were too few, came too late and left too early. Their reports lacked stringency, promptness and clarity. Few observed the registration process, a critical point in any election, where serious abuses can set in. And few remained for the process of counting and tabulating votes.

In the case of the referenda the imminence of the registration period and the length of the polling period both pose particular challenges, but the delay in the process gives the observation missions a chance to make up for lost time, correcting the deficiencies of their coverage of the election by ensuring that they conduct proper observation of the registration and the referenda, reporting early on deficiencies in the process, and staying for the counting, aggregation and declaration of the results.

**The UN high-level panel has an important role.**

UN involvement in the referenda has until recently been confined to technical and logistical assistance—and a less than effective security presence. But the appointment in October by the UN Secretary-General of a high-level panel on Sudan to monitor the process[1] opens the way for a greater UN role in addressing the current crisis. The results of the southern

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1  In the words of Haile Menkarios, Special Representative of the Secretary-General of the United Nations in Sudan, the role of the UN Panel is, 'to monitor the referenda and make interventions to avoid or rectify possible discrepancies during the preparation and conduct of these referenda to enhance their credibility' (near-verbatim transcript of the press conference by Haile Menkerios, UNMIS, 18 October 2010).

referendum may yet be disputed by one or other of the parties, either in the event of a clear vote for secession or if the vote fails to meet the threshold of a 60 per cent turnout of registered voters. This would lead to a further crisis. The UN panel—appointed at the request of both parties—is liable to be the arbiter of international endorsement of the results.

## A political fix.

The referenda are a remarkable, if fragile, achievement of international diplomacy, the culmination of six years of the CPA and the many years of negotiation that preceded it. At this final stage, brinkmanship, delay and broken agreements—old traditions of Sudanese politics—threaten to turn the political and technical challenges of the referenda into a national disaster. Only concerted international attention and skilful diplomacy can bring the process of self-determination in Sudan to a successful conclusion. The absence of agreement so far on post-referendum arrangements increases the possibility that the result will be challenged, generating renewed conflict between the parties. In the event of a vote against unity, a southern referendum with serious technical flaws would damage the legitimacy of secession. Any technical failing in the referenda—and there could be many—would be used as a bargaining chip. Although a technically competent process would go some way to removing these possible points of contestation, the pressures of time make it increasingly unlikely that the referenda will be conducted without procedural deficiencies.

NCP intransigence may well make it impossible for the referenda to take place without a wider-ranging agreement. Resolution of disputes and completion of the self-determination process is likely to be possible only as the result of a political fix, most likely in the form of an agreement brokered under the auspices of the African Union. This will require the support of the United States and China, and perhaps Ethiopia, as these are, effectively, the only countries that have leverage with both parties.

## Comprehensive Peace Agreement II?

A new framework agreement between the two parties—a CPA II—would need to include provisions for post-referenda arrangements as well as for the conduct of the referenda themselves. It should first reaffirm the parties' commitment to the terms of the original CPA. Then lay out agreed arrangements in the event of secession of Southern Sudan on citizenship rights, oil, wealth-sharing and security. A new agreement could establish some reciprocal rights of citizenship—for Southerners in the north and northerners in the south—permitting freedom of movement, work, residence and ownership of property (similar to the Four Freedoms agreement between Sudan and Egypt). It could specify a revenue-sharing formula, based on the northern government's ownership of the pipeline and other oil infrastructure, and Southern Sudan's territorial control of oil fields south of the 1956 border. It might require that Abyei be demilitarized in the event of the referendum there being postponed, and institute continued monitoring by the UN and AU. The agreement should specify a date for a postponed Abyei referendum—possibly April 2011.

Finally, the parties should recommit to respecting the outcome of the Southern Sudan referendum, waiving their right to object on technical grounds, and instead committing themselves to unequivocal acceptance of the judgment of the secretary-general's panel on

the referendum, with the members of the UN Security Council and AU also pledging to uphold the panel's verdict. Reaching such an agreement by December, in advance of the vote, could be pivotal in ensuring that the 9 January poll is not the prelude to further violence. The AU High Level Implementation Panel (AUHIP), the UN Panel, the EU, the United States and other interested states will need to work in unison if such an agreement is to be concluded, and if it is to endure.

# Introduction

At the beginning of November 2010, with barely ten weeks to go until 9 January 2011, when polling is due to begin, the self-determination referenda in Southern Sudan and the Abyei district of Kordofan are in peril. Political standoffs and poor technical planning mean that preparations are only just beginning. In Abyei, where there is still no agreement on the nomination of an organizing commission, it is now unlikely that the vote can be held on time.

The stakes in Sudan's self-determination process are clear and widely recognized. The referenda are the culmination of six years of the Comprehensive Peace Agreement (CPA), of several years of negotiation that preceded it and many years of war before that. This agreement is unique in Sudan's history in addressing the root causes of the long conflict between the north and the south. In Sudan—and internationally—it is widely assumed that there will be a majority vote against unity, leading to the separation of the south of the country from the north. In the north this prospect is regarded with alarm and disbelief. Political opinion in northern Sudan—notably in the National Congress Party (NCP), one of the two signatories to the CPA and the dominant party in the national government in Khartoum—is strongly opposed to separation. There has also been widespread opposition among governments in the Arab world. Even if the referenda take place on time, technical deficiencies in the implementation could still allow the NCP and other interests opposed to the potential independence of Southern Sudan to reject the results. A disputed result would hold serious risks in terms of a potential return to north–south military confrontation.

In contrast to elections held in Sudan earlier this year, the referenda are unique events. Should there be serious administrative flaws they are unlikely to be re-enacted. Insufficient time remains for full legal compliance with the Southern Sudan Referendum Act (SSRA), the Abyei Area Referendum Act (AARA), and the CPA itself. In order to achieve a successful conclusion to the self-determination process further agreements therefore need to be made between the NCP and the Sudan Peoples' Liberation Movement (SPLM), the other signatory to the CPA and the dominant party in the Government of Southern Sudan (GoSS). These agreements need to be made before the referenda and will require high levels of support and unremitting pressure from international actors—from the UN, the AU, the EU and donor countries—and a new level of political will from the two parties.

This report provides an account of critical issues in the final days of the run-up to the referenda. It reviews the options that remain available to the referenda committees for the organization of registration and voting. It provides a timetable for the remaining weeks before the referendum, indicating the point by which each stage of the process needs to happen for the referenda to take place on time. And it provides a guide to the legal framework of the referenda and their organizing bodies.

It considers a broad range of questions about the referenda. Can they still be held on time? Would a delay help? What are the minimum requirements for a credible result? What are the likely points of future dispute? Could the results be contested? Have there been other referenda elsewhere in the world that have useful lessons to offer?

The report is based on a review of the extensive literature of the electoral process in Sudan, on reports on the 2010 elections, on current analysis of the progress of the referenda, and on many interviews with Sudanese citizens, government officials, academic specialists, diplomats, technical consultants and staff of international agencies.

The technical challenges that lie ahead for the referenda commissions are liable to be exacerbated by continuing political disputes. At every step—determining voter eligibility, conducting voter registration, and counting ballots—such disputes could derail the process. The report details the areas to be addressed by the referenda commissions and the international organizations supporting them. These include: making the electoral calendar workable; forming competent electoral administrations; establishing criteria for voter eligibility; managing the registration; deciding the form of words for the questions on the voting forms; and managing the polling process, the vote count and the results.

Despite these challenges, the report argues, the referenda could still be successful, particularly if there is an advance agreement which diminishes the likelihood that technical flaws will be seized upon as an excuse to reject the outcome. The parties have shown that disputes between them, such as the appointment of the secretary-general of the Southern Sudan Referendum Commission (SSRC), can be resolved. A starting date for the registration and an ambitious timetable for the process have now, finally, been announced by the SSRC, and training of registration staff has started in the south. But there is no referendum commission or timetable for Abyei. Neither commission yet has sufficient staff, equipment, capacity or money to implement the referendum processes. Little time remains for the resolution of outstanding disputes or disputes yet to come.

It seems that the challenges can only be overcome with renewed political will—or incentive—on the part of the NCP and the SPLM. A credible result will also require Herculean efforts by the SSRC—and the Abyei Area Referendum Commission (AARC) once it is constituted. While much technical work remains to be done, it is political distrust, delay on the part of the NCP and disputes between the NCP and the SPLM that continue to impede preparations.

The report argues that an expansion of international support to the process is indispensable. More resources will be required in logistics, security arrangements, voter education, training of polling staff, general financial support and, most importantly, in diplomatic pressure and resolution of disputes between the parties. In terms of the conduct of the referenda, donor funds have been pledged, but only a fraction of the SSRC's USD 372 million budget is yet available. Neither the Government of National Unity (GoNU) nor the Government of Southern Sudan (GoSS) have contributed more than token amounts (though the latter has pledged them). The budget far exceeds the original international estimates of USD 60–100 million, and a lack of consensus between the SSRC and the donors has impeded the timely deposit of further funds.[2] The SSRC's subsidiary committees have almost no resources, staff, or office premises. It seems that the UN and other technical assistance providers are still waiting for the SSRC to provide crucial specifics about what support they require.[3] And the UN does not yet have the necessary technical staff in place to administer the level of support that will be needed.

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2    UN and International Foundation for Electoral Systems (IFES) provisional estimates, July 2010. This does not include spending on security or civic education. At an average of USD 20 a voter (the approximately USD 200 million spent on the 2010 elections, divided by roughly ten million voters) and four million voters, costs would total USD 80 million, although the referenda cycle is much shorter and less complex than the 2010 elections to justify an equally high expenditure. One technical assistance expert described the USD 372 million figure as 'fantasy'. Correspondence with the author, October 2010.

3    Author correspondence with UN personnel, August 2010.

Finally, the report considers the lessons for the referenda from the recent elections in Sudan. Sudan's 2010 national elections also took place—after many delays—as part of the political process laid down in the CPA of 2005. They are Sudan's most recent experience of electoral politics. For many southerners, in particular, they were perceived as a prelude to the referenda. For those concerned with the technical conduct of the poll they may be seen as a rehearsal.

Flawed as they were, the 2010 elections provide a number of useful lessons for the conduct of the referenda. More than two hundred recommendations for improving future electoral processes in Sudan— from intergovernmental agencies, providers of technical assistance, and national and international observers—were offered after the vote.[4] There is still an opportunity to apply some of these lessons and introduce improvements in the process. The key areas where the lessons of the elections apply include: accuracy and consistency in registration of voters and administration of the vote; transparency and traceability of results at local level; anticipation of security problems to pre-empt intimidation of voters; and an increase in the number and spread of observers to increase the authority of international missions. Above all, it needs to be borne in mind that the 2010 elections were themselves seriously delayed and preparations for them rushed. The organization of the referenda has been delayed still more than the elections; and preparations will be still more hectic. Support for the referenda from international sources will need to be accelerated at a corresponding rate.

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4    Including recommendations from technical assistance providers (UNMIS, UNDP, IFES, EU); election observer missions (African Union, 2010; Carter Center, 2009a, 2009b, 2010a, 2010b, 2010c; EU EOM, 2010a, 2010b; CFPA, 2010; IGAD, 2010; League of Arab States, 2010; MOFA of Japan, 2010) and domestic observer missions (SHAMS, 2010; SuDEMOP, 2010; SuNDE, 2009; SuNDE–SuGDE, 2010; TAMAM, 2010).

**Table 1  Countdown to the referenda: what needs to be done by when**

OCTOBER 2010

Funding
- Consensus on the cost of the referenda and sources of finance.
- Disbursement of funds for the registration process.
- Funding commitments from GoNU in order to release donor funds.[1]
- RHCs to rent offices, recruit staff and obtain supplies.

Staff recruitment and training
- SSRC to extend secretariat beyond the nine commissioners and secretary-general (appointed in September 2010)
- RHCs to train staff to begin registration preparations in the ten states of Southern Sudan.

Technical support
- SSRC to make formal request for assistance from the UN and other technical assistance agencies.[2]
- UN county teams fully staffed to assist preparations for referenda registration

Voter eligibility
- Voter eligibility to be defined so registration can begin.
- SSRC (and AARC) to determine basis on which voters can be certified as eligible—particularly in Abyei and in northern Sudan and the diaspora.[3]

Voter registration
- The SSRC to determine locations where registration will take place.

NOVEMBER 2010

Voter registration
- Registration staff to be trained and equipped.
- Vehicles for transfer of materials and systems for retrieval and processing of registration data to be in place. Registration throughout Southern Sudan and in prescribed locations in northern Sudan and overseas.
- Voter registry to be published in the format to be displayed during voting.[4]

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1    The United States, Japan, the Netherlands, Norway and the United Kingdom have deposited funds. Other donor assistance is tied to funding commitments from the NCP/GoS which may not be forthcoming. In his visit to the SSRC on 27 September, federal Minister of Finance Ali Mahmud said: 'We went through the initial and basic proposals of the budget, its figures and structures. We agreed with the brother chairman, members [of the commission], his deputies, the secretary-general and all the brothers on the figures and structures of the budget. We transferred the issue to technocrats so that they can discuss the budget in detail; God willing, it will be approved in a very simple manner, and financing will flow after that, God willing' (Sudan TV, 2010).

2    During the elections this was donor-led. In the case of the referendum the SSRC needs to save time by a more proactive approach. The UN has received requests for assistance from the GoNU and the GoSS but detailed requests from the SSRC have been slow in coming. One UN official noted that, 'certain adjustments may need to be made based on the final detailed request from the SSRC, i.e. where/to what extent they would like UNIRED assistance in the north' (interview with the author, July 2010).

3    'A referendum official may seek the assistance of the local authority or the competent Sultan or the dignitaries of the concerned community' (GoNU, 2009a, art. 26).

4    See GoNU (2009a, art. 32.1) and GoNU (2009b, art. 30.1). Processing of election registry data records in Southern Sudan took up to four months in some states, due to the volume of registration data and the limited equipment and ability of SHC staff to input data quickly. With a similar number of registrants and an unchanged data processing system, referendum registration data aggregation could be equally lengthy. The hybrid manual/computerized registration system used during the elections failed in Southern Sudan (interviews with SHC members in Southern Sudan; see also EU final statement (EU EOM, 2010b, pp. 21–22).

Ballots

- Decision on form of words for the question to be put to voters in each of the referenda.[5]
- Procurement and printing of polling material.

Abyei Referendum Commission

- Last practicable date for appointment of Abyei's referendum commission (was due in January 2010).[6]

## DECEMBER 2010

Voting preparations

- Voting locations to be finalized. Polling kits and materials to be distributed (before Christmas holiday).
- Training of polling staff to be completed.
- Ballots and other sensitive materials dispatched.

Results management

- Decisions on tabulation systems for aggregating results to be made by SSRC (and AARC).
- Systems for counting and tabulation to be operational in RHCs before voting begins.[7]

Security

- Security plans for polling and counting centres.[8]

## JANUARY 2011

Deployment of staff and materials

- 20,000 trained staff to be deployed to polling locations.[9]
- Ballots, indelible ink, forms and electoral materials for seven days of voting.[10]

Voting: 9–15 January.

Results management

- Counting and tabulation: preliminary results station by station.

## FEBRUARY 2011

Results management

- Final results published and outcome announced.[11]

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5    GoNU, 2009a, art. 14.2.; GoNU, 2009b, art. 14.2.

6    The AARA required the Abyei referendum commission to be established 'immediately' upon the law's enactment in December 2009.

7    This was not the case for the elections. Correspondence with observers and technical assistance experts, April 2010.

8    If large areas of Southern Sudan were not able to vote due to insecurity, the 60 per cent turnout threshold could fail to be reached, requiring an expensive and politically explosive re-run of the vote.

9    Assuming approximately 5,000 polling stations are required in Southern Sudan, as for the elections in April 2010, and four staff per station, 20,000 poll staff will be needed.

10   '... polling shall take place in seven days' (GoNU, 2009a, art. 36.1; GoNU, 2009b, art. 34.1).

11   Final results, certified by the SSRC and the AARC are due no later than 30 days after the vote, that is by 15 February 2011, after any appeals against results have been addressed (GoNU, 2009a, art. 44.1; GoNU, 2009b, art. 42). Following the declaration of final results, the referenda outcomes are announced. Accordingly, post-referendum arrangements begin to be implemented, as agreed by the NCP and SPLM (GoS/SPLM, 2005a, Machakos Protocol, art. 2.5; GoNU, 2009a, art. 67; GoNU, 2009b, art. 65). The CPA's interim provisions are due to end in July 2011, which is the earliest date an independent state could be declared in Southern Sudan.

# The referendum in Southern Sudan and the referendum in Abyei

## 1. The legal timetable

Time has already run out for full legal compliance with the referenda laws, and in its 29 August meeting, the national presidency conceded this reality and agreed to the SSRC's proposal to ignore certain legal requirements of the SSRA, including the requirement to complete registration three months before the vote (SUNA, 2010; GoNU, 2009a, arts. 29.b, 32.1; GoNU, 2009b, art. 27.b).[5] To allow for the full process of display of lists, challenges and complaints, the original legal timeframe would have required voter registration to have been completed by 29 August (UNMIS, 2010). Few staff or materials are yet in place to conduct registration, for which a date of 14 November has now been announced.

Carrying out a credible referendum on the agreed date is still possible, though it is likely to see significant technical flaws, which could be used to call the outcome into question. Continued flexibility with regard to the legal timetable will be required. The amount of work still facing the key bodies—the SSRC, SSRB and AARC—is enormous. These institutions do not have the year and a half to prepare that was afforded the NEC, yet they have a similar range of tasks to undertake. The NEC found itself stretched to complete its duties within 18 months. The EU election observer mission (EOM) felt it necessary to 'recogniz[e] that the NEC was only established in November 2008 and that the preparations for the elections lasted only 10 months ... the timely conduct of election operations is to be commended' (EU EOM, 2010a, p. 2). The challenge facing the referenda commissions is considerably greater.

Almost without exception, every CPA process has been delayed (AEC, 2008; UNMIS 2008–2010). Throughout 2008 and 2009 at monthly meetings of the UN's Election Assistance Group, the UN's chief electoral affairs officer would invariably note how delayed implementation of the referenda processes had become.[6] With the SSRC sworn in on 6 July 2010, seven months after the National Assembly's passage of the SSRA, history began to repeat itself.[7] As with the NEC, the SSRC started out with no premises, no equipment, no staff, and not even any stationery. It had neither requested nor received a firm commitment of resources from the national government or donors. In the absence of dedicated office space, initial meetings were held at the private legal offices of the chairman, Mohamed Ibrahim Khalil. The SSRC has now moved into dedicated premises in Khartoum, but most of the RHCs still lack offices.[8]

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5    Broad powers are reserved to the SSRC and AARC. See art. 14.2 of the SSRA and AARA (GoNU, 2009a, 2009b). Additionally, art. 9 states that 'no one shall interfere in [the SSRC's; in the AARC's] affairs, duties, competences or limit its powers'.

6    The CPA required the referendum act to be enacted by the 'beginning of the third year of the Interim Period' [July 2008] and for the referendum commission to be formed 'soon' after the referendum act was enacted (GoS/SPLM, 2005a, Implementation Modalities on Power Sharing, sec. 1).

7    By comparison, the NEA was passed in July 2008, requiring the NEC to be formed within one month of the law's adoption. The NEC was formed in November 2008.

8    Author communications with the SSRC and interviews with technical assistance providers, July–August 2010; October 2010.

**Table 2  Deadlines, timetables, actual (bold) and indicative dates for the Southern Sudan and Abyei referenda compared with the 2010 elections**

| | Southern Sudan Referendum | Number of weeks before 9 January 2011 | Abyei Referendum | Number of weeks before 9 January 2011 | 2008–2010 Election | Number of weeks before election (11 April 2010) |
|---|---|---|---|---|---|---|
| **Formation of commissions** | **Sworn in 6 July 2010** | **27** | Overdue (was required on passage of referendum law, February 2010) | | **25 November 2008** | **72** |
| **Formation of RHCs, SHCs and county committees** | **23 August 2010** | **20** | Late October 2010? | 11 | **June 2009** | **42** |
| **Recruitment of registration staff** | Mid-October 2010 | **14** | Late October 2010? | **11** | **September –October 2009** | **30** |
| **Registration** | 14 November–1 December 2010 (announced) | **8** | Mid-November 2010? | **8** | **1 November –7 December 2009** | **23–18** |
| **Publication of preliminary registry** | 6 December 2010 (announced) | **4** | Mid-December 2010 | **4** | **10 December 2009** | **17** |
| **Period for receiving and settling complaints against the electoral register** | 13–30 December 2010 (announced) | **1** | | | | |
| **Publication of final register** | 9 November 2010 (legal deadline) | **8** | 9 November 2010 (legal deadline) | **8** | | |
| **Publication of final register** | 4 January 2011 (announced) | **1** | 31 December 2010 (indicative) | **1** | **January– March 2010** | **14–1** |
| **Voter education campaign ends** | 7 January 2011 | **0** | Not later than 8 January 2011 | **0** | **9 April 2010** | **1** |
| **Voting** | 9–15 January 2011 | **0** | 9–15 January 2011 | **0** | **11–15 April 2010** | **0** |
| **Results tabulated** | Mid-January 2011 | **+1** | Mid-January 2011 | **+1** | **Mid-April 2010** | **+1** |
| **Declaration of preliminary results** | Late January 2011 | **+2** | Late January 2011 | **+2** | **26 April 2010** | **+2** |
| **Declaration of final results** | Not later than 15 February 2011 | **+5** | Not later than 15 February 2011 | **+5** | **May 2010** | **+4** |

For a credible vote to take place with a 9 January start date, further modifications to the timetable may well be required if delays continue. Only a combination of flexibility and political will can achieve this. Additional time in itself will not remedy the political antagonism between the NCP/Government of Sudan (GoS) and the SPLM/GoSS. Nor will it spontaneously resolve the technical challenges the referenda face.

## 2. Can the referenda be delayed?

In no article of the CPA is there allowance for the postponement of the referenda. This is in marked contrast to the CPA's provisions concerning the elections, which require, 'the review of the feasibility of the dates set for census and elections' (GoS/SPLM, 2005a, Implementation Modalities on Power Sharing, sec. 10). From early on there has been a sustained failure to respect the timetable of the agreement. The national census, originally planned for November 2007, was delayed until April 2008 and still suffered from a last-minute SPLM-provoked one-week postponement. National elections were due before July 2009, then moved to February 2010, and were finally held in April 2010.

Both the NCP and SPLM have given repeated public pledges to respect the 9 January 2011 date for the referenda (SUNA, 2010). However, the consistently delayed implementation of earlier phases of the CPA augurs badly for hopes of holding the referenda on time. And NCP ministers have openly begun to demand a delay in the implementation of the Abyei referendum and a renegotiation of the Abyei question. The SSRC and AARC are empowered to postpone polling 'for any compelling situation', with the consent of the Governments of Sudan and Southern Sudan (GoNU, 2009a, art. 14.2h; GoNU, 2009b, art. 14.2h). NCP and SPLM agreement would be required for any change to the date of the vote.[9] But even if the process was delayed by mutual agreement, removing the pressure of the calendar does not ensure that the additional time would be put to good use. In the case of the elections, in March 2010, when the Carter Center mooted the possibility of a short technical delay to the elections, it provoked an angry response from President Bashir and the NCP.[10]

In reality the delay proposed would not have led to even marginally improved implementation. The fundamental circumstances of the election—including the political disputes between the NCP, SPLM and opposition parties; the distrust with which the NEC was viewed; and the continuing conflict in Darfur—would have remained unchanged. In the case of the referenda any postponement would be politically very unpopular for the SPLM/GoSS. Delaying the referenda beyond January may ultimately happen with the consent of the NCP and SPLM. But adjusting the calendar will only defer the political challenges inherent in holding these votes.

In the haste to conduct the referenda, damaging tradeoffs—such as bypassing legal requirements or skipping quality control measures in the data processing for registration—

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9    Theoretically, a change to the referendum date would require an amendment to the CPA and a decision to extend the Interim Period of the agreement.

10   In a radio interview with VOA on 18 March, Carter Center representative Graham Elson said: 'In reality, [the NEC] would be advised to consider very seriously, possibly delaying the election by nine or ten days to ensure that they can overcome these logistical and operational problems' (VOA News, 2010). In response, on 22 March, President Bashir said: 'If [the observers] interfere in our affairs, we will cut their fingers off, put them under our shoes, and throw them out.'

may be made for the sake of expediency. Striking the right balance between speed and integrity is the challenge for the commissions and their advisers. In the words of one elections expert, speaking in July 2010, '[there is] less time, higher risk for upholding the integrity of the exercise. That is where the bargain is. We want everything, all the safeguards, in five months' time. Can't be done.'[11]

**Table 3  Tasks of the Southern Sudan Referendum Commission and Abyei Area Referendum Commission**

|  | Southern Sudan | Abyei |
|---|---|---|
| **Electoral calendar** | Determine measures, regulations, timeline, registration and polling centres for referendum. | Determine measures, regulations, timeline, registration and polling centres for referendum. |
| **Requests for international assistance and confirmation of funding** | Issue a formal and specific request to the UN, IFES, and other technical assistance agencies, possibly including other intergovernmental agencies, such as the AU. Confirm resources required from international donors and Sudan's governments. | Issue a formal and specific request to the UN, IFES, and other technical assistance agencies, possibly including other intergovernmental agencies, such as the AU. Confirm resources required from international donors and Sudan's governments. |
| **Eligibility and residency** | Define indigenous and ethnic communities of Southern Sudan. | Determine the criteria of residence in the Abyei Area. |
| **Registration and overseas participation** | Define how this is to be conducted, when, and for what duration. Specify locations. Decide how to include voters in northern Sudan. Decide how to include overseas voters. | Define how this is to be conducted, when and for what duration. Specify locations. |
| **Balloting options** | Decide form of words on the ballot. Decide on one symbol for each option. Organize secure and transparent printing of ballots. | Decide form of words on the ballot. Decide on one symbol for each option. Organize secure and transparent printing of ballots. |
| **Scheduling of the vote** | Seven days for voting. Determine the timeline for polling procedure that includes the date, time and duration. | Seven days for voting. Determine the timeline for polling procedure that includes the date, time and duration. |
| **Releasing the results** | No legal date is set for preliminary results. Final results must be declared no later than 30 days after polling ends. | No legal date is set for preliminary results. Final results must be declared no later than 30 days after polling ends. |

**Note:** Quoted text is from GoNU (2009a, art.s 14, 25, 45; 2009b, art.s 14, 26, 45).

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11   Interview with the author, July 2010.

## 3. Possible challenges to the results

There are a number of possible bases for challenges to the referenda results including:

- uncertainty whether the turnout threshold of 60 per cent has been met;[12]
- uncertainty whether there is a simple majority of 50 per cent + 1 for one of the two referenda outcomes;
- alleged electoral fraud (including coercion or intimidation of voters, ballot box stuffing, counting irregularities and falsification of results);
- claims of an unfavourable environment for the conduct of the referendum (GoNU, 2009a, art. 7).
- problems with registration or polling leading to significant numbers being disenfranchised.

Improved technical practices would help to minimize these risks. The establishment and publication of an accurate voter registry will be critical in determining the number of registered voters that the 60 per cent threshold represents. A robust tabulation system that shows disaggregated, station-by-station results, will allow for results deemed suspect due to voting or counting irregularities or overt electoral fraud to be isolated and, if necessary, excluded. Mobilizing 60 per cent of registered voters in Southern Sudan may be a challenge: seven out of ten Southern states failed to reach 60 per cent turnout during the presidential elections.[13]

In any vote, electoral fraud cannot be discounted as a risk. Aggregation systems and referendum results need to be sufficiently detailed to overcome the possibility that large numbers of votes will be discounted or quarantined as suspect, and still produce an outcome representative of the will of the electorate.

Political rejection of the referendum result is always a risk, despite the assurances of both the NCP and the SPLM that they will honour the referendum outcome.[14] The NCP has already suggested that the conditions for a free vote are not present in Southern Sudan (*Sudan Tribune*, 2010b). The SPLM might offer a similar rejection of the vote in northern Sudan. The more technically competent the process is throughout the country the more difficult it will be for either party to reject the result, and the easier it will be to isolate a party that does claim the referenda outcomes are flawed.

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12   For an explanation of the turnout threshold, see section 6 for further details. The 60 per cent threshold applies to the Southern Sudan referendum only.

13   Lakes, Jonglei, Unity, Upper Nile, Central Equatoria, Western Equatoria and Northern Bahr al-Ghazal all failed to reach 60 per cent turnout (NEC, 2010).

14   Most recently at the meeting of the NCP and SPLM hosted by the Egyptian government in early August 2010. See also the speeches of Presidents Bashir and Kiir at the Yambio CPA celebrations, January 2010.

# The referendum in Southern Sudan

## 4. Legal conditions the Southern Sudan referendum needs to meet

According to the SSRA the referendum in Southern Sudan is required to meet three legal conditions:

- It must be held in an 'environment favourable' to conducting the referendum;
- All voters must 'enjoy the exercise of their right to express freely their opinion in a secret referendum on self-determination';
- It must achieve a turnout of 60 per cent of the total registered population (GoNU, 2009a, art.s 7, 14, 41.2).

When it comes to the vote, the Act says, the choice that receives 50 per cent + 1 'shall supersede any other legislation and shall be binding to all the State bodies as well as all citizens of Southern and Northern Sudan' (GoNU, 2009a, art. 66).

Of the three conditions in the Referendum Act, only the turnout is quantifiable. If 60 per cent turnout is not reached, a repeat referendum within 60 days of the declaration of the final results is required (no later than 15 April, 2011).[15] The turnout threshold does not require that all votes cast be valid. The figure is to be judged against the number of registered voters.[16] This makes the registration process as important as the polling itself.

## 5. Who can vote in the Southern Sudan referendum?

Two key decisions for the SSRC are the following: who is eligible to vote in the referendum in Southern Sudan and where are they permitted to vote? These questions have been only partly answered. The SSRA's clauses on eligibility for participation in the southern referendum are not clear. The law reads:

> The voter shall meet the following conditions:
> 1. Born to parents both or one of them belonging to one of the indigenous communities that settled in Southern Sudan on or before the 1st of January 1956, or whose ancestry is traceable to one of the ethnic communities in Southern Sudan,
> or,
> 2. permanent resident, without interruption, or whose any of the parents or grandparents are residing permanently, without interruption, in Southern Sudan since the 1st of January 1956;
> 3. have reached 18 years of age;
> 4. to be of sound mind;
> 5. registered in the Referendum Register (GoNU, 2009a, art. 25).

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15    Final results are required no later than 30 days after voting, which is due to conclude on 15 January, 2011 (GoNU, 2009a, art. 41.2b).

16    All votes cast, whether valid, spoiled, disputed or blank, would therefore count towards the 60 per cent threshold.

In October the SSRC produced a Q&A dealing with some of the outstanding questions of interpretation of the SSRA (SSRC, 2010). On the question of which categories of southerner are to be permitted to vote outside the south the document read:

> a) Those who can trace their origins (belonging to one of the indigenous or ethnic group of the South) in the South, or whose parents or either of whom belong to one of the Indigenous communities residing In the South on or before 1 January 1956. These persons can vote and register in the South or in other locations.
>
> b) Those who can trace their origin in one of the indigenous/ethnic communities of the South, but who does not reside in the South or whose parents/grandparents were not residing In the South before the 1st of January 1956. These persons have lost touch with their communities of origin and cannot identify neither being recognized as member of those communities who are in other locations after the 1956. These persons can only register in the South in the place where they trace their community of origin.
>
> c) Those people who although not belonging to an indigenous or ethnic community of the South, reside or whose parents or grandparents reside in the South since 1 January 1956. These persons can only register or vote in the South where they reside. If they are in other locations they have to go to register and vote in the South (SSRC, 2010).

Although the SSRC document is clear about the location of voting, the matter of establishing ethnic origins is left vague. Previously suggested solutions to this issue have ranged from using an agreed list of southern ethnic communities to allowing voters to self-identify as southerners, asserting their own origin. In relation to this issue, the SSRC document poses the question 'Does the Commission intend to prepare a list of ethnic and indigenous communities or will this decision be left to the Referendum Center stall/local authority/competent Chief?' The published answer to this question is simply 'No' (this is presumably in relation to the first part of the question). In northern Sudan, the document says, the SSRC will rely on 'identifiers'. These will be 'the local leaders of each community (Sultans or Chiefs) as official recognized by local authorities' [sic]. The referendum law also allows for 'the referendum official [to] seek the help of the competent Sultan [ie traditional authority]', in case a person was unable to present conclusive personal identification (GoNU, 2009a, art. 26.3). But this still begs the question of which communities are to be included. It also does not specify acceptable ways to trace and prove a registrant's origin.

The SSRC's refusal to compile a list of ethnic groups may well be wise. Defining eligibility on the basis of membership of an ethnic group would have unintended divisive effects in Southern Sudan and its borderlands. In attempting to satisfy the short-term aims of the referendum, it would establish ethnicity as the primary criterion of citizenship, opening the possibility of disputes at every level over the definition of ethnicity. A noted anthropologist of Sudan commented, 'a list of this kind is likely to make matters more controversial, less democratic, and possibly a source of conflict whether at the time of the referendum or later on'.[17] Even if such a list were used, authenticating an individual's claim to membership of an ethnic group would be difficult.

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17   Correspondence with the author, July 2010.

But without an agreed criterion for what indigenous communities are, there is likely to be confusion at registration centres, particularly in the north. Some definition of the 'indigenous communities' of Southern Sudan will be required to determine eligibility. Various proposals were circulated at an earlier stage, including the idea of using an amended version of a list ('Schedule G') found in an early draft of the Interim Constitution of Southern Sudan. In that document, 63 ethnic communities are listed as being indigenously Southern Sudanese (GoSSMUS, 2010, p. 116). The same constitutional draft states that 'ancestry can be traced through agnatic [patrilineal] or male line to any one of the ethnic communities of Southern Sudan as in Schedule G herein' (GoSSMUS, 2010, ch. 2 art. 9.2).

Many of the ethnic groups in Southern Sudan are spread across borders, some into northern Sudan. In the case of Abyei, on the basis of ethnicity, it could be argued that its Ngok Dinka inhabitants are eligible to vote in the southern referendum as well as in the Abyei referendum, although Abyei is so far an administrative region of northern Sudan. Under the terms of the SSRA, the SSRC could, in theory, be obliged to open polling stations for the Southern Sudan vote in Abyei Area itself (GoNU, 2009a, art. 27).

The eligibility clause of the SSRA incorporates both common legal principles of citizenship rights, *jus sanguinis* (the right of blood) and *jus soli* (the right of the ground).[18] Prioritizing the residency requirement (*jus soli*) over ethnicity may mitigate problems inherent in including or excluding individuals on the basis of ethnic identity. But including a voter in the referendum registry on residency grounds suffers from the same deficit of proof that affected registration in the 2010 elections. While legally problematic, the elections were largely able to overcome the difficulties of proving residence. Ultimately, a voter registration officer decides if a person who presents himself or herself at a registration centre meets the conditions for registration, whether this is on grounds of residency or ethnicity. Objections are allowable if a person can present reasonable grounds to dispute whether a registrant does meet those conditions (GoNU, 2009a, art. 30.1). In the case of the ethnic criterion in the Southern referendum this is likely to be contentious.

## 6. Do Blue Nile and South Kordofan affect the Southern Sudan referendum?

Unlike Abyei, citizens of Blue Nile and South Kordofan will not have the right to join Southern Sudan, but southerners in both states could participate in the referendum, if they fulfil the criterion of birth before 1956. The small resident population of southerners in both states is not likely to alter the referendum outcome. Blue Nile and South Kordofan are entitled to popular consultations that assess the quality of implementation of the CPA in the two areas. The Popular Consultation Act allows, 'rectification of any deficiency in the constitutional, political, administrative and economic arrangements within the framework of the Comprehensive Peace Agreement regarding each of the two states'.[19] The Act requires no mass consultative voting exercise.

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18    *Jus soli* and *jus sanguinis* are not terms found in the CPA, but underpin the CPA's residency and ethnicity provisions.

19    For further details, see GoNU (2010, art. 5).

'People of Southern Sudan' in the north, including those resident in South Kordofan and Blue Nile, are allowed to participate in the Southern self-determination referendum by the SSRA (GoNU, 2009a, art.s 2, 4, 25). While the Southern Sudanese population (outside of Abyei) of both states is small, some residents in South Kordofan and Blue Nile (notably in Blue Nile's southern county of Kurmuk) could claim to be ethnically Southern Sudanese.[20] Under a reasonable definition of voter eligibility, these residents would be able to register and vote should they so choose. However, even with a hundred per cent increase over the figures for Southern Sudanese residents in each state (see Table 5), the number of eligible residents will not tip the referendum outcome in either direction, provided that southerners resident in the south are not massively disenfranchised. The overlap between the referendum and the popular consultations could be confusing if not clearly explained to residents of the two areas of South Kordofan and Blue Nile.

## Registration and ethnicity in Western Sahara

After the Spanish colonial withdrawal from Western Sahara in 1975, Saharawis fought a war of liberation against Morocco, which had laid claim to the territory. A referendum on union with Morocco or complete independence was due in 1992, then delayed until 1995. In 2010 it had still not been held. Although it has a much smaller and less ethnically complex population than Southern Sudan, Western Sahara faced similar difficulties in determining voter eligibility. Western Sahara residents identify as being either of Moroccan or of Saharawi origin. One report noted, '... on 4 November 1994 the [UN] Secretary-General reported that because of the complexity of tribal subgroups the registration process was far more difficult than expected' (Gunn, 1997, p. 96). Another analyst commented, 'the main difficulty in administering the referendum… has been in agreeing voter eligibility' (Leite, 2000, p. 177).

In the view of Saharawis, the Moroccan government has attempted to inflate registration of native Moroccans to reduce Saharawis to a minority in the territory; the Moroccan authorities are also accused of preventing indigenous Saharawis from registering. Morocco has submitted applications to join the electoral register on behalf of individuals with questionable ties to the Western Sahara—out of 180,000 applications put in by Morocco, 100,000 are from persons living outside the territory; Moroccan authorities have routinely prevented access by Saharawis to voter registration centres and have confiscated papers from those who have been able to register; and Moroccan authorities have been intimidating local tribal leaders who are responsible for verifying the eligibility of voters (Seddon, 1996). Largely due to disputes over who is eligible to vote, Saharawis have yet to have the opportunity of self-determination.

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20   Although this determination is yet to be made by the SSRC.

**Table 4  Questions from other referenda and forms of words for the referendum in Southern Sudan**

| Referendum | Question | Word count |
|---|---|---|
| **Eritrea**<br>**Single option referendum, 1993** | Do you want Eritrea to be an independent and sovereign country? | 11 |
| **Québec, Canada**<br>**Single option referendum, 1995** | Do you agree that Québec should become sovereign after having made a formal offer to Canada for a new economic and political partnership within the scope of the bill respecting the future of Québec and of the agreement signed on June 12, 1995? | 43 |
| **East Timor**<br>**Two option referendum, 1999** | Do you accept the proposed special autonomy for East Timor within the Unitary State of the Republic of Indonesia?<br>or<br>Do you reject the proposed special autonomy for East Timor, leading to East Timor's separation from Indonesia? | 37 |
| **Iraqi Kurdistan**<br>**Two option referendum, 2005**<br>**(not internationally recognized)** | I want Kurdistan to stay as part of Iraq<br>or<br>I want Kurdistan to be independent | 16 |
| **Montenegro**<br>**Single option referendum, 2006** | Do you want the Republic of Montenegro to be an independent state with a full international and legal personality? | 19 |
| **Possible questions for Sudan,**<br>**two option referendum, 2011** | Do you want to confirm the unity of the Sudan by sustaining the form of government established by the Comprehensive Peace Agreement and the Constitution?<br>or<br>Do you want the secession of Southern Sudan?[i] | 34 |
| **Possible questions for Abyei,**<br>**two option referendum, 2011** | Do you want Abyei Area to retain its special administrative status in the north of Sudan?<br>or<br>Do you want Abyei Area to become part of Bahr el Ghazal in Southern Sudan?[ii] | 32 |

**Notes:** i. Based on art. 6 of the SSRA (GoNU, 2009a).
ii. Based on Art. 6 of the AARA (GoNU, 2009b).


## 7. The ballot question in the Southern Sudan referendum

Of all the issues surrounding the referendum, the simplest, yet most critical, is the phrasing of the question on the ballot paper. The CPA does not provide a specific formulation for the referendum question (GoS/SPLM, 2005a, Machakos Protocol, art. 2.5). The SSRA states that the vote is a 'Referendum to Choose Between Two Options':

> While exercising the right to self-determination through voting in the referendum, the people of Southern Sudan shall cast vote for either:
>
> i. confirmation of the unity of the Sudan by sustaining the form of government established by the Comprehensive Peace Agreement and the Constitution, or
>
> ii. secession (GoNU, 2009a, art. 6).

While the SSRA articles provide a limitation for the wording that could be used on the ballot, it remains the responsibility of the commission to determine the precise wording to be used.[21] The Commission will also be responsible for choosing visual symbols for each choice, an important feature of elections where a significant proportion of the electorate is not literate. The language provided by the law is highly legalistic and not commonly known. What is understood by the 'confirmation of unity' option is uncertain. One election specialist noted:

> I saw on a draft [voter education] document an image [mock ballot] with the choices yes and no. We don't know if the question will be yes and no. It may be yes and yes! We don't know if the language of the law will be used as the question or something else.[22]

## 8. Is demarcation of the north–south boundary a precondition for the referendum?

Demarcation of the boundary is not a legal requirement for the Southern Sudan referendum to proceed. Neither the CPA, the Interim National Constitution (INC) nor the SSRA require demarcation for the vote to be held. The absence of a fully demarcated boundary may present some technical difficulties for referendum registration and will probably disenfranchise some voters, particularly in contested border areas such as Kafia Kingi, but the number of people deprived of the chance to vote by the failure to demarcate borders amounting to a few kilometres in either direction will be small. From a technical point of view therefore demarcation can be seen as a minor hurdle. Politically, however, it is a far more serious obstacle, as long as the NCP maintains the view that complete demarcation is a precondition for the vote.[23] This position has been strongly rejected by the SPLM, which asserts that the referendum must proceed on schedule, regardless of the status of the demarcation.

Boundary issues were sidestepped in the implementation of other CPA processes, including the census and the elections. The work of the Technical Committee for North–South Border Demarcation has been extremely slow.[24] It will be extremely difficult, if not impossible, for physical demarcation of the boundaries as they stood at independence on 1 January 1956 to be completed before January 2011.

Boundary demarcation has long been contentious. Little has changed since the January 2010 report of the Assessment and Evaluation Commission (AEC), which warned, 'urgent action will then be needed at the political level to resolve outstanding questions so as to allow full demarcation of the border on the ground in 2010, before the referendum. Failure in this regard would carry with it the most obvious of risks' (AEC, 2010, p. 5). The CPA specifies that, excepting Abyei, 'the January 1, 1956 line between north and south will be inviolate' and that

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21   The SSRA requires the 'ballots...[be] clear and easy to understand' (GoNU, 2009a, art. 14.2.1).

22   Interview with the author, July 2010.

23   In mid-June, Foreign Minister Ali Karti was quoted as saying, 'we cannot hold a referendum before the border is demarcated' (*Sudan Tribune*, 2010a). On 29 July, NCP Political Secretary Ibrahim Gandour described demarcation as 'a condition for all referendums around the world that might lead to the creation of a new sovereign state' (AFP, 2010). On 2 August Gandour warned that 'holding the referendum without demarcating borders would be a breach of the Comprehensive Peace Agreement [CPA] and the constitution' (translation from quotation in Al-Sahafa, 2 August 2010).

24   'The Technical ad hoc Border Committee... is expected to submit its final report in the first quarter of 2008' (UNMIS, *CPA Monitor*, July 2010, p. 8.).

'the Presidency shall establish a Technical Ad hoc Border Committee to demarcate precisely the 1/1/1956 North/South borderline' (GoS/SPLM, 2005a, Abyei Protocol, arts. 1.4, 8.3; Implementation Modalities, sec. 46). The CPA's implementation modalities matrix indicates timing for the work of the border demarcation committee as: 'pre-interim period after the adoption of the INC'. Demarcation is but one of the 59 required tasks listed in the CPA implementation matrix (GoS/SPLM, 2005a, Implementation Modalities).

Where the border lies is pertinent to the referendum, both in terms of the conduct of the poll and in assessing eligibility. Demarcation would help determine the eligibility of voters registering on the basis of uninterrupted residence in Southern Sudan since 1 January 1956 (GoNU, 2009a, art. 27). But locating the border does not itself prove a voter's (or his or her parents' or grandparents') uninterrupted, permanent residence. That determination of fact can only be made by a referendum voter registration official.

The Eritrean precedent demonstrates where demarcation is most critical. The 1998–2000 conflict between Ethiopia and Eritrea did not arise because of the secession vote. It was an escalation of competing claims over territory and control. As Péninou (1998) described it, 'this conflict is, from the beginning, a war about borders'. The subsequent rulings of the Eritrea–Ethiopia Boundary Commission that followed the war remain unimplemented today.

Other referenda have overcome border demarcation challenges. It was not until 2002 that agreement was reached on a plan to survey and demarcate the border between East Timor and Indonesian West Timor. The referendum had been held in 1999. As Indonesia had agreed, it was only following East Timor's independence that demarcation of the border based on former colonial treaties commenced (ICG, 2010, p. 3). Without an agreed international border, a 'porous and poorly marked' tactical coordination line had been in effect from 2000 (Smith and Dee, 2003, p. 78). The 2006 independence referendum for the former Yugoslav republic of Montenegro was conducted without an agreed border between Montenegro and Serbia. Demarcation between Montenegro and Kosovo (which declared independence from Serbia in 2008) is ongoing in 2010 (SEET, 2010).

Demarcation clearly matters more in the event of voters choosing secession. Finalizing an agreed frontier before any declaration of independence would mitigate future confrontation between the two successor Sudanese states. Even on this matter, international precedent suggests the absence of a demarcated border is not a hurdle to sovereignty. Lebanon and Syria have no clearly demarcated boundary (Now Lebanon, 2009, p. 3). Bangladesh seceded from Pakistan in 1971 without an agreed boundary with neighbouring India. The India–Bangladesh boundary was only partially resolved by the 1974 Indira–Mujib agreement. Parts of the land and maritime boundary have yet to be demarcated (Qader, 2010, p. 3). Demarcation of the lengthy land and maritime boundary between Russia and Ukraine only began in 2007, and was still ongoing in August 2010 (*The Financial*, 2010).

Sudan's presidency has indicated that it will renew efforts to resolve the deadlock at the technical border commission level, but an independent Southern Sudan could still exist without demarcated borders.[25] In any event, neither future state could claim to exert full control along the 2,000-kilometre border line. In whatever future configuration, border disputes between north and south are likely to persist for decades to come, as has been the case since Sudan's independence in 1956.

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25    In late August, the presidency formed a sub-committee to examine the difficulties of the technical border committee.

## 9. Policy decisions required for the referendum voter registration process

The SSRA requires a new registry of eligible referendum voters to be created (art. 14.2.b). In addition to determining eligibility requirements, key registration issues requiring decisions of the SSRC are:

- the system of registration—procedures for identifying voters, notably whether manual or computerized voter lists are to be produced;
- the timing and duration of registration (how many days registration continues in each area of the country) (GoNU, 2009a, art. 29.a);
- out-of-country registration, also to include Southern Sudanese refugees (where registration should take place overseas) (GoNU, 2009a, art. 27.6); and
- how to ensure that the registry is inclusive and accurate (quality control of registration data, ensuring that no area of Southern Sudan is left unreached by registration teams).

Registration will be a national process needed across the south and in many of the 15 states of the north. In practice, multiple registration sites will be required across the north, particularly in Khartoum, Gezira, White Nile, Blue Nile and Red Sea states, in order to register the large population of Southerners living in the north. By law, however, only localities with more than 20,000 Southerners resident are automatically obliged to have registration centres. According to the national census this amounts to only five localities, all in the Khartoum area. Census data are the only systematic means available to determine the places that meet this requirement (GoNU, 2009a, art. 27.2). In locations with fewer than 20,000 Southerners, registration activity in the north is to be centred in state capitals (GoNU, 2009a, art. 27.2). While logistically it should not be difficult to open registration centres in northern Sudan, the SSRC has yet to appoint any staff in the north for this purpose.

In late October, a 17-day (or possibly 18-day) registration period—from 14 November to 1 December—was announced by the SSRC, in order to shorten the referendum timetable. Given the experience of the 2008 national census and the 2009 voter registration, it will not be possible to access all areas of Southern Sudan in 17 or 18 days without a vastly increased number of referenda registration sites requiring thousands more staff. In the case of the census and the voter registration, as well as the 2010 polls, extensions proved necessary in order for hundreds of thousands of eligible citizens to access the process. If well organized, the 17- or 18-day period might suffice to register an acceptable number of voters. But doubts remain about the logistical and technical capacity of the SSRC to achieve this.

**Table 5  2008 national census: Southern Sudanese enumerated in northern Sudan by state**

| State | Southern Sudanese population | Number of localities enumerating 20,000 or more Southern Sudanese |
|---|---|---|
| Northern | 3,538 | 0 |
| River Nile | 5,317 | 0 |
| Red Sea | 4,250 | 0 |
| Kassala | 10,518 | 0 |
| Gedaref | 13,457 | 0 |
| Khartoum | 246,115 | 5 |
| Gezira | 26,450 | 0 |
| White Nile | 41,168 | 0 |
| Sennar | 17,865 | 0 |
| Blue Nile | 28,046 | 0 |
| North Kordofan | 21,456 | 0 |
| South Kordofan | 54,280 (including 16,159 in Abyei) | 0 |
| North Darfur | 5,651 | 0 |
| West Darfur | 2,584 | 0 |
| South Darfur | 37,576 | 0 |
| Total | 518,271 (502,112, excluding Abyei) | 5 |

**Notes:** Figures extracted from Central Bureau of Statistics (2009). Figures for South Kordofan are given first in aggregate and in brackets for Abyei *mahaliya* (district). This format is repeated in the final total. Originally, the SPLM did not accept registration figures given for northern Sudan.

## 10. Could voter registration be challenged?

Registration for the southern referendum could be compromised by a number of factors, any of which, if documented, might lead to a challenge to the voter register from one or other of the parties. These factors include the following:

- manipulation of registration figures for Southern Sudanese in the north;

- manipulation of registration figures for Southern Sudanese in the south;

- manipulation of out-of-country registration, including registration of refugees;

- inconsistent application of eligibility and identification requirements;

- group or proxy registration (voters not registering individually and in person); and

- inaccuracies in data processing by registration centres or state RHCs.

The most critical area of potential dispute in the registration process will be the registration of Southerners in northern Sudan. There are very large numbers of Southerners living in the cities of the north. Their inclusion in the referendum process is viewed with suspicion by some in Southern Sudan, because of NCP influence over registration and voting. One Juba resident noted, 'people get really upset about the idea that people in the north can vote, as they fear the NCP will rig the process'.[26] But the SPLM has accepted that disenfranchisement of Southerners in the north would present a greater risk to the process.

Table 5 provides figures for Southern Sudanese enumerated in northern Sudan, but these figures should not be considered a reliable predictor of registration. There are no accepted figures for the number of eligible southern voters in the north. The SSRA allows for voters to be identified by a number of criteria:

> ... the original identity card or personal identification document or a certificate issued by the local government authority of the County as recommended by a competent Sultan [or] an identity document issued by the United Nations High Commissioner for Refugees (GoNU, 2009a, art. 26.1).

The SSRC has announced that it will rely on 'identifiers', 'local leaders' and 'community leaders' (SSRC, 2010) to validate potential registrants. This seems to preclude self-identification of ethnic origin for Southerners resident in the north, though this would be the only way to assure that no eligible voter outside Southern Sudan is excluded. (Such a registration process would be open to abuse. In the north, an organized attempt could be made to inflate the registration rolls with people with purported but doubtful links to Southern Sudan on the basis that such registrants would favour a pro-unity outcome, or with the intention of inducing such voters to register but not vote, in an attempt to reduce the turnout figure in the referendum below the requisite 60 per cent threshold.)

In the south, where pro-secession forces dominate, poor management of registration operations could give rise to improprieties in processing data, as occurred during the elections. This could give the NCP grounds to question the referendum outcome (EU EOM, 2010b, pp. 5, 21).

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26   Interview with the author, July 2010.

While the referendum is exclusively for Southern Sudanese, it will not take place exclusively in Sudan. This poses special challenges both for registration and voting. Southern Sudanese residing outside the south (as defined by the 1 January 1956 borders) are eligible if they reside in northern Sudan, or in Australia, Canada, Egypt, Ethiopia, Kenya, Uganda, the United Kingdom or the United States. Overseas registrants during the elections totalled 104,345, representing 0.6 per cent of the total electorate (NEC, 2009). Of this population, almost two thirds registered in Saudi Arabia; 80 per cent in the Gulf countries.[27] With different countries eligible for the referendum, and refugee populations now eligible, the demographics shift considerably.[28]

The International Organization for Migration (IOM), which, without prior consultation, found itself positioned in the SSRA as the key technical assistance provider for overseas voting efforts, has provisionally estimated the cost of out-of-country voting (OCV) at approximately USD 30 million, or more than a third of the original estimate for the total cost of the referenda.[29] OCV could prove difficult to implement. (As one international expert remarked, 'OCV? Always difficult, always overpriced—you always spend millions.'[30]) Even if all eligible refugees and Southerners resident overseas were to register for the referendum, they would still represent a small proportion of the electorate. Irregularities in out-of-country registration or voting could detract from the process, but would not be enough to change the outcome.

The SSRC has announced that it will not develop a list of which documents will be acceptable for out-of-country registration, but will accept 'in principle all documents issued by Sudanese authorities (even if expired) or UNHCR'. That policy decision will need to be conveyed uniformly to registration officers. Preventing proxy or group registration will also come down to the quality of registration administration by the SSRC, SSRB, and Referendum High Committee (RHC) staff.

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27   In addition to Saudi Arabia: Qatar, Kuwait, Oman, Bahrain, UAE.

28   Electoral registration took place in 18 countries—Malaysia, Belgium, Ethiopia, Canada, Libya, South Africa, Uganda, Kenya, USA, UK, Egypt, Yemen and the countries noted the previous footnote.

29   Interview with the author, July 2010.

30   Interview with the author, July 2010.

**Table 6  Eligible countries for participation in the Southern Sudan referendum and estimated Sudanese resident refugee populations abroad**

|  | Registered for 2010 elections | Estimated resident Sudanese population (January 2010) | Estimated resident Sudanese population (January 2011) |
|---|---|---|---|
| **Australia** | N/A—no registration | No figures available | No figures available |
| **Canada** | 128 | No figures available | No figures available |
| **Egypt** | 5,377 | 23,600 | 25,500 |
| **Ethiopia** | 231 | 23,000 | 20,700 |
| **Kenya** | 256 | 22,810 | 14,800 |
| **Uganda** | 174 | 30,000 | 25,000 |
| **UK** | 1,354 | No figures available | No figures available |
| **USA** | 977 | 26,698 | No figures available |
| **Total** | 8,497 | 126,108 | 86,000 |

**Notes:** 2009 overseas registration figures are from the NEC. UK registration figures also include Ireland, which is not a country where OCV will be conducted. Estimated resident Sudanese refugee figures for Egypt, Ethiopia, Kenya and Uganda are from UNHCR (UNHCR, 2010) and are not disaggregated by age of majority. Excepting Egypt and the United States, these figures indicate refugee populations only; not including legal residents of the host country that have retained Sudanese citizenship, for which there are no figures available. Egypt's numbers also include asylum seekers, not legally refugees under UNHCR's definitions. Public figures from UNHCR do not differentiate between those seeking refugee status from Southern Sudan versus those from Darfur, the latter presumably accounting for the expected increase in the Sudanese asylum and refugee population in Egypt in 2011. Figures for the United States indicate residents who indicated that they were born in Sudan. There is no further disaggregation of southern versus northern Sudanese. Whether these individuals retain Sudanese citizenship is unknown. See the American Community Survey (US Census Bureau, 2008). The latest figures from the US Census Bureau date from 2008. No figures for legal Sudanese residents abroad are available.

## 11. Could Southern Sudan organize its own self-determination referendum?

Continued delay in preparations for the Southern Sudan referendum has led the SPLM to raise the possibility of organizing a vote without the involvement or consent of the GoS or the NCP. In Juba on 6 October, the UK Ambassador to the UN reported that the GOSS President Salva Kiir had told the visiting Security Council ambassadorial delegation: 'If there is a delay, a politically induced delay by the NCP for the referendum, then it might be necessary for the south to hold their own referendum' (Charbonneau, 2010). It would be logistically ambitious and financially onerous for Southern Sudan to organize its own unilateral vote, but such an attempt could not be ruled out.

The legality of the vote would be questionable, pitting two fundamental principles of the CPA against each other—the primacy of Sudan's national sovereignty versus the inherent right of Southern Sudanese to self-determination. Politically, the NCP would have strong grounds to refuse to recognize the result, holding the process to be an abrogation of the CPA. The CPA states, 'that the people of South Sudan have the right to self-determination, inter alia, through a referendum to determine their future status,' and it fixes the date for the vote: 'At the end of the six-year Interim Period, there shall be an internationally monitored referendum, organized jointly by the GOS and the SPLM/A' (GoS/SPLM, 2005a, Machakos Protocol, art.s 1.3, 2.5, emphasis added).

A unilateral effort by the SPLM to organize a referendum would contravene at least part of article 2.5 of the CPA's Machakos Protocol. The NCP response to the proposal through their spokesman Rabie Abdulatti was unequivocal: 'Nobody would recognise [the vote]. This is against CPA. Everything about its implementation should be agreed by the two partners' (Charbonneau, 2010).

Equally, the NCP, or thw Government of National Unity (GoNU), could be accused by the SPLM of failing to 'organize jointly' the vote, through inaction and delay. If the vote was not held at the prescribed end of the Interim Period as in article 1.3, the comparably fundamental right to self-determination guaranteed by the CPA would also have been violated. Wrangling over which party was guilty of greater non-compliance with the CPA could lead to endless and protracted dispute between the parties.

The CPA could not practically prevent the GoSS from organizing its own vote, but complications arising from unilateral action would make such a referendum far more difficult to implement. A unilateral referendum would require preparations from scratch by the GoSS, so there is no possibility that such a vote could be held in January 2011.

Given the limited financial and technical abilities of the GoSS, even greater international assistance would be required to fund and support the referendum than is currently envisaged, as the national government could not be expected to financially or logistically support a process organized at the bidding of the GoSS. Further, UN and international assistance to the referendum is provided on the basis of fulfilling and supporting CPA commitments (most recently noted in Security Council Resolution 1919 renewing the mandate of UNMIS):

> The Security Council... recalls the CPA's provision for referenda, as well as the parties' responsibility to pursue efforts to make unity attractive, reaffirms UNMIS' support for these activities, requests that UNMIS be prepared to play a lead role in international efforts to provide assistance, as requested, to support preparations for the referenda in 2011 (UNSC, 2010).

There is no viable alternative to the assistance the UN could provide in supporting such a massive and difficult electoral event.

If the CPA-required referendum were delayed beyond the end of the Interim Period (January 2011), or even the end of the CPA in July 2011, the legal precedence of the CPA shifts to a simpler debate over the primacy of Sudan's sovereignty versus the inalienable right of Southern Sudanese to self-determination. In unilaterally organizing its own secession referendum in 2005, Iraqi Kurdistan challenged Iraq's sovereignty in a vote that was not internationally recognized by any other state. In holding a vote without the consent of the national government, Southern Sudan would likely face similar difficulties in receiving broad international recognition, notwithstanding the region's more numerous international allies (compared to Kurdistan).

# The referendum in Abyei

## 12. Why the Abyei referendum matters

The Abyei referendum is a political mechanism to resolve a controversy that has its historical origin in the 1905 colonial administrative transfer of Abyei Area from Bahr al-Ghazal to Kordofan. The vote matters irrespective of the results of the larger Southern Sudan referendum (GoS/SPLM, 2005, Abyei Protocol; GoNU, 2005, art. 183.3). The referendum does not, in formal terms, involve unity or separation; the question is whether or not Abyei should cease to be part of Kordofan and become part of southern Sudan. It is a process distinct from the Southern Sudan referendum, hence it has a separate commission and secretariat.

The Abyei Area Referendum Act reads:

> While exercising the right to determination of administrative status through voting in the referendum, the residents of the Abyei Area shall cast their votes for either:
> i. that Abyei retain its special administrative status in the north or
> ii. that Abyei Area becomes part of Bahr el Ghazal [Warrap] in Southern Sudan (GoNU, 2009b, art. 6).

The CPA's Abyei Protocol states, similarly:

> Simultaneously with the referendum for southern Sudan, the residents of Abyei will cast a separate ballot. The proposition voted on in the separate ballot will present the residents of Abyei with the following choices, irrespective of the results of the southern referendum:
> a. that Abyei retain its special administrative status in the north;
> b. that Abyei Area be part of Bahr el Ghazal [Warrap] (GoS/SPLM, 2005, art. 1.3).

Four theoretical outcomes are therefore possible for the Abyei Area, should the vote take place. It could remain part of northern Sudan, while Southern Sudan secedes; it could remain part of northern Sudan in a fully unified Sudan; it could become administratively part of Southern Sudan in a unified Sudan; or it could become part of a seceding Southern Sudan. The last is clearly the most likely.

As required by the CPA, the AARA was passed by the National Assembly in December 2009, though several years late. The AARC should have been formed immediately following the law's enactment (GoNU, 2009b, art. 8).[31] Negotiations on appointing a commission have stalled over a failure to agree whether the SPLM or NCP nominates the chair and which individuals should comprise the commission's membership. The NCP has repeatedly rejected nominees put forward by the SPLM.[32] In a body of nine, either the nominees of the SPLM or the NCP would be in a minority. The formula for composition of the AARC is no different to that of the SSRC, but in the case of the AARC, this impasse has prevented the formation of the AARC and effectively stalled the referendum.

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31  'Immediately' is not precisely defined.

32  Author interviews, July 2010.

To understand why this issue has become critical in the dispute over the referendum, the recent history of the Abyei Area needs to be borne in mind. Following the NCP's rejection of the decision of the Abyei Boundaries Commission (ABC), which was set up under the terms of the CPA, the matter was referred to the Permanent Court of Arbitration (PCA) in the Hague, which ruled on the boundaries in 2009, a decision accepted by both parties. On 31 July 2010, Presidential Advisor Salah Gosh called for 'new solutions' to resolving Abyei, claiming that the PCA's 2009 ruling, which defined Abyei's new boundaries did not resolve future control over the district as far as the NCP was concerned (McDoom, 2010). Gosh adjusted his views a few weeks later, claiming that the NCP did respect Abyei's PCA mandated boundaries, but did not shed further light on the formation of the AARC (SRS, 2010).

In Abyei itself initial acceptance of the PCA's verdict has given way to recriminations and sporadic violence between the Misseriya and Dinka Ngok communities.[33] Since the PCA redrew Abyei's boundaries in July 2009, progress in implementing the Abyei Protocol has stagnated. Abyei has not been physically demarcated, but as with the Southern Sudan referendum, this is not an impediment to the vote if there is agreement on how the Abyei electorate is determined (see below). But the local authority governing Abyei—the Abyei Area Administration (AAA)—has few resources from the central government and limited capacity to provide effective local government.[34]

The impasse over Abyei is part of a larger issue in Sudanese politics. Abyei is a symbolic issue both for the SPLM, where Ngok Dinka are represented at high level, and for the NCP and other northern interests, for whom it is part of the north. Abyei is also the location of significant oil resources. The special nature of the problem has been recognized both by the US Government and by UN officials. A recent UN assessment put it in this way: 'The issues... do not seem impossible to resolve if widespread rumours and misunderstandings are dispelled and active mediation undertaken. This would require high level engagement to facilitate discussions between relevant national and local actors.'[35]

This assessment may be optimistic. Progress on the Abyei impasse—on which inconclusive US-mediated talks in Addis Ababa took place in October 2010—must begin with appointment of the AARC. A nine-member commission split between two opposing parties will always leave one side with the weaker balance of power. But the Abyei Protocol reserves broad powers for the presidency to determine the membership of the AARC (GoS/SPLM, 2005, Abyei Protocol, art. 8). One possible solution would be to permit three nominees from the NCP, three nominees from the SPLM, and three international, non-partisan members, perhaps selected in a similar manner, to the ABC or the PCA panels.[36] The possibility of international membership in the Abyei referendum is not excluded by the CPA.[37] Alternatively, the current

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33 There were fatalities in Abyei in early July 2010 (see BBC News, 2010). A dispute between Joint Integrated Unit soldiers led to shootings in Abyei town on 11 October 2010.

34 The Abyei Area Administration (AAA) has consistently struggled to obtain funds from the federal ministry of finance. Author interviews with the Chief Administrator of Abyei, 2009 and 2010; author interviews in Abyei Area, 2009.

35 Internal UN assessment, May 2010.

36 See also 'Abyei Index: Understanding on Abyei Boundaries Commission' in the CPA for the formula which determined the composition of the ABC (GoS/SPLM, 2005).

37 International participation in the referenda was explicitly foreseen. The Machakos Protocol agreed in 2002 states: 'An ad-hoc Commission to monitor and ensure accuracy, legitimacy, and transparency of the Referendum as mentioned in the Machakos Protocol on Self-Determination for the People of South[ern] Sudan, which shall also include international experts' (GoS/SPLM, 2005, Machakos Protocol, art. 2.5). The

pre-emptive rejection of any nominee offered by either the NCP or SPLM could be addressed through mediation. Both parties would submit lists of names from which an independent mediator—perhaps the AUHIP—would assist in selecting the membership, without allowing unlimited powers of veto to either party.

With internationally determined administrative boundaries, a failure to physically demarcate Abyei should not prevent registration for the referendum from proceeding.[38] As with the Southern Sudan referendum, the burden falls on the question of determining voter eligibility. Unlike the Southern Sudan referendum, there is no turnout requirement for the Abyei referendum. A simple majority of valid votes cast is binding—an easier threshold for the referendum to meet (GoNU, 2009b, art. 64). There is, however, no agreed mechanism for achieving the administrative transfer if Abyei chooses to join Southern Sudan, possibly leaving a post-referendum Abyei in continued limbo. Regardless of the vote's outcome, border and conflict management throughout Abyei, Warrap, Unity and South Kordofan is likely to be a long-term challenge.

## 13. Who can vote in Abyei?

Legally speaking, the right of the Ngok Dinka to vote in Abyei's referendum is clear. The right to vote of other Abyei residents—notably the Misseriya—is not defined, however, either in the AARA or the Abyei Protocol. The NCP has demanded the inclusion of the Misseriya population, either in its entirety, or the part that spends the dry season in the Abyei Area; the SPLM insists that only the permanently resident population, almost all Ngok Dinka, be included. Given the highly politicized nature of the issues, and the lack of legal clarity, it will require a deal between the NCP and SPLM, probably through outside mediation by the AU and/or the United States, probably as part of a wider bargain over the conduct of both referenda.

The AARA allows that:

> A voter shall be a resident of Abyei Area according to Article 6(1) of Abyei Area Protocol namely:
> (a) members of Ngok Dinka Community;
> (b) other Sudanese residing in Abyei Area in accordance with the criteria of residency, as may be determined by the Commission according to section 14(1) of this Act;
> (c) not less than 18 years of age;
> (d) of sound mind;
> (e) registered in the Referendum Register (GoNU, 2009b, art. 24).

Dinka Ngok who are resident in Abyei are assured a vote in the Abyei referendum. The difficult task for the AARC is to determine the identity of the 'other Sudanese' who are eligible to participate. The CPA leaves 'criteria of residence' to be determined exclusively by the AARC (GoS/SPLM, 2005, Abyei Protocol, art. 6.1.b). In circular fashion, section 14.1 of the Act, referenced in article 24 quoted above, then says: '[T]he Commission shall determine the criteria of residence in the Abyei Area in accordance with Sub-Sections 6 (1) (b) and 8 of the

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Abyei Protocol was not agreed until after Machakos in 2004.

38 Internationally determined administrative boundaries were set by the PCA tribunal judgement, July 2009.

Protocol on the Resolution of the Abyei Conflict' (GoNU, 2009b, art. 24). The same article of the Abyei Protocol, to which the AARA first refers, says:

> The residents of Abyei Area shall be:
> (a) the Members of Ngok Dinka community and other Sudanese residing in the  area;
> (b) the criteria of residence shall be worked out by the Abyei [Area] Referendum Commission (GoS/SPLM, 2005, Abyei Protocol).

The circularity of the legislative references provides no answer to the eligibility question, adding a further layer of uncertainty.

At every point since the Abyei Protocol was signed—the Abyei Boundary Commission process, the Abyei Roadmap, the formation of the AAA, the Abyei PCA demarcation—the NCP has made a sustained effort to undermine the resolution of the problems of Abyei. In passing a deficient AARA, responsibility for making the difficult political decisions on eligibility has been deferred by both the NCP and SPLM. It is unrealistic that the AARC will be able to make any decision on eligibility that has not already been endorsed by both parties to the Abyei Protocol and the CPA.

Without physical demarcation of Abyei, or agreement on the definition of an Abyei resident, alternative solutions for determining eligibility in Abyei will be needed. At present, any person—northerner or Southerner—is free to move to Abyei and claim residency in the area. This has given rise to fears on the part of the Ngok Dinka and the SPLM that Abyei will be swamped by non-natives of the region, resettled in an attempt to ensure that Abyei remains in northern Sudan. To prevent such manipulation of the vote, one imperfect solution would be to allow registration of voters in South Kordofan localities that were considered part of Abyei in the 2008 census. Rather than precipitating any new rush by Misseriya to alter the demographic make up of the region in 2010 or 2011, they could be included on the basis of their 2008 self-identification.

The administration of the 2008 census enumeration of Abyei was divided between South Kordofan and Warrap. In Warrap's census figures, some residents of Abyei were recorded under 'Abyei County'. South Kordofan recorded registrants under the mahalia of 'Abyei'. Other displaced Ngok residents of Abyei were enumerated in Warrap's Twic County, including Ajak-Kuac, Aweng and Turalei *payams* (administrative units). A proximate maximum size of the potential Abyei electorate emerges in Table 7. The PCA ruling was not in effect at the time of the 2008 census, and the effect of the SPLM census boycott in South Kordofan cannot be quantified, so all figures must be treated cautiously. Ethnicity was not recorded in the census, so it is impossible to quantify how many residents are Ngok, and how many are Misseriya. Citizens were able to self-define as northern or Southern Sudanese. While Table 7 includes all of Twic County, the balance between Dinka Ngok and Dinka Twic in the district is unknown.

The enfranchisement of non-Dinka Ngok voters who self-identified as Abyei residents in the 2008 census is therefore one way forward. This question can only be resolved by the AARC however, with support from the parties. Without political will to tackle these questions, there will be stagnation or violence.

**Table 7  2008 national census figures for Abyei and neighbouring counties**[i]

| | Southern Sudanese | Northern Sudanese | Total Population[ii] |
|---|---|---|---|
| **South Kordofan—Abyei County** | 16,159 | 179,373 | 197,681 |
| **Warrap—Abyei County** | 50,619 | 1,208 | 52,883 |
| **Warrap—Twic County**[iii] | 201,544 | 632 | 204,905 |
| **Combined population of the three counties** | 268,322 | 181,213 | 455,469 |
| **Estimated eligible majority-age population (50% of the total population)** | 134,161 | 90,607 | 224,768 |

**Notes:** i. All figures drawn from Southern Sudan Centre for Census, Statistics and Evaluation (2009). Figures represent total population enumerated, including those below the age of majority.
ii. Sums do not total as those that did not indicate their region of origin and those who reported that they were not Sudanese have been excluded.
iii. Twic County borders Abyei and has many inhabitants of Dinka Ngok origin. Only Dinka Ngok citizens of Twic County could claim eligibility to vote in the Abyei referendum. It is impossible to quantify how many of those enumerated in Twic are Ngok.

## 14. How does the Abyei referendum affect the Southern Sudan referendum?

Logistically, the Abyei referendum could be delinked from the southern referendum, and take place at a later stage. This would violate the CPA and the INC (GoS/SPLM, 2005, Abyei Protocol art. 1.3; GoNU, 2005, art. 183.3), but could be part of a larger agreement. In the negotiations over CPA implementation and a possible grand bargain between the parties to resolve their outstanding disputes and bring the process to a conclusion, it may appear to be an inevitable choice to prioritize the much larger Southern Sudan referendum above the vote in Abyei. But easing off international donor pressure on the Abyei issue in return for uncertain pledges from the parties to deliver the southern referendum does not guarantee progress on the latter. This would be true even if a new agreement included guarantees of a future resolution of the Abyei issue. Delaying Abyei's vote to some indefinite future point is likely to lead to a repeat of the Addis Ababa Agreement of 1972, which promised but did not deliver a referendum for Abyei.

# Lessons for the referenda from the 2010 elections

## 15. The organization of the NEC and SSRC

During the 2010 elections, the NEC was hampered by understaffing and by the centralization of responsibility within the office of the secretary-general. With greater delegation the SSRC may avoid replicating some of the NEC's flaws, although it is faced with a far shorter timeframe than its electoral counterpart. Having only two full-time posts on the NEC (the chair and deputy chair), while the majority of commissioners were part-time, was a further error, and one that the SSRC runs the risk of repeating.

The NEC was formed in November 2008, four months after the deadline fixed by the NEA.[39] At their appointment, the membership of the NEC was respected, if in some instances suspected to be politically partisan. The appointment of veteran administrator Galal Mohammed Ahmed as NEC secretary-general was pivotal. As a former senior official in the NEC's predecessor, the General Elections Authority, Galal was the most experienced electoral administrator in the commission. He quickly became the crux of the NEC, playing the lead role in identifying and recruiting other senior NEC staff, as well as SHC members. Every important issue passed through his office. At the same time the NEC was woefully understaffed, almost out-numbered by UNMIS Electoral Affairs Division (EAD) Khartoum personnel sitting three city blocks away.

The NEC's centralizing tendencies meant that mid-level officials were unable to take decisions without first referring to the highest echelons of the commission, and as in past elections, the central personnel were few in number (Willis et al., 2009, p. 5). As one senior NEC official acknowledged, 'There were only two that worked on all the legal issues. [The NEC] could have benefited from another.'[40]

Initially, some commissioners had hoped that they could continue in their professional lives—academia, business, law—without being fully consumed by NEC responsibilities. This proved to be almost impossible as the complexity and scale of the electoral process became apparent. Only the commission chair and deputy chair were obliged to work full time, although as months went by the NEC commissioners did devote many hours to their electoral duties. The referenda laws have repeated the provision of only providing for the chair and deputy chair to be full-time positions (GoNU, 2009a, art. 10.4; GoNU, 2009b, art. 10.4).

## 16. The voter registration process in the 2010 elections

The experience of registration during the elections offers some important lessons for the referenda. The most significant problems emerged during the post-registration phase when voter lists were produced. This effort was hampered by a tight timeframe—a problem likely to re-emerge during referenda registration—and problems with the computer systems used.

Initially, the November–December 2009 voter registration was seen as a success.

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39  Article 4 of the NEA required the NEC to be formed within one month of the adoption of the Act.

40  Interview with the author, July 2010.

Participation during the five-week period was widely agreed to be 'broad', 'enthusiastic', and 'relatively large' (Carter Center, 2009b, p. 1; SuNDE, 2009). Despite observed problems, including early evidence of multiple or proxy registration in some areas, the registration process was described as a victory for participation. For the Carter Center, 'voter registration appeared largely successful in reaching citizens in most areas of the country;' (Carter Center, 2009, p. 1). The Sudanese Network for Democratic Elections (SuNDE) commented, 'voter registration was conducted in a free, peaceful, and transparent manner' (SuNDE, 2009, p. 2). The Sudanese Domestic Election Monitoring and Observation Programme (SuDEMOP) noted 'the voter registration and exhibition exercises were seen as generally successful' (SuDEMOP, 2010, p. 10).

Some months after the election a franker assessment was made in an internal report on international technical assistance:

> The [international organizations] should have pushed for completion of voter roll before exhibition. [The voter registration (VR)] plan was not implemented and we need to be more realistic. Exhibition of VR was a farce and incorrect and not voter friendly, IOs should have pushed harder on international stakeholders about how this would impact on polling. Not enough time for SHCs to follow steps of VR, like recruitment of staff, training, identification of VR centers, etc (IFES/UNMIS/UNDP/EC, 2010).

In the absence of a demarcated north–south boundary, voter registration was able to proceed on the basis of compliance with a more fundamental aspect of the eligibility question—that of satisfying 'the required legal conditions' to ensure the 'basic [i.e. constitutional] right' of registration in the electoral register (GoNU, 2005, art. 4; GoNU, 2008, art. 22). A similar 'basic right' exists for the various referenda processes (GoNU, 2005, art. 219; GoNU, 2009a, art. 28; GoNU, 2009b, art. 26).

Many more people registered to vote in the election than had been counted in the census the previous year. This was an explicit aim of the SPLM, after what it considered deliberate under-counting of Southerners during the 2008 census.[41] One or both figures must, of course, have been inaccurate; population movement could not account for such a huge difference in figures. Table 9 shows further details of the variability of registration figures compared to the census. High overall registration turnout in Southern Sudan obscured significant regional disparities: Unity registered 190 per cent of the total population counted in the census, while Upper Nile and Jonglei, only reached 85–86 per cent (NEC, 2009).

It was in the post-enumeration phase of voter registration that the flaws became apparent. Despite having deployed thousands of registration staff and created millions of records, the task of developing accurate and usable voter lists proved insurmountable in Southern Sudan. The extremely optimistic schedule for displaying the preliminary voter list was impossible to achieve (EU EOM, 2010b, p. 22). The census was clearly inaccurate in parts of Southern Sudan, but registration may have been equally flawed.

All registration data were to be computerized, and for the most part this was eventually achieved, albeit far behind schedule in Southern Sudan. But lists were displayed late, or not at all. In most of Southern Sudan, only paper copies of registration records were initially displayed by the SHCs, immediately following registration, in formats quite different from those displayed during the voting itself. This meant that most Southern Sudanese voters

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41   Interviews with the SPLM, post voter registration, December 2009.

could not verify the accuracy of their finalised voter record, nor were they able to confirm in advance the exact location where they should vote, as individual registration centres were divided into different polling locations. This failure had further implications. The Japanese observer delegation noted that, '[t]he lack of correspondence between the serial numbers on the slips provided upon voter registration and those on the voter lists was an obstacle to smooth identification' (MOFA of Japan, 2010, p. 2). Observed the EU EOM, 'the lack of data for identifying citizens on the computerized voter register did not allow for any meaningful cross checking of double or multiple registrations' (EU EOM, 2010b, p. 22).

No international consensus exists on statistical benchmarks for measuring accuracy in voter registration, nor an acceptable error rate. The ACE Electoral Knowledge Network, a compendium of international elections expertise, describing a permanent registry (as the 2009 exercise in Sudan was intended to establish), suggested that 'a continuous list should aim to be 90 percent complete, 85 percent current and 97 percent accurate' (ACE, 2010).

in 2009, 16.4 million voters were registered (NEC, 2009). Ninety-seven per cent accuracy would have left half a million registry errors nationwide. Ninety per cent accuracy would have left 1.64 million errors; distributed proportionately, there would have been almost half a million errors in Southern Sudan alone. Although it is impossible to establish the registry's overall accuracy without more thorough statistical analysis, the EU EOM's finding that, 'approximately 8% of the voters observed were refused ballots because their names were not on the voter lists' falls within this range (EU EOM, 2010, p. 2). However, the EU's observation does not reveal the full story. Many voters, failing to find their names before even getting to a station queue, never had the opportunity to be refused a ballot. Disenfranchisement by registry happened in multiple ways, through ignorance, manipulation and incompetence. A historic truth of Sudanese elections—'registration has proved the single most consistently challenging aspect of the electoral process in every multi-party election in Sudan' (Willis et al., 2009, p. 34)—was reconfirmed in 2010.

**Table 8  Comparative figures for the 2009 census enumeration, electoral voter registration and presidential ballots cast in Southern Sudan, by state**

| State | Census enumeration | Voter registration | Valid votes cast for President of Sudan |
|---|---|---|---|
| Jonglei | 693,081 | 566,439 | 195,463 |
| Central Equatoria | 586,207 | 536,877 | 240,808 |
| Upper Nile | 488,934 | 425,861 | 231,080 |
| Warrap | 476,887 | 629,701 | 512,383 |
| Eastern Equatoria | 452,676 | 636,774 | 400,165 |
| Lakes | 361,378 | 381,208 | 226,595 |
| Western Equatoria | 352,285 | 318,454 | 159,168 |
| Northern Bahr al-Ghazal | 349,312 | 452,257 | 250,811 |
| Unity | 274,324 | 522,196 | 203,456 |
| Western Bahr al-Ghazal | 177,957 | 210,873 | 152,236 |

**Notes:** Census figures indicate those 17 years or older (Central Bureau of Statistics, 2009). Voter registration figures were obtained from the NEC.

## 17. Election administration in Southern Sudan

Seen as a rehearsal for the referendum, the 2010 election demonstrates the limitations of the distant commission in Khartoum in communicating with the state and county levels. Information, decisions and training practices were not effectively conveyed. As such, many decisions were made at the state or county level, leading to different practices in different areas. The SSHC in Juba was largely sidelined in decision-making by the NEC despite its mandate to coordinate activities in Southern Sudan.

Faced with a lack of communication from the NEC, the 130 members of the 26 SHCs—one committee for every state and one committee for Southern Sudan—were largely able to make their own operational decisions, though they were still constrained by available resources and by the policies set by Khartoum. The division of labour between the NEC, SSRC and SHCs was often unclear, and implementation of NEC policies varied widely. A year before the elections, the Carter Center asserted that, 'a critical priority for action is to clarify the delineation between national, regional, and state election management body responsibilities' (2009a). By April 2010, there was still uncertainty over which committee was supposed to do what, and when, particularly in Southern Sudan.

In Southern Sudan, the SuNDE domestic observer network commented that it had witnessed, 'confusion and disparity among [SHCs] regarding the development of their polling station lists ... noted many variances in the accreditation procedures among the ten southern [SHCs]' (SuNDE, 2010, p. 22).[42] The EU EOM noted, '[t]he training of polling staff was conducted with considerable differences from state to state' (EU EOM, 2010a, p. 5). With regard to authorization for campaigning, the Carter Center found, '[p]olitical parties reported that these regulations were applied inconsistently across the states' (Carter Center, 2010, p. 11). Experiences were similar in the north where '[t]he Mission noticed disparities in the election process in the three regions [North, South, Darfur] of Sudan' (League of Arab States, 2010, p. 1).

For the vast majority, events in Khartoum, Juba or the state capital were irrelevant. What mattered was how things worked at local registration and polling centres. In adopting a decentralized system, and a cascading approach to training, where information and support radiates outwards from the centre, the elections depended heavily on quality being maintained as processes devolved to the local level. This did not happen. As the technical assistance providers concluded:

> ... cascade methodology created deterioration in quality of training at Step 2, 3 and 4 levels [local level training]. Outsourcing of training to private training institutes was a failure as most of the master trainers had never done election related trainings before ... Trainings at lower levels became 'briefings' not trainings (IFES/UNMIS/UNDP/EC, 2010).

No electoral management body was more powerless than the SSHC, the committee supposed to coordinate elections in the south, which was largely bypassed in the decision-making process. The SuDEMOP domestic observer network of Southern Sudanese civil society organizations reported that on 15 April 2010 the SSHC convened a press conference in Juba to announce the delay of election results, while on the same day the NEC head office in

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42   SuNDE was supported by funds and technical assistance from the National Democratic Institute.

Khartoum announced the results (SUDEMOP, 2010, p. 7).[43] News of decisions reached many SHCs weeks if not months after the initial action had been taken. In Southern Sudan, UNMIS EAD would often receive news of a NEC policy decision before their counterpart SHC even knew the issue was under discussion.[44]

The Juba-based Southern Sudan Referendum Bureau (SSRB), the operational branch of the referendum commission, could be different from its predecessor, the SSHC. Its legislative mandate includes, 'direct supervision over the work of High Committees for Referendum in Southern Sudan to ensure the fairness and transparency of the referendum process relating to registration, polling, sorting, counting, and aggregation/declaration of the results' (GoNU, 2009a, art. 18.3.b). As one expert noted, 'the [SSRB] has power. The question is how much.'[45]

The position of the SSRC's deputy chair is critical as this person is concurrently head of the SSRB. The NEC was criticized for being disconnected from activities outside Khartoum; changes to the referendum's administrative structure attempted to address this disjuncture.[46] How this will work remains to be seen. One individual who worked closely with the SSHC, the Bureau's electoral equivalent, remarked, '[the SSRC] deputy chair cannot be in two places at the same time. Either the guy stays in Khartoum and is not aware of what is going on here [in Juba]. Or he stays in Juba and has no influence over the process in Khartoum.'[47]

## 18. Lessons for the referendum commissions from the operations of the NEC

The chief flaws in the operations of the NEC were failures to communicate effectively with officials at the state level and to delegate decision-making powers clearly enough. This resulted in differing electoral practices from state to state and county by county. If repeated in the southern referendum this inconsistency could cast doubt over the integrity of the process. The AARC, SSRC and SSRB could learn from this experience by:

- appointing full-time rather than part-time commissioners to administer the complex electoral process;
- ensuring RHCs and county committees receive the same instructions;
- communicating policy directives to RHCs and county committees as soon as they are made; and
- delegating powers within the SSRC, from the SSRC to the SSRB, and from the AARC to the county committees.

Inconsistency and variability in communications issued from the NEC in Khartoum to the

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43   SuDEMOP was supported by UNDP funds and received technical assistance from the Carter Center domestic observation support program.

44   Correspondence with UNMIS EAD state teams, September 2009 to April 2010.

45   Interview with the author, July 2010.

46   The SSRB has 'direct supervision over the work of High Committees for Referendum' (GoNU, 2009a, art. 18.3.b); in the elections SHCs reported directly to the NEC in Khartoum.

47   Interview with the author, July 2010.

state level resulted in an uneven and haphazard process across the country. The structure established by the legislation—NEC, high committees, subsidiary state committees, constituency officers—was only partially implemented. There was in effect not one election ongoing, but 25. Partly due to internal incoherence and partly as a result of a fluid and dynamic political and electoral context, the NEC's tendency to change course caused confusion and led to an inconsistent process.

The NEC issued dozens of regulations concerning all aspects of electoral administration, but had difficulty ensuring that they were consistently implemented. The EU EOM concluded that, '[the] process of regulation making was not carried out properly. Some issues were not regulated at all, other areas saw regulations far too late, and the NEC used a variety of instruments of uncertain legal status' (EU EOM, 2010b, p. 17).

## 19. Polling days

The administration of polling stations was negatively affected by uncertainty over the number and location of polling stations, causing issues with the distribution of ballot papers. Once again, poor communication and staff training led to a lack of consistency in the application of rules between different polling stations.

The number of planned polling stations fluctuated throughout March and April 2010,[48] forcing the packing and repacking of millions of ballot papers and elections materials only days before the elections. And when those materials arrived, '[it was] the first time polling staff saw many items ... they did not know what to do with them and thus did not use them' (IFES/UNMIS/UNDP/EU, 2010). Confusion was a unifying trend, for technical assistance providers, observers and voters alike. Said the EU EOM, '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' (2010b, p. 5).[49]

With the weaknesses of training at the local level, basic administration of electoral procedure was variable. If names could not be found on voter lists, some voters were turned away, yet for others alternative solutions were found (SuDEMOP, 2010, pp. 12-13; MOFA of Japan, 2010, p. 2). Indelible ink to prevent multiple voting was not always properly applied (SUDEMOP, 2010, p. 13; EU EOM, 2010b, p. 95). In some places, ballot boxes were secured properly, and other times, interference would easily have been possible (SuNDE-SuGDE, 2010, p. 17; EU EOM, 2010b, p. 93). Not all variations were egregious flaws, but the fact that such variation existed meant that one national election, administered by 25 subsidiary committees, in hundreds of constituencies, treated millions of voters in hundreds of different ways. Civic and voter education was often seen as a priority for election administration in Southern Sudan with resources directed accordingly. However, ensuring Southern Sudanese electoral officials are well trained is perhaps more critical for effective delivery of electoral processes.

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48   Shifting from 17,914 on 9 March to 16,525 on 20 March to 16,502 on 23 March to 16,775 on 4 April. See the EU EOM (2010b). Carter Center reporting noted there were originally 21,000 stations planned, amended to 17,914 (2010a) and then to 16,502 (2010b).

49   Various polling station lists were published, but whether these lists describe all stations opened is unknown.

## 20. Security

In both northern and Southern Sudan, the police services were the lead actors in ensuring elections security. In Southern Sudan, the numerous limitations of the Southern Sudan Police Service (SPSS)—a force that is poorly paid, equipped and trained and lacks communications and transport )—meant that the Sudan Peoples' Liberation Army (SPLA) was able to assume a role in elections security, which became closely aligned with the interests of certain SPLM candidates in parts of the south.

The Police Component of UNMIS (UNPOL), which had focused its efforts on training the Sudanese police, had little success in training the SSPS in effective electoral policing. Said one UNMIS official, 'I don't know who to tell you to talk to at UNPOL, none of them can explain what they are doing.'[50] Haile Menkerios, the UN Special Representative of the Secretary-General, discussing plans for the referenda, tacitly acknowledged UNPOL's inadequacies during the election: 'Our police will be co-located with the South Sudan police up to the county level [during and before the referendum] and will be more pro-active than they were last time, because it's demanded, because it's requested and because it's necessary' (UN News Service, 2010). Internal UN planning in May suggested that 'the [UN] Police Commissioner was considering redeployment of one hundred UNMIS police from North to South Sudan'.[51]

Human rights abuses were also widely reported. In a lengthy documentation of incidents that violated human rights prior to and during the elections,[52] Human Rights Watch concluded:

> [Elections] have contributed to a worsening human rights situation throughout the country by emboldening the NCP and SPLM—neither of which have not been forced to account for their actions [sic]—in their clampdown against opponents. They... have set a worrying precedent for Southern Sudan's forthcoming referendum... International observers and diplomatic missions have failed to explicitly and resolutely criticize these documented human rights and electoral abuses, or to call for accountability and reform' (Human Rights Watch, 2010).

Where there were arrests during the elections, 'most were detentions by the SPLA or security services' (EU EOM, 2010b, p. 38). Serious misconduct by the SPLA was observed in at least six of the ten states of Southern Sudan: 'In Western Bahr el Ghazal... SPLA soldiers engaged in widespread intimidation of voters and polling officials' (Human Rights Watch, 2010, p. 25). In Northern Bahr al-Ghazal it was reported that some ballot boxes had been detained by the SPLA (EU EOM, 2010b, p. 44). SPLA troops intervened in aggregations in Eastern Equatoria, Jonglei and Unity States (EU EOM, 2010b, p. 45). In Western Equatoria, the SPLA were used to interfere in the tabulation process and unlawfully detained state elections officials (Carter Center, 2010c, p. 8). The occurrence of similar incidents during the referendum could have implications in terms of the recognition of the results by the NCP.

The SPLA claimed that only a few ill-disciplined soldiers were involved in the incidents (Mayom, 2010), but the elections saw a systematic failure of command within several divisions of the SPLA. The commander-in-chief and high command may not have given orders to interfere in the elections, but many of their old colleagues, in and out of uniform, used the forces at their disposal for their own purposes. Some elections officials—in Western Equatoria,

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50   Interview with the author, July 2010.

51   Internal UN assessment report, obtained by the author.

52   Human Rights Watch chronicled a series of violations throughout Sudan, not only in Southern Sudan.

Northern Bahr al-Ghazal—were forced into hiding during vote tabulation due to fear of retribution from forces loyal to incumbent state administrations.[53]

The EU EOM recommended that:

> 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 (EU EOM, 2010b, p. 53).

Internationally supported Joint Operation Centres (JOCs), established at the state level to coordinate elections security, largely failed to make a difference. Securing the elections was a responsibility that fell on the shoulders of many—governments, commissions, governmental security agencies—none of whom fulfilled their responsibilities adequately.

In relation to the referenda, the SPLA has different interests, and the pattern of abuses seen during the electoral process is unlikely to be repeated. Politicians running for election that used the SPLA to facilitate electoral success have now largely consolidated their positions. All other southern political parties have joined the SPLM in expressing support for carrying out the referenda, although the Southern Sudan Democratic Forum and SPLM–Democratic Change have expressed reservations on whether the votes could be held fairly.[54] There seems to be a clear understanding in GoSS that intimidation and coercion of the type observed in the elections would be used as an argument by those seeking to discredit the conduct of the referenda under SPLM administration.

Pertinent to both referenda is the possibility of instability fomented in the borderlands—Unity and Upper Nile in particular—as well as in Abyei. Violence could easily prevent the Abyei vote from proceeding, and there could be spillover from problems in Abyei into Warrap and Unity states, affecting the southern referendum as well. Some Southern Sudanese interviewees expressed fears that if stalling the referenda is no longer possible, and secession appears inevitable, a desperate NCP would encourage or fund proxy forces to destabilize strategic areas of Southern Sudan and Abyei.[55] The most effective way to do this would be to target areas where voter turnout could be more easily depressed, particularly in Unity, northern Warrap, Upper Nile and Jonglei states.

In the event of violence, postponement of polling at individual referenda centres is permitted. Determining whether postponement is required is a power delegated to the presiding officer of the referendum voting centre (GoNU, 2009a, art. 37; GoNU, 2009b, art. 35). However, the SSRA and AARA do not make specific provision for the SSRC or AARC to act in the event of widespread insecurity or violence, other than the general provision on amending the referenda scheduling noted in article 14.2(h), and the general powers reserved to the commissions to act as required to implement the referenda. Clearly, if wide swathes of Southern Sudan or Abyei were unable to vote, there could be serious implications for meeting both the necessary turnout thresholds and the simple majority margin of victory.

There are also clear security issues relating to populations of Southerners living in the north, above and beyond the obvious worries of intimidation at polling stations. The looming

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53   Communications with international observers and UN sources, April 2010.

54   Author interviews with SSDF and SPLM–Democractic Change party officials, July 2010.

55   Interviews with the author, July 2010.

threat of potential expulsion from northern Sudan and the loss of citizenship rights in the event of a secession outcome could be highly destabilizing, particularly in Greater Khartoum, where Southern Sudanese are most concentrated (PCC, 2009; see also Table 5 above).

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## Referendum violence in East Timor

East Timor provides a clear demonstration of risks inherent in a referendum process, and of the consequences of inadequate security preparations. IFES reported: 'Violence escalated during the registration period (26 July–8 August), continued through election day, and persisted well after the 4 September announcement of results' (IFES, 2009). Rabasa and Chalk noted that while 'Referendum Day, August 30, 1999, saw little violence or interference ... once the results against autonomy were announced a week later the militias and some military units unleashed a campaign of violence at a much more destructive level throughout East Timor' (2001). In the eyes of some observers, the UN's security management also failed. 'The UN's [as electoral administrator] completely inadequate security provisions for the referendum ensured that the military/militias could freely expedite what was clearly a preconceived strategy for preventing the implementation of a vote for independence' (Leite, 2000, p. 183). The majority of electoral violence in East Timor was fomented by the desperation of Indonesian elements opposed to the impending independence of the region. There are analogies with Sudan. The context of Sudan is arguably more challenging than that in which the East Timor vote took place, with a smaller UN presence and divisions amongst the Sudanese in terms of their attitude to the vote.

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## 21. Management of the election results

Sudan's 2010 election results were unverifiable, but at the national and Southern Sudan executive levels the incumbents were nevertheless conclusively re-elected. Where the management of election results really broke down was at the state and constituency level, where obviously inaccurate figures were recorded. In certain parts of Sudan, over-enthusiasm to ensure the re-election of a particular candidate was the likely motivating factor in the high margins of victory recorded. Electoral competition will not be an issue during the referendum, but conditions for the insufficient tabulation of referenda results will still exist. Inaccuracies in the referenda vote figures could allow either the result or the turnout figures to be challenged.

On 26 April 2010, 11 days after voting had ended in the elections, the NEC officially announced the presidential winners. But as the EU EOM described:

> 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 ... 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 (EU EOM, 2010b, pp. 7, 47).

The NEC had committed to a date to release the results long in advance, without knowing when tabulation at SHCs would be completed. In Southern Sudan, the situation was particularly bad. The EU EOM reported: 'On 16 April (the day after polling had ended) [tabulation] 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' (EU EOM, 2010b, p. 47). Evidently, there was political pressure to announce the president's re-election and not leave the country in protracted political limbo. Statistical rigour was not the primary consideration. Even with this haste, and excluding suspicious figures, the declared victors for President of the Republic and President of the GoSS did win, although almost certainly not by the margins announced.[56]

Conclusive victory is much harder to substantiate at every other level of government, from governor to state legislative assembly (SLA). No disaggregated, station-by-station results were ever published. Even some official aggregate results are incomplete.[57] In Eastern Equatoria, winners for SLA constituencies 13 and 26 have been declared, but results have been 'left blank' or else have never been published by the NEC.[58] In Southern Sudan, complete aggregate results have not been published in nine constituencies.[59]

Some results are clearly wrong. In Western Bahr al-Ghazal, votes cast for the SLA women's list are more than double those cast for the comparable national assembly or SSLA women's ballots. For that contest, the NEC recorded turnout of 110 per cent.[60] In several southern states, tens of thousands more ballots were cast for state governor than for President of the GoSS or President of Sudan (see Table 9). For these figures to be accurate, thousands of voters must have intentionally bypassed or mistakenly spoiled ballots for both presidential races, choosing to vote for only the gubernatorial race, the third ballot issued to voters on election day. As the Carter Center noted, 'gubernatorial-level Results Forms for polling stations in the four state constituencies of Terekeka County (showed) substantially higher rates (+90 percent) of participation than were indicated by turnout in other areas of the state or for the other executive races (44–48 percent)' (Carter Center, 2010c, p. 8).

A handful of examples of suspicious figures does not prove widespread failure. However, the failure to publish transparent and disaggregated results casts doubt on the accuracy of the declared results in hundreds of different races. The EU EOM was forced to conclude in its final report, 'the whole [tabulation] process was delayed and became untrustworthy and results were untraceable' (Eu EOM, 2010b, p. 7). The report added:

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56  Official margins of victory over the nearest challenger were: President of the Republic, 4.64 million votes; President of Southern Sudan, 2.4 million votes.

57  Best practice for elections is to publish disaggregated, station-by-station results.

58  See http://nec.org.sd/new/new/eng_doc/EastEquatoria.pdf.

59  Western Equatoria SSLA constituency 5; SLA constituency 28; Jonglei national assembly constituency 6, Bor North; SSLA constituency 12 and SLA constituency 28, Athuk South; Warrap SSLA constituencies 6 and 8; Western Bahr al-Ghazal gubernatorial race or SLA constituencies 18 and 23. Detailed NEC figures for Western Equatoria are only published in Arabic (see http://nec.org.sd/new/new/nt/23.htm); ditto Jonglei (http://nec.org.sd/new/new/nt/7.htm); and Warrap (http://nec.org.sd/new/new/nt/21.htm). The NEC's English version of published results gives an incorrect name for the winner of the Western Bahr al-Ghazal gubernatorial race. The victorious gubernatorial candidate for Lakes State is named twice (see http://nec.org.sd/new/new/eng_doc/Governors.pdf).

60  See http://nec.org.sd/new/new/eng_doc/Westba.pdf, p. 2.

> Counting and aggregation... took much longer than anticipated... The reconciliation of all ballots was carried out inaccurately in 46% of cases in the south and 30% in the north... 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 (2010b, p. 44).

These experiences point clearly to the importance of effective systems for tabulating results, for greater transparency and for the publication of disaggregated voting figures. There is still sufficient time to make some improvements in these areas before the referenda take place.

**Table 9  Variance in valid votes cast in Southern Sudan, 2010 executive elections**

| | Governor | President of Sudan | President of Southern Sudan | Additional ballots cast for state governor compared to President of Sudan | Additional ballots cast for state governor compared to President of Southern Sudan |
|---|---|---|---|---|---|
| **Lakes** | 323,550 | 226,595 | 253,326 | 96,955 | 70,224 |
| **Unity** | 221,150 | 203,456 | 183,060 | 17,694 | 38,090 |
| **Central Equatoria** | 289,258 | 240,808 | 254,409 | 48,450 | 34,849 |
| **Warrap** | 540,233 | 512,383 | 524,172 | 27,850 | 16,061 |
| **Western Equatoria** | 170,838 | 159,168 | 169,651 | 11,670 | 1,187 |
| **Western Bahr al-Ghazal** | unknown | 152,236 | 151,439 | unknown | unknown |
| **Jonglei** | 249,650 | 195,463 | 250,383 | 54,187 | −733 |
| **Northern Bahr al-Ghazal** | 259,743 | 250,811 | 263,864 | 8,932 | −4,121 |
| **Upper Nile** | 260,613 | 231,080 | 266,605 | 29,533 | −5,992 |
| **Eastern Equatoria** | 474,218 | 400,165 | 496,921 | 74,053 | −22,703 |
| **Total** | 2,789,253 | 2,572,165 | 2,813,830 | | |

**Notes:** NEC figures. Calculations in variance by the author.

## 22. The UN and international technical assistance

The United Nations Security Council has mandated UNMIS to provide technical and logistical assistance to the referenda. The UN has received general requests for assistance from the GoNU and the GoSS, and has significantly expanded its planned assistance, establishing UN referenda assistance teams in all counties of Southern Sudan, which Under Secretary-General Suzanne Malcorra described as 'a huge, huge change' from the elections (UN DPI, 2010). But there have been delays in specific requests for assistance from the SSRC and agreement on the support to be provided to the Southern Sudan referendum (and, obviously, in the absence of

the AARC, to the Abyei referendum). As a result, internal organizational decisions have been slow; and both donor support and staff recruitment have been delayed.

UNMIS EAD was the biggest and most prominent international technical assistance provider during the 2010 elections. Its successor department, the UN Integrated Referendum and Electoral Division (UNIRED), remains the largest civilian division in UNMIS, with a substantial presence in Khartoum, and staff, primarily teams of UN Volunteers, based throughout the states. Operating independently during the elections, UNDP, supported by the donor consortium the International Foundation for Electoral Systems (IFES), funded by the US government, the EU and the AU, also offered technical assistance. These organizations will play the same role in the referenda.

During the election there were acknowledged problems of coordination between different UN agencies and between offices in the north and those in the south. As one UN internal assessment concluded: '[We] found that there was criticism within both UNMIS and UNDP of how UN arrangements for the elections have operated, also strongly expressed by some donors who have experienced the failure to present one UN.' A UN expert commented: '[There was] a Khartoum mentality—Khartoum EAD was tiptoeing around, forgetting the key interlocutors elsewhere [in Southern Sudan].[61]

In the case of the referenda, reluctance to site senior technical personnel closer to the main base of referendum activities could jeopardize effective implementation. In the case of UNIRED, a new senior management team must grapple with the responsibility for supporting the referenda, including the expansion of staffing across all 78 counties in Southern Sudan. Staffing is likely to be a problem for UNMIS as well. In May, UNMIS vacancy rates averaged 29 per cent.[62]

Interviews with international technical assistance providers suggest that the degree of buy-in and involvement from Sudanese electoral bodies in relation to UN assistance plans is a source of both concern and disagreement. One senior donor government official said in mid-July, 'We need an operational plan in two weeks or else we are in big trouble [as it will be impossible to deliver donor funding and implement activities without one].' Another senior technical adviser retorted, 'An operational plan? Forget it, we will never have one implemented so why bother developing one!' By late October, no agreed plan existed.

A summary document of elections lessons learned noted, 'IOs [international organizations] should build on what the local election bodies propose rather than forcing them to use IOs' plans' (IFES/UNMIS/UNDP/EU, 2010). Yet, days after the SSRC was sworn in, the UN had already worked up a draft operational plan. The SSRC had provided no input. A UN official said, 'We don't have time to wait for them.'[63] The same document concluded, 'IOs did not pick up on cultural clues (Yes does not necessarily mean 'yes', sometimes it means 'I hear you').' As one UN official explained, 'we need to ask better questions. Not yes or no. Ask the same questions in different ways. [The NEC] didn't know who was what and doing what.' Said another, 'We heard what we wanted to hear. We didn't listen to them.'[64]

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61    Interview with UN official in Southern Sudan, July 2010.

62    Internal UN report, May 2010. Obtained by the author.

63    Interview with the author, July 2010.

64    Interviews with the author, July 2010.

A senior Sudanese official commented:

> In our nature as Sudanese, if someone comes to assist you, then we appreciate that. And I think we appreciated a lot what everyone was doing. The United Nations Mission... they were very sincere in what they were doing. I think they probably could have given us more support in the question of the registration. I never saw UNDP. UNDP played a very narrow role of coordinating donations and the basket fund. We never felt influenced... I don't think we were influenced in any way—by the UNMIS, by UNDP—except for maybe on the budget.[65]

After the election, a senior UN official proclaimed, 'this election wouldn't have happened without the UN.'[66] In the north, this was an exaggeration. Only in Darfur did the UN play a significant role. However, in Southern Sudan—without UN air support and communications systems, the last minute re-packing and re-sorting of materials for which civilian and military UN personnel volunteered—this claim was much truer. It will also be true of the referenda.

Questions remain over the funding of the referenda. While the United States, Japan, the Netherlands, Norway and the United Kingdom have deposited funds, only minimal resources have so far been made available to the SSRC and SSRB for referendum operations.[67] Further donor assistance is tied to financial commitments from the national government being made explicit, through a federal Ministry of Finance allocation. But financial contributions from both the national and Southern Sudanese governments are likely to be minimal. Inadequate funding could slow implementation.[68] As one commentator put it:

> The donors, either they are stupid or they are totally naive. The government [i.e. GoNU] didn't put money for the election, in which they had an interest. So are they going to put money for the referendum? Of course not! ... At the end of the day, is there any donor who is willing to stand and say that they won't pay, at all? No. At the end of the day they will pay. So why not pay now?'[69]

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65  Interview with the author, July 2010.

66  Post-election celebration attended by the author, May, 2010.

67  The United States has pledged bilateral financial assistance, primarily through IFES; other donors are depositing money through the multi-donor basket fund administered by the UN. One expert estimated current disbursements to the SSRC as amounting to only SDG 2–3 million (USD 800,000–USD 1.2 million).

68  In his visit to the SSRC on 27 September, federal Minister of Finance Ali Mahmud said: 'We went through the initial and basic proposals of the budget, its figures and structures. We agreed with the brother chairman, members [of the commission], his deputies, the secretary-general and all the brothers on the figures and structures of the budget. We transferred the issue to technocrats so that they can discuss the budget in detail; God willing, it will be approved in a very simple manner, and financing will flow after that, God willing' (Sudan TV, 2010).

69  The national government did contribute to the cost of the April elections, although the proportion of funds delivered did not match the initial promises made by the Ministry of Finance, resulting in a much higher proportion of funds originating from international donors. Donor sources, April–July, 2010.

## 23. Observing the observers

It took almost a year for the first international observer mission, the Carter Center, to negotiate comprehensive access agreements for election observation with the NEC, GoNU and GoSS.[70] The Center planned a large-scale, long-term presence, but for many months only deployed a handful of observers scattered across the country. The early statements of the Center, calling a year before the elections for 'respect for constitutionally guaranteed freedoms [as] a necessary precondition for any competitive electoral campaign', had by April 2010 given way to more anodyne remarks, particularly from Jimmy Carter himself (Carter Center, 2009a, p. 2; 2010b). There were several 'generally positive features [in the 2010 elections]' said the Center. By May, as further flaws became indisputable, the Center's statements became more critical again. The EU mission suffered numerous delays and eventually deployed at the end of February 2010 (EU EOM, 2010a, p.1).

Immediately after the poll, the initial relief that voting had finally taken place was apparent in the guarded optimism expressed by the three largest international observer missions. A 'democratic opening' had emerged, said the Carter Center (2010b, p. 3); the EU EOM commended the NEC for '[carrying] out the election preparations diligently' (2010a, p. 2); former president of Ghana John Kufuor, leading the AU mission, was decidedly upbeat, and while polling was still ongoing, commented that 'there would have to be glitches and flaws here and there and perhaps it's a bit too much to expect a perfect electoral system right now' (Miraya FM, 2010). In its 19 April statement, the Troika of governments that were the guarantors of the CPA (the United States, the United Kingdom and Norway) found in the elections 'progress... to expand democratic space in Sudan' (US Department of State, 2010).

By July, the Troika was, 'deeply concerned at the actions of the Sudanese Authorities since the election', and the EU EOM and the Carter Center, the only international missions to observe aggregation and tabulation, issued unequivocal statements of concern about irregularities. But it was too late: the results had been announced and accepted, the elections had been endorsed by every observer mission as representing democratic progress, if not meeting international standards.

Most of what undermined credible election observation happened long before election day. Only 32 international observers[71] were present for registration, 25 times fewer than the number present for voting. This number represented roughly one international observer per 500,000 registrants. All the observer missions suspect undocumented flaws and problems with registration.[72]

Domestic observation efforts were also extremely limited during registration. The two largest networks were able to deploy 340 observers between them, but these observers worked for only a fraction of the registration period, and conducted extremely limited post-registration observation activity.[73]

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70   The Center's observation mission was established in February 2008; agreements were signed in July and August 2009. Government consistency in the implementation of these memoranda of understanding varied considerably. As the election approached, the national government did allow for the privileges extended under the agreement to be better respected. Carter Center sources, May 2010. The present author was a principal drafter of Carter Center EOM statements issued in 2009.

71   Of which the author was one. Not all 32 observers were present for the entire five week registration period.

72   Ninety-five interviews with EOM officials post vote, April–May 2010

73   Registration began on 1 November and continued to 7 December. SuDEMOP reported training 160

International observation was weakened by a number of other factors. Few international observers were conversant in Arabic or any of the other indigenous languages of Sudan. Even fewer had prior experience of the country. With the exception of the Carter Center and a limited EU contingent, every other observation mission—the AU, the League of Arab States, the Intergovernmental Authority on Development and a number of smaller NGO-driven teams—deployed mere days before the polls. These factors are not unique to election observation in Sudan. But for some observation missions, there was clear underestimation of the bureaucratic and logistical challenges of operating in Sudan.

The unusual multi-day nature of the polling, rarely encountered in international election observation, complicated matters further. Election day is normally the culmination of observer effort, the typical experience being an early rise to see polling begin and an all-night vigil until the counting ends. Statistically, the sampling method of observation depends on the consistency of observer and polling station activity. Over five days, the number of opportunities for irregularities to occur increases exponentially. Five times stations opened and closed, ballot boxes were sealed and unsealed, basic procedures administered, records completed. For a station observed once, no further observers may have arrived for the remainder of polling. Observations—positive or not—on one day may not hold true throughout the vote.

The EU EOM claimed that it had observed a much higher percentage of stations than was typical in other observation missions. EU observers visited 13.6 per cent of the total polling stations across Sudan (2010b, p. 8). The Carter Center visited approximately 1,050 stations, or six per cent of stations nationwide (2010b, p. 14). Yet an observer at a station on 12 April could make no substantiated claim about activity at that same station on 15 April. In effect, the 16,000 polling stations, open for five days each, amounted to 80,000 days of electoral activity. Against that figure, the observed sample of the EOMs is more modest.

The exhaustion of observing a multi-day election in Sudan also meant that observation of counting at polling stations happened at only a handful of sites.[74] Tabulation and aggregation, which being centralized in state capitals was more widely witnessed, received damning assessments from observer groups (see section 21, 'Management of the election results'). Domestic observers were largely absent from observing tabulation.[75] But hard evidence lacking for the most part, statements expressing 'concern' and urging greater 'transparency' were all that could be mustered (EU EOM, 2010b; Carter Center, 2010c). With respect to tabulation and aggregation, Eric Bjornlund's warning rang true: 'International election monitoring often falls apart after election day, after the large delegations have departed and the international media have their attention elsewhere' (Clark, 2006, p. 3).

International observation during the elections was hindered by lack of numbers and delays in deployment, and in particular by insufficient observation before the vote, during registration, and afterwards for counting and tabulation. This is a clear area for improvement for missions observing the referenda.

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observers but is less clear on how many were deployed from 20 November to 7 December. SuNDE deployed 180 observers from 19 to 22 November and 27 to 30 November. See SuDEMOP (2010) and SuNDE (2009).

74    The EU, for example, observed counting at only 42 polling stations, only 12 of which were in Southern Sudan, representing less than 0.3 per cent of the total polling stations nationwide. Carter Center figures were unavailable at the time of publication, but as a substantially smaller mission than the EU EOM, the number of stations observed is likely to have been equally statistically insignificant.

75    Interview with the author, August 2010.

Observers in the referenda processes will face a number of additional challenges. Heightened political sensitivity over the eligibility of voters will give the registration phase an even greater importance. Access to areas judged insecure, including contested areas along the north–south borders, as well as parts of Abyei and Southern Kordofan, is likely to be difficult. The government in Khartoum may limit observer access in the north, leading to unanswered questions about the integrity of the process.[76] Monitoring seven days of consecutive voting is virtually unprecedented in observation.[77] If observers are not to face the same limitations experienced in 2010, it will be necessary to establish observer missions sufficiently in advance of registration to prepare and anticipate the numerous political, logistical and security challenges ahead.

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[76]    Visas and travel permits in the north are hard to obtain; the modest relaxation of bureaucratic requirements that occurred during the elections is less likely to be offered in 2011. In Darfur, where international observer access was extremely limited during the 2010 elections, no long-term election observation capacity was ever established in any of the three states. The Carter Center deployed two observers to Darfur during voter registration. During polling, observer teams from the Carter Center, League of Arab States and AU deployed teams that were predominantly confined to state capitals. The EU withdrew its observers from Darfur (see EU EOM, 2010b, p. 3).

[77]    Observation of the five days of polling in Sudan is likely to be the only recent comparable, election observer experience.

# Glossary of words and acronyms

**AARA**      Abyei Area Referendum Act (2009)

**AARC**      Abyei Area Referendum Commission

**AAA**      Abyei Area Administration

**ABC**      Abyei Boundaries Commission

**AEC**      Assessment and Evaluation Commission (CPA mandated)

**AU**      African Union

**AUHIP**      African Union High Level Implementation Panel (Mbeki Panel)

**CPA**      Comprehensive Peace Agreement (2005)

**definition**      (legal term) the act of providing a general geographic description of an area

**delineation**      (legal term) the act of establishing the limits or boundaries of an area

**delimitation**      (legal term) the act of establishing the limits or boundaries of an area

**demarcation**      (legal term) the act of physically creating a boundary on the ground

**EOM**      election observation mission

**EU**      European Union

**GoNU**      Government of National Unity of the Republic of Sudan

**GoS**      Government of Sudan

**GoSS**      Government of Southern Sudan

**IFES**      International Foundation for Electoral Systems (technical assistance provider)

**IGAD**      Intergovernmental Authority on Development

**INC**      Interim National Constitution (2005)

**IO**      international organization (generic term)

**IOM**      International Organization for Migration

**JOC**      Joint Operations Centre

***jus sanguinis***      (Latin) the right of blood, by which a child's citizenship is determined by its parents' citizenship

***jus soli***      (Latin) the right of the ground, by which a child's citizenship is determined by its country of birth

***mahaliya***      district

**NCP**      National Congress Party

**NEA**      National Elections Act (2008)

**NEC**      National Elections Commission

**OCV**      out-of-country voting

**PCA**      Permanent Court of Arbitration (The Hague)

**RHC**      Referendum State High Committee

**SDG**      Sudanese pounds (currency)

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| **SHAMS** | Sudan Forum for Elections (civil society domestic observer network, primarily northern Sudan based) |
| **SHC** | State High Committee (elections) |
| **SLA** | state legislative assembly |
| **SSLA** | Southern Sudan state legislative assembly |
| **SPLA** | Sudan Peoples' Liberation Army |
| **SPLM** | Sudan Peoples' Liberation Movement |
| **SSHC** | Southern Sudan High Elections Committee (Juba) |
| **SSRA** | Southern Sudan Referendum Act (2009) |
| **SSRB** | Southern Sudan Referendum Bureau (Juba) |
| **SSRC (also RC)** | Southern Sudan Referendum Commission (Khartoum) |
| **SuDEMOP** | Sudanese Domestic Election Monitoring and Observation Programme (civil society domestic observer network, established for the 2010 national elections, primarily Southern Sudan based) |
| **SuGDE** | Sudanese Group for Democracy and Elections (civil society domestic observer network, established for the 2010 national elections, primarily northern Sudan based) |
| **SuNDE** | Sudanese Network for Democratic Elections (civil society domestic observer network, established for the 2010 national elections, primarily Southern Sudan based) |
| **TAMAM** | Sudanese Consortium of Civil Society Organizations (domestic observer network, established for 2010 national elections, primarily northern Sudan based) |
| **UNDP** | United Nations Development Programme |
| **UNHCR** | United Nations Refugee Agency |
| **UNIRED** | United Nations Integrated Referendum and Electoral Division (successor to UNMIS EAD) |
| **UNMIS** | United Nations Mission in Sudan |
| **UNMIS EAD** | United Nations Mission in Sudan Electoral Affairs Division |
| **UNPOL** | United Nations Mission in Sudan Police Component |
| **USD** | US dollars |
| **VR** | voter registration |

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