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**Preliminary statement
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Introduction and Background on Carter Center Mission

In response to an invitation from the SSRC, The Carter Center initiated its referendum observation activities in Sudan in August 2010, subsequently deploying long-term observers in September. During the voter registration process, the Center deployed a total of 72 observers across Sudan and to the eight nations where *Out-of-Country Voting* (OCV) took place. Carter Center observers made approximately 1300 visits to referendum centers in 24 out of 25 states.¹

For the January 2011 polling period over 100 observers have been deployed to observe the polling and tabulation process, both in Sudan and the OCV locations, covering 24 of 25 States in Sudan and all eight of the OCV countries. Throughout Sudan, observers made over a thousand visits to 762 referendum centers, or 27 percent of the total referendum centers in Sudan. In total, Carter Center core staff, long-term, short term, and out-of-country observers form a diverse group from 34 countries.²

The Carter Center assesses the referendum process in Sudan based on the Comprehensive Peace Agreement (CPA), Interim National Constitution, Southern Sudan Referendum Act, and Sudan's obligations for democratic elections contained in regional and international agreements, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights. The Carter Center conducts observation activities in accordance with the Declaration of Principles of International Election Observation and Code of Conduct that was adopted at the United Nations in 2005 and endorsed by 35 election observation groups.

The objectives of the Carter Center's observation mission in Sudan are to provide an impartial assessment of the overall quality of the referendum process, promote an inclusive process for all Southern Sudanese, and demonstrate international interest in Sudan's referendum process.

This preliminary statement documents the extent of Sudan's compliance with its obligations for democratic elections in the conduct of the referendum. The process is ongoing, with several critical stages still remaining to be completed, including tabulation and the announcement of final results. The Center will issue a final comprehensive report within three months. Read the Center's full report at www.cartercenter.org.

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¹ Carter Center observers did not visit referendum centers in West Darfur.

² These countries include: Australia, Belgium, Benin, Cameroon, Canada, China, Democratic Republic of the Congo, Denmark, Egypt, Ethiopia, France, Georgia, Germany, Ghana, Ireland, Italy, Jordan, Kenya, Lebanon, Liberia, Mozambique, Namibia, Netherlands, Nigeria, Norway, Sierra Leone, Slovakia, Tanzania, Togo, Uganda, United Kingdom, United States, Zambia, and Zimbabwe.

Political background

The referendum on self-determination of Southern Sudan is mandated by the Comprehensive Peace Agreement (CPA), which was signed on January 9, 2005 by the Government of Sudan (GOS) and the Sudan People's Liberation Movement (SPLM). The CPA marked the official end of the 22-year North-South civil war in Sudan.

The CPA established a six-year interim period during which the Government of National Unity (GNU), composed of the National Congress Party (NCP) (holding 52 percent of National Assembly seats), SPLM (28 percent), and other parties (20 percent), governed nationally until the conduct of elections midway through the interim period. The CPA provided for the establishment of the Government of Southern Sudan (GoSS) to govern Southern Sudan in a semi-autonomous arrangement for the interim period. The referendum was scheduled to take place six months before the end of the interim period.

The CPA included a separate protocol for Abyei, which was supposed to hold a referendum simultaneously with Southern Sudan on whether to retain its special status in the north or become part of what is now Warrap State in the south. However, the CPA partners failed to agree on the membership of the Abyei Referendum Commission – effectively paralyzing the implementation of the Abyei Protocol and making it impossible to hold a referendum in Abyei.

In addition, the agreement provided for popular consultations in South Kordofan and Blue Nile to be conducted by elected state assemblies. Prior to the holding of referenda in Southern Sudan and Abyei, the CPA also called for national elections at six different levels of government to ensure that the ballots for the referendum were presided over by democratically elected officials.

After a number of delays, the Government of Sudan held presidential, gubernatorial and legislative elections in April 2010. The Carter Center observed the elections and found that they fell short of international standards and Sudan's obligations for genuine elections in many respects. Nonetheless, the elections were important as a key benchmark in the CPA and were accompanied by an increase in political and civic participation in months preceding the polls. Despite their observed weaknesses, the conduct of the elections allowed for the remaining provisions of the agreement to be implemented. Although the intention of the elections as a component of the CPA was to provide an opportunity for greater inclusion of political parties aside from the SPLM and the NCP, the elections consolidated the dominance of the NCP at the national level and the SPLM in the south.

Background to Self-Determination in Southern Sudan

In 1955 on the eve of independence southern leaders demanded that the country be structured along federal lines. Faced with opposition from the North, an insurgency was launched to achieve southern independence. The war ended with the signing of the 1972 Addis Ababa Agreement, which provided for autonomy for the south. Soon thereafter southern rebels along the Ethiopian border started another insurgency to demand independence of southern Sudan. In 1983 the SPLM under Dr. John Garang also launched an armed struggle, but based on a commitment to a reformed and inclusive 'New Sudan'. In 1991 SPLM leaders, Dr. Riak Macher and Dr. Lam Akol split from the SPLA calling for a commitment to southern self-determination. The demand for self-determination figured in the many subsequent rounds of peace negotiations, but it was not until 1997 that the Government of Sudan formally accepted it in the Khartoum Peace Agreement, which it signed with a number of Southern armed groups led by Dr. Riak Macher. The terms of the agreement were never implemented.

After many failed peace processes the Inter-Governmental Authority on Development (IGAD) backed by the US and its allies applied the necessary pressures and incentives that resulted in the 2002 Machakos Protocol that accepted Southern Sudanese self-determination and provided for a referendum to determine whether southerners preferred to remain in a united Sudan or to secede.

Overall assessment

While several critical stages of the process remain to be completed before final results will be announced, the Center finds that the referendum process to date is broadly consistent with international standards for democratic elections and represents the genuine expression of the will of the electorate.

According to the Southern Sudan Referendum Commission (SSRC) and to reports of observers and others, it appears that the 60 percent turnout threshold required for a valid vote was reached several days before the end of the polling period. In addition, based on early reports of vote counting results, it appears virtually certain that the results will be in favor of secession. The Carter Center welcomes statements by the Government of Sudan (GOS) that it will accept the results of the referendum, and anticipates that the international community will recognize the outcome as soon as the final results are announced. Although the population of Southern Sudan is understandably anxious to receive the results, The Carter Center urges all to remain calm as they wait for the final announcement due in early February.

The Carter Center commends the SSRC and the Southern Sudan Referendum Bureau (SSRB) for their determination to implement a successful referendum despite very short timelines and logistical challenges. The Center also recognizes the critical roles played by the United Nations Integrated Referendum and Elections Division (UNIRED), the International Foundation of Electoral Systems (IFES), and other international partners to assist Sudanese referendum authorities. The Government of Sudan and the Government of Southern Sudan should also be recognized for taking steps to ensure that the process could be conducted successfully.

The sections below provide a detailed summary of The Carter Center's assessment of key issues and aspects of the referendum process.

Legal framework

The Carter Center's assessment of the referendum is based on Sudan's domestic legislation and political commitments relating to the referendum process as well as its international obligations for democratic elections.³ Sudan's Interim National Constitution (INC) incorporates the CPA as the cornerstone of Sudan's interim government and calls for the Southern Sudan Referendum to be held in accordance with the provisions of the CPA.⁴ This legal framework is supplemented by Sudan's international law commitments under the provisions of the ICCPR, Banjul Charter, the Arab Charter on Human Rights, among others.

The Comprehensive Peace Agreement of 2005 establishes the overarching legal framework of Sudan. In 2009, pursuant to the CPA, the National Assembly passed the Southern Sudan Referendum Act (Referendum Act), which sets out the guidelines for the administration of the referendum. In addition, through accession to, and ratification of, international treaties and the incorporation of internationally recognized obligations into its Constitutional Bill of Rights, the Government of Sudan has committed itself to the protection of political and human rights essential to the conduct of a democratic referendum, including freedom of expression, assembly, and association, universal suffrage, among others.⁵

³ Sudan has acceded to the International Covenant on Civil and Political Rights (March 18, 1986), the International Convention on the Elimination of Racial Discrimination (March 21, 1977), International Covenant on Economic, Social and Cultural Rights (18 March 1986), and ratified the Convention on Rights of Persons with Disabilities (April 24, 2009), the African Charter on Human and Peoples' Rights (February 18, 1986) and the Arab Charter on Human Rights (May 22, 2004). In addition, Sudan is signatory to the United Nations Convention against Corruption (January 14, 2005), the African Charter on Preventing and Combating Corruption (June 30, 2008), and Protocol 1 of the African charter on Human and Peoples' Rights on the Rights of Women (June 30, 2008).

⁴ Interim National Constitution for the Republic of the Sudan, Art. 224-226(2) (2005).

⁵ The International Covenant on Civil and Political Rights (ICCPR), Article 25, requires in part that "Every citizen shall have the right and the opportunity...(a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b)

According to the Referendum Act, the referendum will be considered legal and valid if at least sixty percent of registered voters cast their votes in the referendum.⁶ If the turnout did not reach the required threshold, the referendum was to be repeated within sixty days of the final vote declaration.⁷ A simple majority of fifty percent plus one of the total votes is necessary for either unity or secession to be declared to be the expression of the will of the Southern Sudanese.⁸

The CPA and INC call for the referendum to be “internationally monitored” and the Referendum Act further asserts the need for “international observation” of the process.⁹ The Referendum Act grants accredited observers the right to observe all referendum processes including: voter registration, polling, and aggregation and declaration of the results.¹⁰

In recognition of the widespread displacement that accompanied the conflict in Southern Sudan, the Referendum Act provides for voting in Southern Sudan, northern Sudan and eight out-of-country (OCV) locations.¹¹ The enfranchisement of voters outside of the territory of Southern Sudan is intended to ensure the broadest possible pool of voters. This is consistent with Sudan’s commitments to ensure universal suffrage.¹² By facilitating the participation of Southern Sudanese in northern Sudan, the Government of Sudan affirmed the right of Internally Displaced Persons to vote.¹³ In addition to centers in Southern Sudan, the Referendum Act calls for referendum centers to be established in all locations where over 20,000 Southerners reside and state capitals in northern Sudan.¹⁴ In the cases in which there would not be 20,000 registered voters, voters were expected to travel to the capital of the northern state or out-of-country location.¹⁵

The CPA established a timeline for different processes associated with the Southern Sudan Referendum. According to the CPA, the National Assembly should have passed the Referendum Act by the beginning of the third year of the interim period in 2008. The referendum commission should have been enacted soon after and voter registration should have ended three months before voting began.¹⁶ The INC and Referendum Act reflect these timelines.¹⁷ Although each of the benchmarks was ultimately reached, there were delays and CPA timelines were not met on schedule. Despite not adhering to the timeline in its entirety, the passage of the Referendum Act, the establishment of the SSRC and the voter registration process took place with sufficient time to prepare for the Southern Sudan Referendum. The CPA parties and government representatives acknowledged the delays but chose not to modify the date of the Southern Sudan Referendum in response.

Eligibility

The universal right to participate in the democratic processes of one’s country is directly affected by

To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.” Further, the United Nations Human Rights Committee, General Comment 25, paragraph 12 has established that, “Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected.”

⁶ SSRA, Art. 41(2).

⁷ SSRA, Art. 41(2).

⁸ SSRA, Art. 41(3).

⁹ CPA, Machakos Protocol, 2.5; Interim National Constitution, Art. 222(1). SSRA, Art. 5, 7(d).

¹⁰ SSRA, Art. 42.

¹¹ SSRA, Art. 2; 27(2) (The eight Out of Country locations are: Ethiopia, Kenya, Uganda, Australia, Britain, the United States, Canada, and Egypt).

¹² Article 4 of the African Charter on Democracy, Elections and Governance and Article 25 of the International Covenant of Civil and Political Rights. Article 21 (3) of the UN Universal Declaration of Human Rights,

¹³ Guiding Principles on Internal Displacement, Art. 22(1)d.

¹⁴ SSRA, Art. 27(2).

¹⁵ SSRA, Art. 27(2).

¹⁶ CPA, The Implementing Modalities of the Machakos and Power Sharing Protocols, 1(a), (b), and (c).

¹⁷ Interim National Constitution, Art. 220; SSRA, Art. 32.

eligibility and voter registration processes. Moreover, authorities should facilitate the registration process, and remove any impediments.¹⁸ The Referendum Act establishes eligibility to vote in the Southern Sudan referendum for three categories of people - those who were born to at least one parent from a Southern Sudanese indigenous community whose parent was residing in Southern Sudan on or before January 1, 1956; those whose ancestry is traceable to one of the ethnic communities in Southern Sudan but without at least one parent residing in Southern Sudan on or before January 1, 1956; and permanent residents (or whose parents or grandparents) have resided in Southern Sudan since January 1, 1956.¹⁹ The first category of eligible voters can vote in northern Sudan, Southern Sudan, or out-of-country voting (OCV) locations. The second and third category of voter may only vote in Southern Sudan.

The eligibility criteria reflect the intention of including ethnic Southerners and long-term Southern residents but did not indicate a list of what constitutes an ethnic or an indigenous community nor the proof necessary to demonstrate fulfillment of these criteria. In response to questions by technical advisers about which indigenous or ethnic communities are Southern Sudanese, how to prove residency, and other implementation concerns, the SSRC released a document titled, “Critical Legal and Procedural Questions: Answers.”²⁰ However, it did not fully clarify the above issues.²¹

During voter registration, individual referendum center officials and Carter Center observers reported confusion about the implementation of the eligibility criteria, particularly in northern Sudan. The lack of clear guidance from the SSRC on implementation of the eligibility criteria led to subjective application by referendum center chairpersons, particularly to migratory populations such as the Ambroro, persons with only one parent from the south, or people from Abyei living in and around Khartoum. The SSRC issued an additional clarification on October 24 that addressed the issue of where persons falling under each eligibility category would be allowed to vote but again this circular did not address the issues mentioned above.

The Carter Center is also concerned that some of the population of Abyei may have been excluded from participating in the Southern Sudan referendum, even though they may have met the eligibility criteria by proving their links to indigenous communities of Southern Sudan. The SSRC decided against placing a referendum center in Abyei, seemingly to avoid confusion related to the anticipated simultaneous referendum on the Abyei Area.

Election Management

Structure of Referendum bodies

An independent and impartial authority that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuine democratic process, and that other international obligations related to the democratic process can be met.²² The Referendum Act called for the establishment of the Southern Sudan Referendum Commission (SSRC), an independent government body based in Khartoum, to oversee the Southern Sudan Referendum.²³ This body is responsible for the overall administration of the referendum, including the promulgation of referendum regulations, organization of voter registration and polling, and the final declaration of

¹⁸ General Comment 25, paragraph 11

¹⁹ Southern Sudan Referendum Act (2009), Art. 25.

²⁰ Southern Sudan Referendum Commission’s “Critical Legal and Procedural Questions: Answers” of Oct. 6, 2010.

²¹ In response to an inquiry as to whether the SSRC intended to provide a comprehensive list of southern Sudanese ethnic groups, the SSRC responded “no.”

²² UNHRC , General Comment No. 25 para. 20

²³ The SSRC is comprised of nine members, including a Chairperson, Deputy Chairperson, and seven Commissioners. The President, with consent of the First Vice-President and the approval of a simple majority of the National Legislature, appoints the Commissioners. Five of the nine SSRC members are Southern Sudanese, including the Deputy Chairperson.

results.²⁴

The Southern Sudan Referendum Bureau (SSRB), a subsidiary body to the SSRC, sits in Juba and manages referendum operations in Southern Sudan.²⁵ The SSRB is responsible for overseeing the work of the referendum authorities in Southern Sudan and arranging all logistical requirements necessary to carry out the referendum in Southern Sudan. The Referendum Act calls for state-level High Committees, county-level Sub-Committees, and referendum centers in Southern Sudan; in northern Sudan, the SSRC created State Referendum Committees that directly oversee Referendum Centers (with no intermediary Sub-Committees). In total, the referendum administration was comprised of the SSRC, SSRB, 15 State Referendum Committees in northern Sudan, 10 state level High Committees in Southern Sudan, 79 county subcommittees in Southern Sudan, 2813 referendum centers in Sudan and 41 OCV referendum centers in each of the eight countries.²⁶

Referendum Administration

The SSRC and SSRB made efforts to operate transparently, particularly the SSRB. The SSRC could have improved transparency by sharing information on the referendum administration process with the public more regularly. Throughout the referendum process, referendum administration officials demonstrated strong commitment to successful implementation of the referendum. Officials often struggled with inadequate resources. Limited funds were made available to the SSRC or SSRB from the national government. The GoSS allocated significant amounts of funds to the functioning of the SSRB and its subsidiaries but due to delays in cash transfers from the national government, the disbursement of these funds was often late. The SSRB's inability to make timely payments to referendum center staff during registration was partially linked late disbursement by GoS and the GoSS. Although the SSRB managed to carry out its functions with the limited funds available to it, adequate resources would likely have contributed to a more efficient referendum management process.

The SSRC and SSRB effectively distributed thousands of voter registration books and polling materials, supported with critical technical assistance from international partners. At the start of voter registration and polling, the large majority of referendum centers were able to open on time, a significant improvement on the 2009 voter registration and 2010 polling processes.

Public Information and Communications

Both the SSRC and the SSRB made some to increase the transparency of the referendum process via press conferences. During voter registration, the SSRB held bi-weekly press conferences; the SSRC organized comparatively fewer media events. However, all levels of referendum administration endeavored to make themselves accessible to international observers and Carter Center observers have encountered few difficulties in observing the processes.²⁷

Communications between the SSRB and referendum centers faced challenges due to the lack of infrastructure in Southern Sudan and the impacts of the rainy season, which leaves large parts of Southern Sudan inaccessible via road. Although the SSRB deployed satellite phones to referendum centers to narrow the communication gap, some were not appropriately activated or supplied with sufficient credit.

²⁴ SSRA, Art. 14.

²⁵ The SSRB is comprised of five members. The SSRC's Deputy Chairperson also chairs the SSRB. The SSRC, on the recommendation of the SSRB Chairperson appoints the SSRB's other members.

²⁶ SSRA, Art. 8(3); SSRC and SSRB members must be Sudanese by birth; at least 40 years of age; and well-known for independence, non-partisanship, and impartiality, among other criteria. Five of the nine SSRC members are Southern Sudanese, including the Deputy Chairperson. All members of the SSRB are Southern Sudanese.

²⁷ The one exception was the inability to adequately observe the data center in Juba following the voter registration process.

Considerations Committees and Appeals

According to the SSRC voter registration regulations, referendum center Chairs should appoint three former civil service officials to serve on the consideration committees.²⁸ The considerations committees were mandated to consider appeals from persons denied the ability to register during the voter registration and to hear complaints from registered voters during the appeals process. The failure to establish and train considerations committees in a timely manner in many centers undermined voters' rights to legal redress and effective protection.²⁹ Although it appears not to have affected many persons, the failure to establish consideration committees denied some persons their right to appeal their exclusion from the process.

Voter Education

Voter education efforts are necessary to ensure an informed electorate is able to effectively exercise their right to vote.³⁰ It is an obligation of the government, referendum administration and civil society to make efforts to clarify to the population key issues regarding the referendum consistent with Sudan's international obligations to take necessary steps to ensure sufficient civic and voter education for all citizens.³¹

Overall, voter education was insufficient, as the SSRC, SSRB, and government did not adequately engage in efforts to inform voters about the referendum process, which runs against the state obligation "to take legislative, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights."³² The large majority of voter education activities observed in Southern Sudan were led by civil society groups and often mixed voter education efforts with advocacy in favor of secession. While the state bears an obligation to promote public understanding of the democratic process, it is essential that election administration provides for objective, non-partisan voter education and information campaigns.³³

Political parties in Southern Sudan - aside from the SPLM – informed the Carter Center observers that they wanted to conduct voter education but they lacked the resources to do so. Carter Center observers reported very few voter education activities in northern Sudan, which may partially explain the inadequate understanding by southerners in northern Sudan as to whether they were eligible to participate in the referendum. Voter education in both regions increased in the latter part of the voter registration process with intensified engagement of civil society groups, the SSRC, and the NCP in the north and local chiefs, churches, women's groups, the SPLM, and members of the state or county referendum taskforces in the South.

Voter Registration

Registration is recognized as important means to ensure the right to vote, and should be made available to the broadest pool of citizens possible to ensure universal suffrage is protected as required by Sudan's international commitments.³⁴ In this regard, both the SSRC and SSRB took significant steps to ensure that

²⁸ Referendum Act, Art. 30(2); Voter Registration Regulations, Reg. 15.

²⁹ ICCPR Art. 2 (3); UN, International Convention on the Elimination of All Forms of Racial Discrimination, Article 6

³⁰ ICCPR, Art. 25; United Nations Human Rights Committee, General Comment 25, paragraph 11.

³¹ The African Charter on Democracy, Elections, and Governance (Signed June 30, 2007) Article 12(4) (requiring signatories to "implement programmes and carry out activities designed to promote democratic principles and practices and consolidate a culture of democracy...integrate civic education in their education curricula and develop appropriate programmes and activities"); *United Nations Human Rights and Elections*, paragraph 87; ICCPR, Art. 2. Moreover, under the UN Universal Declaration of Human Rights, states have undertaken to take legislative, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

³² Article 14, UN, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

³³ UN, Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 124

³⁴ United Nations Human Rights Committee, General Comment 25 on "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service", para. 11; UN, International Covenant on Civil and Political Rights, art. 25(b).

the broadest possible pool of eligible Southern Sudanese were able to participate. In advance of the referendum, the SSRC and SSRB conducted voter registration from November 15 to December 8, 2011. The original end date was to be Dec. 1 but the SSRC extended the process by one week.

The Carter Center deployed 16 long term and 30 medium term observers to assess voter registration, referendum preparedness and the broader political environment in Sudan. Although the voter registration exercise faced some procedural, logistical, and security challenges, The Carter Center found that the process was generally credible and constituted a strong step toward the successful conduct of the referendum.³⁵³⁶

According to the Jan. 8 SSRC publication of the final voters registry, 3,932,588 people registered to vote in the referendum with 3,755,512 people registered in the South, 116, 857 registered in the north and 60,219 people registered in the eight OCV countries. In order to meet the 60 percent threshold set by the Referendum Act validate the referendum, 2,359,553 people needed to vote during the polling period.

Materials and Payment

Referendum officials diligently worked to overcome logistical challenges and administrative shortcomings during registration. However some states of Southern Sudan faced shortages of registration books, which temporarily disrupted the process in some referendum centers. Fortunately these shortages were replenished fairly rapidly. Due to challenges securing necessary funding, inadequate access to hard currency, and inaccessibility of some areas, payments to referendum center officials were inconsistent. Many referendum center workers expressed frustration with the lack information about their payments and told Carter Center observers that they were without food or water for long periods of time.

Eligibility and Participation

Referendum center staff implemented the eligibility criteria inconsistently, particularly in northern Sudan. Referendum center officials lacked clear understanding of the eligibility of persons with one parent from the South and that of persons from Abyei. In parts of Southern Sudan, particularly in Unity State, persons were asked whether they would remain in the same location until polling before they were allowed to register. The exclusion of potential applicants on this basis would constitute a clear violation of the guidelines governing eligibility and may have resulted in the exclusion of some eligible participants. The Carter Center noted the exclusion of several other categories of persons in contravention of the criteria, which while only impacting a relatively small proportion of the population, was inconsistent with the SSRC's eligibility criteria.³⁷

Identification

Carter Center observers noted inconsistencies in the application of identification procedures during registration. In more than one third of referendum centers visited by Carter Center observers in northern and Southern Sudan, potential registrants did not have their identity confirmed either by documents or designated identifiers. In addition, Carter Center observers reported some cases where identifiers were not present in referendum centers, possible resulting in some people being unfairly excluded from the process due to the absence of a person able to confirm their identity.

³⁵ See December 15, 2011 Carter Center Preliminary Statement on Voter Registration Process for the Southern Sudan Referendum.

³⁶ Five civil society organizations (SuDEMOP, KACE, NCF, Al Masaar, and GCRT) conducted a person-to-list voter registration audit and survey of the preliminary referendum register from December 9 – 16 during the exhibition period to assesses the quality of the preliminary voter lists produced in each referendum center by checking how many of the registration details of people interviewed appear correctly on the register. Their preliminary findings will be released in coming weeks.

³⁷ Carter Center noted the exclusion of deaf persons and persons with suspected mental illness in violation of the eligibility criteria, which indicates that such persons be included in registration with the provision that their inclusion could be challenged during the exhibition period. Although the SSRC allows for the registration of the mentally ill, it is not required to do so under international standards.

Overall, The Carter Center found that the registration process was appropriately inclusive with the exceptions of small numbers of persons excluded due to the lack of an identifier, physical or mental handicap, and inconsistent application of the eligibility requirements.

Location of Referendum Centers

Many participants in the registration process complained to Carter Center observers about the location of referendum centers in northern and Southern Sudan saying either that the centers were too far away from the concentrations of Southern Sudanese or that there were too few centers causing people to have to travel long distances in order to register. The latter sentiment led some referendum teams to operate as “mobile centers” to improve access to registration for rural populations. The decision to operate mobile referendum centers seems to have been driven by good intentions to include rural populations. However, given the SSRC requirement that voters would vote where they had registered, there was limited scope to address obstacles to including some of these voters registered at mobile referendum centers without organizing additional referendum centers. It is likely that some voters registered at mobile centers were not able to participate in polling due to the constraint of distance.

Appeals and Considerations Committees

According to the SSRC voter registration rules and regulations, a person denied participation by the referendum center Chair should have been able to submit a rejection form – obtained from the Chair – to a considerations committee sitting in the referendum center. The appeals process established in the SSRA and voter registration regulations helps ensure that eligible voters have a right to an effective remedy when barred from participation. The appeals process should ensure compliance with Sudan’s international commitments requiring the right to an effective and timely remedy.³⁸

The consideration committees were nonexistent in both northern and Southern Sudan at the start of registration making it impossible for persons to follow the procedures for appeals as outlined in the SSRC voter registration regulations. As registration continued, observers reported an increase in the formation of consideration committees. However, referendum center staff rarely seemed to understand the role of these committees.

In addition, Carter Center observers reported that few people who were deemed ineligible by the chairs of the referendum centers received the rejection forms that were supposed to be the first step toward submitting an appeal. Although the number of persons denied participation in the registration process was relatively small, this undermined the process.

Data Retrieval and Aggregation

Despite delays in the retrieval of information from centers in particularly remote areas of Southern Sudan, the data aggregation process for voter registration was successfully completed in northern and Southern Sudan in a timely manner. The Carter Center observed the compilation process in the data centers in north and Southern Sudan. Although both processes appeared to function smoothly, the Carter Center was disappointed that there was only a limited ability to observe the data compilation process in the Juba data center due to the restrictions placed on observers by the SSRB and data center management.³⁹

Intimidation

Although the Carter Center did not observe a systematic pattern of intimidation, where such behavior

³⁸ Southern Sudan Referendum Act, Art. 31; SSRC Voter Registration Regulations, Art. 20; ICCPR, Art. 2 (providing a right to legal redress); A Handbook on the Legal, Technical, and Human Rights Aspects of Elections A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 114 (stipulating that “Anyone alleging a denial of their individual voting or other political rights must have access to independent review and redress”).

³⁹ By Article 3 of the African Union Convention on Preventing and Combating Corruption, “[t]he State Parties to this Convention undertake to abide by the following principles: 3. Transparency and accountability in the management of public affairs.”

occurs, it undermined full participation in the referendum process and is contrary to Sudanese and international legal obligations, which require that everyone be allowed freedom of expression without fear of interference and that other rights necessary to freedom of expression be respected.⁴⁰ The Carter Center observed isolated instances of intimidation during the voter registration process.⁴¹

Security

The security forces that provided security during voter registration played a generally positive role in the process and refrained from interfering in the registration. These members of the security forces should be acknowledged for respecting the integrity of the registration process. However, Carter Center observers witnessed a few incidents in northern and Southern Sudan in which security forces interfered with the process.⁴²

Armed Attack

The GOS is required by the Interim National Constitution and Sudan's commitments to guarantee security of the person.⁴³ Overall, Carter Center observers reported that the vast majority of Southern Sudanese participated in the voter registration process without fear for their personal security. However, The Carter Center was particularly concerned by the attacks of the Sudan Armed Forces (SAF) around the border of Northern Bahr el Ghazal including the documented air bombardment on Nov. 24 in the Kiir Adem area by aircraft of the SAF which resulted in several casualties, the destruction of houses and one referendum center. Such attacks are deplorable and could have led to wider conflict.⁴⁴

Referendum Campaign

The right of individuals to participate in public affairs, including through the establishment of and free association with political parties and participation in campaign activities, is protected by international principles and fundamental electoral rights.⁴⁵

The referendum campaign started on November 7 and ended on January 7. The campaign period began without regulations governing its conduct as the SSRC did not adopt campaign regulations until early December. Given the enormous significance of the referendum to the people of both northern and Southern Sudan, it is disappointing that the campaign period did not provide regular fora and opportunities for in reasoned debate. Unfortunately the campaign only rarely rose above the level of sloganeering.

The Carter Center is particularly concerned about several incidents of public rallies or statements during which local government officials openly threatened and intimidated persons supporting unity or persons who chose not to participate in the referendum process.⁴⁶

⁴⁰ Interim National Constitution, Art. 29, 40, 41; ICCPR Art. 25; In addition, According to paragraph 20, CCPR/C/21/Rev.1/Add.7, General Comment No. 25, states should make measures that voters are "protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process."

⁴¹ Observers confirmed five politically motivated arrests of NCP members in Eastern and Western Equatoria and Jonglei. In River Nile State and Khartoum, observers reported incidents of government workers and soldiers being told that they would not receive their salaries if they did not register.

⁴² In the Kajo Keji area of Central Equatoria in Southern Sudan, The Carter Center observed instances of national intelligence officials looking through registration books and writing down the numbers of persons registered each day. In the Akobo area of Jonglei, Carter Center observers noted several incidents of SPLA and Southern Sudan Police Service involvement in the registration process. These included instances of security personnel opening the box of registration material, checking and recording the seals, accessing the materials, checking applicants' fingers for ink residue, and verifying applicants' eligibility. In Khartoum state, security officers on several occasions entered referendum centers without justification.

⁴³ Interim National Constitution, Art. 23(2)b; ICCPR, Art. 9.

⁴⁴ Continued sightings of Antonov planes near Kiir Adem and over the Gok Machar area in the last two months have considerably contributed to fear of renewed warfare in the area.

⁴⁵ ICCPR, Art. 25(a); ICERD, Art. 5(c); CEDAW, Art. 7(b), UNHRC General Comment 25, para. 26.

Neither the NCP nor the SPLM communicated fully their party positions to the public on the options presented in the referendum. SPLM leaders assumed conflicting positions. Meanwhile, the NCP failed to launch a fully-fledged campaign for unity, or propose the kind of changes that the SPLM sought to support unity.

The southern political parties played only minor roles in the referendum campaign, thus furthering the sense that the campaign was an SPLM-NCP affair. Southern civil society was largely devoted to campaigning for secession and observation of the vote with some efforts devoted to voter information.

Northern opposition parties supported a united Sudan but they largely failed to engage in the referendum process, perhaps due to fear that any support for the unity campaign would be seen as support for the NCP. Also, after years of repression their support base and capacity to carry out a campaign is limited. Apart from the NCP, the Sudan Communist Party held two pro-unity rallies in the south. Northern civil society was weakened by government and as a result has had only a minimal role in the referendum campaign.

Media Environment

International obligations related to the media and elections include freedom of expression and opinion and the right to seek, receive and impart information through a range of media.⁴⁷ The media environment in Sudan for domestic news sources has been characterized by self-censorship and intimidation, while the international news sources are often hampered from full freedom of movement in conducting their work. The Carter Center was concerned that most of the domestic and international media narrative on Sudan ahead of the referendum almost exclusively highlighted the potential for a return to war, at times making it sound inevitable. Members of the media have a responsibility to report accurately on the referendum process and should endeavor to play a constructive role in documenting the process.

Polling

Polling is a critical element of the democratic process. Measures should be taken to allow all categories of voters, including prisoners and voters abroad, to exercise their voting right. In addition, there should be independent scrutiny of the voting and counting process, and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.⁴⁸

Preparations

The preparations for polling began in earnest towards the end of the voter registration period facing a very tight timeline to meet the scheduled January 9, 2011 start of polling. International technical advisors, especially the UNIRED/UNDP and IFES, provided critical assistance to the SSRC to procure the ballots and polling kits respectively.

Plans to print the ballots ran into challenge in late November 2010 with the award of the tender for the printing of ballots. The head of the SSRC called for the re-opening of the closed tender changing the printing criteria in order to ensure that Sudanese companies could compete for the award. The re-opening

⁴⁶ Particularly worrying was the public naming-and-shaming of a group of Jehova's Witnesses in Western Equatoria State (WES) whose belief did not allow them to register. The governor of WES reportedly issued public statements calling them traitors, and the burning down of the Kingdom Hall a few days after the statement might have been connected to the public outcry.

⁴⁷ Art. 19, *Id* In addition, states have committed to "safeguard the human and civil liberties of all citizens including the freedom of expression, as well as access to the media on the part of all stakeholders, during electoral processes."

⁴⁸ Paragraph 20, CCPR/C/21/Rev.1/Add.7, General Comment No. 25. In this respect, "[s]tates should take measures to guarantee the requirement of the secrecy of the vote during elections....This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process." Paragraph 20, UN, United Nations Human Rights Committee, General Comment 25 on "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service."

of the tender cost the referendum preparations one additional week. The printing and delivery of the ballots was expedited in order to prevent this additional week from delaying the polling. Materials arrived in the country in mid to late December and UNIRED assisted the SSRC and SSRB to begin the process of delivering them to the states, counties and referendum centers.

Training of referendum authorities for polling began in mid December in Juba and Khartoum. Although the SSRC rules and regulations for polling were not yet developed at the start of training, the trainers used a polling manual developed on the basis of the Referendum Act in order to allow training to begin in a timely manner. The SSRC adopted rules and regulations for polling on December 22 which differed slightly from the polling manual, most significantly in that it provided for appeals in the referendum center to be heard by considerations committees. The SSRC amended the Rules and Regulations on December 29. The updated Regulations modified the start and the end of voting as 8 am to 5 pm, respectively eliminating an earlier discrepancy between the regulations and the polling manual.

On January 7 and 8 Carter Center observers reported that materials were still being delivered from the counties to the referendum center levels but that they were likely to be in place by the start of polling.

Voting

Polling started on January 9. Most referendum centers opened on time and were well stocked with the appropriate materials.⁴⁹ In the south, voters started queuing as early as 2 and 3 am for the 8 am opening of the polls. Some voters slept at the polling stations. The first two days saw very long and slow-moving queues, particularly in urban areas, but the majority of voters expressed excitement rather than frustration over the long wait. In northern Sudan, the opening days of polling were more subdued with a significantly lower percentage of the registered population turning out to vote. By the final day of voting, the Carter Center observers reported turnout for Southern Sudan exceeding 90 percent of registered voters and in northern Sudan more than 50 percent based on the referendum centers visited.

Overall, Carter Center observers reported that referendum center staff followed procedures and the vast majority of eligible voters were able to exercise their right to express their self-determination as provided for in the CPA.⁵⁰ The voting period between Jan. 9-15 resulted in an overwhelming turnout of voters who cast their ballots in an atmosphere that mixed enthusiasm with solemn determination to participate in a historic referendum process. Although this enthusiasm led to long queues during the initial days of polling in Southern Sudan, voters displayed patience and commitment. The Southern Sudanese people should be congratulated for participating peacefully in the referendum with the few exceptions of security incidents in Unity State, Abyei, and on the border of Northern Bahr al Ghazal–South Darfur. The SSRC and SSRB and their technical assistance providers should be commended for organizing the exercise in such a logistically challenging environment within a short time period. Despite these many successes there were some problems with the voting.

Turnout in Northern Sudan

The Carter Center observed that the turnout in northern Sudan was relatively low throughout the polling period. Interlocutors told observers that this was partially due to the fact that transportation that had been provided to people during voter registration was not provided during voting. Other reasons given for the low turnout were that many Southerners were in the process of returning to the South and that those that remained were confused and anxious about the post-referendum period. There were also reports that

⁴⁹ In very few cases (one in Blue Nile, and one in Lakes), centers were missing screens to block the polling booth but staff was able to improvise a solution. Referendum center staff reported problems with the hole-punchers across Sudan, although scissors were provided in the voting kits as a backup option.

⁵⁰ CPA, Machakos Protocol, Part A; Agreed Principles.

Southerners feared being the target of reprisals were they to vote in the North, although observers did not have direct evidence of threats of reprisals.

Unauthorized Assisted Voting/Secrecy of the Vote

According to the SSRC Rules and Regulations on voting, only blind, elderly and physically disabled persons should receive assistance when voting. These regulations explicitly excluded assistance to illiterate voters, although this was not the case during the April 2010 elections when polling station staff was permitted to give assistance to this group of voters (a large portion of the voting population in Sudan).⁵¹

However, in all ten states of Southern Sudan Carter Center observer reported incidents of unauthorized assisted voting. Observers reported large numbers of voters who did not understand the voting process. Many of these voters received some assistance from referendum center staff in the polling booth. For the large part, the efforts of referendum center staff to assist were well-intentioned and in response to voters desires for help and assistance to be able to cast a ballot. The officials appeared to want to mitigate the problems of poorly educated voters and did not appear to be attempts to manipulate the vote.

Nonetheless, in seven southern states, observers reported that referendum center officials in a small number of centers both marked ballots for voters and physically assisted voters to cast ballots.⁵² Although observers believed the officials acted with good intentions, the loss of agency for these voters is of concern.⁵³ While voters did not seem disturbed by such assistance, it runs counter Sudan's commitments to ensure a secret ballot.⁵⁴ Observers noted other problems that could affect the secrecy of the vote, including the absence of voting screens in some centers as well as problematic placement of voting booths, which allowed either referendum center staff or observers to see how voters were voting.⁵⁵

Security Forces and Intimidation

Although most security personnel followed the SSRC rules requiring them to remain outside of the perimeter of the center unless invited inside, Carter Center observers reported that security forces were present inside 20 percent of the referendum centers visited by observers in Southern Sudan.⁵⁶ In Jonglei and Upper Nile, representatives from National Intelligence were present inside a large majority of referendum centers observed by Carter Center observers. One branch of the Southern Sudan Police Service, the Criminal Investigation Division, received accreditation from the Western Bahr el Ghazal State Referendum Committee, which was subsequently revoked once the mistake was realized.

⁵¹ The principle of assistance to disabled or infirm voters is complemented and strengthened by General Comment No. 25, which provides that assistance provided to the disabled, blind or illiterate should be independent.

⁵² Central Equatoria, Eastern Equatoria, Western Bahr el Ghazal, Northern Bahr el Ghazal, Jonglei, Unity and Warrap

⁵³ In particular, in a few referendum centers in these states observers saw the chairperson physically cover the unity option so it could not be marked and/or the chairperson (and in one case a political party agent) physically put the voters' thumbs on separation.

⁵⁴ Interim National Constitution of the Republic of Sudan, Article 41 (2); CPA Protocol on Power Sharing, 1.6.2.11.; This runs against the principle of secrecy of vote provided that states have agreed to "take measures to guarantee the requirement of the secrecy of the vote during elections. Voters, election officials, party agents, and party supporters need to be assured of the secrecy of their ballot to avoid suspicion, mistrust, political violence, intimidation, as well as political retribution and victimization." The Carter Center also notes as problematic the large presence of plain clothes security agents inside and outside polling centers, potentially undermining the secrecy of the vote.

⁵⁵ In a few centers observers noted that insufficient voter education on the need to fold the ballot led voters to place their ballot into the ballot box in a way that revealed their choice.

⁵⁶ This occurred in the states of Central Equatoria, Jonglei, Lakes, Northern Bahr al Ghazal, Upper Nile, Warrap, and Western Bahr el Ghazal.

On occasion security officials interfered with the process as in a number of centers in Jonglei, particularly rural areas in Ayod and Akobo counties.⁵⁷ While this represented a small sample of the referendum centers visited, the breach of the secrecy of the ballot for the affected voters is of strong concern.

In both northern and Southern Sudan, observers recorded large and seemingly disproportionate numbers of security officials outside centers, in a few cases with heavy weaponry, a phenomenon that may have led to intimidation to voters. In Darfur, security presence was excessive, and while they did not overtly intervene, their presence was intimidating and observers were unable to speak freely with voters. SPLA soldiers were observed outside of a few centers in Jonglei and Central Equatoria, despite the fact that the remit for referendum security lies solely with the police.

While the majority of voters were able to freely exercise their rights to self-determination and universal suffrage, there were several worrying cases of intimidation. In Western Equatoria and Central Equatoria, there were reports of intimidating radio messages from government officials and others warning of consequences for those who did not vote.⁵⁸ In Northern Bahr al Ghazal police pressured businesses to close on the final day of polling so that people would go and vote.⁵⁹

Salaries

In most states in northern Sudan referendum center staff received their salaries or a portion of their salaries on time. However, the vast majority of referendum center staff in Southern Sudan informed observers that they did not receive payment during the polling process. In all ten states of Southern Sudan, staff had not yet been paid for the December portion of the voter registration period, yet staff continued working without their payment. The SSRB's inability to ensure timely payment of salaries to sub-committee and referendum center staff placed a significant burden on polling staff. In many areas, members of the local community provided food and water.

Considerations Committees

As outlined previously, the SSRC regulations called for the establishment of considerations committees at referendum centers during polling to hear complaints about the process from registered voters. Carter Center observers reported that there were considerations committees in only 5.5 percent of all referendum centers visited.⁶⁰ In the north, observers noted that they were present in a majority of referendum centers (55 percent of those visited). The failure of the SSRC and SSRB to establish consideration committees in a timely manner potentially limited the right of redress, undermining the right to "effective protection and remedies."⁶¹

Irregularities in Unity State

Observers in Unity State witnessed irregularities in several centers relating to the voters list, including instances that may have allowed multiple voting. In several center, referendum staff did not consistently

⁵⁷ At one RC armed police were observed watching voters cast their ballots and unfolding ballot papers to check which way people voted before placing the ballot in the ballot box. At another RC in Jonglei, observers witnessed police assisting people to vote by telling them where to place their thumb and not allowing them privacy to make their choice. At other stations, there was a large armed police presence inside the referendum centers.

⁵⁸ In addition, in Yambio, Western Equatoria, the "Arrow Boys" a local militia force, acting on their own initiative set up a checkpoint and were checking people for ink to make sure they voted. Those without ink would apparently be put under temporary arrest. While observers were present, they had not found anyone without ink. The sub-committee drove by them several times and mentioned nothing of the unauthorized checkpoint.

⁵⁹ One woman who had not been informed and opened her shop was arrested.

⁶⁰ Consideration Committees were to be established by the SSRC Rules and Regulations on Polling and Counting, to adjudicate appeals at the Referendum Centers.

⁶¹ Article 2(3) of the ICCPR and Article 6 of the UN International Convention on the Elimination of All Forms of Racial Discrimination.

follow procedures to mark registration books.⁶²

In Pariang County, there were many discrepancies between the registration books and the final voter list.⁶³ In discussions with the referendum center staff, and later a member of the Pariang County sub-committee, Carter Center observers received no convincing explanations for the discrepancies. Carter Center concerns about the process in parts of Unity State and in Pariang County in particular were reported to members of the SSRB who have committed to looking into these discrepancies.

Closing

Although the SSRC regulations called for counting to begin after the close of January 15, the final day of polling, some centers in remote areas started counting on January 13 stating that all registered persons had already voted. In addition, a few referendum centers in Kapoeta South County started counting several hours early on January 15 before closing had begun at the direction of the sub-committee. Carter Center observers reported that counting procedures were generally followed and that referendum center staff seemed to understand and implement the regulations sufficiently, with a few minor deviations from procedure. Overall, there was some confusion noted by observers from referendum staff not fully understanding the procedures for packing and delivery of sensitive materials onward to sub-committees and state referendum committees.

Dispute Resolution

Effective dispute mechanisms are essential to ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process.⁶⁴

According to the Referendum Act and the SSRC regulations, referendum disputes are adjudicated at the Referendum Centers by the Referendum Chairperson, and by Consideration Committees. Each referendum center should have its own Consideration Committee to hear appeals from the decisions of Referendum Center officials.⁶⁵ Competent Courts, which are special courts established for the referendum, hear appeals from Consideration Committees and preside over trials for illegal and corrupt referendum practices. Finally, the National Judiciary in Khartoum and the Supreme Court in Juba hear appeals to the preliminary referendum results at each county.

Although the number of persons affected appears relatively small, delays in establishing consideration committees may have rendered some individuals unable to appeal rejections based on eligibility and also denied persons their ability to submit complaints during polling. Even when consideration committees were established, confusion persisted over their functioning, role, and authority.

Pursuant to the Referendum Act, the National Judiciary in Khartoum and the Supreme Court of Southern Sudan appointed judges to serve on Competent Courts. Like Consideration Committees, Competent Courts were, for the most part, not designated and accessible until the end of voter registration or later, in the case of Southern Sudan, and very few cases were brought to the Competent Courts.

The right to an effective remedy when a voter was rejected was impacted by the delays in establishing Consideration Committees and Competent Courts and the lack of voter education about these

⁶² In four of more than 60 centers observers visited in Unity state, referendum center staff did not consistently mark the registration books appropriately with thumbprints or ticks next to voters' names, a measure intended to prevent multiple voting. In Pariang County, as many as 800 thumbprints were missing in one center.

⁶³ Also in Pariang County, observers noted serious problems with the voters' registry in six centers where several hundred names were either added or deleted from the final voter registry, despite reports that there had been neither corrections nor deletions during the exhibition period. In addition, in one referendum center in Pariang County, one ballot paper booklet had gone missing.

⁶⁴ International Covenant on Civil and Political Rights Art. 2(3), UNHRC General Comment No. 32, para. 18.

⁶⁵ Article 40, the SSRC Rule and Regulations on Polling, Sorting, Counting and Declaration of Results.

mechanisms. The Sudanese domestic legal framework generally complies with Sudan's international obligations; however its implementation falls short of international standards.

Legal challenges to the Referendum

The Constitutional Court in Khartoum has received legal challenges to the referendum process. Political parties, aggrieved individuals, and tribes brought cases alleging violations of the CPA, Interim National Constitution and Referendum Act. The Court accepted five cases - with two dismissed and three still pending. Constitutional issues raised and under consideration include: the timeframe for the conduct of the referendum; the composition of the SSRB; violations of the Referendum Act;⁶⁶ and the postponement of the Abyei Referendum. The Court declined to hear cases related to individual eligibility determinations and corrupt practices, as appellants had not exhausted the remedies provided for in the Referendum Act, claiming that voters failed to address to the consideration committees and competent courts.

Since late December, three Southern judges on the Constitutional Court have been absent: According to Sec 8 (1) of the Constitutional Court Act, the Court needs seven of nine judges for a quorum. With only six judges sitting, the Court has been unable to rule on the remaining referendum-related cases. The six sitting judges appear ready to dismiss one appeal but are waiting for another judge to announce the decision. It is unclear whether the judicial absences represent political obstruction, an effort to avoid disrupting the referendum process, or simply logistical difficulties. It would increase legitimacy and confidence in the referendum process if all constitutional challenges were resolved before announcing the final result of the referendum.

Civil Society and Domestic Observation

Sudan is obligated by an international commitment to ensure that every citizen has the right to participate in the public affairs of Sudan and the right to freely participate within civil society and domestic observation organizations.⁶⁷ The Carter Center welcomes the significant participation of a variety of domestic organizations in observing the voter registration and polling processes in northern and Southern Sudan.

In Southern Sudan, two domestic observation networks – Sudanese Network for Democratic Elections (SUNDE) and the Sudan Domestic Election Monitoring and Observation Programme (SUDEMOP)-played especially important roles during voter registration and polling. In northern Sudan, domestic observation was led by the Sudanese Group for Democratic Elections (SUGDE) and a loose partnership formed between the National Civic Forum (NCF), al Khatim Adlan Center for Enlightenment and Human Development (KACE), and Al Massar Organization for Nomads Development and Environmental Conservation.

The Carter Center was concerned by delays in accreditation for Southern domestic observers during voter registration. To facilitate domestic observation of these processes, the SSRB issued a letter that provided access to centers. In the North, accreditation for some observation groups prior to voter registration was only received in Khartoum the evening before registration began. For the polling period, the SSRB and SSRB expedited the process to ensure that the majority of observers received their accreditation before the start of the polls. Timely accreditation of domestic observers is needed to guarantee their right to observe the process.

The rights and responsibilities of observers and accreditation requirements and procedures was not communicated or applied consistently. Although the polling regulations did not require applicants to submit photo identification for domestic observation accreditation, the official SSRB forms indicated a

⁶⁶ Article 25 and 28 of the SSRA.

⁶⁷ Article 25, ICCPR.

space to attach a passport photograph, which led officials in subsidiary bodies to believe that a photograph was required. This caused an undue burden and unnecessary costs for Sudanese observer groups, particularly for observers living in remote areas of Southern Sudan. The SSRC and SSRB waived this requirement in the first few days of registration.

The addition of party advocates late in the process helped to ensure that there was less temptation for political advocates to join the ranks of non-partisan domestic observation groups. However, strengthening the role of political parties in a process that was not focused on candidates contributed to unnecessary polarization of issues along party lines. A lack of differentiation in accreditation badges for party advocates and non-partisan observers unfortunately blurred the distinction between the two groups.

Out-of-Country Voting

The Referendum Act extended the right of vote for Southern Sudanese citizens in Ethiopia, Kenya, Uganda, Australia, Britain, the United States, Canada and Egypt.⁶⁸ By introducing out-of-country voting, the GOS took steps to ensure the broadest possible pool of registrants, consistent with obligations for the universal and equal suffrage.⁶⁹

Article 27 of the Referendum Act determined the role of the International Organization of Migration (IOM) to assist in the organization and supervision of the procedures of registration, polling, sorting, counting and declaration of the results. The final number of registered voters amounted to 60,219, far lower than the initial estimate of more than 400,000 potential voters in OCV countries. Referendum administration had difficulty assessing the potential number of eligible voters in each country since the data was collected from several official and unofficial sources. At the same time, a number of factors may have discouraged registration. In several OCV countries, Carter Center observers heard reports that some Sudanese believed that polling results would be manipulated in Khartoum to favor unity.⁷⁰

OCV: Deployment and Accreditation

The Carter Center deployed 28 out-of-country observers for voter registration and balloting in the eight countries selected by the SSRC.⁷¹ All Carter Center OCV observers were formally accredited by the SSRC in a timely fashion.

GOSS and political party representatives, most notably the SPLM, received diplomat observer and domestic observer accreditation respectively, albeit with a clear indication of the institution to which they belonged. Domestic OCV observers, drawn from the local Sudanese population, were accredited locally in accordance with the regulations.

OCV: Registration and Exhibition

The SSRC operated 41 OCV registration centers/sub-centers comprised of 188 stations.⁷² The Carter Center observers visited 33 registration centers and 170 stations. In response to requests from the Diaspora community, referendum centers were added in the United States (Boston, Chicago, Dallas, Nashville and Seattle) and Australia (Brisbane and Perth).

⁶⁸ Article 5, The Southern Sudan Referendum Act.

⁶⁹ Article 21 (3) of the UN Universal Declaration of Human Rights, and Article 25 of the ICCPR.

⁷⁰ In Uganda, the SPLM supported boycotting OCV registration by providing buses to Southern Sudan. In the three East African countries, the cost of transportation to a center and harvesting obligations at home prohibited many Southern Sudanese from registering.

⁷¹ The Carter Center deployed two teams in Australia; two teams in Canada; one team in Egypt; one team in Ethiopia; two teams in Kenya; two teams in Uganda; one team in the United Kingdom; and three teams in the United States.

⁷² Figures drawn from Khartoum data center publication of provisional breakdown of OCV registration figures.

Carter Center observers reported that referendum staff were well-trained and, in spite of the low numbers of voters, remained motivated throughout the process. Given the substantial over-estimation of eligible voters who would register, material and manpower was more than sufficient and registration largely was conducted without major incident. During the exhibition period, hundreds attended in Uganda and Kenya to confirm their names. In the other OCV countries, only those seeking to correct errors on their registration cards took advantage of the period.

OCV: Polling

Carter Center observers found that the OCV polling process was generally conducted in an orderly manner, although many stations were overwhelmed by the high turnout and rowdy crowds on the first day of polling. By mid-week, voter turnout gradually reduced as the number of ballots cast passed the 60 percent threshold, and in many cases exceeded 90 percent. Although overall the referendum centers were aware of proper procedures and were well functioning, observers noted a few minor irregularities during the voting process, which did not appear intentional. On the whole, voting in OCV countries was conducted in a manner consistent with international standards and Sudanese law. Observers noted that security was present at most referendum sites and that the process was largely conducted in a peaceful and secure environment.

The Center was troubled, however, by reports of threats against referendum officials in Uganda, where the SPLM advocated for a boycott of out-of-country registration and voting due to fears of manipulation of the OCV results in Khartoum. As a result, registration operations were suspended for a short period in refugee camps located near the Ugandan-Sudanese border. The Carter Center strongly condemns any such interference and intimidation in relation to the democratic process and recalls Sudan's obligations to ensure uninhibited participation in the process.

OCV: Consideration Committees

In contrast to in-country registration, consideration committees were established in all of the OCV registration centers at the start of the process. Unfortunately, in many cases the committees were uncertain of their roles, had no written guidance or briefing, and seemed unclear about their status relative to the referendum center chair and staff. Carter Center observers saw no significant disputes, however, and the decisions of consideration committees regarding eligibility were generally accepted.

Women's Participation

In the first days of the voter registration process, Carter Center observers reported minimal numbers of women turning out to register. However these numbers steadily increased throughout the exercise. In many areas, the participation of women was equal to or exceeded that of men. The final voter registry for the referendum indicates that women constitute 51 percent of the registered voters for the referendum, a positive step toward meeting Sudan's national and international obligations to ensure universal suffrage and protection from discrimination.⁷³ Although there are some women in high-level positions at the SSRC and SSRB, Carter Center observers noted comparatively low numbers of women serving as referendum center officials.⁷⁴

Post-Referendum Issues

While administration of the referendum was a major focus of the NCP, SPLM, observer groups, and the international community, the large number of post-referendum issues still to be negotiated by the two parties highlights an ongoing need for mediation and cooperation in order for the CPA to conclude

⁷³AU, African Charter on Democracy, Elections and Governance, art. 29(3); ICCPR, Art. 3.

⁷⁴ In Kassala, the Raja area of Western Bahr el Ghazal, and South and North Darfur, there was few female referendum center staff during voter registration, particularly in senior positions. Involving women in public life will help ensure Sudan fulfills its domestic and international commitments to ensure the equal participation of women in public affairs.

successfully. Given the parties' lack of agreement on a range of issues – citizenship, oil and other resource-sharing, demarcation of the North-South border, finance and currency matters, amongst others – the political climate for most Sudanese heading into the referendum was defined by uncertainty regarding the impact of potential separation.

Consideration of the post-referendum issues was slow to take off for a number of reasons – delays in realizing most of the objectives of the CPA, inertia, political uncertainty, brinkmanship on the part of both parties, and concern that a focus on borders could be seen to pre-judge the outcome of the referendum.

The negotiation process was facilitated by the June 2010 Mekelle conference where the parties agreed to African Union-led negotiations on various issues under four broad groups or clusters: (1) Citizenship, (2) Security, (3) Financial, and (4) International Treaties and Legal Issues. The use of clusters helped structure the process, but there was only little progress. As a result, the parties limited their focus to reaching a framework agreement, but even that reduced goal has not been achieved. By the start of 2011, it was agreed that negotiations would resume soon after the referendum. Thus far neither the SPLM nor the NCP has involved other parties or civil society in the process.

The failure to address the issue of citizenship has led to fears of sudden displacements and loss of basic rights of Southerners in the north and vice versa. Although Presidents Bashir and Salva Kiir have issued reassuring statements on this matter, that has not been the case with all of their ministers. Many Southerners are leaving the North but finding little support when they arrive in the South. Nomads who regularly cross the north-south border and the one-third of the population of Sudan who live in the border area are also crucially affected by the outcome of the negotiations over citizenship. The primary aims should be that no one suffers statelessness in the event of the South opting for independence and that Northerners in the South and Southerners in the North have adequate time and resources to re-organize their lives.

Other key issues include arrangements for revenue sharing, dealing with the national debt, the signatures to international treaties, currency and security arrangements. The Carter Center urges the parties to resolve all of these issues as quickly and as peacefully as possible to promote stable relations among them.

Border Demarcation

According to the CPA, the border was to have been demarcated long ago, but 20 percent of the border is proving difficult to resolve between the two CPA partners.⁷⁵ If this issue cannot be resolved quickly, the SPLM and NCP could ease anxieties of the population that lives along the border by moving quickly to reach an agreement on citizenship that would permit border-dwelling people unhindered movement across the borders.

Abyei

The Abyei Protocol of the CPA and the Abyei Referendum Act outline the provisions for a referendum in the Abyei Area in which its residents would choose to either retain its special status as a part of northern Sudan or join Southern Sudan. According to the CPA and the Abyei Referendum Act, the Abyei Area Referendum was supposed to take place simultaneously with the Southern Sudan Referendum. After beginning talks on the composition of the Abyei Referendum Commission in early 2010, the parties to the CPA quickly reached a standstill on the issue of who would chair the Commission – a critical position

⁷⁵ This includes territory between Upper Nile's Renk and Kaka with neighboring White Nile, along Southern Kordofan's border with Unity State and Northern Bahr El Ghazel, and along the border between Southern Darfur and Western Bahr El Ghazel. Many of these areas possess, or are believed to possess, oil and other valuable resources.

given that the Chair would cast the deciding vote as to the criteria for participation in the referendum.⁷⁶

In late 2010, there were two attempts to broker a new agreement between the two parties clarifying the future of Abyei – first by the US government and subsequently by President Mbeki as the Chair of the AU High Level Panel on Sudan. President Mbeki put forward six options for the future status of Abyei but the two parties could not come to an agreement, and the future of Abyei remains uncertain. The failure of the NCP and SPLM to resolve the Abyei issue is a matter of grave concern, especially since the uncertainty is contributing to increased insecurity in the territory, and threatens to negatively affect other negotiations between the parties.

Returnees

More than 180,000 southern “returnees” returned from northern Sudan to Southern Sudan in the ten weeks prior to the referendum.⁷⁷ These Southerners were among approximately 2 million Southerners who settled in northern Sudan during the decades of conflict. Returnees have told observers they returned due to fears of losing citizenship and rights in northern Sudan, fears of retaliation if Southern Sudan were to vote for separation, and a sense that it was time to come home to build their new country. The requirement that voters had to register and vote in the same location led many eligible Southerners in the north to refrain from registering due to the potential for return.⁷⁸ Observers reported no instances of returnees being denied registration upon arrival in Southern Sudan and, in some areas, special efforts were made to ensure returnees were able to register. During polling in northern Sudan, observers frequently heard that some of the registrants who had not yet voted had returned to Southern Sudan after registering in northern Sudan.

The GOS and the GoSS hold the primary responsibility for protecting Internally Displaced Persons, ensuring they are able to exercise their political rights⁷⁹ and are not discriminated against as a result of their displacement in the enjoyment of these rights⁸⁰ Returnees have not been adequately protected en route to Southern Sudan and have been attacked and held hostage by armed groups as they exercise their right to return.⁸¹ Both the Government of Sudan and the Government of Southern Sudan should strive to create an environment that minimizes uncertainty and fear, coordinate to protect returnees in transit, and guarantee that Southerners in northern Sudan are able to exercise their internationally recognized civil and political rights.

Migratory populations

The Carter Center is concerned about the future of migratory populations in Sudan, in the post referendum period. Given that migratory populations rely on freedom of movement to sustain their livelihoods, the NCP and SPLM should ensure that the rights of migratory populations to move freely will be guaranteed regardless of the result of the polling. If there becomes an international border between north and Southern Sudan, the rights of migratory populations to move freely between these borders should be guaranteed.

⁷⁶ The Abyei Area Referendum Act calls for the participation of the Ngok Dinka and “other Sudanese residing in the Abyei Area in accordance with the criteria of residency, as may be determined” by the Abyei Commission. This description does not explicitly provide for the participation of the Misseriya tribes in an eventual referendum.

⁷⁷ Humanitarian Update: Returns to Southern Sudan, Office for the Coordination of Humanitarian Affairs, 13 January 2011. This number reflects the number of returns from Northern to Southern Sudan tracked by the International Organization for Migration between November 1, 2010 and January 11, 2011.

⁷⁸ Southern Sudan Referendum Commission Regulations for Polling, Sorting, Counting and Declaration of Results 2010, Art. 7 (December 29, 2010).

⁷⁹ Guiding Principles on Internal Displacement, Principle 3(1).

⁸⁰ UN, Guiding Principles on Internal Displacement, Principle 22(d). “[t]he right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right.”

⁸¹ Humanitarian Update: Returns to Southern Sudan, Office for the Coordination of Humanitarian Affairs, 13 January 2011.

The issue of migratory populations has been focussed on the tensions between Misseriya and Dinka Ngok in Abyei, but other migratory groups, such as the Rizeigat or the Ambororo, face uncertainty over which grazing grounds they will be able to access in the future as a result of the referendum.⁸² Ambororo groups and their cattle have for decades regularly crossed the border from South Darfur into Western Bahr el-Ghazal. Many Ambororo families have in the past years opted to settle in the South.⁸³ The status of Ambororo who have stayed in the South and identify themselves as Southerners remains murky. This has manifested itself during voter registration, when Ambororo were allowed to register in some areas, but not in others.

South-South Reconciliation

In October 2010 in his capacity as President of the GoSS and Chairman of the SPLM, Salva Kiir convened an all Southern Sudan Political Parties conference. Designed to overcome the distrust and anger of the southern opposition parties and Other Armed Groups (OAGs) in the wake of the April 2010 elections, it brought together twenty-four southern political parties and factions and started a process that is to continue into the post-referendum period. Key elements of the process include a meeting of the political parties' council after the announcement of the referendum results, and in the event of a vote for secession, the formation of an inclusive interim government which will establish the rules and procedures for a constituent assembly, a new census, and the holding of elections. Should this process unfold as planned it would go far to overcoming the opposition parties' grievances regarding abuses during the 2010 elections. More importantly, it would provide a path of political reform with stability during a time of considerable stress, and lay the ground for a genuine democratic transformation required in the CPA, but not yet fulfilled. The Carter Center encourages the southern parties to use this agreement to advance democratic and accountable government.

While the reconciliation of the southern parties provides reason for hope, the commitment to reconciliation of the SPLA and OAGs has not met expectations. Meetings arranged between Major General Gordon Kong's South Sudan Defense Forces and the SPLA have not to date taken place and this is a cause for concern.⁸⁴ General George Athor, who launched a rebellion in northern Jonglei, has signed a ceasefire with the SPLA, but as yet there has been no agreement or integration of his forces into the SPLA.

Conflict and insecurity

Regardless of the outcome of the referendum, it is likely that the spectre of conflict and insecurity will remain a daily challenge that many Sudanese will have to confront. The war in Darfur continues with no clear resolution in sight and the failure to resolve the impasse in Abyei threatens the security of the communities living in and around the area. There is also fear that security in the south will further deteriorate as armed groups, bandits, political interest groups or cattle raiders will clash. Insecurity usually manifests itself locally, but tends to be connected to broader national political and developmental challenges that need addressing. Without a resolution to the war in Darfur, an agreement on the future of Abyei and comprehensive south-south reconciliation, it is unlikely that the Sudanese people will be able

⁸² The northern Rizeigat, who regularly cross the border between Southern Darfur and Northern Bahr el-Ghazal in the dry season and the Dinka Malual, who live in Northern Bahr el-Ghazal have been engaged in a locally driven peace process for the last few years. On December 28, 2010, Northern Bahr el-Ghazal's governor Paul Malong oversaw the signing of a peace deal between Rizeigat, Dinka Malual and Misseriya groups who move in the area to allow cross-border movement into Northern Bahr el-Ghazal after the referendum. While he stressed that this agreement will stand regardless of decisions made on the national level, it is unclear whether this is feasible if tension in Abyei further increases.

⁸³ After escalating tension between the population of Western Equatoria and the Ambororo, the Ambororo leadership agreed to move all groups into Western Bahr el-Ghazal in 2010 where they have been assigned an area around Deim Zubeir. The citizenship issue affects this group in two ways: it makes unclear if they will still be able to move into Southern Darfur to trade cattle, as they have done in the past.

⁸⁴ SSDF refers to the rump faction remaining after the mainstream SSDF led by Paulino Matiep signed the Juba Declaration of January 2006.

to live without fear of armed conflict. In addition, residents of East Sudan and marginalized political groups in all of the North expressed the need to establish a forum to engage with the Khartoum government in a constructive way, something that is desperately needed to prevent conflict in the north.

The presence of OAGs remains another major security challenge and brings the lack of reliable protection of civilians into sharp focus. This is particularly true in areas under threat of the Lord's Resistance Army (LRA) in Western Equatoria, where civilians have been employed as local defence units which, in defending the community against LRA attacks, have also openly turned against groups that are resented by some communities.

It is important to note that the referendum process will have a great impact on many people's lives, and may bear potential for conflict and insecurity. As returnees seek out livelihoods and constituency borders are drawn that separate communities, it will be important to focus on conflict mitigation mechanisms.

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production. The Carter Center began working in Sudan in 1986 on the Sasakawa-Global 2000 agricultural project and for more than 20 years its health and peace programs have focused on improving health and preventing and resolving conflicts in Sudan. Please visit www.cartercenter.org to learn more about The Carter Center.