

## Rigged Elections in Darfur and the Consequences of a Probable NCP Victory in Sudan

### I. OVERVIEW

The principal preoccupation of the ruling National Congress Party (NCP) is to win the elections now scheduled for 11-13 April 2010. It has manipulated the census results and voter registration, drafted the election laws in its favour, gerrymandered electoral districts, co-opted traditional leaders and bought tribal loyalties. It has done this all over Sudan, but especially in Darfur, where it has had freedom and means to carry out its strategy, since that is the only region still under emergency rule. Because of the fundamentally flawed process, the international community, working closely with the African Union High Level Implementation Panel for Sudan (AUHIP), should acknowledge that whoever wins will likely lack legitimacy; press for Darfur peace talks to resume immediately after the elections; insist that any Darfur peace deal provides for a new census, voter registration and national elections; and lay the groundwork for a peaceful referendum on southern self-determination and post referendum North-South relations.

One indication of the NCP's long-term plans to rig the elections was the management of the 2008 census. The flawed results were then used to draw electoral districts, apportion seats in the national and state legislatures and organise the voter registration drive. Census takers – aided by NCP party organisers – expended great efforts to count supporters in Southern Darfur (mostly inhabited by Arabs), nomads of Northern Darfur and some tribes loyal to the party. They also reportedly counted newcomers from Chad and Niger, who had settled in areas originally inhabited by persons displaced in the Darfur conflict, and issued them identity papers so they can vote as Sudanese citizens. However, most of the estimated 2.6 million internally displaced (IDPs) living in camps, as well as people from groups hostile to the NCP living in "insecure" neighbourhoods of cities and the population of rebel-controlled areas were not counted.

Darfur is important for the NCP because Southern Darfur is the second most populous state and Northern Darfur is the fifth. The three Darfur states combined have 19 per cent of Sudan's population (according to the flawed 2008

census), slightly less than the South. Darfur has been allocated 86 seats out of 450 in the national assembly (the latter number may increase to 496, if the assembly approves an agreement the NCP reached with the Sudan People's Liberation Movement, SPLM, the dominant party in the South). Winning big in Darfur is thus central to the NCP's hopes of capturing enough votes in northern Sudan to ensure its continued national dominance.

The NCP was able to gain advantages by dominating the drafting of election laws, despite opposition from the SPLM and other parties, and through the demarcation of favourable new electoral districts based on the flawed census results and organised by a National Elections Commission (NEC) heavily influenced by NCP members appointed to its various branches. As a result, constituencies have been added in areas where NCP supporters are the majority and removed in areas where they are not.

The voter registration process in Darfur also favoured the NCP. According to national and international observers alike, many groups targeted in the conflict, especially IDPs, were unable to register or refused to do so. In many instances, people were deliberately denied sufficient time and information, while teams worked hard in remote areas to register nomads who support the government. NCP party organisers aggressively helped register likely supporters and new immigrants; security personnel deployed in remote areas were registered in contravention of the NEC regulations. Lastly, the NCP has co-opted local leaders and played the ethnic card, further polarising the population. It has used money and offers of positions of power to buy the loyalty of tribal and community leaders, who in turn have been mobilising their constituencies to support the ruling party.

The result is an almost certain victory for the NCP. And the consequences for Darfur are catastrophic. Disfranchising large numbers of people will only further marginalise them. Since the vote will impose illegitimate officials through rigged polls, they will be left with little or no hope of a peaceful change in the status quo, and many can be expected to look to rebel groups to fight and win back their lost rights and lands.

Ideally, elections would be held after a peace deal has been negotiated and the problems with the census, voter registration and demarcation of electoral districts resolved. However, this is not likely. The NCP is desperate to legitimise President Omar al-Bashir, who has been indicted by the International Criminal Court, and the SPLM fears any delay may risk jeopardising the South's January 2011 self-determination referendum. To contain the damage from rigged elections to both the Comprehensive Peace Agreement (CPA) that ended the North-South conflict and the Darfur peace process, therefore, it is necessary that:

- electoral observation missions in Sudan take note of the severely flawed process, and governments and international organisations, especially the UN Security Council and AU Peace and Security Council, state that whoever wins will lack a genuinely democratic mandate to govern;
- the international community, working closely with the AUHIP, demand that CPA implementation and Darfur peace negotiations resume immediately after the elections, and any new peace deal in Darfur include provisions for a new census and voter registration drive in the region and new national elections at that time; and
- the AU, UN and Intergovernmental Authority on Development (IGAD), as well as other key international supporters of the CPA act immediately after the election to encourage the Khartoum government and the Government of Southern Sudan (GoSS) to agree on the critical steps needed to ensure a peaceful self-determination referendum in the South in January 2011 and stability in both North and South in the aftermath of that referendum.

## II. THE ELECTORAL ENVIRONMENT

After a number of delays, the vote appears set for 11-13 April. It will be the first relatively competitive national elections held in Sudan since 1986<sup>1</sup> and an enormously complicated exercise in a huge and poorly developed country, with multiple ballots and an inexperienced electorate. The stakes are extremely high, especially in Darfur, which appears to be pivotal to the NCP's strategy for retaining power.

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<sup>1</sup>Sudan held presidential and parliamentary elections in 1996 and 2000. In 2000 Bashir ran against five candidates and won the presidency with 86.5 per cent of the vote. See Justin Willis, Atta el-Battahani and Peter Woodward, "Elections in Sudan: Learning from Experience", Rift Valley Institute, 2009.

The elections are a requirement of the CPA. The logic was that they would prompt "democratic transformation" and address one of the root causes of numerous conflicts: the concentration of power and money in Khartoum at the expense of peripheral, marginalised areas. A more democratic government, it was thought, would help redress this imbalance and thus also make continued unity attractive to the South.

The election is logistically challenging and extremely complex.<sup>2</sup> Sudan is Africa's largest country, and many regions are poorly connected by roads and other infrastructure. All registered voters will cast ballots for president, state governor, members of the national assembly and members of a state assembly.<sup>3</sup> Southerners will also choose the president of the Government of Southern Sudan (GoSS) and members of the South Sudan Assembly. In total, each northerner will cast eight and each southerner twelve ballots.<sup>4</sup>

According to the 2008 Elections Act, pushed through the national assembly by the NCP majority,<sup>5</sup> the presidents (both of the republic and of the South) are elected by direct majority vote, with a run-off between the two leading candidates if no one wins more than 50 per cent in the first round.<sup>6</sup> Governors are directly elected in the

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<sup>2</sup>There are some 16,000 candidates contesting 1,841 parliamentary and executive seats. "Preliminary Statement on the Final Stages of Sudan's Electoral Process", The Carter Center, 17 March 2010.

<sup>3</sup>The NCP and SPLM recently agreed to increase the number of seats in the national assembly by 40 for the South, four for Southern Kordofan, and two for Abyei. This change still needs to be approved by the assembly. The South's seats will be distributed among the southern parties in proportion to the election results. This will give the South 26.5 per cent of the seats in the national assembly, enough to prevent the NCP from slowing down the referendum process and passing constitutional amendments unilaterally.

<sup>4</sup>Justin Willis, "Elections in Sudan: Between a Rock and a Hard Place", Rift Valley Institute submission to the UK Associate Parliamentary Group, October 2009. If all the elections are held as planned there will be 1,268 separate ballots. "Assessment of the Electoral Framework Final Report: Sudan", Democracy Reporting International, November 2009, p. 49.

<sup>5</sup>Opposition parties and south Sudanese former rebels said they only accepted the new law to avoid delaying the election but feared it could give an unfair advantage to President Bashir's ruling National Congress Party. "Sudan passes election law ahead of key 2009 vote", Reuters, 7 July 2008.

<sup>6</sup>Bashir cleverly exploited the electoral law, which states that candidates are listed in the order that their nomination applications are submitted, by rushing his application to ensure that his name is at the top of the ballot. See Article 72 (3) b, The National Elections Act 2008 (Act No. XI of 2008).

states by plurality.<sup>7</sup> Elections for the national assembly are more complicated: 60 per cent of the seats are contested in single-member, first-past-the-post (FPTP) electoral districts,<sup>8</sup> 40 per cent are elected at state level in closed proportional representation lists (25 per cent from state-level lists of women candidates put forward by the political parties and 15 per cent from separate state-level lists of candidates also put forward by the political parties).<sup>9</sup> A party must receive at least 4 per cent of the vote to win seats.<sup>10</sup> The South Sudan Legislative Assembly and the 25 state legislative assemblies are elected in a system similar to that of the national assembly.<sup>11</sup> Each state legislative assembly then elects two members to the Council of States.

Local strongmen, many of whom are loyal to the NCP, will dominate the races for national assembly seats in the single-member districts; their influence has been en-

trenched by the NEC's partisan demarcation of district boundaries.<sup>12</sup> Moreover, the NCP has by far the most prominent lists of women candidates.<sup>13</sup> Opposition parties that have broad name recognition, like the Umma or the SPLM, can expect to do better in the general candidate list proportional contests, but these determine only 15 per cent of national and state assembly seats, and even here the opposition's advantage is diminished by the proliferation of a bewildering number of splinter groups, such as Umma Party (Reform and Renewal), Umma Party (Reform and Democracy), Umma Party (General Leadership), Federal Umma Party, and SPLM-Democratic Change, that will siphon off votes. Smaller parties, unless they enjoy strong local support, will also struggle to win national assembly seats.<sup>14</sup>

The broader legal framework does not provide for free and fair elections.<sup>15</sup> The NCP has used its majority in the national assembly to adopt a controversial National Intelligence and Security Services bill and block review or passage of laws guaranteeing basic freedoms of ex-

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<sup>7</sup> Unlike in the presidential contest, the winning gubernatorial candidate does not require more than 50 per cent in the first round, but simply more votes than any of the other candidates.

<sup>8</sup> FPTP seats are decided by simple plurality in single-member districts. Only the candidate with the most votes wins the district's one seat. A victorious candidate does not need an absolute majority (more than 50 per cent of the total vote), and there is no run-off.

<sup>9</sup> Political parties run two separate lists in each state for national assembly seats: one for women, and one general political party list. These are "closed proportional lists", because voters can only select a party list, not a specific candidate on the party list. In each race, parties are awarded national assembly seats based on the proportion of their votes to the total number of votes.

<sup>10</sup> The National Elections Act was passed by the national assembly on 7 July 2008 and signed into law by the president on 14 July. Initially the political forces in the National Constitutional Review Commission agreed to split the number of seats equally between single-member FPTP districts and national party proportional representation lists and divide the seats from the latter equally between the women's list (25 per cent) and the general parties (25 per cent). However, the NCP pressed the SPLM to accept a change to 60 per cent FPTP seats and 40 per cent proportional representation. Opposition parties pushed for women to be included on a single party closed list (not a separate list as has occurred) and for the 4 per cent electoral threshold to be lowered. A lower threshold may have facilitated better representation for smaller parties.

<sup>11</sup> All state assemblies have 48 seats (29 FPTP, twelve from the political parties' women's list at state level and seven from the political parties' general list at state level), with the exception of Southern Kordofan, which has 54 seats (32 FPTP, fourteen women, and eight general) and Khartoum, which has 84 seats (50 FPTP, 21 women, and 13 general). See "Assessment of the Electoral Framework Final Report: Sudan", Democracy Reporting International, November 2009, p. 49. Because of concerns about the census and voter registration results, the NCP and SPLM have agreed to postpone gubernatorial and state assembly elections in Southern Kordofan and only hold the presidential and national assembly polls there.

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<sup>12</sup> In the small FPTP districts, the drawing of district boundaries is an important determinant of who wins seats. Even apparently minor changes to district boundaries to include or exclude villages from a district can swing the results, as often quite narrow margins determine winners and losers.

<sup>13</sup> The NCP has a strong women's component. Most other parties are struggling with their women's list, especially at the state level. For example, in Sinnar, historically an Umma stronghold, that party is having difficulty to form a separate list for women, and its general party list is also very weak, because many traditional Umma supporters have defected to the NCP. Crisis Group telephone interview, prominent women's advocate, Sudan, February 2010. Crisis Group does not disagree with the principle of setting aside one in four parliamentary seats for women.

<sup>14</sup> Because the party proportional contests are conducted state-wide rather than nationally, smaller parties will struggle to win seats. To give a hypothetical example, in a nation-wide proportional race, a small party with a support base of about 5 per cent of the electorate might expect to win 5 per cent of the party proportional seats. But because these seats are contested in state-wide constituencies, and because a smaller number of seats are contested in each state (only seven in Southern Darfur, four in Northern Darfur and two seats in Western Darfur, for example) 5 per cent of the vote in any one state may not be sufficient for a party to win a seat. The system's proportionality, in other words, is diminished by the reduction in size of the constituencies. That said, if a smaller party's support is concentrated in a single state, rather than dispersed across many states, it may have a better chance of winning proportional seats. And if its support is compact in one or a few districts, it may pick up FPTP seats.

<sup>15</sup> See for example, "Preliminary Statement on the Final Stages of Sudan's Electoral Process", The Carter Center, 17 March 2010; "Sudan: Government Repression Threatens Fair Elections", Human Rights Watch, 21 March 2010; and "Sudan: Briefing to International Election Observers", Amnesty International, March 2010.

pression, association and movement and regulating the security services.<sup>16</sup> It has no intention to level the playing field for opposition parties or to give up its legal instruments of repression. It has instead used delays in the legislative agenda as justification for postponing reforms indefinitely.

The NEC has been the focus of escalating criticism since electoral constituencies were drawn and voter registration conducted in 2009, as many believe the process was manipulated by the NCP. Criticism intensified when the NEC allowed the armed forces to register at their place of work, using military identification cards that could not be verified by neutral observers. Recently, the NEC issued a regulation obliging the political parties to apply for permission from the relevant authorities 72 hours in advance of any campaign activity. It cited the Election Law and the Criminal Procedures Law as sources for the regulation,<sup>17</sup> but this confirmed in the opposition's view the NEC's lack of neutrality.<sup>18</sup> Government-controlled media do not give the opposition equal access, while the opposition has concluded that the NCP dominates the media supervision mechanism the NEC created.<sup>19</sup>

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<sup>16</sup>For more details on these laws, see "Sudan Human Rights Monitor", African Centre for Justice and Peace Studies, August-September 2009. Additional relevant measures include criminal law amendments, passed 24 May 2009; the criminal procedures law, passed 20 May 2009; the Media and Publication law, passed in a second reading over the protest of the SPLM and National Democratic Alliance (NDA); and the Police Forces Act (2008), which is in force but remains contentious; its Article 45 (2) stipulates that no policeman is to be subjected to legal proceedings "if the legal affairs department of the police- deems that he committed an act which constitutes a crime during or as a result of carrying [out] his duties or following a legal order from superiors, save with an authorisation issued by the interior minister". See also "Preliminary Statement", The Carter Center, op. cit.

<sup>17</sup>In particular, Article 127 of the Criminal Procedures Act, which gives government authorities the right to disband or disperse any public meeting or gathering if they deem it a threat to peace and public safety. This article was the focus of intense debate, and many international and national experts believe it to be in contravention of both the constitution and the International Covenant for Civil and Political Rights (ICCPR), as it has no judicial oversight mechanism to rectify the abuse of the power. In February 2010, in a session of their Political Joint High Level Committee, the SPLM proposed a bill to the NCP to suspend, inter alia, Article 127 and other restrictive laws. The NCP rejected the bill.

<sup>18</sup>Crisis Group interviews, Khartoum, February-March 2010.

<sup>19</sup>Yasir Arman and Sadig al-Mahdi, presidential candidates for the SPLM and National Umma Party respectively, have decided to boycott the official media, claiming that both Sudan Radio and TV favour the NCP. Crisis Group interviews, Khartoum, February-March 2010. Five of the six political party members of the joint media monitoring mechanism have withdrawn,

On 4 March 2010, the "Consensus Forces" (Juba Alliance)<sup>20</sup> organised a march to protest NEC conduct, citing what they believe are illegal and unconstitutional decisions and questioning its impartiality. The protest was led by presidential candidates Yasir Arman (SPLM) and Mubarak al-Fadil (Umma Reform and Renewal Party) and included most opposition parties. Participants also delivered a petition calling for measures to rectify NCP dominance of the media and other parts of the state apparatus, cancellation of the latest NEC regulations and correction of voter registration and electoral constituency flaws.

It was also recently discovered that the NEC had diverted the tender for printing presidential ballots from a Slovenian printing house (for \$800,000) to the government-controlled Sudanese Currency Printing Company (for \$4 million).<sup>21</sup> The NEC justified its decision to favour a Sudan-based firm on the fact that if a run-off vote is required there would only be 21 days to complete the printing and that the Sudanese Currency Printing House was accustomed to operating in secrecy, so the risk of fraud would be reduced.<sup>22</sup>

The international community, including the European Union (EU), African Union (AU), Arab League, Japan and Russia, as well as the Carter Center, is sending a number of observation teams to deter electoral fraud.<sup>23</sup> The EU mission, in particular, is quite large and headed by an experienced chief observer.<sup>24</sup> The Carter Center

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leaving only the NCP. "Preliminary Statement", The Carter Center, op. cit.

<sup>20</sup>The Juba Alliance is a grouping of the major northern opposition parties and the SPLM.

<sup>21</sup>Opheera McDoom, "Sudan opposition demand probe into ballot printing", Reuters, 17 March 2010. The UNDP indicates the contract with the Slovenian company was for \$1,662,980, including transportation costs. It does not report the cost of the Sudanese Currency Printing Company contract. See "Fact Sheet: UNDP Procurement of Ballots for the Elections in Sudan", UNDP, 17 March 2010.

<sup>22</sup>NEC response to opposition memo (in Arabic), 10 March 2010. The customary practice is to award these tenders to foreign printing companies, among other reasons to minimise the risk of fraud or the perception of bias. Opposition statements also criticised the chief of the UNMIS Electoral Assistance Division for failing to demand the NEC inform the parties and monitors of this action, but UNMIS denied it was involved in the decision and subsequently recommended to the NEC that it give non-partisan observers and party agents the opportunity to observe and ensure the integrity of the printing process. "Printing of Ballots for Sudan Elections 2010", UNMIS press statement, 14 March 2010. So far, the recommendation was not accepted.

<sup>23</sup>The closing date for the registration of election observers was pushed back by the NEC to 30 March 2010.

<sup>24</sup>The EU mission is comprised of 130 observers from 22 EU member states, as well as Norway, Switzerland and Canada. It

also has a large presence and has been on the ground since 2009.<sup>25</sup> This may deter the most blatant campaign fraud, political intimidation and ballot stuffing.<sup>26</sup> But much of the rigging has already taken place. Furthermore, on 22 March 2010, President Bashir sent a clear signal to the observers, when he told a rally that if they interfere in Sudan's affairs, "we will cut off their fingers and crush them under our shoes".<sup>27</sup>

The UN Security Council has also mandated the two peacekeeping missions in Sudan, UNAMID and UNMIS, to "support the NEC in preparing for credible national elections". While this mandate is somewhat vague, the UN has nevertheless been given a role to offer technical assistance to the NEC in the process. For the UN's credibility, it is advisable that the missions interpret this mandate in the most hands-off manner possible in order to avoid accusations of complicity in fraudulent practices that might take place during the poll.<sup>28</sup>

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will be deployed to all 25 Sudanese states and meet with government and electoral officials, candidates and representatives from political parties, as well as with civil society and the media. "EU kicks off its Sudan election monitoring mission", *Sudan Tribune*, 12 March. The chief observer is Veronique de Keyser, who headed the EU observer mission for the 2006 elections in Palestine. See, "Core Team", EU Election Observation Mission to Sudan 2010, [www.eueom.eu/sudan2010/eom-bios\\_en.html](http://www.eueom.eu/sudan2010/eom-bios_en.html).

<sup>25</sup> The Carter Center has based twelve long-term observers in five of Sudan's regions to assess the electoral process. It will supplement these observers with 70 short-term observers, who will monitor the conduct of the actual elections.

<sup>26</sup> The AU monitoring mission intends to intervene in real time with the Political Parties Councils. These councils are dispute resolution mechanisms established by the Electoral Code of Conduct, March 2010.

<sup>27</sup> "Sudan 'will expel poll observers'", BBC News, 22 March 2010.

<sup>28</sup> For UNMIS, Security Council Resolution 1870 (2009), "11. Requests UNMIS, consistent with its mandate and within its current capabilities, to support the NEC in preparing for credible national elections, including through provision of assistance and advice, as required, with security preparations and coordinating UN election support efforts in close collaboration with UNDP, and ensuring that UNMIS' efforts are complementary to those of the international community and the parties to the CPA, and urges the international community to provide technical and material assistance, including electoral observation capacity as requested by the GNU, to support credible elections". For UNAMID, Security Council Resolution 1881 (2009): "11. Requests UNAMID, consistent with its current capabilities and mandate, to assist and complement UNMIS efforts in preparing for credible national elections through the provision of advice and assistance where required".

### III. MANIPULATING THE ELECTIONS IN DARFUR

Darfur is important in the elections, because it is one of the most populous regions and has traditionally been a stronghold of opposition parties.<sup>29</sup> In the 1986 elections, the Umma Party won 35 of the 40 seats the region was allocated in a 273-seat national assembly. Over the last two decades, the NCP has consistently sought to restructure political power in Darfur in its favour. In 1994, it split the single state into three, dividing the Fur, its largest tribe, between them, and annexing the northern part to Northern State.<sup>30</sup> Khartoum's policies have fuelled local conflict between Arab tribes and the Fur (1986-1989), the Massalit (1996-1998) and the Zaghawa (1999-2001).<sup>31</sup>

It appears the NCP's current electoral calculations are to keep the rebel groups and their communities weak and divided through various means. First, it uses local security apparatuses to contain rebel groups and affiliated tribes.<sup>32</sup> Secondly, it uses co-option and corruption to gain electoral support, including by legalising new administrative boundaries to create and accommodate favourable demographic shifts. Thirdly, it contributes to the fragmentation of Darfur's social fabric, including that of the Arab tribes, by instigating and then not responding to inter-tribal conflicts and by promising money and government positions to members of rebel groups.<sup>33</sup>

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<sup>29</sup> It has always been the core region of the Ansar, one of the largest religious sects in Sudan. The *imam* (spiritual leader) of the Ansar is Sadig al-Mahdi, who is also the leader of the National Umma Party and its presidential candidate. In all elections since independence, the Umma Party has relied on Darfur to win the majority of its seats in the national assembly.

<sup>30</sup> Days before the unsuccessful May 2006 Darfur Peace Agreement (DPA) was signed, and apparently responding to one of the rebel demands, Bashir ordered a return to the 1956 Darfur borders. But Darfur continues to be divided into three states.

<sup>31</sup> For more background, see Crisis Group Africa Briefing N°32, *Unifying Darfur's Rebels: A Prerequisite for Peace*, 6 October 2005.

<sup>32</sup> Although the media often portrays the Darfur conflict as one between "Africans" and "Arabs", not all Arabs in Darfur support the NCP. The large Baggara tribes of Southern Darfur, in particular, have stayed very much on the periphery. Those such as the Habaniya, Maalia, southern Rezeigat, Beni Hussein and a good part of the Beni Halba did not take a substantial part in the earlier stages of the war. Some community leaders have openly expressed disapproval of the NCP. In October 2006, a mixed tribal delegation from Southern Darfur met with Vice President Taha to urge the NCP not to consult exclusively with Darfurian Arabs who are NCP members, because they do not represent all Arabs in Darfur. Crisis Group interview, November 2006.

<sup>33</sup> If anything, Arab/Arab violence shows to what extent tensions over land escape the strict African/Arab dichotomy, as

Fourthly, it is manipulating the various components of the election process to ensure it wins the polls in Darfur and, therefore, in Sudan as a whole.

With the state of emergency increasing its security and political control, Khartoum has dominated the pre-election preparations and the polling process in Darfur.<sup>34</sup> The NCP aims to secure victories for President Bashir, his nominees for state governors and the party's national assembly candidates. To achieve these wins, the party has disenfranchised large numbers of people from groups that would probably not vote for the NCP. According to a lawyer in Southern Darfur, "for the NCP to win in Darfur, they cannot do so easily unless they deny the large tribes, such as the Fur, effective participation in the elections and at the same time facilitate the voting process for those tribes whose leaders are subordinate and committed to [Bashir]".<sup>35</sup> The NCP has systematically created these conditions by manipulating the census, using laws to close down political space, influencing the delineation of electoral districts, limiting voter registration, co-opting traditional leaders and buying tribal loyalties.

## A. THE CENSUS RESULTS

According to several civil society and political party leaders in Darfur, the manipulation of the election process started with the census.<sup>36</sup> The Fifth Population and Housing Census,<sup>37</sup> conducted in April-May 2008, was a key CPA benchmark, since the data is necessary for both the April 2010 elections and South Sudan's January 2011 self-determination referendum.<sup>38</sup> According to the census, the greater Darfur region has the highest population (7,515,445, 19 per cent of the total national population) of any region after South Sudan (8,260,490, 21 per cent

of the national population). The three Darfur states account for 24 per cent of the northern population, followed by Khartoum state, including the capital (5,274,321, 13.5 per cent). Thus, Darfur matters to the NCP both in terms of ensuring Bashir wins the more than 50 per cent of the presidential votes he needs to avoid a run-off and in terms of securing an NCP majority in the national assembly – especially as voters in the South are unlikely to vote for NCP candidates.

In Darfur the census was conducted in a highly insecure, polarised and politicised environment that included active conflict, lack of trust in the central government and aggressive political co-option. Many major political forces, civil society elements and tribal groups rejected the results.<sup>39</sup> The flawed census will affect the election in three ways.

First, many regime opponents were not counted, including populations in areas under the control of the rebel groups, who threatened census staff, and most IDPs. Before the census started, in April 2008, the IDPs in Darfur declared a boycott and also threatened census personnel,<sup>40</sup> because they thought that if they were counted in the camps, they might lose their right to return and never get their lands back. They believe the NCP intends to give land in their *hawakeer* (tribal homelands), such as in Wadi Salih, Wadi Azoum, Kabkabiya and around Jebel Marra, to Arabs from Darfur and Chad who have settled

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well as the divide between Arab tribes supporting the NCP agenda and those which are not. There have been a number of clashes between the Rezeigat and Habaniya, Beni Halba and Falata and the Targam and Abbala (Rezeigat).

<sup>34</sup>The national state of emergency was lifted, except in the three Darfur states, when the CPA was signed in 2005.

<sup>35</sup>Crisis Group interview, prominent lawyer in Southern Darfur, January 2010.

<sup>36</sup>In early 2008, during internal NCP deliberations over nominees for the census board, several individuals declined to serve. Crisis Group interviews, senior NCP figure, Khartoum, October 2008; senior member of the election committee in Southern Darfur state, January 2010.

<sup>37</sup>According to the CPA, the Fifth Population and Housing Census was to be conducted not later than the end of the second year (9 July 2007) of the six-year interim period. The census was to count all people in the country, both Sudanese citizens and foreigners (including refugees).

<sup>38</sup>The previous census was in 1993, but lacked detailed data. The 2008 census data is stored in a centralised database that is also available for development and planning purposes.

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<sup>39</sup>The outcome of the census was rejected by the major parties that had signed peace agreements with the NCP and thus joined the Government of National Unity. These include the SPLM (CPA), the former Darfur rebel group, Sudan Liberation Movement of Minni Minawi (Darfur Peace Agreement), and the Beja Congress part of the Eastern Front (Eastern Sudan Peace Agreement). The outcome was also rejected by the other Darfur rebel groups and leaders of major Darfur tribes. Major opposition parties, including the National Umma Party of Sadig al-Mahdi and the Popular Congress Party of Turabi, either have rejected or expressed reservations about the census results.

<sup>40</sup>The IDPs collectively wrote to the Special Representative of the UN Secretary-General on 22 April 2008 declaring their boycott of the census process and any process that resulted from it. During the census, the IDPs threatened staff and held several demonstrations against the process. The police, fearing that they might sabotage the census, refused to let them leave the camps to visit registration centers in major towns, which resulted in several bloody confrontations. "5th Population and Housing Census in Sudan – An Incomplete Exercise", Darfur Relief and Documentation Center ([www.darfurcentre.ch](http://www.darfurcentre.ch)), February 2010, p. 19; and "Darfur IDPs are comprised in 2010 electoral constituencies – official", *Sudan Tribune*, 26 July 2009. The Darfur Relief and Documentation Center (DRDC) is an independent, not-for-profit, non-governmental organisation based in Geneva that seeks to inject an independent and impartial civil society perspective into the search for a peaceful resolution of armed conflicts in Darfur.

there during the war.<sup>41</sup> Although some of the approximately 2.6 million IDPs – 26 per cent of the total Darfur population assuming the census is otherwise accurate – were eventually counted, the majority were left out.<sup>42</sup>

Secondly, the census did not count people in neighbourhoods of the three major cities in Darfur – Nyala, Al Fasher and Geneina – where people from tribes opposed to the government have settled. A survey by the Darfur Relief and Documentation Center (DRDC) found that only 25 per cent of households were counted in certain neighbourhoods of Nyala, 30 per cent in Al Fasher and 19 per cent in Geneina.<sup>43</sup> Members of the state election committees in Nyala and Al Fasher claimed these areas were not secure enough for census takers to visit.<sup>44</sup> A Sudanese lawyer commented:

... this manner of census taking [referring to the findings of the DRDC] was observed in most of the centres in Sudan. The census takers tactically excluded the quarters where the majority of the people from the so-called marginalised areas live. They [the NCP] first disfranchised them by their brutal and corrupt policies and now [by] again leaving them to live on the margins of their economy; this is not a manner of a regime that wants justice for its people.<sup>45</sup>

Thirdly, the proportion of pro-NCP Arab groups was inflated relative to other groups. Census takers apparently initiated counts in some remote areas occupied by nomads more than three months before the official start of the

census.<sup>46</sup> Early population assessments were also conducted in several other areas, mainly those occupied by new settlers and where government-affiliated militias such as border guards and contingency forces were deployed.<sup>47</sup> According to the results, the population of Southern Darfur State is 4.1 million, compared to 2.2 million in 1993, an increase of more than 90 percent (in Sudan as a whole the growth rate has been approximately 70 per cent).<sup>48</sup> Since many in this state were displaced and not counted, this appears even less likely. Other data are also suspicious. In Northern Darfur, the census suggests Arab nomads are 38 per cent of the total, compared to 12 per cent in 1993.<sup>49</sup> The population of Western Darfur was reported as 1.3 million, compared to about 1.5 million in 1993.<sup>50</sup> Using the average Sudanese population growth rate – 3 per cent – a reasonable, even conservative, estimate would be 3 million.<sup>51</sup>

## B. MANIPULATED CONSTITUENCIES

The NCP has also engaged in significant gerrymandering – drawing electoral constituencies to favour its candidates in the single-member districts.<sup>52</sup> According to

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<sup>41</sup> “After allegations of resettlement of Chadian Arabs would Darfur become another Palestine[?]”, *Al-Ayyam Daily Newspaper* (in Arabic), 29 July 2008.

<sup>42</sup> According to the UN, the total number of those displaced from Darfur is approximately 2.9 million, including an estimated 250,000 who are refugees in Chad. “5th Population and Housing Census in Sudan – An Incomplete Exercise”, op. cit., p. 19. The 2008 census found that the nomad population in greater Darfur has increased by 324 per cent – from 695,518 in the 1993 census to 2.95 million. Crisis Group interview, lecturer at University of Khartoum, January 2010. It is possible that nomads were undercounted in 1993.

<sup>43</sup> Based on a survey of 400 households in each city. “5th Population and Housing Census in Sudan – An Incomplete Exercise”, op. cit., p. 14.

<sup>44</sup> Crisis Group interview, members of the state election committees in Nyala and Al Fasher, January 2010. Equally, in certain Khartoum neighbourhoods only 34 per cent of households were counted. Their survey among 400 households constituting a cross section of IDPs from Darfur in South Khartoum and in Khartoum North (known as the black belt of Khartoum and mostly inhabited by people from Darfur, Kordofan, Blue Nile, South Sudan and the East), suggests that over 95 per cent were not counted. Ibid.

<sup>45</sup> Crisis Group interview, lawyer and leader of an eastern tribe, Khartoum, January 2010.

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<sup>46</sup> A member of the High Committee of West Darfur complained that he was brought census data along with a memo from the office of a senior military intelligence officer instructing him to enter it into the database. Crisis Group interview, member of the NEC, Al Fasher, February 2010.

<sup>47</sup> DRDC research revealed that early assessment and registration also occurred in Habila (about 26 villages), Mestarei (about eight villages), Krenek (about 36 villages, especially around Wadi Bari), Zalingei (about eighteen villages), Foro Baranga and Mornei Administrative Units (about six villages). It claims that this operation was conducted by the security forces with the assistance of local Janjaweed leaders. “5th Population and Housing Census in Sudan – An Incomplete Exercise”, op. cit., p. 22.

<sup>48</sup> Ibid, p. 28.

<sup>49</sup> According to the DRDC, its field research in Northern Darfur revealed an unusual concentration on certain rural areas during the period March-May 2008. It argues this was part of a strategy to inflate the number of Arab nomads in Northern Darfur. For example, in al-Kuma area, the number of nomads in 1993 was approximately 12,000 and in 2008 approximately 69,000; in al-Waha locality the number of nomads was approximately 60,000 in 1993 and approximately 200,000 in 2008. Ibid, p. 23. Almost universal modern population trends are for nomad numbers to decrease.

<sup>50</sup> Ibid, p. 27.

<sup>51</sup> Ibid.

<sup>52</sup> Electoral constituencies are based on the 2008 census. A geographic electoral constituency (directly elected single seat) comprises approximately 145,000 people. States are apportioned a general party list seat for every 575,000 and a party women’s list seat for every 350,000. In every one of Sudan’s multi-party elections, the demarcation of constituencies has been controversial, with multiple and sometime contradictory assertions

the 2008 National Elections Act, the NEC is mandated to delineate electoral constituencies.<sup>53</sup> The NEC is chaired by Mawlana (“magistrate”) Abel Alier (former vice president of Sudan).<sup>54</sup> Although it is supposedly independent and non-partisan, opposition parties and independent civil society activists alike claim it and its subsidiary organs are dominated by the NCP (except in South Sudan).<sup>55</sup> For example, the deputy chairman is Abdallah Ahmed Abdallah, once the National Islamic Front’s ambassador to the U.S.; Alsir Ahmed Almek, the president of the High Committee for Northern Darfur, was director general of governmental affairs in the Northern Darfur government.<sup>56</sup> The high committees in Darfur also brought NCP members into subsidiary organs at the local level.<sup>57</sup>

Contrary to the NEC’s rules and regulations, some members are sharing confidential work with governors. On the eve of the closing date for candidacies, the High Committee for Northern Darfur reportedly gave the list of each candidate’s nominators to Governor Osman

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of gerrymandering. “Elections in Sudan: Learning from Experience”, op. cit., p. 31.

<sup>53</sup>The NEC is mandated to regulate and supervise elections in Sudan at all levels. It also regulates and supervises any referendum (excluding the South Sudan and Abyei referendums which will be organised by separate commissions). The NEC also prepares, revises, approves and maintains the electoral register, determines the geographical constituencies and conducts the elections in accordance with the provisions of this law. It likewise issues the general rules of elections and referendums and takes the necessary executive measures, including appointing state High Level Committees that are responsible for supervising elections and referendums at state level and for establishing temporary election committees in each constituency.

<sup>54</sup>The Commission is composed of nine persons selected and appointed by President Bashir (who is, of course, himself a candidate), with the consent of the First Vice President Salva Kiir (a candidate for the presidency of the Government of South Sudan, GoSS) and approval of two thirds of the members of the national assembly (dominated by the NCP and affiliated parties). Each High Committee is meant to be composed of five members known to be independent, experienced, non-partisan and impartial.

<sup>55</sup>“Sudan’s elections board reviewing opposition protest memo”, *Sudan Tribune*, 8 March 2010; and “SPLM: NCP ‘dominates’ NEC”, *Miraya FM*, 17 February 2010.

<sup>56</sup>Article 4.2. Chapter II of the 2008 National Elections Act stipulates that the Commission shall establish High Committees at the Southern Sudan level and in all the states of Sudan and delegate its authority and functions to these committees. Each High Committee is supposed to establish the temporary branch committees for each geographical constituency.

<sup>57</sup>Crisis Group interview, member of the Northern Darfur Legislative Council, Al Fasher, January 2010. The commissioners were responsible for naming the 130 members of the 26 High Committees (Southern Region plus 25 states). For biographies of the NEC members, see “Elections Assistance Monthly Bulletin”, UN Development Programme (UNDP) issue 1, December 2008.

Mohamed Yusuf Kibir.<sup>58</sup> These lists would provide the governor – a candidate himself – with crucial information about the supporters of his opponents. In the days after, more than 100 of these individuals were approached by National Security and Intelligence Service agents and intimidated or promised money if they would swear on the Quran to support Kibir in the elections.<sup>59</sup>

The NEC determined the number of national assembly seats for each state based on the census results.<sup>60</sup> In Darfur, the NEC and its High Committees allocated 86 seats in the national assembly (51 directly elected single district and 35 proportionally-elected seats) and 29 seats in each state legislative council. The national assembly seats were distributed as follows: Southern Darfur, 28 district seats, twelve seats for political party lists of women and seven seats otherwise for political party lists; Northern Darfur, fourteen district seats, six seats for political party lists of women and four seats otherwise for political party lists; Western Darfur, nine district seats, four seats for political party lists of women and two seats otherwise for political party lists.

The allocation of electoral constituencies has been protested by many people in Darfur, particularly the IDPs and civil society, but the NEC has rejected most of their objections.<sup>61</sup> The impact of the census is very significant. For example, the Western Darfur figures, reflecting a reported population decrease of 200,000, has resulted in the state being allocated only fifteen seats in the national assembly compared to 24 for Northern Darfur. The rebel-held Jebel Marra massif in Southern Darfur, with an estimated population of 1 million but only 35,000 according to the 2008 census, has no seats.<sup>62</sup>

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<sup>58</sup>Crisis Group interview, ex-minister in the Kibir government, Al Fasher, February 2010.

<sup>59</sup>Ibid.

<sup>60</sup>The total number of seats (electoral constituencies) of the national assembly is 450: Khartoum 60, Southern Darfur 47, al-Jazira 41, North Kordofan 33, Northern Darfur 24, Kassala 20, White Nile 20, Southern Kordofan 17, Red Sea 16, Gedaref 15, Sinnar 15, Western Darfur 15, Jonglei 15, River Nile 13, Central Equatoria 13, Upper Nile 12, Warap 12, Blue Nile 10, Eastern Equatoria 10, Northern State 8, Northern Bahr al-Ghazal 8, Unity State 7, Lakes 8, Western Equatoria 7, Western Bahr al-Ghazal 4. Again this may change if the national assembly accepts the NCP and SPLM agreement to increase the number of seats for the South, Southern Kordofan and Abyei.

<sup>61</sup>There were 885 objections to constituency demarcations registered with the NEC, of which 400 were accepted. In the three Darfur states there were 81 objections, of which 34 were accepted.

<sup>62</sup>The 1993 census indicated the population was 450,000. In the 1986 elections, Jebel Marra district was represented by four single candidate districts. “5th Population and Housing Census in Sudan – An Incomplete Exercise”, op. cit., p. 28.



The DRDC notes that in Northern Darfur, during a December 2000 election for national assembly members organised by the NCP government, the Arab nomads, including majority Abbala, were estimated to be 12 per cent of the total population of the state. They were allocated two of the state's twelve geographic constituencies – al-Serif and Nomads. This time they have been allocated three – al-Waha, al-Kuma and al-Serif – of the state's fourteen seats.

### C. VOTER REGISTRATION BOYCOTT AND EXCLUSION OF IDPS

Voter registration was the next critical step. It began in most states on 1 November 2009 and continued to 7 December amid controversy.<sup>63</sup> Principally this was over the census results, the reallocation of the electoral constituencies and the legitimacy of the results in Darfur. According to the NEC, 15.7 million of the estimated 20.7 million eligible voters have been registered nationally: 75.8 per cent and close to the 80 per cent national target set by the NEC.<sup>64</sup> The Darfur figures were Western Darfur 69 per cent, Southern Darfur 68 per cent and Northern Darfur 65 per cent.<sup>65</sup>

In Darfur, most IDPs did not register, and many eligible voters from the most war-affected communities boycotted the exercise. Opposition parties have listed a number of serious flaws in the registration process that could undermine the legitimacy of the April elections.<sup>66</sup> Their observers and representatives in the three Darfur states sent petitions to the relevant courts and to the NEC, but none have yet borne fruit, and the majority of complaints have been rejected.<sup>67</sup>

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<sup>63</sup> A number of political parties requested a one-week extension of voter registration, and the NEC agreed, because large numbers of eligible voters were not able to register in the 30 days specified, due to poor dissemination of information and large distances to reach registration centers in many rural areas, particularly in Darfur. Despite the extension, which was beneficial for many states, the three Darfur states failed to reach the target set by the NEC of registering at least 80 per cent of voters.

<sup>64</sup> This includes a 71 per cent rate of registration of the eligible electorate in the North and 98 per cent in the South. All such figures are open to question, however, since reliable population data is simply not available in Sudan.

<sup>65</sup> "Final Registration Report", National Elections Commission (no date).

<sup>66</sup> "Declaration of Objections of Opposition to NEC", (in Arabic), 4 March 2010.

<sup>67</sup> There is still no final voter registration list or an accounting of objections to the process. The Carter Center has expressed deep concern "that the final voters' list is still not ready, with several hundred thousand names still omitted". There are also reports of discrepancies between registration booklets and the

Two serious flaws were the failure of the NEC to properly train its registration officials and to conduct civic education campaigns nationwide. In some cases, access was blocked to sites and many people were not able to register, while in other instances people were improperly registered, such as those under the minimum age of eighteen and soldiers.<sup>68</sup> A number of registrations of temporary residents were conducted. The residents of temporary shelters, such as the Ambaroro nomads (originally from the Fulani tribes of West Africa) near the *wadi* (dry river) in the centre of the city of Nyala, Southern Darfur and in other places, were registered, though they had not been in these locations the required three months.<sup>69</sup> Students in boarding houses were registered under direct orders from the governor's office, though some were under eighteen.<sup>70</sup>

According to international observers, centres remained open throughout the registration period in two high schools in Nyala, while in most other areas they were open for much shorter periods. These centres were said to be run by members of the armed forces, and election observers and political party members were not notified of them.<sup>71</sup>

The NEC guidelines and regulations provided that voter eligibility would be restricted to people who had lived at least three months in a constituency and were not reg-

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central electronic voter registry. "Sudan may have to delay elections, observers say", Reuters, 18 March 2010.

<sup>68</sup> See "Building on a Cracked Foundation: An Analysis of the Election Registration Process in Sudan and its Impact on the Potential for Free and Fair Elections", Africa Centre for Justice and Peace Studies, 9 February 2010.

<sup>69</sup> The Ambaroro nomads reportedly had been in the Nyala shelters only two months. Crisis Group interview, Nyala temporary camp, January 2010.

<sup>70</sup> The African Centre for Justice and Peace Studies reported that underage students registered and in some places were explicitly encouraged to do so. It argued that, though a flexible approach was necessary, especially as birth documentation is lacking in many areas in Sudan, the process appeared to have been manipulated. Many registration centres had large numbers of underage registrants, including in Southern Darfur: Nyala City, Constituency 7, and Nyala East, Constituency 9, were observed. "Building on a Cracked Foundation", op. cit., p. 5.

<sup>71</sup> In areas visited by the Carter Center mission, observers indicated that military units, police, and National Intelligence and Security Service (NISS) agents were involved in the registration process. They observed NISS agents actively engaged in a manner which undermined the independence of the work of the election committees and raised questions about the NISS role in the process. In Northern Darfur, the Carter Center observers reported the presence of vehicles with heavy mounted weapons outside registration sites, in a show of force that may have intimidated registrants. "Statement on Sudan's Voter Registration, Nov. 1 – Dec. 7, 2009", The Carter Center, 17 December 2009.

istered in another constituency.<sup>72</sup> However, in Darfur, the NEC registered security forces in several constituencies, particularly in villages of IDPs, such as in north Kas and the locality of Zalingei and Wadi Salih. Furthermore, military, security service and police personnel are not supposed to be registered in their place of work, but rather in their place of residence, so there are concerns that they may have been double registered.<sup>73</sup> Most of these personnel were registered using their military ID cards, or by lists presented by their officers to the registration officials.<sup>74</sup>

The NEC also failed to inform local populations properly about where and when to register.<sup>75</sup> According to IDP community leaders in Northern Darfur, several centres were opened and closed without sufficient notification and advertisement. After initially boycotting the process, many IDPs were convinced of its importance during the seven-day extended period but were unable to register.<sup>76</sup> Officials who came to some of the IDP camps started registration but left after an hour.<sup>77</sup> They announced the opening time for the next day but did not appear, leaving the IDPs waiting in line for hours.<sup>78</sup> Registration monitors from civil society and political parties were harassed by security authorities, and there are credible allegations that data were tampered with and some eligible voters were intimidated after registration.<sup>79</sup>

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<sup>72</sup> “Factsheet: National Elections Act of 2008”, National Elections Commission.

<sup>73</sup> This would be in contravention of the 2008 Elections Act, Article 22. When the political party registration monitors and observers presented a written complaint, the NEC issued a statement on 24 October 2009 authorising this process.

<sup>74</sup> The votes of large numbers of security personnel may change single district and proportional list election results.

<sup>75</sup> Crisis Group interview, general public from Northern Darfur, Al Fasher, January 2010.

<sup>76</sup> There is no evidence that the NEC provided instructions to state election committees on the participation of IDPs; according to a member of the High Committee in Northern Darfur, some members of the committee were told to pay lip-service to such participation in the last days of the one-week extension. Crisis Group interview, Al Fasher, January 2010.

<sup>77</sup> According to the Darfur Relief and Documentation Centre and the African Centre for Justice and Peace Studies, election committee officials conducted no registration in most IDP camps, which, they argued, contributed to the low IDP registration figures in the three Darfur states. The African Centre for Justice and Peace Studies indicated that until 7 December, registration had not begun in three of Darfur’s largest IDP camps. “5th Population and Housing Census in Sudan – An Incomplete Exercise”, op. cit., pp. 18-22; and “Building on a Cracked Foundation”, op. cit., p. 11.

<sup>78</sup> Crisis Group interview, community leaders, IDP camp near Al Fasher, January 2010.

<sup>79</sup> “Statement on Sudan’s Voter Registration, Nov. 1 – Dec. 7, 2009”, op. cit.; and “AU’s Mbeki panel optimistic on hold-

The flawed census also had an enormous impact. Because there were many people it had not counted, there were no or few registration centres in certain areas, especially where IDPs lived.<sup>80</sup> Many in rural areas in Darfur did not have access to registration sites. The decision of some groups to boycott the process lowered registration numbers further.<sup>81</sup> Conversely, mobile registration units were successful in reaching nomads in agreed sites.<sup>82</sup> Yet, despite detailed complaints by local and international observers, the NEC has refused to allow an external audit of the voter registration list.<sup>83</sup>

## D. MANIPULATED TRIBAL LOYALTIES, CO-OPTED TRADITIONAL LEADERS

Since the start of the current conflict in Darfur in 2003, the government has mobilised militias from the Arab tribes to fight a proxy war alongside the regular army. To do so, the NCP has co-opted the majority of tribal leaders<sup>84</sup> through money and an ideology premised on Arab identity and Islam.<sup>85</sup> Many have formed their own

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ing fair and free elections in Sudan”, *Sudan Tribune*, 3 March 2010.

<sup>80</sup> “Building on a Cracked Foundation”, op. cit., p. 10; and Crisis Group email correspondence, international elections observer, February 2010.

<sup>81</sup> Crisis group interview, Zaghawa community leader from Kornoï, Al Fasher, January 2010.

<sup>82</sup> Mobile registration units are supposed to facilitate registration of constituencies in remote areas.

<sup>83</sup> The NEC has also refused to allow an audit of its estimated \$315 million budget, 43 per cent of which is provided by international partners. “Report of the African Union Second Pre-Election Assessment Mission to the Sudan Presented to the African Union Peace and Security Council”, PSC/PR/210 March 2010.

<sup>84</sup> In Sudan the British introduced a “native administration” system of tribal governance, as a way of devolving power from the centre to local chiefs. The current regime has turned this into a partisan institution, controlling the appointments and payments of tribal leaders based on their political loyalties.

<sup>85</sup> The Arab Gathering, formed in the late 1980s during the government of Sadig al-Mahdi represents the political interests of Arabs in the central government and the NCP. It has four layers: the Shura Council of the Arab Tribes Gathering, composed of tribal paramount chiefs, militia commanders (*fursan ageeds*) and ordinary citizens; the Executive Organ, which coordinates and monitors strategic work, headed by the former Southern Darfur governor and member of the Council of States, Adam Hamid; the Military Organ, composed of tribal militias (*fursan*); and the People’s Organ, the base of the Gathering, which influences the Native Administration. The Arab Gathering of Darfur – very much the organisation’s nexus – has alliances with kin in the Sahelian zone, extending from Chad to Mali and Burkina Faso. The Gathering represents Arabs across the Sahel, irrespective of political affiliations, location, way of life or nationality. In Darfur, it includes much of the Arab political elite – ex-

parties, basically splinters from the Umma Party with added acronyms, and have joined the Government of National Unity in Khartoum.<sup>86</sup> They include figures such as Abdallah Massar, an adviser to President Bashir; Babiker Ahmed Nahar, the environment minister; and al-Zahawi Ibrahim, the information minister. All these detached Umma factions have formed electoral alliances with the NCP.

Senior leaders have been rewarded with money and economic concessions.<sup>87</sup> Middle-level leaders have been given modern weapons and cars. Ordinary members have been given positions in security structures, such as the border guards, nomad police and contingency forces, so that they are well paid and fed by the government. The regime's counter-insurgency plan in Darfur included driving presumed supporters of insurgency from their lands in order to deny the rebels food, water and other aid. The result is that large swaths of territory were depopulated; often militias then settled those lands.<sup>88</sup> These tribes now play an important role in the NCP's election strategy. Many of their leaders are also campaigning for seats in the national and state assemblies, some in constituencies that they have newly occupied.

The NCP has carefully selected candidates for each constituency, including those dominated by newcomers and the military forces deployed to protect the area. These candidates are given extensive support for campaigning and co-option of voters.<sup>89</sup> The party has also put forward stalwarts – over the objection of its local leaders – for the three Darfur state governorships: Osman Mohamed Yusuf Kibir, Abdel Hamid Musa Kasha and Jaafar Abu Hakam.

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governors, military commanders, paramount chiefs, presidential advisers and senior members of the executive and legislative bodies – many of whom are also NCP members. See Crisis Group Africa Report N°125, *Darfur: Revitalising the Peace Process*, 30 April 2007, p. 14.

<sup>86</sup>The various Umma parties and their leaders include: National Umma Party – Sadig al-Mahdi; Umma Party (Reform and Renewal) – Mubarak al-Fadil; Umma Party (Reform and democracy) – Information Minister al-Zahawi Ibrahim Maalik; Umma Party (General Leadership) – Dr. al-Sadig al-Hadi al-Mahdi, an adviser to President Bashir; Federal Umma Party – Ahmad Babiker Nahar, the current environment and physical development minister.

<sup>87</sup>These include Abdullah Massar, Abdel Hamid Musa Kasha (NCP candidate for governor in Southern Darfur), Adam Hamid and Musa Hilal.

<sup>88</sup>See Crisis Group Africa Reports N°134, *Darfur's New Security Reality*, 26 November 2007; N°125, *Darfur: Revitalising the Peace Process*, op. cit.; and N°105, *To Save Darfur*, 17 March 2006.

<sup>89</sup>The NCP, through Awad al-Jaaz, former energy and mining minister and current finance minister, has collected over \$800 million from national revenue and external business commissions for its plans to achieve a comprehensive electoral success. Crisis Group interview, a senior NCP member of the national assembly, Khartoum, January 2010.

Osman Kibir,<sup>90</sup> a Berti, has been the governor of Northern Darfur for more than five years. According to many interviewees in Darfur,<sup>91</sup> the recent replacement of the governor of Southern Darfur by Abdel Hamid Musa Kasha<sup>92</sup> is part of an overall NCP strategy to closely monitor and control voter registration and the elections. The governors of the two large states – Southern and Northern Darfur – are crucial for the effort to win as many votes for Bashir as possible. The governor in Western Darfur, Abu al-Gasim Imam, a former rebel leader, was appointed as part of a peace deal. The NCP selected Jaafar Abu Hakam, a Fur, to stand against him.<sup>93</sup> He is accused of having eliminated some Fur leaders, including those whose names were found in a notebook of Daud Bolad, an insurgency leader captured and executed in Southern Darfur in 1992.<sup>94</sup>

No expense is being spared. In a meeting with his fellow tribesmen outside Al Fasher, Kibir announced to the Berti that he has SDG49 million (approximately \$20 million) for the elections, those who do not support him will lose, and those who support him will benefit.<sup>95</sup> Nafie Ali Nafie, the vice president of the NCP, has publicly stated that party members who challenge its decisions will suffer later.<sup>96</sup>

The decision by NCP national leaders not to endorse the local nominations for governors of the three Darfur states has alienated many.<sup>97</sup> According to a senior party member frustrated by the lack of progress in the peace process, “the priorities of our brothers in Khartoum are simple: President Bashir must win the seat of the president of Sudan; and what happens later in Darfur is not their

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<sup>90</sup>Osman Kibir is nicknamed the Bashir of Darfur for his close ties to the top echelons of the NCP in Khartoum.

<sup>91</sup>Crisis Group interviews, members of the general public, Southern and Northern Darfur, January 2010.

<sup>92</sup>Abdel Hamid M. Kasha, a well-known member of the Arab Gathering, has been accused by many analysts and observers of taking part in mobilising and organising the Janjaweed during the early phase of the war in Darfur. See, for example, “Who's who on Darfur”, *Africa Confidential*, 18 February 2005.

<sup>93</sup>Crisis Group interview, scholar and former minister in one of the state governments, January 2010.

<sup>94</sup>Daud Bolad was a Fur Islamist who split from the National Islamic Front (NIF). In late 1991, with the support of the SPLM, he led a military group to capture Jebel Marra. He was captured in Southern Darfur by the local communities and executed by the government in early 1992.

<sup>95</sup>Crisis Group interview, several Berti who attended this meeting, January 2010.

<sup>96</sup>“Sudan: signs of a crisis within the ruling party due to nominations for the elections”, *Asharq Alawsat* (in Arabic), 14 January 2010.

<sup>97</sup>Crisis Group interviews, Southern and Northern Darfur, January 2010.

concern, provided that their supporters control security and political life”.<sup>98</sup> This would facilitate their continued control of the executive and legislative branches of the national government and thus retention of their wealth.<sup>99</sup>

#### IV. THE STAKES

The NCP has refused to create the conditions for free and fair elections. Its past and present policies indicate it intends to continue to dominate Sudan, thus leaving marginalised people to feel that they have no other option for challenging the status quo than continued armed resistance. In its efforts to win the elections, however, the NCP is sowing additional discord in its own party as well as among the rebels.<sup>100</sup>

The international community is confronted with a dilemma. A major goal of the CPA, the democratic transformation of Sudan, will not be realised in the April elections. The most probable outcome – one obtained in a fundamentally flawed process – is a victory for, and the continued domination by the same forces that have controlled Sudan for years. This would make unity even less attractive when the South votes on self-determination in January 2011 and have dire implications for implementation of the remaining provision of the CPA and the future stability of northern Sudan.

#### A. TACTICAL NEGOTIATIONS WITH REBEL GROUPS

Having established their preferred conditions for the elections in Darfur, the NCP is working hard to block any attempt to postpone or derail the vote.<sup>101</sup> The government’s focus is on the Justice and Equality Movement (JEM), currently the leading insurgency in Darfur. It

fears JEM may attack a major city or attempt to create insecurity that could lead to many people not voting. This could potentially impact the outcome of the elections, especially for President Bashir. A first round victory in the presidential contest requires an absolute majority of votes (50 per cent plus one), which will be hard for Bashir to obtain if the northern vote is held down, and he might have difficulty defeating a single opposition candidate in a run-off.<sup>102</sup>

The NCP is thus working to ensure the elections will be held in Darfur and has negotiated a number of important deals. In mid-January 2010, it engaged in a diplomatic blitz with Chad, facilitated by the U.S. Sudan envoy, General Scott Gratton. After several weeks of secret negotiations in N’Djamena, the Sudanese negotiator, Ghazi Salaheldin al-Atabani, reached a deal with President Déby, basically to reactivate past agreements, most importantly the pledge that the two countries would stop supporting the other’s rebels.<sup>103</sup> Though this might serve the interest of Chad more than Sudan, it has also forced JEM to come to the negotiating table before the elections.

Khartoum reached agreement with JEM on 20 February 2010 in N’Djamena on a preliminary framework that includes a temporary ceasefire. This prepares the ground for future political negotiations, probably after the elections.<sup>104</sup> It appears the ceasefire is mainly designed to keep JEM from any attacks in the coming weeks. In return, the NCP reversed the death sentences against JEM prisoners, including the half-brother of the movement’s leader, Khalil Ibrahim. On 24 February, more than half the JEM prisoners were freed, though so far not Khalil’s half-brother.<sup>105</sup>

<sup>98</sup> Crisis Group interview, senior NCP figure very close to the top leadership, Khartoum, October 2009.

<sup>99</sup> The remaining phase of the CPA is critical; that a new elected government could possibly amend the Interim National Constitution (INC) and the CPA, as per their provisions, is the main reason behind the current deadlock between the NCP and SPLM regarding CPA implementation.

<sup>100</sup> All these groups including JEM do not recognise the census, the demarcation of geographical constituencies or the voter registration process. They argue that in the interest of peace the NCP must agree to reschedule the elections. During the recent visit by Mbeki, the head of the High Implementation Panel of the African Union, the NCP is said to have refused to discuss postponing the elections either partially or fully. “Mbeki’s summit for Sudan political parties postponed”, *Sudan Tribune*, 19 February 2010.

<sup>101</sup> Crisis Group interview, senior NCP figure and member of the NCP Shura Council, January 2010.

<sup>102</sup> Crisis Group interview, senior adviser to a political party leader, February 2010.

<sup>103</sup> On 9 February the National Intelligence and Security Service reportedly met with leaders of Chadian groups and instructed them that no operation will be allowed against Chad from Sudanese territory. Crisis Group interview, Khartoum, February 2010.

<sup>104</sup> During this process, the JEM leader Khalil Ibrahim apparently demanded the governorship of Kordofan, the three Darfur states, and Khartoum, plus 42 per cent of their legislative seats. The NCP response was that only a few weeks remain for negotiations, after which the national assembly will be dissolved, the current government will be a caretaker, and the window for negotiations will be closed until after the elections.

<sup>105</sup> More than 100 JEM men were sentenced to death by hanging after being found guilty by Sudanese courts of taking part in an attack by the insurgent group on Omdurman in May 2008. So far 57 have been released. “57 prisoners set free after Darfur JEM rebels commit to talks”, *Sudan Tribune*, 25 February 2010.

That same day, ten other rebel groups agreed to form an alliance, the Sudan Liberation and Justice Movement (SLJM), led by Dr Tigani Sessi.<sup>106</sup> They also embarked on consultations with the international mediation team on another draft framework agreement to be negotiated with the government. The JEM tried to frustrate this by threatening to withdraw its delegation from the ongoing talks with the government over implementation of the ceasefire, but on 18 March, the SLJM signed a framework agreement with the government.<sup>107</sup>

To achieve peace and stability, an inclusive process involving all rebel groups and civil society is essential. A bilateral agreement with JEM or with SLJM but excluding other large rebel groups – particularly the one led by Abdel Wahid – and the wider Darfurian society would impede a final settlement. Moreover, peace in Darfur is inseparable from the need for democratic transformation in Sudan as a whole. Thus, it is essential for Darfur to be an integral part of the wider national process.

## **B. CONTROLLING THE DAMAGE CAUSED BY FLAWED ELECTIONS**

Because the conditions for free, fair and credible polls do not exist in Darfur, where so many people have been disenfranchised, these elections will not help achieve peace and stability. This is why the opposition parties in the North proposed to postpone the general elections to November 2010, by which time they hope there will be a settlement in Darfur.<sup>108</sup> In September 2009, the African Union High Level Panel on Darfur emphasised the importance of including Darfur in the general election:

Darfur is an integral part of Sudan and Darfurians must be able to participate in national democratic decision making. National decisions taken without the full participation of Darfurians will suffer from a deficit of democratic legitimacy. To enable the people of Sudan to approach the next important phase of their history as one nation, without other distractions, there is an urgent need to secure a definitive peace settlement for Darfur before the 2010 General Elections and to

ensure nationwide legal and security conditions to allow political activity to be freely conducted.<sup>109</sup>

Crisis Group argued in December 2009 that a new CPA protocol was necessary to reconcile the pieces of the Sudan peace process, and that, provided a political agreement could be reached to secure the holding of the South's self-determination referendum in January 2011, the best option would be to postpone the elections. This is now unlikely to happen. Even delaying all the elections in Darfur is unlikely, as the NCP will not accept excluding the three Darfur states from the presidential and gubernatorial votes. The SPLM also fears postponement might impact the self-determination referendum. It is thus of utmost importance that Sudan's partners and supporters of the peace process act to control the damage caused by the flawed electoral process.

Consistent with their own resolutions and principles and with the AU High Level Panel recommendations on the Darfur peace process, which highlighted the need to address Darfuri disenfranchisement, neither the AU nor the UN should reward a fraudulent electoral process by providing Bashir and the NCP the legitimacy they are seeking. Electoral observation missions and international observers in Sudan should take note of the severely flawed process leading up to the elections. Governments, and international organisations should state that the newly elected government, particularly if the incumbent wins, will have very little legitimacy. That should not serve as a pretext for refusing to ensure the remaining implementation of the CPA – and hopefully avert a return to war – but new elections may become necessary after the Southern Sudan self-determination referendum.

Immediately after the elections, the international community, working closely with the AUHIP, should pressure the resulting government to restart negotiations in Darfur and proceed with CPA implementation. It should insist that any peace deal in Darfur include provisions for a new census and voter registration drive in the region, to be followed promptly by new national elections.

Also immediately after the elections, the AU, UN, IGAD and other key international supporters of the CPA should encourage the government in Khartoum and the GoSS to reach agreement on the critical steps that are needed to ensure that the January 2011 self-determination referendum in the South is peaceful and to provide for stability in both North and South in the aftermath of that referendum.

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<sup>106</sup> Bahr Idriss Abu Garda, leader of the United Resistance Front (URF), was appointed secretary general; Ali Abdallah Karbino is commander in chief of the military organisation and Ali Mukhtar Ali, chairman of the joint chiefs of staff. Sessi is to be joined by five vice presidents to form the presidency's supreme council. SLM-Abdel Wahid did not join.

<sup>107</sup> "Sudan: As Another Darfur Ceasefire Deal is Signed, UN Envoy Voices Hope", UN News Service, 18 March 2010.

<sup>108</sup> Crisis Group telephone interviews, opposition leaders, February-March 2010.

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<sup>109</sup> "Darfur: The Quest for Peace, Justice and Reconciliation", report of the African Union High Level Panel on Darfur (AUPD), October 2009, p. 99.

### **C. ENSURING A PEACEFUL REFERENDUM AND POST-REFERENDUM STABILITY**

Once the elections are held, it is imperative that both Sudan and the international community refocus on the task of ensuring that the South's self-determination referendum occurs on time and in a peaceful manner. Although it is increasingly unlikely that the CPA will preserve the unity of Sudan, the North and South will remain interdependent for the foreseeable future. Furthermore, instability in either would inevitably spill over into the other. Therefore, separation will need to be managed to ensure a peaceful coexistence. This should include a post-election mechanism to negotiate critical transitional arrangements for handling the referendum vote and the process of separation, should that be the result; set out the process for transferring sovereignty to an independent Southern state, if that is the referendum's decision; and create a powerful international mechanism to monitor and support its implementation.

It would serve both North and South well to have an arrangement for dealing with everything from border issues through wealth sharing and to treatment of each other's citizens. Negotiating an arrangement that in effect acknowledges the possible division of the country even before the South votes would be politically difficult for the North, but rationales for such negotiations exist. For example, many issues need to be regulated even should the South choose to stay in the national union with its current high level of autonomy. The agreement could be divided into two periods: from the day after the referendum until the CPA interim period expires in July 2011; and another, perhaps through the end of 2014, during which two independent states would cooperate as sovereignty is progressively passed to the South.

### **V. CONCLUSION**

Recognising how important the elections are for Sudan's future, the international community has established a number of electoral observation missions to improve their conduct. This may help prevent the most egregious cases of electoral fraud and ballot stuffing, but much of the rigging has already occurred through manipulation of the census, voter registration and constituency gerrymandering. Furthermore, observers will only – according to their mandate – assess the quality of the elections; they cannot be expected to make broader recommendations about how the international community should react. It will be up to governments and intergovernmental organisations to act so as to limit the damage from rigged elections.

Foremost must be to press for implementation of the remaining provisions of the CPA and to ensure that the South's referendum on self-determination is held on time. Otherwise, a return to North-South conflict would be very likely. In addition, it must be recognised that flawed elections will not address the root causes of Sudan's multiple conflicts. Only after free and fair elections will the government in Khartoum be compelled to address the marginalisation of the country's peripheral areas that has driven so many people to rebel. A critical precondition for such elections is negotiation of an inclusive and comprehensive peace agreement in Darfur. As the AU High Level Panel has noted, Sudan will have a real chance for peace and stability only when all Darfuris participate fully in its governance.

**Nairobi/Brussels, 30 March 2010**

## APPENDIX A

### MAP OF SUDAN





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