

# **Electoral Reform in Sudan and Prospects for Peace in Darfur**

**Implications of The National Elections Act 2008 for the  
Darfur Political Process**

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## Executive Summary

Sudan's new electoral law promulgated in July 2008 represents a significant step forward in the process of electoral reform outlined in the Comprehensive Peace Agreement of 2005.

However, the National Elections Act 2008 has several important implications for the Darfur Political Process, many of which have yet to be fully considered by the Government of National Unity, international actors supporting the political process and other stakeholders.

Five important implications of the Act relate to:

**1. Types of electoral system specified in the Act:** The use of a combined majoritarian- and proportional representation (PR) type system for election of members to the National- and State Legislative Assemblies may not effectively accommodate non-homogeneous political views at the constituency level in Darfur. While this may not present a difficulty in many areas of Sudan outside Darfur, it could potentially lead to political disenfranchisement, particularly of minority or opposition groups/parties, in Darfur.

**2. Membership and decision making of the National Elections Commission:** The National Elections Commission will make decisions – including those on demarcation of constituency boundaries – by majority vote of its members. An alternate, consensus-based decision making system and the nomination of a representative from Darfur to the Commission may assist in ensuring that decisions of the Commission reflect the broadest possible cross-section of interests of the population throughout the Sudan.

**3. Opportunities for power-sharing in the National Legislature and State Legislative Assemblies:** The State Legislative Assemblies will be one of the primary potential foci of political- and legislative influence for representatives of the people in Darfur. However, the National Elections Act does not provide for any special types of representation for Darfur opposition groups/Movements or minority parties at the level of the State Legislative Assemblies. Other potential consociational- or consensus-type models of representation could better accommodate minority and opposition views in the State Legislative Assemblies.

**4. Representation from each State in the National Assembly:** Largely as a result of the relative incompleteness of the Fifth Population Census (2008) in parts of Darfur, which will be used as the basis for determining geographical constituencies for Legislative Assembly elections, Darfur (and indeed Southern Sudan) may be allocated proportionally less seats in the National Assembly that their populations would otherwise enjoy.

**5. Voter registration and potential disenfranchisement of displaced persons:** The requirement for- and process of voter registration could potentially disenfranchise a large number of displaced persons in Darfur who may not be able to meet the necessary requirements because of their situations of displacement.

Based on these implications of the Act: (A) the Government of National Unity may wish to consider postponing certain (but not all) elections in Darfur, especially those that involve the use of geographical constituencies, until such time as conditions are more conducive for elections; (B) any future peace negotiations in Darfur should prioritize the issue of power-sharing, as it pertains to a direct cause of the conflict, rather than focusing on effects of the conflict; (C) any future peace agreement could include provisions to amend the National Elections Act and/or the rules and procedures of the Darfur State Legislative Assemblies to allow for more consensus-orientated decision making within the Assemblies; and (D) the National Elections Commission could usefully include representative(s) from Darfur and could also amend its operating procedures to allow for more consensus-type decision making.

## **Introduction and Objectives**

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The enactment and signing into law of new legislation governing national elections by the National Assembly and Presidency of the Government of the Republic of the Sudan in July 2008 marked a critically important milestone for electoral reform in the country in the context of implementation of the 2005 Comprehensive Peace Agreement (CPA).<sup>1</sup> It also marked the end of protracted deliberations between the partners in the Government of National Unity (GoNU) – the National Congress Party (NCP) and the Sudan People’s Liberation Movement (SPLM) – on the provisions of the electoral law.

The National Elections Act 2008 (“the Act”) has far reaching implications for power-sharing and governance in the Sudan and has, potentially, particularly important repercussions for efforts to mediate between the parties to the conflict in Darfur (“the Parties”).<sup>2</sup> These potential implications have not yet been fully considered by the partners in the Government of National Unity nor by the United Nations, the African Union or key international actors working to support the political process in the Sudan.

This paper serves to highlight the implications of select provisions of the National Elections Act for democratic representation throughout Sudan, with a primary focus on the consequence of the Act for the Darfur Political Process.<sup>3</sup> This paper is not intended to provide an exhaustive technical analysis of the new legislation, but rather seeks to stimulate and inform debate around aspects of the legislation that could potentially impact efforts to reach a negotiated settlement to the conflict in Darfur. Furthermore, this paper refines and expands upon the assertions presented in a previous note, drafted in May 2008, which highlighted the implications of the (then) draft National Elections Bill for the Darfur Political Process.<sup>4</sup>

The implications of the National Elections Act are presented here under five thematic headings covering both general areas of relevance and specific provisions of the Act:

1. Types of electoral system specified in the Act
2. Membership and decision making of the National Elections Commission
3. Opportunities for power-sharing in the National Legislature and State Legislative Assemblies
4. Representation from each State in the National Assembly
5. Voter registration and potential disenfranchisement of displaced persons

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<sup>1</sup> The legislation was passed by the National Assembly on 7 July 2008 and was signed into law by the President of the Republic of the Sudan shortly thereafter, on 14 July.

<sup>2</sup> For the purposes of this document the main parties to the conflict in Darfur (“the Parties”) are considered to be: the Government of National Unity of the Sudan (GoNU); the various armed opposition movements operating in Darfur, and armed militia groups associated with- or drawn from certain tribes in Darfur.

<sup>3</sup> The term “Darfur Political Process” is used to capture international and national efforts – led or coordinated by the UN-AU Mediation Team – to bring about a political settlement to the conflict in Darfur.

<sup>4</sup> Gerard Mc Hugh, *Observations on the draft Sudan National Elections Bill of 2008: Implications for the Darfur Political Process*. Unpublished note produced for the AU-UN Joint Mediation Support Team, 6 May 2008

Based on this assessment of the provisions of the National Elections Act, the paper provides some forward-looking observations on what could be done to address some of these implications of the Act for the Darfur Political Process.

## **Types of electoral system specified in the Act**

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The North-South Comprehensive Peace Agreement (CPA) and the Interim National Constitution (INC) of 2005 mandated the timing and conditions for contesting elections and referenda, but left the specific type of electoral system to be elaborated through legislation.<sup>5</sup>

In meeting this constitutional requirement, the National Elections Act specifies the electoral system to be used for election of: (i) the President of the Republic; (ii) the President of the Government of Southern Sudan; (iii) the Governors or each State; (iv) members of the National Legislature; (v) members of the South Sudan Legislative Assembly; and (vi) members of the State Legislative Assemblies.

At the level of the Executive Branch of government, the system for election of the President of the Republic or the President of the Government of Southern Sudan is one based on a majoritarian principle; that is, the candidate who gets the most votes wins the election.<sup>6</sup> Similarly, Governors of the States of Sudan are to be elected by voters in each State based on a majoritarian system.<sup>7</sup>

Different types of electoral system are used for each of the two chambers in the bicameral National Legislature: the National Assembly and the Council of States. The Council of States consists of two members from each State plus two observers to represent Abyei. Under the Act, State representatives to the Council of States are to be elected by the members of the State Legislative Assemblies in each State.

The electoral system for election of members to the National Assembly is one which combines majoritarian- and proportional-type systems, as follows:<sup>8</sup>

- Sixty percent of the members of the National Assembly to be elected, using a majoritarian system, to represent single-seat geographical constituencies throughout Sudan;
- Twenty five percent of members of the National Assembly to be women elected on the basis of proportional representation (PR) at the State level from women's lists;
- Fifteen percent of members to be elected from political party lists at the State level, also using PR system.

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<sup>5</sup> The Interim National Constitution stipulates that the National Elections Act shall, "... specify general rules and procedures to govern elections as well as functions and terms and conditions of service of the National Elections Commission." Republic of the Sudan, Interim National Constitution of the Republic of the Sudan, 2005. Article 141(3).

<sup>6</sup> The National Elections Act 2008, Articles 26(1) and 26(2). For election of the President of the Republic or the President of the Government of Southern Sudan, the Act stipulates that a candidate shall be elected if, "...he or she obtains fifty percent of the valid votes plus one vote or more ..." In the event that no candidate reaches this threshold, a run-off between the two candidates with the highest number of votes is to be held within sixty days of the polling day.

<sup>7</sup> The National Elections Act 2008, Article 26(3)

<sup>8</sup> The National Elections Act 2008, Article 29.

The electoral system for election of members to the *State* Legislative Assemblies uses a combined majoritarian-proportional system similar to that used for the National Assembly elections, with identical allocation of seats between geographical constituencies, women's lists and political party lists.

The use of this type of 'mixed' electoral system for the National Assembly and the State Legislative Assemblies has several implications for the conduct of the respective elections in Darfur. Foremost among these implications is the ability of single-seat geographical constituencies to effectively represent minority- or heterogeneous political views.<sup>9</sup>

The use of single- rather than multi-seat constituencies has the advantage of reducing the potential for destructive political largesse at the constituency level (for example, candidates competing for votes by promising certain benefits designed to lure voters). However, the system of using single-seat constituencies has the more significant disadvantage that minority views may not be adequately reflected within each constituency. This is because the majoritarian system of election for the geographical constituencies ensures that the candidate with the highest number of valid votes wins the seat for that constituency; majority views win the day!<sup>10</sup>

Conversely, the use of a proportional system of representation with multi-seat constituencies would enable different views to be represented *within* each constituency.

The ability, therefore, of a majoritarian system using single-seat constituencies – as specified in the Act – to effectively represent the views of the constituents, particularly minority views, depends on (1) the political homogeneity of the constituency; and (2) the political homogeneity of different geographical areas within the region in which the election is taking place (e.g. within a State, for State Legislative Assembly elections).

For geographical constituencies in Southern Sudan, and in Northern Sudan excluding parts of Khartoum and Darfur, it is likely that the constituencies will be largely politically homogeneous, at least in terms of political support for- or affiliation to 'Northern' (NCP, other) or 'Southern' parties (SPLM).

The situation in Darfur is more complicated; First of all, without the return to their homes or resettlement of Internally Displaced Persons (IDPs), the number and concentration of geographical constituencies will be skewed in favor of the non-displaced population (see below), which would likely reflect a greater percentage of pro-Government voters. Secondly, in the more densely populated areas of Darfur in particular, the geographical constituencies will likely not be as politically homogeneous as in other parts of the Sudan, in terms of constituents identifying themselves as supporting or opposing the Government of National Unity (and the NCP in particular). Single seat constituencies that encompass these politically-mixed communities will not afford the most effective representation of the views of minority groups in each constituency. Thirdly, if a significant percentage of the existing displaced persons decided to resettle in or near

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<sup>9</sup> A recent survey of electoral systems in 191 States worldwide identified the following frequency of occurrence of different types of electoral system: majoritarian – 75; combined majoritarian-proportional 39; proportional representation – 68; and no direct elections – 9. See: Pippa Norris, *Driving Democracy: Do Power-Sharing Institutions Work?* (Cambridge: Cambridge University Press, 2008).

<sup>10</sup> The National Elections Act 2008, Article 32(2).

the main urban areas, that would most certainly provide for a mixture of political views in the peri-urban constituencies.

On this basis, the potential negative effects of the use of a majoritarian system as specified in the National Elections Act may have to be countered through other institutional or electoral arrangements, examples of which are suggested in the concluding section of this paper.

## **Membership and decision making of the National Elections Commission**

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The National Elections Act provides for the establishment of a National Elections Commission (“the Commission”) whose general function is to,<sup>11</sup>

*“ensure and guarantee the enjoyment by all citizens without discrimination the exercise of their political rights to nominate and freely express their will in secret ballot in every periodic elections or referendum to be conducted under the provisions of the Constitution and this Act.”*

Article 6 of the Act stipulates that the Commission will have nine members appointed by the President of the Republic, with the consent of the First Vice-President and approval of two-thirds of the members of the National Assembly. Decisions of the Commission will be taken by simple majority vote of members present.<sup>12</sup> At the time of writing the partners in the Government of National Unity were nominating candidates for the National Elections Commission.<sup>13</sup>

The simple majority decision making procedures of the Commission will not provide for the broadest possible consensus among Commission members, since a majority group could dominate decisions of the Commission. Other decision making mechanisms which could lead to greater consensus in the Commission could include, for example: decision by two-thirds of the members (apropos as there are nine members), or decision by majority of members from each party (National Congress Party (NCP), Sudan People’s Liberation Movement (SPLM)), thereby constituting an overall majority.<sup>14</sup>

Within the general scope of its functions stated above, the functions and powers of the Commission include, *inter alia*, to “*determine the geographical constituencies and conduct the elections in accordance with the provisions of this Act.*”<sup>15</sup> For such functions, it may be more suitable to have more consensus-orientated decision making processes (as proposed above) in the Commission to avoid the perception or actuality of one party of the GoNU influencing the electoral process.

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<sup>11</sup> The National Elections Act 2008, Articles 4 and 10.

<sup>12</sup> The National Elections Act 2008, Article 11(3).

<sup>13</sup> For example, an article in the Sudanese Al-Ayyam newspaper on 5 October 2008 reported that the SPLM had nominated three Southerners for the National Elections Commission and that the NCP had nominated six persons.

<sup>14</sup> These are just some examples of possible decision making rules or arrangements that could be put in place.

<sup>15</sup> The National Elections Act 2008, Article 10(2)(d).

Furthermore, experience from other post-conflict settings where elections commissions have been established and consist of Commissioners nominated by the parties to a conflict points to the need for the Commission:

- to act in an independent and impartial manner; and
- to reflect a diverse membership in terms of regional-, political- and religious affiliations, ethnicity and gender.<sup>16</sup>

## **Opportunities for power-sharing in the National Legislature and State Legislative Assemblies**

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The National Elections Act provides for four hundred and fifty elected members in the National Assembly.<sup>17</sup> Assuming an estimated population of Sudan of 37.8 million (2007) and an estimated population of 6.36 million in Darfur, even if all of the persons in Darfur were to have been enumerated under the Fifth Population Census (also referred to as the “General Population Census”), the full Darfur representation in the National Assembly would equate to roughly 76, or just under 17 percent, of the total number of seats.<sup>18</sup>

In light of the (almost exclusively) simple majoritarian decision making rules and processes in the National Legislature, the representatives of Darfur in the National Assembly will not be in a position to significantly influence legislative policy at the national level, unless they enter into a coalition with larger political parties.<sup>19</sup>

Apart from the National Assembly, the other *potential* foci of political influence for political representatives of the Darfurian population could be: (I) in the Executive Branch; (II) at the (national) Ministerial level; (III) at the level of a regional authority (such as the Transitional Darfur Regional Authority established under the Darfur Peace Agreement (DPA) of May 2006); and (IV) at the level of the State Legislative Assemblies in the three States of Darfur.

With regard to the State Legislative Assemblies as a potential focus of political influence, the National Elections Act provides that for election of members of these

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<sup>16</sup> See, for example: Paul R. Williams et al., *Peace Agreement Drafting Guide: Darfur* (Washington, DC: Public International Law Policy Group, 2007) : pp. 124 – 144; Organization for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections* (Warsaw: OSCE, January 2001) : pp 10 – 13.

<sup>17</sup> The National Elections Act 2008, Article 29.

<sup>18</sup> Source: Population of Sudan; United Nations Population Fund (UNFPA), *The State of the World's Population 2007* (New York: UNFPA, 2008). Estimated population of Darfur: UNMIS June 2006 estimate based on data from several UN agencies.

<sup>19</sup> The National Legislature consists of the National Assembly and the Council of States (two Chambers). Resolutions of the National Legislature and either Chamber shall be taken by unanimous vote or consensus, whenever possible, or alternatively by simple majority of those present, except in cases where the Interim National Constitution provides otherwise (INC, Part IV, Chapter 1, Paragraph 99). The INC stipulates the instances in which measures are to be approved/passed by two-thirds majority voting, especially in the Council of States. These instances include voting on appointment of the Justices of the Constitutional Court (by the Council of States); voting on necessary ‘alternative’ legislation and institutions as identified in the Constitution (by the Council of States); passage of legislation in the absence of assent from the President of the Republic etc.

Assemblies each State Constitution will specify the number of members in its Assembly, with percentages of representatives set as follows: 60 percent elected from single-seat geographical constituencies; 25 percent from women's lists at State level; and 15 percent from political party lists.<sup>20</sup>

The Act does not, therefore, provide for any special types of representation (distinct from the model of representation which applies to the whole country) for Darfur opposition groups/Movements or minority parties at the level of the State Legislative Assemblies.<sup>21</sup>

Consequently, the Darfur opposition Movements may have little incentive to discuss power-sharing arrangements, as currently envisaged, as part of the Darfur Political Process, since effectively there will be little possibility for sharing of power, *per se*, at the level of the State legislatures.<sup>22</sup> The one exception is the quota of 25 percent of representatives in the State Legislative Assemblies allocated to women.

In theory, there could be opportunities for State Legislative Assemblies in Darfur to put in place special decision making processes with a view to achieving broader consensus among members of the State Legislative Assemblies supporting the Government and those supporting opposition parties or the opposition Movements. Examples could include consociational-type decision making rules that require majority consent within *each* group/party.<sup>23</sup>

However, the Interim National Constitution stipulates that each State legislature will decide its own rules of procedure and, therefore, the composition and interests of the majority representatives in the State Legislative Assemblies will most likely be mirrored in the decision making procedures adopted by the State Assemblies.

## **Representation from each State in the National Assembly**

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The number of elected representatives from each State in the National Assembly will be based on the population size of each State relative to the total population of the country as determined by the General Population Census and in accordance with the provisions of the National Elections Act.<sup>24</sup>

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<sup>20</sup> The National Elections Act 2008, Article 31.

<sup>21</sup> Special arrangements could include quota/consociational type representation models.

<sup>22</sup> The DPA stipulates that, as part of pre-election arrangements, the signatory parties are allocated 21 of 73 seats in each of the State Legislative Assemblies in Darfur. This allocation of seats at the level of the State Legislative Assembly, combined with the simple majority decision making rules of the Assemblies would never have provided a meaningful role for the opposition Movements in advance of elections. Darfur Peace Agreement (5 May 2006), Article 16, Paragraph 91(C).

<sup>23</sup> For example, both the Northern Ireland Belfast Agreement of 1998 and the Pretoria Protocol on Power-Sharing in Burundi of 2004 provided for representation of minority groups in the national or regional assemblies disproportionate to the actual size of the minority group in the population. In Northern Ireland a qualified majority, consociational model was used which required a majority vote within each of two communities ('Republican' and 'Unionist') for key decisions to be made. In the case of Burundi, Tutsi were allocated approximately 40 % of the seats in the National Assembly, while this ethnic group constituted 15 % of the population.

<sup>24</sup> The National Elections Act 2008, Article 35. This is a two step-process: First, the 'National Dividend' – or the number of people (not only those eligible to vote) for each National Assembly seat to be elected from geographical constituencies – is calculated based on the overall population of the Sudan. Second,

In light of the fact that the General Population Census is likely to be far less comprehensive in the three states of Darfur and in Southern Sudan than in the Northern States (excluding Darfur) due to insecurity and logistical challenges encountered, there exists the possibility that the Darfur- and Southern States will derive proportionally less representation – in terms of the number of seats – in the National Assembly than those States where a more comprehensive census has been conducted.

## **Voter registration and potential disenfranchisement of displaced persons**

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Provisions concerning voter eligibility and voter registration are outlined in Articles 21 and 22 of the National Elections Act. To be eligible to vote a person must be: Sudanese; eighteen years of age; registered in the Electoral Register; enjoying all his civil and political rights; and of sound mind.<sup>25</sup> The Act goes on to elaborate the conditions of registration and participation in an election or referendum:<sup>26</sup>

*“(1) Registration in the electoral register is a basic right and an individual responsibility of every citizen who satisfies the required legal conditions.*

*(2) Without prejudice to the generality of sub-section (1) a Sudanese resident inside the Sudan shall, at the time of application for inclusion in the register, satisfy the following conditions:-*

*(a) be a resident in the geographical constituency for a period not less than three months before the date of closure of the register,*

*(b) have a personal identification document or a certificate authenticated from the People's Committee at the Locality or the native or traditional administrative authority, as the case may be,*

*(c) have not been registered in any other geographical constituency*

*...*

*(4) No voter shall be eligible to participate in the election or referendum unless she/he was registered three months before the date of elections...”*

The National Elections Act further stipulates that the Final Electoral Register shall be published three months before the date of the polling.<sup>27</sup>

According to the timetable for the implementation of the CPA, elections are to be held by July 2009. While many within the National Congress Party have publicly stated their intent to adhere to this date, some within the Government of National Unity see this timeframe as increasingly unrealistic.<sup>28</sup>

If the Government of National Unity does indeed intend to hold elections during 2009 (whether in July or later), it would mean that IDPs would need to have either returned to

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the total population of each State is divided by the National Dividend to give the number of geographical constituencies, and hence seats, in each State.

<sup>25</sup> The National Elections Act 2008, Article 21.

<sup>26</sup> The National Elections Act 2008, Article 22.

<sup>27</sup> The National Elections Act 2008, Article 25(1).

<sup>28</sup> See, for example: Skye Wheeler, *Sudanese elections could be delayed: Southern Minister* (Juba: Reuters, 11 September 2008).

their original localities or formally resettled elsewhere six months prior to the polling date (three months' residency requirement in a geographical constituency plus requirement for Final Register to be completed three months before the elections) to enable them to vote. This is a very unrealistic scenario given the current security and political situation in Darfur.

Since the National Elections Act states that no person can be registered in more than one geographical constituency at any one time, if IDPs do not have an opportunity to return to their home communities (if they so choose), then they will only have the option of being registered in their displaced locations.<sup>29</sup>

Furthermore, the number of geographical constituencies for electing representatives from Darfur to the National Assembly and to the State Legislatures in each of the three states of North, South and West Darfur will be determined by the National Elections Commission based on the General Population Census conducted throughout Sudan in April/May 2008. This will also be based on national- and electoral dividends calculated based on the number of seats in the respective legislatures. The General Population Census did not, however, cover areas of Darfur that were difficult to access due to insecurity or political opposition to the census. The preliminary results of the population census are expected to be published before the end of 2008, however, it is clear that the IDP camps were generally not well covered in the census.<sup>30</sup>

The implications of this poor coverage of IDP camps is that the number of single-seat geographical constituencies allocated to areas where IDPs are located will be less than it otherwise would be. Since IDPs cannot yet return to their homes, may not have the necessary documentation to register in the displaced location, and may not have an opportunity to return home or resettle elsewhere six months in advance of polling, they risk becoming disenfranchised in the forthcoming elections.

## **Observations**

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The National Elections Act promulgated in July 2008 is without doubt a significant step forward in the process of electoral reform outlined in the Comprehensive Peace Agreement of 2005 and subsequently enshrined in the Interim National Constitution.

However, the Act primarily reflects the interests of the NCP and SPLM in the context of the Comprehensive Peace Agreement and does not adequately reflect the need to provide for special arrangements for Darfur with a view to accommodating the views of all parties to the conflict in Darfur and guaranteeing voter enfranchisement.

One of the primary potential foci for legislative influence and decision making by minority- or opposition groups in Darfur will be at the level of the Darfur States' Legislative Assemblies. This is because: (1) representatives of Darfur elected to the National Legislature will have limited legislative influence at that national level; (2) regional authorities (such as the Transitional Darfur Regional Authority established

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<sup>29</sup> The National Elections Act 2008, Article 22(2)(c)

<sup>30</sup> On 14 September 2008 the Sudan News Agency reported that, according to the Director of the Central Bureau of Statistics (CBS), Dr. Yassin Al-Haj Abdeen, the results of the Fifth Population Census are to be published before the end of 2008.

under the DPA) are perceived as impotent due to incomplete implementation; and (3) 'Advisor'-type positions for individual leaders within the Executive Branch of the Government of National Unity are also viewed as largely 'nominal' positions.<sup>31</sup>

The National Elections Act does not, however, address this dilemma: The Act has specified a system of representation for the State Legislative Assemblies which will make it more difficult to accommodate minority or opposition views in the State Legislatures. If the Darfur State Legislative Assemblies necessarily represent a primary focus for potential power-sharing between the parties to the conflict in Darfur, options must now be developed to inform future negotiations between the Parties in this area.

Based on the foregoing assessment of the implications of the electoral law, the following observations are intended to assist in initiating dialogue and debate on possible avenues for genuine power-sharing and enfranchisement of voters in Darfur:

- I. The Government of National Unity may wish to consider delaying some of the elections in Darfur – especially the elections that require the use of (sub-State level) geographical constituencies, such as the elections for members of the National- and Darfur State Legislative Assemblies – until such time as a framework- or comprehensive peace agreement is secured between the Parties to the conflict. The eventual return or resettlement of displaced persons would provide them with the opportunity to vote in their original or resettled locations. Postponement of geographical constituency-based elections would also enable a peace agreement to include specific provisions to mandate power-sharing at the level of the State Legislative Assemblies in Darfur (as opposed to a *fait accompli* of potential majority domination in the Legislative Assemblies by virtue of the current electoral system).
- II. Any future peace negotiations between the Government and the opposition Movements should include, as an early and high priority, negotiations on how the parties would share power in Darfur; Power-sharing addresses a central cause of the conflict – actual or perceived exclusion – while compensation for those affected by the conflict and security arrangements are primarily effects of the conflict.
- III. In formulating any future peace agreement the Parties could consider including a requirement to amend the National Elections Act to facilitate consideration of special arrangements for election of members of the State Legislative Assemblies in Darfur.
- IV. In formulating any future peace agreement the Parties could consider including a requirement for the three State Legislative Assemblies in North, South and West Darfur to amend their rules of procedure to put in place consociational-/consensus-type decision making arrangements.

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<sup>31</sup> This is especially true in the case of Minni Arko Minnawi, leader of one faction of the Sudan Liberation Movement, who signed the DPA in 2006. His position of Senior Assistant to the President has come to be widely viewed, even within his own constituency, as a nominal position with limited influence over Executive affairs.

- V. The National Elections Commission in Sudan should include a representative from Darfur and should also consider adopting consensus-type decision making procedures instead of simple majority decision making.

Finally, in addition to these implications of the electoral law there are other issues to be considered that relate to the electoral process and electoral reform. One such issue relates to the sequencing of elections and any possible referendum in Darfur on the status of the Region (whether to remain for administrative purposes as three separate States or whether to form a single State/Region of Darfur).

If elections for the State Legislative Assemblies are held in Darfur in advance of a possible future referendum, and if the outcome of that referendum were to be a decision to form one region of Darfur, all of the electoral processes and legislation would have to be amended to establish a single Legislative Assembly for the Region of Darfur. This would again significantly set back the realization of equitable power-sharing as a key component of peace in Darfur. In such a scenario, prospects for building peace may be enhanced by holding any referendum on the status of Darfur in advance of elections.

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