



ASSESSING SUDAN'S ELECTORAL LEGAL FRAMEWORK



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This study was undertaken between February and September 2021, before the military takeover of the transitional administration in Sudan, and does not reflect on the political changes after 25 October 2021.

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Zeinab Elnour Abdelkarim



International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
+46 8 698 37 00
info@idea.int
www.idea.int

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Sami Saeed
Head of Sudan Programme
International IDEA

Executive summary

This paper provides an overview and analysis of Sudan's current legal framework for elections. It examines conformity with internationally recognized electoral standards and good practices and identifies gaps or inconsistencies that may undermine the electoral process. The paper also makes recommendations and provides options for reform to enhance the effectiveness, credibility, and public confidence in the country's democratic institutions and processes.

A clear, impartial, and enforceable legal framework for electoral and political processes is essential for securing democratic transition and electoral integrity in Sudan, a politically divided country marred by decades of war. After years of conflict and repression, the country has just begun a political transition with a power-sharing government formed between the pro-democracy movement and the military generals who overthrew former President Omar Al-Bashir's 30-year rule. The fragile government is confronting daunting political, security, and economic challenges and most of the institutional and law reforms envisioned by the August 2019 Constitutional Charter are falling behind.

Although in the 2010 general elections international observers perceived Sudan's legal framework to be progressive, comprehensive and laying the foundations for credible elections, they also found it fell far short of its domestic and international obligations (Carter Center 2010; EU 2010b). Therefore, the transitional government and other electoral stakeholders must draw lessons from these past elections to ensure future electoral processes do not repeat the same technical and political flaws. However, electoral reforms carry their own risks, requiring time, resources, political commitment, and extensive planning. Depending on the extent of future reform and the specific electoral processes involved, reformers must consider incremental changes pursued over several elections to minimize disruption to electoral operations. Most importantly, reformers should give thoughtful attention to the skills and knowledge required within the country's future election management

body (EMB) to manage and implement these new reforms. A complete change of the country's existing EMB would risk losing institutional memory and staff with a strong understanding of existing processes, strategies, policies, and procedures.

Electoral legal reforms can be political as well as technical in nature, generating winners and losers among electoral stakeholders and producing changes in the institutional governance structure. Consultative, inclusive, and transparent legal reform practices are therefore vital to building public trust in the legislative process and its outcomes and reducing resistance to the necessary changes. It is thus in the interest of the transitional government and electoral stakeholders to ensure that the rules for future electoral competition and the way those rules are enforced guarantee a genuinely democratic election (Merloe 2008). A decline in public confidence that the transitional authorities can oversee legal reforms might engender voter apathy, violence, and long-term political instability. The inability of civil society to wield much influence in Sudan's near-term transition could further exacerbate the credibility gap facing the transitional government. Therefore, before the passing of any significant reforms, citizens must have the opportunity to publicly debate fundamental issues such as the function of the military in a democracy, the role of Islam and Shariah in the affairs of the state, the status of the internally displaced, the rights and roles of women, the electoral system, and the form of government. Fair representation of women and other marginalized groups in any national dialogue is key to establishing political consensus on a positive path towards democracy within Sudan.

Unfortunately, lack of a comprehensive peace process, disagreements over the formation of the Transitional Legislative Council and other essential institutions mandated by the Constitutional Charter, and the ongoing economic crisis have caused slippage in the transition timeline, slowing the pace of legal reform. Slow progress is to be expected given the fragmented leadership of the transitional government and the complexity of the issues facing it. However, the transitional government should be mindful of the considerable time pressure under which it must now discharge its constitutional mandate—to prepare for a permanent constitution, a national constitutional conference, and electoral events—by the end of the transitional period.

International IDEA commissioned the assessment covered by this paper in an attempt to support in-country dialogue about electoral legal reform. The assessment discusses Sudan's electoral legal framework's strengths and weaknesses. It offers options for promoting free and fair elections, identifying confidence-building measures in the democratic process, and highlighting political factors that could introduce delays or uncertainty into the transition.

Chapter 1

ASSESSMENT METHODOLOGY

The assessment aims to provide in-depth insight into all aspects of Sudan's electoral processes, beginning with a review of the electoral framework and including the performance of the election administration; the human rights situation in the country; the independence of the judiciary; and overall levels of transparency and accountability necessary to instil public confidence in the country's governance system. The objective of the assessment is not to criticize or pass judgement on existing electoral processes but to provide comprehensive and constructive recommendations that can strengthen existing legislation and contribute to uniformity, reliability, consistency, and professionalism in Sudan's future elections (see Table 1).

The assessment methodology relies heavily on International IDEA's guidelines for reviewing the legal framework of elections, which uphold high standards of impartiality, transparency, and professionalism. It measures Sudan's legal electoral framework against a common international understanding of the principles, norms, and obligations that define credible, democratic elections. These include periodic and genuine elections that reflect the free expression of the people's will (USAID 2021). The methodology assesses whether Sudan's existing legislation and prevailing government practices respect a wide range of human rights, such as freedom of speech, opinion, information, assembly, movement, and association, as covered in the universal instruments and treaties (see European Commission 2008). The aim is to assess the status of the core democratic principles and freedoms that provide a foundation for credible elections and highlight

any restrictions on these fundamental rights and liberties that could interfere with the upcoming elections or delay the political transition. A salient question addressed is whether the country's legal framework ensures that no identifiable societal group is excluded or marginalized from the electoral and political process, for example, women, ethnic minorities, citizens with disabilities, and internally displaced persons (IDPs).

The assessment also examines the country's political, cultural, and historical context to identify factors that may present opportunities or risks to credible elections. This examination involves identifying power dynamics, political culture, electoral stakeholders' commitment to democratic reforms, and stakeholders' capacity to implement or influence reforms. The review analyses conflict dynamics, particularly in Darfur and the Eastern provinces, and how they will likely impact the electoral process. Regional political developments and external influence by foreign actors that may pose a risk to credible and inclusive elections are also considered.

The assessment includes a desk review that thoroughly evaluates and analyses all governing legislation and pertinent legal and quasi-legal documents related to the elections. The analysis covers the applicable provisions of the 2019 Constitutional Charter and its amendments, the 2008 National Elections Act,¹ the 2007 Political Parties Act, and all other laws that impact the elections (pertaining to the media, citizenship, national registers, census, access to information, national security, and criminal and civil law provisions relevant to elections and political processes, among others). Where appropriate, the study examines directives, instructions, and regulations issued by the National Elections Commission (NEC) or any other government agency, which may directly or indirectly impact the country's future electoral process. The study also inspects the status of Sudan's international and regional obligations on elections and human rights, including the Arab Charter on Human Rights, the African

1 The amendments made to the National Elections Act in 2018 were never published in the Official Gazette as required by articles 5 and 9 of the Interpretation of Laws and General Provisions Act of 1974. The political opposition in the National Assembly objected to the former President signing the draft 2018 National Elections Act into law, citing that the National Assembly did not adopt it. They claim the Assembly lacked the proper quorum when the law was introduced to the floor for voting. Therefore, some do not consider it a formal law.

Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights. In addition, the study takes into consideration election observation reports and other relevant literature released by international, regional, and domestic observers of Sudan's 2010 and 2015 national elections; however, it places primary emphasis on the analysis of the following critical elements of the electoral process:

- electoral system;
- election administration;
- voter registration;
- boundary delimitation;
- political parties, candidates and campaigning; and
- electoral dispute resolution.

Throughout the phases of the assessment process, virtual and in-person interviews were held with various electoral stakeholders to inform and fact-check the findings and technical recommendations. Stakeholders who were consulted include members of the transitional government, political party representatives, members of the judiciary, staff of the NEC, human rights defenders and civil society groups, representatives of the media, representatives of the donor community, and elections assistance providers working in-country. These informative interviews attempted to reflect diversity in terms of gender, age, ethnicity, religion, political perspective, and other relevant factors to the extent possible.

The assessment provides a set of technical recommendations on how the electoral and political processes can be improved and brought more closely into line with international best practices and Sudan's international commitments. The recommendations cover the areas of emphasis listed above, as well as electoral risk management, including but not limited to electoral violence and operational, political and other challenges. The overall goal of the assessment is to assist the transitional government and other electoral stakeholders in understanding how the existing

local laws and country context create an enabling or disabling environment for free and fair elections. The final assessment has undergone an independent peer-review process through several round-table discussions with subject matter experts with country and regional expertise.

Last but not least, the assessment methodology ensures a systematic, comprehensive, and accurate gathering of data and information covered by the assessment, particularly material on the national laws, processes, and institutions related to the conduct of elections and the overall political environment. It is essential to note that the translation of all legislation and regulatory frameworks reviewed by this assessment is not official. Nonetheless, the project team have done their utmost to ensure that recommendations, comments, or analyses are not based on an erroneous understanding of the translated texts.

Chapter 2

INTRODUCTION AND COUNTRY CONTEXT

Sudan's 2018 popular uprising, fuelled by years of authoritarian rule, a failing economy, political instability, and relentless armed conflicts, finally led to the overthrow of President Omar al-Bashir on 11 April 2019. Negotiations to form a transitional government were fraught with tension over the division of power between the civilian opposition and the Transitional Military Council (TMC) representing the security establishment that ousted the al-Bashir regime. The TMC comprised the Sudanese Armed Forces (SAF), the National Intelligence and Security Services (NISS), and the paramilitary group known as the Rapid Support Forces (RSF).

On 17 July 2019, the TMC and the pro-democracy movement representing the protestors known as the Forces of Freedom and Change (FFC) signed a political accord outlining the broad terms for the power-sharing deal. After intensive discussions, the two sides signed a Constitutional Charter on 17 August 2019 (Sudan 2019). They agreed on a transitional government with civilian and military components and a 39-month transition to civilian rule. On 20 August 2019, the Charter was proclaimed by the Head of the TMC and published in the Gazette. Article 72(2) of the Charter states that the TMC will be dissolved once the Sovereignty Council is sworn in.

The Constitutional Charter repeals the country's Interim Constitution (Sudan 2005) and the constitutions of all provinces; however, other legislation remained in effect until amended or repealed. It lays out the principles and governance structure for the transitional period. It also calls for three central transitional

bodies to be established: (a) an 11-member Sovereignty Council consisting of 5 civilians selected by the FFC, 5 chosen by the TMC, and 1 civilian chosen by agreement between the TMC and FFC; (b) an interim 20-member Cabinet headed by a Prime Minister, selected by the FCC and appointed by the Sovereignty Council; (c) a 300-member Transitional Legislative Council, at least 40 per cent of whom are women. On 21 August 2019, the Prime Minister and the Sovereignty Council were inaugurated into office, followed by the appointment of the Cabinet on 8 September 2019.

Although the Transitional Legislative Council was to be formed and begin to exercise its duties within 90 days of the signing of the Constitutional Charter, its formation was deferred by the Juba peace declaration signed on 11 September 2019 between the Sovereignty Council and the armed groups in Juba (Dabanga 2019). Articles 7(2) and 68(2) of the Charter stipulate that establishing comprehensive peace should be a priority during the first six months of the transition and should start within one month after the formation of the Peace Commission. However, considering the magnitude of issues to be covered by the peace negotiations (article 69 lists more than 14, encompassing civil, political, and socio-economic matters), the time needed to form the Peace Commission, and fragmentation among the armed groups, many were sceptical about the envisioned timeline. A peace agreement was finally signed between the transitional government and some armed and unarmed groups on 3 October 2020 (Al Jazeera 2020). Unfortunately, two of the most crucial armed groups that control territories inside Sudan—the Sudan People's Liberation Movement-North Abdel Aziz al-Hilu faction; and the Sudan Liberation Movement Abdul Wahid al-Nur faction—remain outside the 2020 Juba Peace Agreement.

The Agreement seeks fair representation of the armed groups within the government, integration into the country's national security forces, justice and reconciliation, equitable resource and land allocation, and the return of IDPs and refugees. On 18 October 2020, in a joint session of the Sovereignty Council and Cabinet (Joint Council), constitutional amendments were passed to integrate the Juba Peace Agreement into the Constitutional Charter. (Pending formation of the Transitional Legislative Council, the Joint Council acts as an alternative legislative council per article 25(3) of the Charter.) These amendments include:

- (1) increasing membership of the Sovereignty Council by three seats to be nominated by signatories to the peace agreement;
- (2) granting signatories to the peace agreement the power to nominate 25 per cent of the Cabinet seats;
- (3) allocating 75 seats in the yet-to-be-formed Legislative Council to be nominated by signatories to the peace agreement;
- (4) resetting the 39-month transitional period to begin from the date of signing the Juba Peace Agreement; and
- (5) exempting signatories to the peace agreement from article 20 of the Constitutional Charter, thus allowing them to run for office in future elections (subject to resignation from current government positions six months in advance of the election).

On 4 February 2021—as per the first of these items—the Sovereignty Council was expanded to include three signatories to the Juba Peace Agreement. A new Cabinet representing a broad coalition of civilians, military, and armed groups was also formed. It consists of 26 Ministers, an increase of 8 members over the previous Cabinet.

Many considered the peace deal to be a power grab by the armed groups and an undue focus by the transitional government on Darfur and the Two Areas (South Kordofan and the Blue Nile) while neglecting other impoverished and war-torn regions. Some believe the peace agreement failed to address inter-communal violence and tribal competition over declining natural resources (Human Rights Watch 2020), and it places a substantial financial burden on the central transitional government that might be impossible to meet given the current economic crisis (Gallopín 2020). Others fear that it inflates the military and sets up the prospect for a political alliance between the armed groups and Sudanese security forces, which could further sideline the government's civilian Cabinet and threaten the transitional reform agenda (ICG 2021). More fundamentally, some legal experts argue that the Joint Council lacks a legal mandate to amend the Charter and erred by giving the peace agreement precedence over the Constitution (Sudan News 2020).

While political transitions are never linear and a fragmented political landscape with competing interests is not unusual, decisions made by the transitional government will crucially affect how the democratic transformation is perceived. To foster public buy-in and trust, the transitional government should consider adhering to commitments made in the Constitutional Charter and ensure the rights of those affected by the conflict or injustice are fully upheld and not compromised by political pressure or the timetable of the transitional period. Furthermore, the transitional government must give proper time and attention to adopting and creating the legal framework, institutions, and strategy necessary to integrate accountability, transitional justice, and representation of marginalized groups into the peace process (SOAS/Redress 2020). Embracing a highly participatory approach to peacebuilding centring around engaging the whole spectrum of civil society, stakeholders, victims, communities, groups and voices, and not only armed groups' elites, is critical. More pragmatically, it must continue to mobilize donors' funding support (estimated to be in the billions) to meet its obligations under the peace agreement.

Concerns have also been raised about the government's lack of attention to missed milestones envisioned in the Constitutional Charter, particularly the formation of the Transitional Legislative Council, the Constitutional Court, and other critical bodies, including the elections commission and the commission responsible for the preparations for the drafting of the country's permanent constitution, and holding of the national constitutional conference (Mirghani 2021). Two years after the revolution, Sudan's governing system still lacks proper legislative and judicial oversight to prevent waste, fraud and abuse, and protect civil liberties and human rights. Without transparency and the presence of a system of governance that relies on a series of checks and balances, there can be no accountability for government abuses and no way to ensure that the government's actions reflect the people's will and live up to the aspiration of the revolution. Therefore, the transitional government should consider finalizing the political negotiations delaying these critical public institutions; otherwise, it risks a decline in its political legitimacy and a slip in the transition timeline.

The Constitutional Charter tasks the state institutions with drafting a permanent constitution and holding a national constitutional conference before the end of the transitional period (articles 8(9) and 8(10)), a process that is very complicated and requires time, resources, political commitment, and extensive planning. The Charter is silent on the scope, procedures, and rules of the constitutional drafting process and the makeup of the institutions responsible for it. It is unclear whether the process will entail drafting an entirely new constitution or only a substantial revision and reform of the 2005 Interim Constitution. It is also uncertain whether the new permanent constitution will be put to a referendum or declared by decree. It appears that all of these matters are yet to be debated by the political factions represented in the transitional government. The legal and regulatory framework necessary for drafting, deliberating upon, and rectifying the permanent constitution must be enacted urgently to allow sufficient time for these processes to be comprehensive and inclusive. Following its adoption and ahead of any future elections, swift reforms will then be essential to bring the legal electoral framework into conformity with the permanent constitution.

The transitional government is also under extreme pressure to embark on legal, economic, and security sector reforms as mandated by the Constitutional Charter and the aspirations of the popular uprising. Much of the Cabinet's attention since its formation in September 2019 was devoted to the country's struggling economy—particularly strengthening the financial sector—and improving governance and transparency. The Cabinet has successfully removed Sudan from the list of states harbouring terrorism, paving the way for lifting 30 years of economic sanctions and ending the country's isolation from the international financial system.²

On 29 June 2021, the World Bank and International Monetary Fund approved Sudan's eligibility for debt relief under the Enhanced Heavily Indebted Poor Countries (HIPC) Initiative

2 On 14 December 2020 the US Government announced Sudan's removal from the list of state sponsors of terrorism following a commitment by Sudan's transitional government in October 2020 to pay USD 335 million to the victims of the 1998 US embassy bombings in Kenya and Tanzania, victims of the USS *Co/e* attack, and the family of murdered United States Agency for International Development (USAID) employee John Granville.

(IMF 2021) and commended the government for implementing policies focusing on fiscal sustainability and exchange rate flexibility, and expanding the social safety net (EU 2021). The HIPC reduced the country's overall debt from about USD 56 billion to USD 28 billion and cleared Sudan's arrears to the World Bank, African Development Bank, and IMF (USD 1.1 billion; 400 million; and 1.4 billion, respectively). The country debt is expected to drop to USD 6 billion by June 2024 if the government continues its steadfast commitment to economic reform. For its part, the EU and eight of its member states (Finland, France, Germany, Ireland, Italy, the Netherlands, Spain, and Sweden) pledged EUR 305 million in support of a Sudan Family Support Programme aimed at mitigating the adverse effects of economic reform measures for vulnerable families.

However, the Cabinet has faced fierce criticism over some of these policies, particularly its decision to lift fuel subsidies and devalue its currency (AP News 2020). Many believed that without the necessary cash reserves in the central bank, lifting subsidies would lead to soaring inflation and more street demonstrations (Mail and Guardian 2020). Unfortunately, financial aid pledged by Western and Arab countries in support of economic reforms at the Sudan Partnership Conference held on 23 June 2020 fell short of what is needed to rescue the country's plunging economy (Arab Weekly 2020).

Others also feel the transitional government cannot achieve economic reform without complete control of the market, citing many sectors of the economy that remain in the hands of elements of the previous regime and some controlled by the current security forces (ICG 2020). The law dismantling the former regime passed on 28 November 2019 establishes a committee responsible for dissolving the former ruling National Congress Party, confiscating its property and assets, and recovering looted resources (Al Jazeera 2019). But doing so will take time, could be polarizing, and may undermine reconciliation if not founded on due processes that are fair, equitable, and rights-based (UN 2020).

Each step in Sudan's transitional process (peacebuilding, transitional justice, security sector reform, constitution-building, legal reform, etc.) introduces a degree of vulnerability. A deadlock

in one transition area can stall overall progress and derail democratic transformation. Likewise, if the rule of law is weak, such that the Constitutional Charter is selectively applied or changed unilaterally, this will undermine the constitutional order (Vasylchenko 2016). Therefore, the transitional government must uphold its commitment to carry out its constitutional mandate, including establishing the remaining branches and organs of government. Urgent financial and technical support from various international actors, including foreign governments, multilateral organizations, and international NGOs, is equally necessary to help the transitional government successfully manage the many formidable challenges of the transition. A commitment from foreign governments to prevent more weapons from reaching the hands of armed groups is also critical in stopping such groups from expanding their base, saving the country from a descent into chaos should the peacebuilding process stall or the transitional government collapse.³

3 In a letter dated 14 January 2020 from the Panel of Experts on Sudan, addressed to the President of the Security Council, they recommended: (1) supporting cooperation between Sudan and regional states, including enhancing joint border forces with a focus on the prevention of arms and human trafficking; and (2) urging the Libyan warring factions to stop cooperating with the Darfuri armed groups and providing them with financing and military equipment (see United Nations, Letter dated 14 January 2020 from the Panel of Experts on the Sudan addressed to the President of the Security Council, S/2020/36, <<https://digitallibrary.un.org/record/3847271?ln=en#record-files-collapse-header>>, accessed 6 May 2022).

Chapter 3

ELECTORAL FRAMEWORK

This paper presumes that the ongoing transitional government reform programme may substantially overhaul the exiting electoral legal framework, replacing the Constitution and most applicable electoral laws before the next elections. Therefore, this review aims to assist election stakeholders in drawing lessons from the technical and legal deficiencies of the current legal framework to ensure future electoral processes do not repeat past mistakes.

The review covers a broad range of laws and regulations essential for free and fair electoral processes, effective electoral administration, and public confidence in the election results (see ACE Project n.d.a). It assesses relevant provisions of the Constitution and laws regulating elections administration, political parties, civil society organizations, the media, and criminal and administrative rules. It also covers administrative decrees and secondary legislation regulating aspects of the election process.

3.1 THE CONSTITUTION

The August 2019 Constitutional Charter proclaimed in the wake of the power-sharing deal signed a month earlier (between the TMC and FCC) lays out the principles and governance structure for the transitional period. It provides for a politically inclusive governance system founded on protecting human rights and fundamental freedoms, the rule of law, justice, equality, and

diversity (Sudan 2019: articles 4–6). The Charter recognizes that the people's will is the basis for the government's authority; outlines the nature of the sovereign state; delineates the powers and duties of the branches of government; establishes the transitional government's mandate; and details citizens' fundamental rights and obligations (articles 4–10).

In Chapter 14, the Constitutional Charter entrenches an extensive Bill of Rights that strengthens civil and political rights relevant to electoral processes (articles 43–62) and gives special attention to women, youth, children, minorities, and marginalized groups. Article 67(k) commits the state to ensuring and protecting the rights of IDPs and refugees to participate in general elections and the national constitutional conference. More generally, the Charter compels the state to protect, promote, and guarantee these rights without discrimination based on race, religion, culture, sex, colour, gender, social or economic status, political opinion, disability, regional affiliation, or any other basis (article 4 (1)). It also guarantees fundamental freedoms and political rights, such as the freedom of speech, assembly, association, movement, and press; these rights and liberties shall not be suspended, limited, or excluded except by law.

Contrary to the 2005 Interim Constitution, the Charter does not explicitly mention the right to elect and be elected in free, fair, and regular elections based on equal and universal suffrage and the free expression of the electorate's will (see European Commission 2008). Also, it does not include any mention of universal standards and best practices for free and fair elections, such as secret ballots, freedom from violence, intimidation, corruption or improper influence, conducted by an independent and transparent body, and administered in an impartial neutral, efficient, accurate and accountable manner. This omission ignored the premise that the current transitional constitution is the backdrop and normative reference for all electoral operations, planning, and preparations preceding the adoption of a new electoral legal framework. Guaranteeing these rights and norms is essential for these processes' efficacy, efficiency, and fairness. Also, it would count as a firm pledge to the young generation who struggled to instil democratic governance that the transitional leadership is committed to moving the country towards genuine democracy characterized by a multiparty system, equal suffrage,

and periodic, free and fair elections guaranteed by law (see UN 1996, 2014).

Despite the absence of these explicit guarantees, electoral rights are still protected by the broad scope of article 59 of the Constitutional Charter, which guarantees public and political participation. Further, electoral rights are also protected by Sudan's obligation to meet its commitments under the relevant universal and regional human rights treaties, covenants, and instruments it has ratified. Article 42(2) of the Charter classifies universal and regional human rights instruments ratified by the state as an integral part of Sudan's legal framework with the same level of authority as the Constitution and enforceable immediately upon ratification. The question that remains to be answered is whether the Constitutional Court will be willing in practice to invoke direct claims for a right protected by Sudan's universal and regional obligations. For example, it has been reluctant in the past to apply article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) to embrace the right to access information held by public bodies (see Constitutional Court 2011).

As a member of the United Nations, Sudan is subject to the Universal Declaration on Human Rights. It has also ratified and acceded to the following international and regional treaties, covenants, and instruments related to human rights and elections:

- the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)—acceded to 21 March 1977;
- the African Charter on Human and Peoples' Rights (ACHPR)—ratified on 18 February 1986;
- the International Covenant on Civil and Political Rights (ICCPR)—acceded to 18 March 1986;
- the Cairo Declaration on Human Rights in Islam (CDHRI)—acceded to 5 August 1990;⁴

4 CDHRI is a non-binding document and contains no specific mention of elections. However, it offers a relevant political commitment by the member states of the Organization of the Islamic Conference (OIC) under article 23b, which states: 'Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs' (OIC 1990).

- the African Union Declaration on the Principles Governing Democratic Elections in Africa—acceded to in 2002;
- the Arab Charter on Human Rights (ACHR)—ratified on 21 July 2005;⁵
- the Convention on the Rights of Persons with Disabilities (CRPD)—ratified on 24 April 2009;
- the First Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa—acceded to 30 June 2008; and
- the African Charter on Democracy, Elections and Governance (ACDEG)—ratified on 19 June 2013.

Sudan has not yet ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to bring its legal framework into compliance with international standards regarding gender equality. Nevertheless, the principle of promoting gender equality is entrenched in the Constitutional Charter, underlining the commitment of its political negotiators to women's full participation as equal partners in Sudan's development. For instance, under article 49(1), the Charter calls on the state to eliminate discrimination against women and ensure their rights as stipulated in international declarations and conventions. It also affirms the state's duty to guarantee women's equal civil, political, social, cultural, and economic rights (article 49(2)).

The Charter emphasizes the state's obligation to ensure that women's rights are promoted, realized, and protected, including using special measures to accelerate de facto equality between men and women to enable them to enjoy all their human rights (article 49(3)). It further stipulates that women must hold 40 per cent of the Transitional Legislative Council's seats (article 7 (7)). Additionally, the Charter calls on state institutions to take concrete steps to ensure women's full participation in the peace process and eliminate all forms of discrimination and gender-

5 ACHR is a non-binding political commitment entered into by most members of League of Arab States on 23 May 2004 to protect citizens' fundamental freedoms and political rights. However, it provides a clear basis for identifying the relevant standards for elections and public participation within the Middle East and North Africa region (UN 2004a).

based violence against them. Article 67(c) requires the state to implement UN Security Council Resolution 1325 on women, peace, and security—for which Sudan adopted a national action plan in June 2020—and relevant African Union resolutions at all levels of the peace process. However, the transitional government is yet to take concrete actions towards establishing the Commission for Women and Gender Equality, as stipulated in article 39(4)(g) of the Charter.

The transitional government continues to demonstrate its commitment to enhancing and protecting human rights. Several positive legal reforms were made, such as repealing the public order law, abolishing apostasy as a criminal offence, prohibiting the death penalty for children, ending practices endangering women's physical and psychological development, and amending the male guardian law. Despite these positive developments, the transitional government has failed in specific incidents to take adequate measures to prevent human rights violations; investigate state officials and third parties; provide victims with an effective remedy; and hold perpetrators to account (Amnesty International n.d.). For example, in Darfur, South Kordofan, and Eastern Sudan, inter-communal violence has continued and resulted in unlawful killings, sexual violence, torture, other ill-treatment, property destruction, and burning and looting of villages (Human Rights Watch 2020). Excessive force, arbitrary detention, extra-judicial killing, and human rights abuses committed by security forces have been reported as well (UN 2020). Furthermore, the National Committee of Inquiry established to investigate the killing of protesters on 3 June 2019 has not concluded its work, adding to the list of failed commitments. In addition, the transitional government is yet to meet its obligation to surrender former President Omar al-Bashir and elements of his regime to the International Criminal Court on charges related to war crimes, crimes against humanity, and genocide in Darfur (Dabanga 2020).

The transitional government must take the necessary measures to protect citizens' rights and liberties and prevent any abuses that may influence public trust, fairness, and openness of electoral and other transitional processes. Instilling public confidence in the democratic transformation begins by meeting expectations and adhering to norms created to usher in a

functional democratic government. The transitional government must also consider reviewing and amending repressive legislation and regulations that infringe on speech, association, and press freedoms, such as the National Security Act 2010, Access to Information Act 2015, Press and Printing Act 2009, Voluntary and Humanitarian Work Act 2006, and Criminal Act 1991 (see Amnesty International 2015). These laws, which impose restrictions on fundamental freedoms in the interests of national security and public order, contain loosely defined terms for exemptions levied against these freedoms and provide no recourse or remedies for violations or denial of these freedoms. (The following section provides further details on the negative aspects of current legislation.)

3.2 OTHER NATIONAL LEGISLATION

The Constitutional Charter stipulates that all existing laws, including those regulating elections administration, political parties, civil society organizations, the media, and criminal and administrative rules, will remain in effect and ultimately apply to future electoral processes unless amended or repealed (article 2(1)). It further asserts that existing state agencies, including the National Elections Commission (NEC), will remain in office and carry out their functions and mandates unless dissolved, abolished, or reconstituted by any subsequent measure (article 73).

This section will review national laws relevant to the electoral process to assess whether they: (a) provide for free and fair electoral processes per the relevant and applicable international standards; and (b) include guarantees for the free enjoyment of fundamental freedoms and political rights. The assessment will make recommendations aimed at enhancing the electoral processes' efficiency, transparency, and integrity as necessary.

The National Elections Act

The National Elections Act 2008 (NEA) provides the legislative and regulatory basis for the conduct of the referendum on the new permanent constitution and future elections unless amended or repealed (Ministry of Justice 2008). The NEA will require

revision and modifications to comply with the new permanent constitution ahead of future electoral processes.

The NEA lays a solid foundation for credible electoral processes in its present form and is compliant with most international standards. It covers most aspects of the electoral process and provides for the appointment, composition, term, and mandates of the elections commission; voter eligibility and registration; electoral systems, boundary delimitation, candidate and political party nominations; campaigning and campaign finance; voting and vote counting procedures; and electoral offences. However, observers of the Sudan 2010 elections noted some gaps in the NEA's legal framework. They offered recommendations that warrant the attention of the relevant authorities ahead of future electoral processes. These recommendations—captured later in this paper in Table 1—focus on enhancing the efficiency of the electoral process and the independence, impartiality, and transparency of the elections commission.

The transitional government should be conscious that last-minute changes in the electoral legal framework or delays in adopting the necessary procedures and regulations could undermine the electoral process. An electoral framework established well in advance of electoral events removes legal ambiguity and enhances efficiency and transparency: international standards and best practices recommend a lead-time of no less than one year. Late amendments to the electoral legislation limit the time available for electoral preparations, including training and voter education, making it challenging to apply the electoral legislation properly and uniformly (see Venice Commission 2018). Equally important, the transitional government must ensure the implemented reforms enjoy broad support and confidence among the electoral stakeholders by allowing for an open and inclusive reform process. In close coordination with other political actors, the transitional government should consider setting up and releasing a timeline for the transitional electoral processes as soon as possible. Publicly communicating the roadmap for elections and other milestones of the democratic transition will allow stakeholders and public institutions to prepare well in advance.

The Constitutional Charter envisages a new elections commission appointed by the Sovereignty Council in consultation with the

Cabinet, the composition and mandate of which will be defined by law (article 29(3)(d)). It also sets the requirements to be met by candidates for membership on the commission; however, it is silent on the nomination process and mechanisms for it (articles 39(1) and (2)). Under international law, to combat corruption, states must endeavour to adopt, maintain, and strengthen systems for recruiting and hiring civil servants and other non-elected public officials. These systems must be based on principles of efficiency, transparency, and objective criteria such as merit, equity, and aptitude and must include adequate procedures for selecting individuals for public positions (UN 2004b: article 7(1)). Hence, the new legislation defining the composition and makeup of the elections commission must ensure proper procedures for the nomination and selection of the commissioners. Also, the transitional government should consider launching a consultative nomination process to provide a more inclusive representation of Sudan's society and political spectrum in the commission's makeup. Lengthy political negotiations or lack of consensus on the commission's makeup could hamper and delay its formation.

To date, the transitional government has made no progress towards fulfilling its constitutional mandates on electoral administration. For reasons already outlined, it should be mindful that political and electoral processes take time to address—and require immense resources and experience within the public institutions in charge. Unfortunately, delaying the establishment of the elections commission and other public bodies responsible for aspects of the electoral process and reforms, including the Transitional Legislative Council and the Constitutional Court, will further hinder the transitional government's ability to meet its constitutional mandate. This delay risks a decline in its political legitimacy and a slip in the transition timeline.

The current NEC formed under the NEA does not enjoy broad confidence among election stakeholders; many believe remnants of the former regime still exert considerable control over its operations. Also, some claim the NEC has failed to demonstrate functional independence from the executive branch of the government in the past, leading to widespread public demand to dismantle it completely. Undoubtedly, an EMB's effectiveness, independence, impartiality, and professionalism are crucial to achieving genuine electoral processes and building the necessary

confidence in their integrity. Nonetheless, consideration should also be given to the experience needed to plan and deliver all facets of electoral operations and the time required by personnel to build such expertise. Depleting the elections commission of its institutional memory and experienced staff in advance of critical transitional processes could endanger its capacity. The decision to retain or hire key personnel should be made sufficiently in advance of electoral events to allow for proper orientation and training.

The Political Parties Act

The rights of political parties to free association and peaceful assembly are accorded protection in the Charter under article 58(1). Responsibility is placed on the transitional government to establish adequate mechanisms and procedures to ensure that these freedoms are enjoyed in practice and not subjected to undue restrictions. The Charter further mandates that any restrictions imposed on these freedoms must have a formal basis in law and must be necessary for a democratic society (article 58(2)). Legitimate grounds for restricting these freedoms are prescribed in universal and regional instruments ratified by Sudan; therefore, ordinary laws regulating these freedoms must also adhere to those best practices.

The Political Parties Act 2007 (PPA) provides the legal framework for registering and regulating political parties and organizations (Ministry of Justice 2007). It establishes an independent Political Parties Affairs Council (PPAC) responsible for the registration and financial supervision of political parties and organizations—consisting of one full-time chair and eight part-time members appointed by the President of the Republic and approved by two-thirds of the National Assembly (Sudan 2019: articles 5–7). The PPA lacks provisions regulating the scenarios and the process for removing a PPAC member from office. As such, the appointing authority can terminate a member's service for any reason, including for reasons deemed in the public interest. It is not clear whether two-thirds approval of the National Assembly would be necessary under certain circumstances before a PPAC member can be terminated. Future reforms of the PPA should therefore consider strengthening the independence of the PPAC to act with integrity and without undue external influence by specifying those events where the National Assembly's approval is necessary

before removing a member from office. The independence of the PPAC is at risk if its members can be arbitrarily removed or replaced.

Under the PPA, any individual aged 18 or over can establish a political Parties or become a member. The Act restricts the right of specific categories of individuals from joining or becoming a member of a political Parties while in office, including members of the armed forces and the judiciary, senior civil servants, diplomats, and legal advisors at the Ministry of Justice. The Act is silent on the objective and the rationale of restricting the political activities of these individuals, even though, in practice, the restriction is considered appropriate to safeguard the impartiality and proper functioning of their non-partisan public duties.

Articles 12–19 of the PPA provide a substantive list of conditions and procedural steps necessary to register a political Parties. For example, political parties must demonstrate commitment to non-violence, minimum public support through active party membership, transparent and open financial arrangements, and a functioning internal democracy. Before the amendment of article 12(c) of the PPA in 2020, political parties were also required to demonstrate that they have adequate representation of women within the institutional structure of the party, including at the leadership level. However, the condition was abolished by the 2020 amendment in favour of the prevailing view that internal functions of a political Parties should be free from state interference and are best regulated through the party's constitution or voluntary codes of conduct. A recent study conducted by International IDEA revealed that only a few political parties had adopted special internal measures to improve the situation of women, either within their structures or as means to accelerate the full enjoyment of women's political rights (Elkarib 2021).

Under the Act, any decision by the Political Parties Affairs Council to deny registration must be justified and subject to appeal before the courts. Denial of registration by the PPAC on technical grounds, such as an error in submitting required paperwork or documentation, is revokable unless the denied party had the opportunity to correct the error within the timeframe allotted by the law. In addition, a political party cannot be

dissolved, suspended, or barred from political activities except in exceptional circumstances and by a ruling from the Constitutional Court based on a formal petition submitted and signed by two-thirds of PPAC members. These exceptional circumstances are listed in the Charter and include failing to provide for internal democracy, transparent operations, or open membership to all Sudanese citizens regardless of religion, ethnic origin, or place of birth (Sudan 2019: article 58(3)).

As with the NEA, the PPA provides a broadly acceptable legal framework for the registration and regulation of political parties. However, consideration should be given to eliminating the requirement for a PPAC representative to be present at the founding meeting of a party or conference. This requirement risks interference in party affairs, especially if the PPAC is perceived as being not entirely independent from the state. Also, although (as mentioned) the Act provides for judicial review and the right to appeal the PPAC's decisions on party registration, it does not explicitly designate the competent court. This omission might open the door to a conflict of jurisdiction between different courts, jeopardizing the applicant's right to redress: if the appeal ended up before the wrong court, coupled with a lapse of the stipulated two-week timeframe within which an applicant can appeal a PPAC decision (Supreme Court 2014). Future reforms of the PPA or its bylaws should remove this ambiguity and consider extending the period within which the PPAC's decisions can be appealed.

The PPAC is obliged under article 6 of the Political Parties Act to periodically disclose information on its activities and affairs to the National Assembly and make the same available for public inspection. Despite this, the PPAC has failed to consistently maintain the level of transparency required by law. Future reforms should consider imposing a duty on the PPAC to publish all the relevant information the public needs to know about its operations within a specific timeframe.

Article 21(d) of the PPA lists public subsidy as a permitted funding source for political parties' routine activities; however, no guidelines or procedures for accessing and receiving such funding are provided for in the law. (The National Elections Act 2008 under article 67(2)(c) allows the national and state

governments to provide campaign finance funding for political parties and candidates but does not mandate it. To date, no financing or political campaign funding has been provided by the government to any party—see also African Union 2015.) Consideration should be given to amending the PPA to incorporate the legal and regulatory framework for allocating and administering public funding to registered political parties. The law should specify the institution responsible for requesting, distributing, and overseeing the use of these funds. Further, to ensure fairness of the process and a level playing field for all political parties, the law must guarantee equitable distribution of public funds based on fair criteria. The law must also ensure no advantage will be given to incumbents in the distribution of these funds.

Aside from the PPA, freedom of assembly is also regulated by other domestic laws, including the Criminal Act 1991, the Criminal Procedure Act 1991, the Police Act 2008, and National Security Act 2010. At its 2018 concluded observation report, the Human Rights Committee noted severe restrictions on the freedoms of expression, association, and peaceful assembly in Sudan, citing incidents where the National Intelligence and Security Services prevented the public gathering of political parties (OHCHR 2018b). The transitional government is encouraged to review its legislation and practice to ensure that any restrictions on the exercise of freedom of assembly comply strictly with the requirements set out in the ICCPR (Right of Peaceful Assembly n.d.). In particular, it must pay attention to reforming articles 124–129A of the Criminal Procedure Act 1991 (Ministry of Justice n.d.) to ensure that peaceful assemblies are not subject to bans or dispersal. Additionally, consideration should be given to revising provisions granting broad powers of arrest and detention to security forces under the National Security Act 2010 (Ministry of Justice 2010) to ensure conformity with international law.

The transitional government should be aware that the human rights environment prevailing in the period preceding Sudan's upcoming referendum and elections will affect the fairness and effectiveness of these processes and the willingness of the electorates to participate in them. It must, therefore, take all necessary actions to provide unbiased, impartial, and just security during these processes to regain the electorate's confidence and

commitment to the democratic process. Such measures must include applying appropriate sanctions against security personnel who violate the law.

3.3 ELECTION SYSTEM

According to article 9(3) of the Constitutional Charter, the present federal, state, and local government levels will remain until the distribution of authorities and responsibilities between them—and the geographical boundaries—are examined. It is not yet known whether the existing system of decentralized governance will transfer to the new permanent constitution. Regardless, the domestic actors involved in the institutional design process will ultimately have to decide on the system for electing representatives to public office at all levels of government. It is not clear who will lead the design of Sudan's future electoral system if a change is warranted. The transitional government could impose the system design as part of ongoing political and peace negotiations, leave the decision to be part of the broader constitutional drafting process, or assign the decision to the transitional legislature as part of its legal reform agenda. Whichever route is taken, the outcome will profoundly affect the legitimacy of elected institutions and the country's future political trajectory. Therefore, broad and timely consultation among political parties and other electoral stakeholders is strongly advised to ensure consensus on the choice of the electoral system.

Sudan's current electoral system is provided for in the National Elections Act 2008 and its subsequent amendments. While the repealed 2005 Interim Constitution was silent on the voting system for the state and local levels, it stipulated a two-round majoritarian voting system for electing the President of the Republic (article 54). Under this voting system, the presidential candidate receiving 50 per cent of the vote plus one wins the elections. If no candidate receives an absolute majority, then the second round of voting is held between the two highest vote winners. The candidate with the highest votes on this second round is declared elected, regardless of whether s/he won an absolute majority or not. It is hard to predict whether the details

of the electoral system for the different levels of government will be provided for and regulated in the new permanent constitution or left to the NEA. Various competing priorities will eventually determine the type of legislation to fulfil this role, including whether shielding the electoral system from easy alteration is preferred over making its reform more responsive to public opinion and political needs (African Union 2015: 34). Usually, to change an electoral system embedded within a constitutional framework requires the support of a two-thirds majority in parliament. In contrast, incumbents need only a simple majority vote to unilaterally alter electoral systems where they are regulated by an ordinary law (Reynolds et al. 2005).

Electoral stakeholders have several precedents of multiparty elections to draw from when deliberating the future design of Sudan's electoral system, including the 2010 elections. Lessons learned from these elections are essential in assessing the electoral system used at the national, state, and local levels of government. Particularly in terms of how easy or difficult it is for voters to understand, its cost implications, the mechanism used to translate votes cast into electoral results, and its impact on the representation of women and minority groups in elected office.

As mentioned earlier, the 2005 Interim Constitution provided (and hence the NEA provides) a two-round electoral system for electing the President. This system is the most common method used worldwide for the direct elections of presidents. In Africa, the system is used, for example, in Angola, Gambia, Ghana, Kenya, Mozambique, Namibia, Nigeria, Sierra Leone, Tanzania, Uganda, and Zimbabwe. One of the downsides of this system is the considerable pressure it places on election administrators by requiring them to run a second election a short time after the first. The NEA eases this particular pressure by giving the NEC 60 days to plan for a run-off election, increasing the time elapsed between the holding of the first elections and the declaration of the final result. In a highly contested election, especially in deeply divided societies, this delay can lead to instability and uncertainty if or where any of the contesting parties has no incentives to abide by the rules of the democratic processes. Also, this system can sometimes experience a sharp decline in voter turnout between the first and second rounds.

The NEA provides a parallel system for electing all legislative bodies (i.e., national and state legislative assemblies), combining first-past-the-post (FPTP) and proportional representation (PR) systems. Fifty per cent of the legislative assembly seats (i.e., 213 seats in the National Assembly) are elected through FPTP in single-member constituencies; 30 per cent of seats (i.e., 128 seats in the National Assembly) are reserved for women and elected by a closed PR party list on a separate ballot. The remaining 20 per cent of the legislative assembly seats (i.e., 85 seats in the National Assembly) are elected by a closed PR party list, reserved for political parties. As with the women's list, voters cannot here express a preference for any individual candidate; winning candidates are drawn in order of their position on the lists. The NEC decided the minimum level of support that a party needs to gain representation under the PR list system will equal the total number of valid votes cast divided by the number of seats to be filled (NEC 2014: article 48). The largest remainder method is used to calculate the allocation of unfilled seats.

Although the affirmative action quota of 30 per cent under the PR list system makes it more likely for women to win seats in the national and state legislative assemblies, it excludes independent women candidates from competing for these reserved seats. Also, observers of the 2010 elections noted that women were few among the candidates running for either the geographical FPTP constituencies or PR seats beyond the reserved gender quota.

Another disadvantage of the PR list electoral system lies in its complexity. It is difficult for voters to understand and for election administrators to implement. Given the low levels of literacy in Sudan, more voter education and training of poll workers are necessary to administer the PR system correctly and gain support for the results produced (Carter Center 2010). In rural areas, voters tend to show allegiance with candidates from their regions rather than identify with any political parties (Reynolds et al. 2005). Therefore, the system tends to produce weak links between elected legislators and their constituents, especially if the PR list is contested at a national or state level, as in the case of Sudan.

Using a parallel electoral system during an immediate post-transition period may produce a coalition government with insufficient common ground in its vision and ethos. These

'coalitions of convenience' can result in gridlocks and the inability to carry out coherent policies, just at a time when public expectations of the newly elected bodies are high (Reynolds et al. 2005). Another downside of this mixed electoral system is that it cannot guarantee overall proportionality. Popular parties can win a large majority, and small parties may still be shut out of representation despite winning a substantial proportion of the overall votes (ACE Project n.d.b). This possible outcome was evident in Sudan's 2015 national elections, where the National Congress Party won 75 per cent of the 426 seats of the National Assembly (NEC 2015).

3.4 BOUNDARY DELIMITATION

The NEC is mandated to delimit constituencies for the national and state legislative assembly elections using census results. The last national census of the population of Sudan took place in May 2008. Sudan's Census Bureau of Statistics could not complete the census process in several states due to ongoing conflicts, lack of security in some areas, and in others, internally displaced citizens' unwillingness to participate. Therefore, the final results were not comprehensive and were highly contested (see Ahmed 2018, n.d.). The transitional government plans to initiate the country's sixth national population and housing census in the second half of 2021, using computer-assisted personal interviewing and other internationally recognized methods (supported by UN Population Fund and other international agencies). It is unclear whether new population census results will be available for the NEC's next boundary delimitation exercise. The NEA sets the criteria for drawing the geographical boundaries, ensuring that no constituency crosses state boundaries and that the total population of each constituency does not differ by more than 15 per cent of the target population. The NEC is also required to consider other factors such as geography, local administrative boundaries, and population movements.

The NEC is required to publish its review of the boundaries for the geographical constituencies in the Official Gazette and other mass media. The NEC is also obliged to make the same data available for inspection by all electoral stakeholders who

may submit objections or alternative proposals within 30 days. Appeals against the NEC's final decision on the boundaries of the geographical constituencies must be filed before the National Supreme Court within two weeks of publication (NEA article 40).

The NEC decided ahead of the 2010 elections to delegate the delimitation process to its High Committees in the different states. Election observers and technical assessment reports indicate that delegation of responsibility to inexperienced committees, and in the absence of detailed maps, has produced incomplete or inaccurate constituencies. In some cases, territories were left unassigned, and in other instances, demarcated boundaries deviated from the plus or minus population variance (15 per cent) required by the law (DRI and Center for Peace and Development Studies 2009). Unfortunately, the NEC did not have the in-house capacity or means to investigate some of the objections raised by political parties.

The NEC is encouraged to consider centralizing the boundary delimitation process in the future and ensure that it is led by qualified and trained staff. Bringing consistency to how boundaries are demarcated across the country will enhance the election planning and operations processes, particularly the correct allocation of polling stations and voters per constituency. The NEC is also encouraged to allocate enough time for the boundary delimitation process in its elections calendar: it was inadequate to allow only five days to finalize all constituencies after the objection period, for example. The NEC should also seek external expert technical support since it has limited in-house capacity for this critical process.

Overall, the legal framework for the boundary delimitation process is in line with international standards as it seeks to ensure reasonable equality in the weight of each vote. However, the NEC demonstrated a lack of internal capabilities to produce electoral constituencies that meet the legal requirements. The new elections commission must redraw the boundaries of the geographical constituencies once the latest census data is released by mid-2022. Given that the census data may uncover substantial population deviations across constituencies, and considering the transitional government may draw new regional and administrative boundaries (as projected by the Constitutional

Charter), redrawing new geographical constituencies will be a massive and complicated undertaking. Depending on the electoral calendar and availability of funding, and after weighing the risk of introducing a new technology ahead of the upcoming electoral events, the new elections commission should consider utilizing Geographic Information System (GIS) technology in redrawing the geographical constituencies. Using GIS has multiple benefits, including enhancing the efficiency, accuracy, and speed of mapping geographical constituencies. The system provides greater transparency as it allows for easy inspection by electoral stakeholders of the maps and reports produced. It also makes it possible to fulfil legal requirements, such as equal population and consideration of geographic and social factors. Further, the use of the system has proven helpful in assigning eligible voters to the correct voting centre.

It is important to note that proposed amendments to the National Elections Act in 2018 suggested removing the need for the 10-yearly census by adopting a system whereby population statistics are drawn from information recorded in the civil registry. In an ideal situation, a civil registry will cover all the demographic events occurring in a population and ultimately produce vital statistics that can be used for delimitation and voter registration purposes. Under the civil registry, each person is usually assigned a unique national identifying number that enables information across different databases (e.g., birth, death, marriage) to be combined and kept up to date.

However, for the system to be reliable, it must be of high quality and have a low level of missing data and improbable classifications. Equally necessary, the data produced by the register must be timely, i.e., citizens are obligated and can report vital events such as births or deaths immediately after they occur. Unfortunately, in many developing countries such as Sudan, it may take years before the authorities are notified of these important events. Also, for civil registration centres to play this data collection role, they must be physically accessible to a high percentage of the population and equipped to capture and produce reliable data at the geographical constituency level. Travelling long distances to registration centres may exclude thousands of people, particularly women, people with disabilities, and others who cannot travel for other reasons.

Electoral stakeholders and the legislature must carefully assess this proposition before adopting it for the upcoming post-transition elections. The benefits could be undermined or ultimately jeopardized if the civil register is not accurate, comprehensive, inclusive, and accessible or if the populace does not perceive the entity that oversees it to be competent and impartial. More importantly, efforts to increase the reliability of the civil registry in the short term may entail increased resources and responsibility for the relevant state ministries. This change could ultimately make the new elections commission highly dependent on the performance of other state sectors. Hence, the reliability of the civil registry, the time and resources needed to bring it up to standard, and the institutional consequences have to be assessed carefully and factored into the decision-making process.

In any event, the transitional government and the elections commission must be prepared to launch a massive civic and voter education campaign to inform voters and electoral stakeholders of any legal changes and raise awareness about the importance of acquiring a national identification number.

Chapter 4

ELECTION ADMINISTRATION

This section of the assessment provides an overview of how Sudan's current National Elections Commission conducts its affairs and whether it can undertake its statutory obligations without political interference or intimidation. The review will cover the ability of the commission to plan effectively, independently, impartially, and transparently all facets of the electoral processes in accordance with the national laws and international standards for elections. It will also assess the commission's capabilities to adopt proper procedures to safeguard the integrity of its operations, including measures to identify risks and take preventive and corrective actions.

The review notes that a new elections commission will be established under article 39 of the Constitutional Charter, replacing the existing one and possibly changing its structure. (It is unknown whether the yet-to-be-formed elections commission will be permanent or a temporary setup to manage and administer only the post-transition elections.) Therefore, the assessment will primarily aim to identify institutional deficiencies within the current commission that must be addressed by ongoing reform efforts to avoid adversely affecting the administration of the post-transition elections. It will also provide recommendations to enhance the NEC's independence, transparency, impartiality, and integrity.

4.1 STRUCTURE AND COMPOSITION OF THE ELECTION ADMINISTRATION

The Constitutional Charter declares (article 39(1)) that a new elections commission will be established under the relevant provisions of the NEA 2008. Articles 4–8 of the NEA provide for the size, composition, and membership tenure of the elections commission and the process for appointing and removing its members. The Charter states members of the elections commission will be drawn from candidates known to be independent, impartial and competent, and to hold the necessary education and elections experience. It excludes from consideration individuals who served in senior and constitutional positions during the 30-year tenure of the former regime (articles 39(2)(a) and (c)). The Charter does not refer to whether any special consideration will be given to the representation of women and other social groups in the composition of the elections commission. However, this reference is made under article 6(1) of the NEA.

The Constitutional Charter further states that the Sovereignty Council will appoint the head and members of the elections commission after consultation with the Cabinet (article 39(3)). According to article 6(1) of the NEA, two-thirds of the national legislature must approve the appointment of the commissioners. Unless the Transitional Legislative Council is in session, the confirmation of the new commissioners can be made in a joint meeting of the Sovereignty Council and the Cabinet by two-thirds of their members (NEA article 25(3)).

It is unlikely that the new commissioners will be selected based on a publicly open, transparent, and competitive process. The process will probably aim to balance the interests of the different forces represented within the transitional government. The political actors involved in the selection process must ensure that the political balance in the commission membership does not take priority over merit, qualifications, and the other criteria provided for in the Constitutional Charter and the NEA. Article 6 (2) of the NEA lists the criteria for selecting the commissioners, including non-affiliation with any political party. Stakeholders in the selection process are also encouraged to ensure a more inclusive representation of the various components of Sudanese

society in the composition of the elections commission, particularly women.

As noted earlier, the formation of the new elections commission should be made well in advance of any electoral events to allow for adequate planning and preparation. Also, as observed previously, it might be beneficial to retain experienced key staff of the existing NEC and consider some continuity in the membership of the present commissioners if they have not reached the statutory serving limit. According to article 6(3) of the NEA, the commissioners can only serve for a six-year term renewable once. Electoral leadership training might be necessary to strengthen the capacity of the commissioners once a new elections commission is in place and depending on the level of combined expertise and skills present within it. Given the complexity of the transition's political environment, the capacity-building programme must cover strategies to manage with integrity the many challenges and crises that are likely to occur in the transitional context, including time pressure, partisan politics, political uncertainty, delayed reforms, or technology failure.

Under article 73 of the Constitutional Charter, the sitting NEC will remain in office until dismissed, changed, or reformed. Established per article 141 of the 2005 Interim Constitution and articles 5–6 of the NEA as a financially, administratively and technically independent EMB, it is based in Khartoum and consists of nine commissioners appointed by the President of the Republic and confirmed by two-thirds of the National Assembly. The President also appoints the Chair and Deputy Chair from among the nine confirmed commissioners. The Chair and Deputy Chair are full-time members; the rest are part-time members who meet occasionally (and more frequently than usual during peak periods of the electoral calendar) to deliberate on the NEC's policies and operations. The attendance of more than half of the NEC's members is the statutory quorum required for holding regular meetings. However, only the majority vote of those in attendance is necessary to make decisions (NEA article 11(1–2)).

Whether it is appropriate for the membership of the new elections commission to be full-time or maintain the same ratio of full-time to part-time commissioners depends on the impartiality and level of skills remaining within its Secretariat and the complexity,

schedule, and sequence of future electoral events. Reformers have to weigh the benefit of having full-time members readily available to speed consultation and decision-making processes throughout the electoral cycle against the cost of their services—especially when it may be years before the next electoral event (ACE Project n.d.c).

The current NEC is supported by a General Secretariat responsible for its day-to-day executive, administrative and financial affairs. The Secretariat is headed by a Secretary-General appointed by the Chair of the NEC and approved by two-thirds of its members. The NEC also has offices in all of Sudan's 18 states, led in each case by a five-member High Committee responsible for administering and supervising elections and referendums at the state level. With the approval of the NEC, the High Committee can form temporary sub-committees in each geographical constituency (i.e., each single-member district) or at the level of the election centre to assist in carrying out its functions.

In addition to the High Committees, the NEC appoints a Returning Officer for each state and Elections Officers for each single-member district. These officials commence voter registration and organize polling, votes sorting, and counting—but it is unclear whether Returning Officers report to the High Committees and how their roles and responsibilities differ from those of the High Committees or their sub-committees. Future legal reforms should address this gap to remove any ambiguity or overlap in the functions and duties of the different committees at the state and local levels. Any new organizational structure for the new elections commission should be cost-effective, designate the necessary skilled staff at the appropriate locations and levels, and be subject to effective lines of accountability.

The new elections commission will be operating within a very tight electoral calendar, probably leaving a small window for investment in staff training and development to improve the NEC's operational effectiveness. Therefore, it would be wise for the commission to fully assess its immediate staffing needs, identifying competency gaps and opportunities for staff professional development. Adequate advance training for all election officials is imperative. Whether cascade or mobile team training methods are adopted, attention should be given to the

timing and quality of the training and information that reaches poll workers at the field level. Experience has shown that such training is most effective when enough time is given for implementation and it is designed to concentrate on specific technical processes. Simulations and good-quality training materials such as manuals, checklists, instructions, audiovisual aids, and rigorous evaluation are proven to be practical tools in this regard.

4.2 INSTITUTIONAL AND FUNCTIONAL INDEPENDENCE OF THE ELECTION ADMINISTRATION

As mentioned, members of the NEC are appointed for a term of six years, renewable once. However, upon receipt of a written report from the NEC Chair or Deputy Chair, the President may remove from office any commissioner convicted of a crime involving honesty or wrongful behavior or who has failed to attend five consecutive ordinary meetings without permission or an acceptable excuse. The President can also remove any commissioner, including the Chair and Deputy Chair, from office if found to be politically affiliated or incompetent by a committee of judges. The latter is formed from Supreme Court judges, based on a request from the NEC Chair or the Deputy Chair supported by a two-thirds majority of the NEC membership (NEA article 8(2)). In this way, judicial review protects the commissioners from arbitrary removal or replacement, and it provides a framework within which the commissioners can carry out their responsibilities impartially and independently. Article 14 of the NEA also shields commissioners from criminal prosecution so long as their actions are within the scope of their jobs. Future legal reform should make immunity from criminal prosecution removable only by a two-thirds majority of the national legislature instead of resting this power with the executive branch or (as currently) with the President of the Republic. Such an amendment will eliminate political pressure, intimidation, or fear of prosecution by the executive branch.

Under the law, the NEC must undertake its role and responsibilities with complete independence, neutrality, and transparency (NEA article 5). The law left it for the NEC to determine how to publish its decisions; notably, it granted the

NEC the power to exclude certain information from public disclosure if two-thirds of its members approve (NEA article 11 (4)). Opposition groups claim the NEC is not fully transparent in its decision-making nor consistent in providing comprehensive information to all electoral stakeholders on an equal footing. For the new elections commission to refute repeated allegations of partiality made against its predecessor, it should make every effort to ensure easy, prompt, effective, and practical access to all information of public interest. It should consider putting such information in the public domain using web-based communication channels, printed media, or computer-readable format. Consideration also should be given to amending the law to compel the NEC to publish all its decisions, regulatory instruments, instructions, and relevant data on electoral processes. The new elections commission should also strive to meet and regularly consult with electoral stakeholders, hold press conferences, open some of its meetings for stakeholders' attendance (already a requirement under NEA article 10(2)(m)), and limit the scope of its power to withhold information by way of internal written policies.

Furthermore, the commission should adopt a code of conduct for members and staff obligating them to uphold the integrity of electoral processes and to refrain from operating in a manner that conflicts with their responsibility to act transparently, impartially, and neutrally. The code must include realistically enforceable sanctions for breaches of duty, confidentiality, or conflict of interest, such as dismissal from the commission or other disciplinary action.

The primary role and responsibility of the NEC under the law is to ensure and guarantee citizens their political rights to nominate and freely express their will in a secret ballot in every periodic election or referendum. For this purpose, it has a range of functions and powers (see NEA article 10(1–2)). These include administering elections and referendums, preparing the voter register, determining the boundaries of electoral districts, regulating candidate registration and political campaigning, issuing regulations governing the internal functioning of its operations, etc. Missing from the list of functions and powers assigned to the NEC is the responsibility to carry out voter education and information campaigns. Also omitted is a

commitment to train its personnel—and other elections and referendum officials—on their role and responsibilities, as necessary. Further, the NEC's responsibility to coordinate with the state media, police, and other security forces during elections and referendums is also unmentioned. Therefore, it is not clear what level of authority the NEC has over these critical arms of government during electoral events. Granted, the NEC can carry out these activities under its general mandate without explicit terms of reference. However, given the significance of these activities, it is best practice to provide for them in the law.

For example, in past elections, the NEC was reluctant to engage civil society to raise awareness and encourage political participation. Multilateral agencies and other international implementers supporting the NEC during the 2010 national elections tried to fill the gap in the commission's national voter education and information campaign by promoting and funding NGO and civil society organization involvement. Unfortunately, their support came too late and offered too little to make a real contribution to voters' understanding of complex and unfamiliar electoral processes (see Norad 2010; EU 2010a). Therefore, the NEC must regularly engage with all stakeholders at the national and regional levels through all phases of the electoral process. It should consider mobilizing electoral stakeholders' networks and access to communities to expand the reach of its voter education and information campaigns across the country.

Adequate and timely funding of the commission will be critical to the implementation of the anticipated electoral events, that is, to ensure access, equal opportunity, safety, integrity, and neutrality of all electoral processes. Under the current law, the NEC has complete autonomy over its finances and is responsible for preparing its regular budget and those earmarked for conducting specific elections or referendums. The NEC submits its budget annually for the President's approval and inclusion in the general government budget. The Ministry of Finance releases the funds to the NEC once the National Assembly's approval of the government budget is secured. Budget independence places an additional workload on the NEC during electoral events and increases the burden of internal controls to ensure the highest accounting and procurement standards are maintained. Per article 17 of the NEA, the National Audit Bureau or its designee

audits the NEC finances annually and after each electoral event and submits the final audit report for review by the National Assembly. Therefore, the new elections commission must ensure that procurement and compliance policies, accounting systems, staff skills, inventory management, internal and external audit controls, and reporting schemes are suitably robust and adequate to this challenge.

Chapter 5

VOTER REGISTRATION

This section of the assessment provides an overview of the NEC's responsibility to develop and maintain an accurate voter register such that eligible citizens can exercise their right to vote. The review will examine the process of compiling the voter register and whether the law and regulations clearly stipulate the voter registration procedures. It will also address whether the voter register is regularly updated to remain accurate and whether adequate measures are in place to prevent multiple registrations, include newly eligible voters, and remove the names of ineligible or deceased persons. In addition, the review will look at opportunities and remedies available to voters and political parties to effectively challenge any inaccuracy or omission in the voter register. Issues that the new elections commission must address to improve the voter register are identified throughout this section.

5.1 RIGHT TO VOTE

International law clearly illustrates that states should make voter registration and voting open and accessible for all eligible citizens. Article 25(b) of the International Covenant on Civil and Political Rights recognizes that every citizen shall have the right and the opportunity, without unreasonable restrictions, '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. (OHCHR 1966). The UN Committee on Human Rights has stipulated:

States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated, and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting, as well as intimidation or coercion of voters, should be prohibited by penal laws, and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community. (UN 1996: #11)

As mentioned earlier, the right to vote in free, fair, and regular elections is not explicitly guaranteed by the Constitutional Charter. However, electoral rights are protected by Sudan's obligations under international laws and the broad scope of the Charter's article 59, which guarantees the right to political and public participation. The Charter also compels the state to protect, promote, and secure these rights without discrimination based on race, religion, culture, sex, colour, gender, social or economic status, political opinion, disability, regional affiliation, or any other basis (article 4(1)).

The NEA (article 21) warrants the right to register as a voter to every mentally competent Sudanese aged 18 residing within a geographical constituency for at least three months before the end of the registration period. Those becoming 18 years of age after the closing of the registration period and before the election or referendum are not able to vote unless the new elections commission takes extraordinary measures to register them.

The NEA does not restrict or suspend registration by eligible citizens whose rights have been suspended because they have been convicted of a crime. Also, article 22(3) guarantees all eligible voters living abroad the right to register and cast a ballot in non-geographic contests (i.e., referendums, the presidential elections, and the PR list elements of National Assembly elections). Yet undue requirements for registration, such as possession of a Sudanese passport and valid residency in the host country, mean that the law made it very difficult in practice

for eligible citizens living abroad to register, particularly refugees. Future legal reform should remove these excessive and unfair requirements, especially when other forms of identification are allowed for in-country registration. Under international human rights law, conditions and restrictions on direct and indirect political and public participation are permitted only when they are objective, reasonable and non-discriminatory (UN 1996: #3–4).

Under the law (NEA articles 21–22), eligible voters must show proof of identity, eligibility, and residency to be added to the voter register. For the consistent application of the law, the registration regulations must provide a list of acceptable official documents that a voter must present on registration day. In general, these may include, for example, a birth certificate, photo ID, citizenship certificate, driver's licence, national civil registration, or property ownership certificate. The NEA also allows those who lack proper identification documents, especially in remote areas and IDPs camps, to substantiate their identity through witnesses or certification by traditional authorities or local administrative structures, such as the local Popular Committees. While it is encouraging to see a positively inclusive registration process, the integrity and accuracy of the register are likely compromised without setting this method within proper safeguards and parameters.

The NEA clearly states that eligible citizens may only register as voters at one geographical constituency, and the responsibility lies with them to approach the registration officers to get registered. Per article 21(1)(a) of the NEA, the Returning Officer at the state level and Elections Officers in each constituency are responsible for preparing, reviewing, and maintaining the voter register in accordance with regulations issued by the NEC. The NEC has a legal duty to ensure the ease and transparency of the registration process and remove any obstacles that might prevent or discourage voters from registering or updating their records (article 10(2)). Unfortunately, the NEC failed to release necessary registration regulations and guidance during past national voter registration drives. Nor were all registration officers trained in procedures before launching the voter registration process. Further, written rules and regulations on registration or prevention of unlawful or fraudulent registration are currently lacking. For example, by NEA article 22(2)(a), military personnel

and nomads are exempted from meeting the three months' residency requirement; the NEC is required to put in place special procedures to ensure their inclusion in the voter register, but these are unspecified. The regulatory framework is also silent on the process and guidance necessary to include eligible IDPs in the register. To effectively enfranchise these three groups, the new elections commission must issue the proper regulations on time and provide formal guidance and training to registration officers on the relevant processes. The Guiding Principles on Internal Displacement (UN 1998) are a vital resource on this matter.

The NEA and the NEC regulations do not specify clearly what personal information and data will be collected and publicly listed on the voter register. However, the voter registration form utilized by registration officers (attachment to: NEC 2014) captures the name, age, sex, and residence address of any person eligible. Future legal reform initiatives should review provisions governing voter registers to ensure the law protects the right to privacy as granted by the Constitutional Charter. The legal framework should ensure voters' information is appropriately collected, stored, used, and released. It should mandate the elections commission to issue policies and acquire the necessary tools to protect voters' data. Also, the regulatory framework should provide the list of personal information the commission is expected to collect, for example, surname, date of birth, voting domicile.

5.2 REGISTRATION PROCEDURES

The NEC is required by article 21(2) to review the voter register three months before an election or referendum. Periodic review of the voter register shortly before an electoral event can be labour-intensive and prone to disruptions: anything from severe weather events to civil unrest to conflict. It also requires highly trained staff, vast financial resources, and adequate infrastructure. Given that voter lists are reviewed and developed quickly under this type of update, there is a greater chance of data entry errors which could jeopardize the accuracy of the register. Therefore, consideration should be given to enhancing the reliability of the data-capturing system. Also, targeted voter awareness and education campaigns are essential for a short-term registration

drive to be successful. The new elections commission should expand its registration initiatives to include television stations, radio, newspapers, social media sites, and mobilization of civil society at the grassroots such as women's groups, minority organizations, and youth representatives. The commission must take necessary steps to ensure that the rights of persons with disabilities and people with reduced mobility or limited freedom of movement are considered in voter registration planning and implementation.

By law, the NEC must make the preliminary voter lists publicly available to allow voters reasonable time to correct their data or request addition or deletion from the list. Once the NEC concludes its review and publishes the updated lists, voters can object in writing about their or anyone else's registration within seven days of publication (NEA article 24(1)). At this stage, voters can report errors in their registration information; for instance, if their details are recorded incorrectly or they are not registered but should be. Also, they can request the removal of the name of someone who has died or does not reside within the geographical constituency. A committee headed by a judge and appointed by the Returning Officer in each geographical constituency receives all complaints concerning the accuracy of the voter lists. The committee has five days to decide on the objection request (NEA article 24(2)). This window of opportunity for review is very short, given that disqualified individuals have to be summoned and allowed to prove their eligibility to stay registered. Future legal reforms should consider extending the complaints review period and permit anyone who has a legal standing beside voters to file a complaint challenging how the voter register is compiled, maintained, and updated, including political parties, candidates, and other stakeholders.

Once the period allowed for claims and objections lapses, the Returning Officer publishes a list containing all voters whose records were corrected and the names of those enlisted for deletion from the register. These voters have 15 days to submit a signed affidavit to the Returning Officer recertifying their right to vote and objecting to corrections or deletions made to their voter registration records (NEA article 24(3)). Decisions issued by the Returning Officer are final, and modifications are submitted

to the NEC for inclusion in the register before the final voter lists are made public. Once the NEC publishes the final voter lists, no voter or any third party can request further changes to the voter register. It is not uncommon for the appeals process to be purely an administrative function left for elections officials to address. However, the responsible personnel and the process must be perceived to be fair, with sufficient opportunities for voters to prove their eligibility to vote; otherwise, consideration should be given to making the decisions of the Returning Officer subject to expedited review through the judicial system. To guarantee respect for fundamental rights and ensure legal integrity, voters must have an effective means of redress against administrative decisions.

Any political party has the right to obtain one photocopy of the final voter lists from the NEC at no cost. Also, the NEC must make the voter register available for review and inspection by anyone upon request and payment of the appropriate fees. The NEA does not specify whether political parties can receive the voter lists electronically or only in print. The NEC regulations should specify the technical specifications for providing parties with copies of the voter lists. Also, future reform of the NEA must prohibit the use of the information contained in the voter lists for any purpose other than registration of voters. It should be an offence to collect, use, or disseminate voters' data for any purpose other than the exercise of voting rights (there is a gap in the current legislation of unlawful actions committed in connection with voter registration: see NEA article 89).

The NEC usually issues a receipt with a unique serial number to each voter after registration. Voters are instructed to keep the slip safe and bring it on polling day with another piece of identification, such as an ID card or passport, to cast a ballot. Unfortunately, these slips will not safeguard the voter registration process if they are easy to forge and inconsistently filled. Also, it would defeat their purpose if too many voters were not instructed to keep and bring them on election day. In the future, the new elections commission should contemplate issuing a more durable and reliable voter identification card suitable for an electorate with a low literacy rate and with good security features to deter fraud. The decision to do so should be based on assessing the feasibility, cost-effectiveness, sustainability, and capabilities

needed to introduce a new type of voter ID card ahead of the next elections. Although voter identification cards can play a crucial role in increasing the electoral process's integrity and legitimacy, they may be costly to produce and update. The technology also requires highly trained staff and significant administrative support and infrastructure to operate, maintain and distribute. It is important to note that, as with all election technologies, upgraded identity cards should only be adopted if they solve problems that might hinder the credibility of the process or the acceptance of results, not as an end in themselves (OHCHR 2018a).

The administrative planning and organization of past voter registration exercises must be thoroughly examined to assess their influence on the existing voter register's efficiency, quality, and credibility. The new elections commission should consider conducting a comprehensive voter registration audit in the pre-electoral period. The audit should cover multiple facets of the process, namely:

- (1) all decisions, regulations, procedures, and guidance pertaining to voter registration;
- (2) voter registration implementation plan and schedules;
- (3) logistics in place to gather, verify, record, and store a large volume of voters' data;
- (4) procurement and dissemination of registration materials and information to registration centres;
- (5) recruitment, training, and remuneration of registration officers;
- (6) technological components and infrastructure of the voter registration process and registry, including the voter identification card;
- (7) claims and objections processes; and
- (8) voter education and information activities.

If time permits, consideration should also be given to conducting a database audit and a statistical field survey (using sampling methods such as 'list to voters' and 'people to list') to test the quality of the voter register.

Chapter 6

POLITICAL PARTIES, CANDIDATES AND CAMPAIGNING

This section will review whether the electoral legal framework provides political parties and candidates with equal treatment and opportunity, without unreasonable restrictions, to compete and campaign. It will assess whether the candidate registration requirements and procedures are provided for in the law and uniformly applied. The review will also evaluate the grounds for rejecting an application to register as a candidate and whether they are based on objective criteria explicitly provided for in the law. In addition, it will examine the avenues available for political parties and candidates to appeal rejections made against their applications to get their names on the ballot. The goal is to ensure the legal framework does not unduly restrict the right to run for office and be elected.

This section will also look at whether campaign regulations promote transparency and require details on the sources of funding and expenditures. The objective here is to examine whether or not the legal framework places any undue restrictions on freedoms of assembly, expression, or association, which can impede contestants' access to the electorate during campaigning.

6.1 RIGHT TO STAND FOR ELECTION

The right to stand for election is an inseparable component of the right to political and public participation protected under article 59 of the Constitutional Charter. Under international law,

any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy.

(UN 1996: #15)

The NEA requires candidates to meet specific requirements to be placed on the ballot for any elections. These requirements vary depending on the type of electoral contest. For example, candidates wishing to stand for the presidential elections should be Sudanese by birth, mentally competent, not less than 40 years old, literate, and not convicted of an offence involving honesty or wrongful behavior (NEA article 41). Presidential candidates also must demonstrate minimum support of 15,000 registered voters from at least two-thirds of the 18 states, with no less than 200 voters from each state (NEA article 42(1)).

Best practices recommend monetary deposits are set at a sufficient level to discourage frivolous parties or independent candidates, but not to be so high as to prevent legitimate parties or independent candidates from obtaining ballot access (see OSCE-ODIHR 2013). In Sudan, presidential candidates must pay a monetary deposit equal to 10,000 Sudanese pounds (SDG; equivalent today to USD 27 given the depression of the SDG) refundable if the candidate secures more than 10 per cent of the valid votes cast in the election or withdraws from the race within the 45 days preceding polling day. Additionally, presidential candidates must submit a certified affidavit of assets and liabilities for the year before nomination to run for elections, including holdings in the candidate's spouse's and children's names (NEA article 43(3–4)).

To register, presidential candidates must use application forms and sworn statements prepared by the NEC. Failure to submit supporting documents or meet any requirements specified in the law is considered grounds for invalidating the candidate's registration request (NEA article 44). It is unclear from the legal framework whether the candidate will be given a chance to

correct any errors or minor shortfalls in their application before the close of the nomination period. Such a guarantee is essential to ensure that candidates' nominations are not rejected on insufficient grounds.

Within 48 hours from the closing of the candidate nomination period, the NEC will publish for public review and objection the names of all individuals applying to appear on the presidential ballot along with their affiliations. Including political parties, the general public has 72 hours to object to or comment on any candidate nominations. The NEC has three days after this objections period to decide whether candidates' applications are compliant with the rules and regulations (NEC 2014: Rule 16 (1–3)). The NEC must then immediately publish a list of accepted and rejected applications, detailing why specific applications have been denied. There is a seven-day period for appealing denied applications before the court, which has seven days to decide on the petition. The NEC will then publish the final list of nominated candidates in the Official Gazette and any media or other venue it deems appropriate. It seems the candidate nomination schedule set by the NEC is very tight, considering that the law allows up to 90 days before election day to finalize the process (NEA article 43(2)).

Candidate nominations rules for local and legislative elections do not differ much from the rules for presidential elections, except with respect to eligibility age, disqualifying criminal records, required minimum voters' support, the value of the monetary deposit, and the period of registration.

Unfortunately, the current regulations and rules issued by the NEC are a mere reiteration of relevant articles in the NEA. As such, the regulatory system fails to achieve its legal objective: a key determinant of quality in the resulting electoral processes. The new elections commission must revise all regulations, rules, guidelines, and forms for reviewing and processing candidate nominations to ensure clear, transparent, and fair processes that guarantee equal opportunity among candidates and are consistent with best practices. Such revisions must provide (among others) the calendar for commencement and closure of the nominations period, specifying when, how and where nomination procedures must be undertaken, and layout the

process of scrutiny and verification of nomination forms and declarations (International IDEA 2002). The regulations should also provide a precise and reasonable method for checking and verifying the signatures of voters supporting candidate nominations to ensure that all candidates, regardless of the type of electoral contest, are exposed to the same level of scrutiny according to clearly stated and objective criteria.

6.2 ELECTION CAMPAIGNS

To help ensure a level playing field and an election that ultimately reflects the will of citizens, candidates and political parties must have equal opportunities to present their campaign. Voters are then better able to make educated and informed decisions on election day. Any restriction on campaigning must be applied equally, consistently, and impartially to all contestants and should not be implemented in a way that limits legitimate opportunities for campaigning (European Commission 2016).

Election campaigning is regulated by the Constitutional Charter, the NEA 2008, and the Political Parties Act 2007. Several human rights guaranteed by the Charter play a direct role in supporting and enabling candidates to campaign freely without unreasonable restrictions, including the freedoms of peaceful assembly and association, opinion and expression, and the rights to information and education. Therefore, discrimination and other barriers to fully enjoying these supporting rights will undermine political parties' and candidates' efforts to access the electorate and put forth their views, platform, and programmes. All contesting parties and candidates should be able to hold meetings, rallies and events and disseminate information and ideas to the voters in any format during the campaign period. At the same time, contestants have a duty to campaign fairly and abide by the campaign rules and regulations, including denouncing violence, intimidation, harassment, or incitement of such acts through hate speech or political rhetoric (NEA articles 65(2–3) and 66(6)).

The NEC is responsible for regulating, supervising, and determining the electoral campaign period and making public the rules governing it (NEA article 64(2)). However, its General Rules

of 2014 did not include any guidelines on election campaigning, even though the NEC has powers to implement and enforce campaign regulations that further define and clarify the law. The legal framework for electoral campaign and finance in its current structure is thus incomplete, lacking the proper legislative and regulatory rules necessary to combat fraud, abuse of power and misuse of state resources, or to promote equality, transparency, and accountability. For example, the current legal framework recognizes the importance of compelling all state institutions and public employees to act impartially and ensure equal opportunity for all candidates and political parties during the electoral campaign (NEA article 65(1); see also Charter articles 43 and 47). Failing to act impartially is classified under the NEA as an illegal act punishable by imprisonment up to two years and not less than six months, a fine, or both. However, the legal framework fails to define actions by public servants that are considered partisan, biased, or restrictive of the contestants' right to equal and peaceful campaigning. Nor does the legal framework specify any administrative sanctions that the NEC can apply independently when campaign regulations are violated without conceding to the judiciary. The NEC's legal mandate is therefore incomplete in its substance and lacks robust enforcement mechanisms.

In recent elections, multiple reports cited interference by security personnel with contestants' peaceful campaigning, by either denying permits to hold rallies, arresting and holding candidates without charge, or dispersing campaign rallies by force (Human Rights Watch 2010). Law enforcement personnel have repeatedly acted with impunity and have not been held accountable for violating the law or abusing their powers. In cases where the courts or public prosecutors are reluctant to cooperate with the elections commission in enforcing campaign regulations, the NEC should consider publicly announcing its findings regarding legal violations or unlawful behaviour by public employees to protect its credibility and independence. The NEC should also consider developing in coordination with the transitional government a country-wide civics (citizenship education) programme, including training on the role of public service and security personnel within a democratic system of governance. The training should be delivered ahead of the upcoming electoral events to raise awareness of elections rules and regulations in general and election campaigns in particular.

To reiterate, effective enforcement is essential to any meaningful system of electoral campaign regulation. Unfortunately, lack of political will in support of strict enforcement can hinder the elections commission's ability to hold electoral offenders accountable for breaking electoral campaign and finance rules despite its responsibility to consistently and impartially enforce the election campaign rules and regulations. The new elections commission must review the current legal framework and identify gaps that must be addressed by new regulations and procedures to protect the right of contestants to peaceful campaigning. To deter non-compliance and enforce the law, the commission should establish a unit responsible for enforcing political campaigning regulations and provide that unit with sufficient authority, training, and resourcing needed to perform its oversight, detection, and enforcement responsibilities.

6.3 CAMPAIGN FINANCE

The NEA provides a set of rules regulating the financing of electoral campaigns. These focus on preventing funding from undesirable sources, addressing transparency through financial reporting and public disclosure, and levelling the playing field by providing free broadcasting and subsidies to contestants.

Under article 67(1), the NEA law restricts candidates and political parties from accepting campaign contributions, donations, or material support from any foreign country or foreign body (also prohibited under the Political Parties Act 2007). Funding by illegal sources can give illegitimate, criminal, or terrorist actors access to the overall political process and hinder reconciliation between warring factions. But this prohibition should not be interpreted to prevent financial contributions from nationals who are merely living abroad.

Private donations and contributions from named individuals, corporations, and domestic NGOs are permitted. However, no anonymous donations or contributions are allowed since political parties and candidates must disclose their funding sources and the nature and amount of their spending within 30 days of the final election or referendum results. The contestants' final campaign

finance report must be audited and meet acceptable accounting practices. Failure to submit the legally required information on time and in the format prescribed by the NEC is considered an electoral offence punishable by a fine to be determined by the competent court, or imprisonment up to two years and not less than six months, or both (NEA article 70(1–2)); also, the PPA requires parties' annual audited accounts to be submitted to the PPAC). The new elections commission must enforce legal funding restrictions and reporting obligations through administrative or judicial processes to deter non-compliance and enhance accountability. The commission should also consider making campaign finance information disclosed by the contestants publicly available. Access to contestants' campaign finance information would increase the general public's confidence in the electoral process and provide sufficient information on how candidates and political parties finance their campaigns.

Sudan's national and state governments are allowed to provide public funding to all candidates and political parties during election campaigning to help enhance the competitiveness of the elections (NEA article 67(2)(c); PPA article 21(d)). However, the electoral legal framework lacks further details on how these subsidies are distributed. Also, it is unclear whether the NEC is expected to oversee the allocated funds. The electoral legal framework must designate the institution responsible for allocating and administering public funding to candidates and political parties during election campaigning. It must provide the necessary guidelines and procedures for accessing and receiving the same, guaranteeing that it will be distributed to electoral contestants on an equitable basis using fair criteria and delivered in a timely manner. Decision-making processes about allocating government subsidies should be transparent, so contestants and the broader public can understand and trust the outcomes. Also, the legal framework must guarantee that no advantage will be given to incumbents in the distribution of public funds for campaign purposes.

Under article 67(3), the NEC can limit electoral campaign expenditures to ensure equal opportunity for the different candidates and political parties. The NEC determines the maximum spending limit by weighing factors such as the size of a particular geographical constituency, the voting population

in the constituency, accessibility of residential areas, and any other factors that could impact the overall costs of the electoral campaign. Spending limits for all electoral races should be indexed for inflation to ensure they stay relevant for subsequent elections (OEDI n.d.).

The law also states that candidates and political parties shall have equal access to public (i.e., publicly owned or funded) media apparatus at no cost. If fees are levied for any media services, they must be reasonable, proportionate to the services rendered, and applied to all political parties and candidates equally and without discrimination (NEA article 69). Public media are expected to be balanced and impartial in their election campaign reporting and not discriminate against any political party or candidate. They would be in breach of duty if some candidates' or parties' programmes were aired at less favourable times than others (article 19).

Under NEA article 66(2), the NEC is expected to issue further rules and guidelines to regulate electoral contestants' access to public media. Unfortunately, the regulatory framework governing such access during election campaigns is still weak and requires serious reform to align with best practices. For example, it should be clearly emphasized that in-kind access to public media is considered a campaign finance contribution. As such, it must be counted by the contestants towards any campaign expenditure ceiling set by the elections commission and duly reported. The regulations should also define how in-kind donations are valued. More importantly, the rules should clarify that the media is not legally liable for unlawful statements made by candidates or party representatives in a broadcast during election campaigns. Additionally, the rules should stipulate that neither the state nor the media may censor the candidate or political party program if it does not include any unlawful statements.

The new elections commission should consider establishing a department responsible for monitoring election broadcasts, allocating time to various political parties and candidates, and receiving and acting upon complaints regarding media access, fairness, and responsibility. Such a department should also have the power to hear and take binding action on complaints concerning broadcast-related violations by the media, political

parties, or candidates, including ordering a correction or reply to be issued. Actions and decisions taken by the elections commission regarding the use of public media by electoral contestants for campaign purposes should be subject to judicial review, which should be carried out on an expedited basis.

Lastly, the use of state resources to favour the campaign of one candidate or political party is another example of where lack of adequate controls and sanctions for misconduct can critically undermine equal opportunities for electoral campaigning. While the NEA prohibits (articles 69 and 96) the use of state resources during electoral campaigns, it fails to define what constitutes an abuse of state resources. Also, the NEC lacks the oversight capabilities and enforcement mechanisms necessary for the effective implementation of the law. Unfortunately, inadequately controlled political finance can be widely exploited for private interests and exert undue influence over politics and political decisions (Check et al. 2019). State institutions, including the new elections commission, are encouraged under article 7(3) of the UN Convention Against Corruption (UN 2004b) to take the necessary measures to enhance transparency in the funding of electoral campaigns and political parties. However, state institutions should bear in mind that political finance regulations are likely to be ineffective at combating corruption if they exist in isolation. They should be placed within a holistic anti-corruption mechanism that deals with lobbying, conflicts of interest, asset disclosure, and other related issues (Hamada and Agrawal 2020).

Chapter 7

ELECTORAL DISPUTE RESOLUTION

Efficient and effective resolution of election disputes is crucial for the overall protection of electoral rights, public confidence in the electoral processes, electoral integrity, conflict prevention, and acceptance of election results (Orozco-Henríquez et al. 2010). Under the ICCPR (article 2.3.b), every person should have access to an effective means of redress against administrative decisions or regulations and the ability to seek judicial review (OHCHR 1966). Electoral complaints and appeal processes must be clear, efficient, transparent, and accessible to the public, including within the election administration, public prosecutors, and courts. Further, these processes must meet international standards and guarantee voters, candidates, political parties, and other electoral stakeholders the following (OSCE-ODIHR 2019):

- (1) the right to file a complaint;
- (2) the right to present evidence in support of the complaint;
- (3) the right to a public and fair hearing on the complaint;
- (4) the right to impartial and transparent proceedings dealing with the complaint;
- (5) the right to an effective and speedy remedy; and
- (6) the right to appeal to an appellate court if a remedy is denied.

This section will review whether the legal framework for electoral complaints and appeals provides adequate procedures and remedies for protecting electoral rights at all stages of the electoral process. The review will inspect whether the procedures for submitting complaints and the jurisdiction of the relevant competent authorities are established in the law. It will further examine whether the procedures provide reasonable timeframes for the submission and resolution of complaints and whether or not they provide opportunities to appeal.

The National Elections Act of 2008 did not provide a separate section on election dispute resolution mechanisms necessary for hearing or adjudicating complaints, challenges, claims, or contests relating to the different stages of the electoral process. Procedures for complaints and appeals are instead mentioned throughout the law at the various stages of the electoral processes. For example, the NEA grants the right to file complaints concerning law violations during essential steps such as registration of voters and candidates, boundary delimitation, campaign finance, and election results. The NEA does not provide legal standing to voters, candidates, and political parties to challenge all irregularities or inaccuracies in the election process. The right to file complaints is limited to the phases directly affecting the voters, candidates, or political parties' rights. Expanding in the law the group of people entitled to file complaints could help to increase the trust in electoral processes, provided safeguards are in place to prevent frivolous complaints aimed at disruption.

Nor does the NEA provide for clear, understandable, and efficient complaints and appeals procedures and how these engage the different levels of authority within the NEC and court system. The NEC's rules, regulations, and instructions on electoral dispute resolution are minimal. The new elections commission must further clarify the provisions of the elections law to enhance the ability of the various competent bodies to deal promptly and uniformly with the different types of complaints that inevitably arise throughout the electoral processes. The rules and regulations must state who exactly can file a complaint, on what basis, to what department or body, how that complaint or appeal will be handled, how the parties to the complaint will be notified, and how the decisions will be enforced, published, and archived.

The commission should also consider updating templates and forms for complaints to include the type of information and supporting documents required to help inform complainants and expedite the review process. However, such standard forms should not be used as a premise for rejecting complaints that do not comply with the form.

Under article 10(2)(j) of the NEA, the NEC must take the necessary action against persons who commit misconduct or electoral offences, including any official or worker, or whenever someone breaches any of the election laws' provisions or regulations. The elections commission demonstrated reluctance in carrying out this mandate in past elections and left many complainants to seek redress directly through the public prosecutors and courts. The NEC lacked sufficient internal capacity to investigate and provide a prompt determination of law violations or complaints. To address law violations effectively, the new commission must better understand its authority under the law and build effective communication with the public prosecutors and the special courts within the established legal boundaries.

Chapter 10 of the NEA lists a slew of election-related violations ranging from corrupt and illegal practices to electoral offences. The law did not define or explain the bases for these three distinct categories of offences. Interestingly enough, the law did not provide separate sanctions or penalties for each type of wrongdoing or criminal offence despite the variation in their nature and seriousness. Instead, the law stated that all offences are punishable by imprisonment of up to two years and not less than six months, a fine, or both. The law imposes no limits on the fines that the court can levy; instead, it is left to the competent court's discretion to determine the appropriate punishment for conduct that has resulted in harm. Giving the court such broad discretionary power may result in offenders receiving different sentencing having committed the same or similar acts. Therefore, the judiciary must issue guidelines to the courts on how to apply the law. Also, the law should specify the maximum fine(s) that can be imposed by the court for an election offence and not leave that for the courts' discretion. Further, the NEA failed to consider an attempt to commit the wrongful acts listed in the law as an offence in itself. This shortcoming should be addressed in future legal reforms.

In summary, there remains considerable room for improvement in the complaints and appeals processes. The new elections commission must give special attention to the following:

- *Right of complaint.* The legal framework should provide an opportunity to file a complaint against decisions, actions, inactions, or inadequate enforcement by elections commissions or any of its High Committees, sub-committees, Returning Officers, or any other registration or election officer.
- *Responsiveness.* The legal framework must provide for a system where disputes can be escalated within the election administration with the opportunity for an appeal to a court. Commission personnel and temporary workers must be equipped with sufficient powers, resources, and tools to be able to respond adequately to challenges and complaints raised before them throughout the electoral cycle.
- *Timelines.* While swift decision-making on electoral complaints is preferable, the timeframe for filing and deciding electoral challenges must be long enough to allow complainants adequate time to prepare and meet legal requirements. It should also guarantee the exercise of the right to defence and provide the competent authority sufficient time for investigation and issue a fully reasoned decision. However, the time limit for deciding on a complaint or adjudicating appeals should not be so long as to render the judgment or remedy ineffective.
- *Legal standing.* The right to appeal to a competent court as the final authority must be considered on all voter registration matters. The Human Rights Committee, General Comment No. 32 (UN 2007) suggests that the elections commission is unlikely to appear impartial to the reasonable observer given its role in the electoral process. Although administrative decisions can play a role in resolving election disputes, in certain circumstances, they cannot be considered sufficient on their own, requiring access to a court of law at some point in proceedings (Carter Center 2009).
- *Election observation.* The legal framework must grant election observers the right to obtain corrective relief when their privileges are revoked or denied by the elections commission.

- *Administrative penalties.* The courts and the elections commission should have penalties at their disposal, provided for in the law, to impose for administrative infractions. These should include, for example, reprimand, suspension, removal, or disqualification of a public employee or electoral official; reduction in public financing; suspension of allotted media time.

Chapter 8

CONCLUSIONS AND RECOMMENDATIONS

Sudan's upcoming elections and possible referendum are at the core of its democratic transition. Providing that sufficient forethought is given to their objective, timing, and possible effects, they can serve as crucial elements in rebuilding a sustainable democratic state. Under no circumstances should the planning for these electoral events be postponed further; rushed processes held without enough public support will derail the transition and aid spoilers and rebel actors. Additionally, the current power-sharing arrangements, while effective in ending stalemates in the short term—by allowing all actors to participate in political decision-making through their presence in transitional authorities—may become an obstacle to democratic consolidation in the long run.

The next elections can be expected to be very competitive, technically challenging, and vehemently opposed by potential losers, making them vulnerable to abuse and fraud. For these future elections to provide the desired legitimacy to the newly elected government, they must be fully trusted by the general public and perceived as fair and genuine. Therefore, a clear, impartial, and enforceable legal framework for electoral and political processes is pivotal for securing electoral integrity in a politically divided country marred by a decade of war. Unfortunately, most of the institutional and legal reforms envisioned by the August 2019 Constitutional Charter are falling behind. A decline in the public confidence in the transitional authorities' ability to meet the terms of the Charter and oversee legal reforms could lead to mistrust, violence, and long-term

political instability. Therefore, it is in the interest of the transitional government to give careful consideration to the risks associated with the legal reforms proposed in this paper and the time needed to pass and implement them. The transitional government should be mindful that the electoral framework must be reformed well ahead of future electoral processes to remove legal ambiguity and enhance efficiency and transparency. Equally important, the transitional government must avoid passing legal reform without an open, transparent, and inclusive consultative process that engages a broad spectrum of electoral stakeholders. It must remove the elites' monopoly over decision-making; otherwise, it risks endangering public trust in the legislative process and its outcomes and increases resistance to reforms.

To avoid further slippage in the transitional timeline, the transitional government must finalize the political negotiations impeding the formation of critical institutions responsible for the electoral processes, including the elections commission, the Transitional Legislative Council, and the Constitutional Court. Furthermore, in the interest of transparency, public understanding, and securing confidence in the transitional phases to come, the transitional government should consider creating and publicizing a roadmap and a timeline for implementing the same. Meeting expectations and adhering to constitutional norms created to usher in a functional democratic government are key considerations in gaining public trust.

Critically, transitioning to democracy involves taking necessary measures to protect citizens' rights and liberties; to prevent abuses that may influence public trust or fairness and openness of electoral and other transitional processes. Therefore, the transitional government must immediately repeal repressive legislation and regulations that infringe on fundamental freedoms and political rights, establish civilian control over the armed forces and militant groups and hold their members accountable for abuses and violations of human rights. Also, it must take concrete steps to build the rule of law and promote justice and accountability, starting by delivering on its constitutional mandate to improve the justice system's independence, impartiality, and integrity (Bishai 2020).

The nature of the upcoming elections makes them vulnerable to a range of security threats against participants, infrastructure, information, and materials.⁶ A secure electoral environment is crucial for ensuring the overall integrity of these processes, and the transitional authorities are the primary stakeholder responsible for enabling a safe exercise of voters' fundamental rights. Different security forces may be tasked with securing certain aspects of these processes, depending on their level, scale, and the prevailing electoral environment. In this context, the transitional government must be mindful that the deployment of security forces that are themselves experiencing or need significant reforms can be detrimental to electoral security, especially if those forces are involved in tribal and communal conflicts.

Lessons learned from past disarmament, demobilization, and reintegration (DDR) programmes in Sudan call for an urgent focus on disarming those with weapons and creating an environment for reconstituting a governing order. Efforts to reintegrate ex-combatants must keep pace with programmes to disarm and demobilize them. Otherwise, the results might be unsatisfactory since disgruntled groups may strive to maintain their shadow economies and transnational networks, continue to terrorize local populations, and undermine confidence in the government's ability to provide security. Equally critical is a firm commitment from foreign governments to prevent human trafficking and the flow of more weapons into the hands of armed groups: to minimize their ability to expand their base and to save the country from the risk of descending into chaos should transitional processes stall.

The depth of Sudan's electoral reforms ultimately depends on the pace and scale of constitutional and institutional reform, a process that can be very complicated, requiring time, resources, political commitment, and extensive planning. Hence, the transitional government is encouraged to consider incremental electoral reform over several electoral cycles rather than a comprehensive overhaul of the electoral framework.

6 In May 2018 the Islamic State suicide bombers targeted the offices of Libya's electoral commission in Tripoli killing at least 12 people (see Raghavan 2018).

In an attempt to support in-country dialogue about electoral legal reform, offered below is a set of technical recommendations on how Sudan's electoral processes can be improved and brought more closely into line with its international commitments and with best practices globally (Table 1). Most of the proposed recommendations call for the adoption of limited amendments to the National Elections Act, coupled with institutional reform before holding future elections. The recommendations assume a swift legislative process that will leave sufficient time for the elections commission to (a) revise its rules and (b) conduct proper staff training and voter education.

Table 1. Recommendations on Sudan's electoral legal framework

No.	Recommendation	Suggested action	Responsible institution	Comments
ELECTORAL LEGAL FRAMEWORK				
1	Immediately establish the Transitional Legislative Council, the Constitutional Court, and critical commissions, including the elections commission and the commission responsible for preparing the draft of the country's permanent constitution and holding the national constitutional conference.	Implement the relevant constitutional provisions, including but not limited to articles 24, 29, 31, and 39 of the Constitutional Charter.	Sovereignty Council and Cabinet	Sudan's governing system still lacks proper legislative and judicial oversight to prevent waste, fraud and abuse and to protect civil liberties and human rights. Without transparency and the presence of a system of governance that relies on a series of checks and balances, there can be no accountability for government abuses and no way to ensure that the government's actions reflect the people's will and live up to the aspiration of the revolution. Therefore, consideration should be given to finalizing the political negotiations delaying these critical public institutions; otherwise, the government risks a decline in its political legitimacy and a slip in the transition timeline.
2	Without further delay, pass the legal framework on the mandate and composition of the new elections commission, including the nomination and selection criteria for appointing its members.	Pass the relevant new legislation.	Legislature [in the absence of the Transitional Legislative Council, the Joint Council of the Sovereignty Council and the Cabinet have legislative powers.]	Under international law, to combat corruption, states must endeavour to adopt, maintain, and strengthen systems for recruiting and hiring civil servants and other non-elected public officials. These systems must be based on principles of efficiency, transparency, and objective criteria such as merit, equity, and aptitude and must include adequate procedures for selecting individuals for public positions. Hence, the new legislation defining the composition and makeup of the elections commission must ensure proper procedures for the nomination and selection of the commissioners. Also, the transitional government should consider launching a consultative process on the makeup of the elections commission and ensure a more inclusive representation of the various components of Sudan's society and political spectrum in the commissioner's membership.

3	Urgently enact the legal and regulatory framework necessary for drafting, deliberating, and rectifying the permanent constitution to allow sufficient time for a comprehensive and inclusive process.	Pass the relevant new legislation.	Legislature	Under articles 8(9) and (10) of the Constitutional Charter, the state institutions must prepare to draft a permanent constitution and hold a national constitutional conference before the end of the transitional period.
4	Create and publicize a transitional roadmap and a timeline for implementing the different phases of the transition.	Uphold all applicable freedoms and rights protected by Chapter 14 of the Constitutional Charter and enforce other relevant constitutional provisions, including but not limited to articles 4(2), 6, 8(1–5), 8(16).	Sovereignty Council and Cabinet	This step should be taken in the interests of transparency, public understanding, and securing confidence in the transitional phases to come.
5	Take adequate measures to prevent human rights violations; investigate state officials and third parties; provide victims with an effective remedy; hold perpetrators to account.	Uphold all applicable freedoms and rights protected by Chapter 14 of the Constitutional Charter and enforce other relevant constitutional provisions, including but not limited to articles 4(2), 6, 8(1–5), 8(16).	Sovereignty Council and Cabinet	The transitional government must take necessary measures to protect citizens' rights and liberties and prevent any abuses that may influence public trust or fairness and openness of electoral and other transitional processes. Instilling public confidence in the democratic transformation begins by meeting expectations and adhering to norms created to usher in a functional democratic government.

6	Review and amend repressive legislation and regulations that infringe on speech, association, assembly, and press freedoms.	Reform the National Security Act 2010, Access to Information Act 2015, Press and Printing Act 2009, Voluntary and Humanitarian Work Act 2006, and Criminal Act 1991.	Legislature	These laws, which impose restrictions on fundamental freedoms in the interests of national security and public order, contain loosely defined terms for exemptions levied against these freedoms and provide no recourse or remedies for violations or denial of these freedoms.
7	Finalize electoral reforms well ahead of the anticipated electoral processes to remove legal ambiguity and enhance efficiency and transparency. Equally important is ensuring the implemented reforms enjoy broad support and confidence among electoral stakeholders by allowing for an open and inclusive reform process.	Sovereignty Council and Cabinet		Last-minute changes in the electoral legal framework or delays in adopting the necessary procedures and regulations could undermine the electoral process. Late amendments to the electoral legislation limit the time available for electoral preparations, including training and voter education, making it challenging to apply the electoral legislation uniformly and adequately. International standards and best practices recommend no less than one-year lead-time.
8	Strengthen the Political Parties Affairs Council (PPAC) to act independently, with integrity, and without undue external influence by explicitly mentioning	Reform the Political Parties Act 2007.	Legislature	The independence of the PPAC is at risk if its members can be arbitrarily removed or replaced.

9	<p>the events where the national legislature's approval is necessary before removing a PPAC member from office.</p>	Amend the Political parties Act 2007.	Legislature	<p>Article 21(d) of the PPA lists public subsidy as a permitted funding source for political parties' routine activities; however, no guidelines or procedures for accessing and receiving such funding are provided for in the law.</p>
9	<p>Incorporate a legal framework for allocating and administering public funding to registered political parties, and designate the institution responsible for requesting, distributing, and overseeing the use of these funds.</p>	Reform the National Elections Act of 2008.	Legislature	<p>Domestic actors involved in the government institutional design process will ultimately have to decide on the electoral system for electing representatives of public offices at all levels of government. Whichever route future reform of the electoral system takes, it must be inclusive and based on broad consultation given that the outcome will profoundly affect the legitimacy of the elected institutions and the country's future political trajectory. Lessons learned from past elections are essential in assessing the electoral system used at the national, state, and local levels of government. Particularly in terms of how easy or difficult it is for voters to understand, cost implications, the mechanism used to translate votes cast into electoral results, and its impact on the representation of women and minority groups in elected office.</p>
10	<p>Hold broad and timely consultations among political parties and other election stakeholders to ensure consensus on the choice of the electoral system.</p>	Reform the National Elections Act of 2008.	Legislature	<p>Domestic actors involved in the government institutional design process will ultimately have to decide on the electoral system for electing representatives of public offices at all levels of government. Whichever route future reform of the electoral system takes, it must be inclusive and based on broad consultation given that the outcome will profoundly affect the legitimacy of the elected institutions and the country's future political trajectory. Lessons learned from past elections are essential in assessing the electoral system used at the national, state, and local levels of government. Particularly in terms of how easy or difficult it is for voters to understand, cost implications, the mechanism used to translate votes cast into electoral results, and its impact on the representation of women and minority groups in elected office.</p>

<p>11</p> <p>Redraw the boundaries of the geographical constituencies once the latest census data is released and after the regional and administrative boundaries are demarcated, as mandated by the Constitutional Charter.</p>	<p>Elections commission</p>	<p>The elections commission is mandated by law to delimit constituencies for legislative assembly elections using population census results. The law sets the criteria for drawing the geographical boundaries, including ensuring that no constituency crosses state boundaries and that the total population of each constituency does not differ by more than 15% of the target population. The elections commission also must consider other factors, such as geography, local administrative boundaries, and population movements.</p>
<p>12</p> <p>Centralize the boundary delimitation process, allocate enough time in the election operations calendar to complete it, and ensure it is led by qualified and trained staff to bring consistency to demarcated boundaries across the country.</p>	<p>Elections commission</p>	<p>Delegating responsibility for boundary delimitation to inexperienced High Committees and in the absence of detailed maps has produced incomplete or inaccurate constituencies. In some cases, territories were left unassigned, and in other instances, demarcated boundaries deviated from the plus or minus population variance (15%) required by the law.</p>
<p>13</p> <p>Consider utilizing GIS (Geographic Information System) technology in redrawing the geographical constituencies to enhance the efficiency, accuracy, and speed of mapping geographical constituencies.</p>	<p>Elections commission</p>	<p>The elections commission should weigh the risk of introducing a new technology ahead of the upcoming electoral events, the associated costs, and funding availability before considering the adoption of GIS technology. Using GIS has multiple benefits, including enhancing efficiency, accuracy, and speed. The system provides greater transparency as it allows for easy inspection by electoral stakeholders of the maps and reports produced. It also makes it possible to fulfil legal requirements, such as equal population and consideration of geographic and social factors. Further, the use of the system has proven helpful in assigning eligible voters to the correct voting centre.</p>

14	<p>Before deciding to substitute the civil registry for the census as the source of population data (for constituency boundary delimitation), and ahead of the upcoming elections, assess the civil registry data's reliability and the time and resources needed to bring it up to standards.</p>	National Elections Act 2008.	Electoral stakeholders and legislature	<p>The benefits of utilizing this data source could be undermined or ultimately jeopardized if the system is not accurate, comprehensive, inclusive, and accessible or if the populace does not perceive the entity that oversees it to be competent and impartial. More importantly, efforts to increase the reliability of the civil registry in the short term may entail increased resources and responsibility for the relevant state ministries. This change could ultimately make the new elections commission highly dependent on the performance of other state sectors.</p>
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ELECTION ADMINISTRATION

15	<p>Add to the functions and powers of the elections commission the responsibility to:</p> <p>(a) carry out voter education and information campaigns; (b) train its personnel and other officials on their role and responsibilities as deemed necessary; and (c) coordinate with the state media, police, and other security forces during elections and referendums.</p>	Amend article 10(2) of the National Elections Act 2008.	Legislature	<p>Despite the elections commission's ability to carry out these activities under its general mandate, it is best practice to provide for them in the law and clearly define respective spheres of responsibility.</p>
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16	Assess the elections commission's immediate staffing needs and identify competency gaps and opportunities for staff professional development.	Conduct a training needs assessment.	Elections commission	The new elections commission will be operating within a very tight electoral calendar, probably leaving a small window for investment in staff training and development to improve its operational effectiveness. Tailored and targeted training for all personnel, whether core staff or temporary workers, is necessary to ensure they have the skills and knowledge required to implement their technical work effectively. Such tailored training is essential, especially when changes to the electoral law are anticipated.
17	Compel the elections commission to publish all its decisions, regulatory instruments, instructions, and relevant data on the electoral processes.	Amend article 11(4) of the National Elections Act 2008.	Legislature	The law currently grants the NEC the power to exclude certain information from public disclosure if two-thirds of its members approve. The law also left it for the commission to determine how to publish its decisions.
18	Make every effort to ensure easy, prompt, effective, and practical access to all information of public interest.	Create a written communication policy and strategy.	Elections commission	The elections commission should consider putting such information in the public domain using web-based communication channels, printed media, or computer-readable format. It should strive to meet and regularly consult with electoral stakeholders, hold press conferences, open some of its meetings for stakeholders' attendance, and limit the scope of its power to withhold information by way of internal written policies.
19	Introduce a code of conduct to uphold the integrity of electoral processes and refrain from operating in a manner that conflicts with their responsibility to act transparently, impartially, and neutrally.	Adopt a code of ethics and professional conduct for members and staff.	Elections commission	The code must include realistically enforceable sanctions for breaches of duty, confidentiality, or conflict of interest, such as dismissal from the commission or other disciplinary action.

20	Make commissioners' immunity from criminal prosecution removable only by a two-thirds majority of the national legislature to eliminate any political pressure, intimidation, or fear of prosecution by the executive branch.	Amend article 14 of the National Elections Act 2008.	Legislature	The current law shields elections commissioners from criminal prosecution so long as their actions are within the scope of their jobs. Written approval from the President of the Republic is necessary to lift a commissioner's immunity from criminal prosecution.
21	Remove any ambiguity, redundancy, or overlap in the functions and duties of the different committees at state and local levels.	Revisit articles 18, 19, and 20 of the National Elections Act 2008.	Legislature	The NEC appoints a Returning Officer for each state and Elections Officers for each single-member district to commence voter registration and organize the polling, sorting, and counting of the elections and referendum. It is unclear whether these Returning Officers report to the High Committees and how their roles and responsibilities inter-relate with those of the High Committee or its sub-committees. Any new organizational structure for the new elections commission should be cost-effective and designate the necessary skilled staff at the appropriate locations and levels, subject to effective lines of accountability.

VOTER REGISTRATION

22	Remove undue requirements restricting the registration of eligible voters living abroad.	Amend article 22(3) of the National Elections Act 2008.	Legislature	By placing undue requirements for registration, such as possession of a Sudanese passport and valid residency in the host country, the law made it very difficult for eligible citizens living abroad to register, particularly refugees. Under international human rights law, conditions and restrictions on direct and indirect political and public participation are permitted only when they are objective, reasonable and non-discriminatory. Voters should be allowed to prove their identity and eligibility by presenting other acceptable official documents such as a birth certificate, citizenship certificate, valid driver's licence or photo ID, national civil registration.
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23	Issue and release proper registration regulations on time, and provide registration officers with formal guidance and training on the relevant processes.	Enhance the regulatory framework for voter registration and electoral staff's understanding of it.	Elections commission The elections commission has a legal duty to ensure the ease and transparency of the registration process and remove any obstacles that might prevent or discourage voters from registering or updating their records.
24	Ensure voters' information is appropriately collected, stored, used, and released. The law should mandate the elections commission to issue policies and acquire the necessary tools to protect voters' data adequately.	Review and amend the National Elections Act 2008.	Legislature Neither the law nor the regulations issued by the elections commission specify clearly what personal data will be collected and publicly listed on the voter register. The legal framework should provide the list of voter information the elections commission is expected to collect, e.g., surname, date of birth, voting domicile.
25	Make it an offence to collect, use, or disseminate voters' data for any purpose other than the exercise of voting rights or election campaign purposes.	Amend article 89 (a–c) to add this of actions that are considered unlawful if committed in relation to voter registration.	Legislature Electoral law must respect and protect the right to privacy as granted by the Constitutional Charter.
26	Extend the reach of voter education across the country, notably in rural and IDP communities, by mobilizing civil society at the grassroots, such as women's groups, minority organizations, and youth representatives.	Elections commission	In past elections, the NEC was reluctant to engage with civil society to raise awareness and encourage political participation. Given the anticipated change in the electoral legal framework, the elections commission should seriously consider mobilizing the electoral stakeholders' network and community access to expand the reach of its voter education and information campaign across the country.

27	Ensure that the rights of persons with disabilities and people with reduced mobility or limited freedom of movement are considered in voter registration planning and implementation.	Elections commission	The elections commission must take adequate measures to ensure that all persons entitled to vote can exercise that right. It must improve access to voter registration by expanding the geographical spread of registration offices and removing barriers to accessing registration sites.
28	Guarantee respect for fundamental rights and ensure legal integrity by revising the voter registration complaints and appeals framework to allow for an effective means of redress against administrative decisions.	Legislature	It is not uncommon for the appeals process to be purely an administrative function left for election officials to address. However, the process and the elections administrators must be perceived to be fair, and sufficient opportunities are given to the voters to prove their eligibility to vote; otherwise, consideration should be given to making the decisions of the Returning Officer subject to expedited review through the judicial system.
29	Ensure that all voters, candidates, political parties, and other election stakeholders are allowed to file a complaint about the inclusion of ineligible voters or the exclusion of eligible voters.	Legislature	Under the current elections law, only a registered voter in the geographical constituency can file a complaint about how the voter register is compiled and updated.

30	<p>Assess the feasibility, cost-effectiveness, sustainability, and capabilities needed to introduce a new voter ID card ahead of the next elections.</p>	Elections commission	<p>The new elections commission should contemplate issuing a more durable and reliable voter identification card for future voter registration, suitable for an electorate with a low literacy rate and with good security features to deter fraud. Voter identification cards can be costly to produce, distribute, and update. As with all election technologies, upgraded identity cards should only be adopted if they solve problems that might hinder the credibility of the process or the acceptance of results, not as an end in themselves.</p>
31	<p>Examine the administrative planning and organization of past voter registration exercises to assess their efficiency and their influence on the quality and credibility of the existing voter register.</p>	Elections commission	<p>The audit must review and assess the following aspects of the voter registration process:</p> <ol style="list-style-type: none"> (1) all decisions, regulations, procedures, and guidance pertaining to voter registration; (2) voter registration implementation plan and schedules; (3) logistics in place to gather, verify, record, and store a large volume of voters' data; (4) procurement and dissemination of registration materials and information to registration centres; (5) recruitment, training, and remuneration of registration officers; (6) technological components and infrastructure of the voter registration process and registry, including the voter identification card; (7) claims and objections processes; and (8) voter education and information activities.
32	<p>Conduct a database audit and a statistical field survey using sampling methods such as 'list to voters' and 'people to list' to test the quality of the voter register.</p>	Elections commission	<p>Establishing and maintaining accurate voter registers are vital for implementing and guaranteeing universal suffrage. These types of audits will help reveal if the voter register contains false, inaccurate, or missing data.</p>

POLITICAL PARTIES, CANDIDATES AND CAMPAIGNS

33	Revise all regulations, rules, guidelines, and forms for reviewing and processing candidate nominations to ensure clear, transparent, and fair processes consistent with best practices and guarantee equal opportunity among candidates.	Elections commission	Revisions must, e.g., provide the calendar for commencement and closure of the nominations period; specify when, how, and where nomination procedures must be undertaken; and lay out the process of scrutiny and verification of nomination forms and declarations. Also, the regulations should provide a precise and reasonable method for checking and verifying the signatures of voters supporting candidate nominations to ensure that all candidates—regardless of the type of electoral contest—are exposed to the same level of scrutiny according to clearly stated and objective criteria.
34	Introduce administrative sanctions that the elections commission can apply independently when campaign regulations are violated.	Amend the National Elections Act 2008. Legislature	A range of sanctions may be applied, including warnings, administrative fines, partial or total loss of public funds, etc. Recourse to judicial appeal should be provided whenever administrative sanctions are imposed.
35	Define actions by public servants considered partisan, biased, or restrictive of the contestants' right to equal and peaceful campaigning.	Elections commission	Revise election campaign regulations to clarify the law.
36	Develop oversight capabilities and enforcement mechanisms necessary for the effective implementation of campaign finance rules and regulations.	Elections commission	The commission should also establish a department responsible for enforcing political campaigning and finance regulations, and provide that unit with sufficient and clear authority, training, and resources to perform oversight, detection, and enforcement responsibilities.

37	Enforce legal funding restrictions and reporting obligations through administrative and judicial processes to deter non-compliance and enhance accountability.	Elections commission	Continuous enforcement of the campaign finance rules and regulations by internal and external mechanisms can help detect problems in the system, bring those who violate them to justice and maintain trust in the system.
38	Designate the institution responsible for requesting, allocating, and administering public funding to campaigns by candidates and political parties.	Revisit campaign finance rules under the National Elections Act 2008. Legislature	The electoral legal framework did not specify whether the NEC or any other government agency is responsible for overseeing the distribution of public funding to electoral contestants' campaign activities.
39	Issue a clear and comprehensive legal framework for allocating and administering public subsidies to electoral contestants' campaigns, including reporting and audit requirements.	Enhance the Political Parties Act 2007 and the National Elections Act 2008. Legislature	The electoral legal framework must provide the necessary guidelines and procedures for accessing and receiving public funds for campaigning. It must guarantee that public funds are provided to electoral contestants on an equitable basis using fair criteria and delivered in a timely manner. Decision-making processes about allocating government subsidies should be transparent so contestants and the broader public can understand and trust the outcomes. Also, the legal framework must guarantee that no advantage will be given to incumbents in the distribution of public funds for campaign purposes.
40	Align the regulatory framework governing electoral contestants' access to public media during election campaigns with best practices.	Elections commission	For example, the regulatory framework must emphasize that in-kind access to public media is considered a type of campaign finance contribution that contestants must report towards any expenditure ceiling set on campaign finance by the elections commission. The regulations should also define how in-kind donations are valued. More

		<p>importantly, the rules should clarify that the media is not legally liable for unlawful statements made by candidates or party representatives in a broadcast during election campaigns. Additionally, the rules should stipulate that neither the state nor the media can censor the candidate or political party programme.</p>
41	<p>Establish a department responsible for monitoring election broadcasts, allocating time to various political parties and candidates, and receiving and acting upon complaints regarding media access, fairness, and responsibility.</p>	<p>Elections commission</p> <p>The department should also have the power to hear and take binding action on complaints concerning broadcast-related violations by the media, political parties, or candidates, including ordering a correction or reply to be issued.</p>
42	<p>Actions and decisions taken by the elections commission regarding the use of public media by electoral contestants for campaign purposes should be subject to judicial review, which should be carried out on an expedited basis.</p>	<p>Revisit election campaign rules under the National Elections Act 2008.</p> <p>Legislature</p>

ELECTION DISPUTE RESOLUTION

43	<p>Adopt appropriate electoral dispute resolution procedures able to deal promptly and uniformly with the different types of complaints that will inevitably arise throughout the electoral processes.</p>	<p>Elections commission</p> <p>The rules and regulations must state who exactly can file a complaint, on what basis, to what department or body, how that complaint or appeal will be handled, how the parties to the complaint will be notified, and how the decisions will be enforced, published, and archived.</p>
44	<p>Conduct appropriate training for all personnel, whether core staff or temporary workers, and equip them with sufficient powers, resources, and tools to respond adequately to challenges and complaints raised throughout the electoral cycle.</p>	<p>Elections commission</p>
45	<p>Provide for an electoral dispute resolution (EDR) system where disputes can be escalated within the election administration with the opportunity for an appeal to a court.</p>	<p>Revisit EDR rules under the National Elections Act 2008.</p> <p>Legislature</p>

46	Introduce administrative penalties into the law. The courts and the elections commission should have such penalties at their disposal to be imposed for administrative infraction.	Revisit penalties imposed by the National Elections Act 2008 for failing to adhere to its rules.	Legislature	Administrative penalties include, e.g., reprimand, suspension, removal, or disqualification of a public employee or electoral official, reduction in public financing, suspension of allotted media time.
47	Grant election observers the right to obtain corrective relief when their privileges are revoked or denied by the elections commission.	Revisit relevant articles in the National Elections Act 2008.	Legislature	

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About the author

Zeinab Elnour Abdelkarim is a seasoned legal expert on elections and constitutional laws and a specialist with over two decades of experience in elections and political processes, good governance, conflict mitigation, civil society strengthening, and institutional reform. She served as the Regional Director for the Middle East and North Africa programmes at the International Foundation for Electoral Systems from 2009 to 2019. She led several legal and needs assessment missions across the region to assess the prospects for open, competitive, and credible elections based on input from a wide spectrum of local stakeholders, including government officials, political party representatives, judiciary, and legal practitioners. She authored and contributed to numerous briefing papers and publications related to the electoral legal framework in the Middle East and North Africa and testified on issues facing democracy and governance in the region before the Helsinki Commission and the US House Foreign Affairs Committee.

Abdelkarim holds an LLB degree (with honours) from the University of Khartoum, Faculty of Law, and an LLM degree from Wayne University Law School. After receiving her bachelor's degree in law, she joined the law firm of Mahmoud El Sheikh Omer in Khartoum, Sudan as an Attorney and Legal Counsellor from 1988 to 1993.

Abdelkarim currently serves as a member of an advisory board formed to guide the overall strategic direction of International IDEA's Sudan programme and contribute to enhancing the relevance and quality of the programme activities. She is a strong advocate for citizens' political and human rights, particularly those pertaining to protecting minority groups, gender equality, freedom of expression, freedom of assembly, freedom of religion, and social welfare.

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

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In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work. International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on good international democratic practices; offers technical assistance and capacity-building on democratic reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

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<<https://www.idea.int>>



International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
+46 8 698 37 00
info@idea.int
www.idea.int

Assessing Sudan's Electoral Legal Framework provides an in-depth insight and analysis of Sudan's current legal framework for elections. It measures Sudan's legal electoral framework against a common international understanding of the principles, norms and obligations that define credible and democratic elections. The objective of this analysis is not to criticize or pass judgement on the country's existing electoral processes; instead, it offers an unbiased assessment of how Sudan's existing electoral laws and country context create an enabling or disabling environment for free and fair elections. It provides comprehensive and constructive recommendations to strengthen existing legislation and improve fairness, uniformity, reliability, consistency and professionalism in Sudan's future elections.

This Report also assesses the status of core democratic principles and freedoms that provide the foundation for credible elections and highlights any restrictions on these fundamental rights and liberties that could interfere with the country's upcoming elections or delay its political transition. It calls upon the transitional government to protect citizens' rights and liberties and prevent abuses that may influence public trust, fairness, and openness of electoral and other transitional processes.

Lastly, this Report discusses political, socio-economic, and legal issues impacting Sudan's roadmap to democratic transition before the October 2021 military coup.

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