



## SUDAN: BRIEFING TO INTERNATIONAL REFERENDUM OBSERVERS

In the lead up to the referendum on self-determination of southern Sudan, scheduled for 9 January 2011, Amnesty International calls on international referendum observers to include human rights monitoring as a key component of their brief. The recommendations included in the briefing document are aimed to allow monitors to carry out an integrated monitoring of the referendum and human rights.

The referendum is a key milestone in the 2005 Comprehensive Peace Agreement (CPA) that ended more than two decades of civil war in Sudan. It marks the end of a six year interim period under the CPA, when the southern Sudanese people will vote to determine whether the south remains part of Sudan, or becomes an independent nation. The CPA was implemented in stages and included a number of reforms and processes, including presidential and parliamentary elections which took place in April 2010.

In December 2009, a Southern Sudan Referendum Act was adopted by the National Legislature, setting the conditions in which the referendum should take place. While the Act itself was criticized by a number of national and international organizations, it set in place the conditions to conduct the referendum and validate its result. In May 2010, President Al Bashir approved the establishment of the Southern Sudan Referendum Commission. On 30 June, the chairman, deputy chairman and members of the Referendum Commission were appointed by Presidential decree.

The CPA also provides interim arrangements for Abyei, Southern Kordofan and Blue Nile States, known as the three transitional areas. In Southern Kordofan and Blue Nile these arrangement will be confirmed or amended through popular consultations. Although Southern Kordofan and Blue Nile will remain part of northern Sudan, there is potential for a level of autonomy.

Abyei is scheduled to hold a referendum simultaneously with the referendum on the self-determination of southern Sudan, in order to decide whether to remain part of northern Sudan, or become part of Bahr el Ghazal state in southern Sudan. However a number of requirements under the CPA, to be implemented prior to the Abyei referendum, have not been achieved. These include the appointment of members of an Abyei Referendum Commission, determining who is eligible to vote, and border demarcation. The borders of Abyei were determined by the Permanent Court of Arbitration in July 2009, however the demarcation process on the ground has stalled and remains a source of dispute between the north and south.

Despite delays in the preparations the date for the referendum is set for 9 January 2011. The European Union (EU) has committed some 60 observers to monitor the referendum. The Carter Centre, a Non Governmental Organization (NGO) founded by the former President of the United States of America, Jimmy Carter, has deployed 16 long-term observers and some 60 medium and short term observers. Small advance groups of observers from the EU and the Carter Centre have been deployed to assess the voter registration phase of the referendum process scheduled to start on 14 November 2010. The United Nations (UN) has appointed a three-member panel to monitor the referendum, led by former Tanzanian President Benjamin Mkapa in addition to observers, and the African Union has expressed willingness to send referendum observers. The referendum will also be monitored by Sudanese civil society.

In April 2010, President Omar Al Bashir was re-elected, despite the arrest warrant issued against him by the International Criminal Court (ICC) in March 2009, for war crimes and crimes against humanity committed in Darfur, and three additional charges of genocide as of July 2010.

The elections were regarded as flawed and did not meet full international standards, according to the EU and Carter Centre observer missions. During and after the elections, human rights violations were increasingly carried out by the government including harassment, intimidation and arrests of opposition leaders, journalists and human rights defenders in both northern and southern Sudan.

Freedom of expression was severely restricted during and after the elections. In the north, the National Intelligence and Security Services (NISS) resumed their pre-print censorship on newspapers between May and August 2010. The NISS closed down a number of newspapers and arrested journalists in relation to their work. Three journalists were sentenced to two and five year prison terms and remain in detention by 1 November. One of the subjects that newspapers and journalists were banned from reporting on, and which allegedly triggered the closure of pro-government newspaper *Al Intibaha*, was the possibility of secession of the south.

Although the pre-print censorship was lifted in the north, a number of restrictions remain on newspapers and journalists. In the south, security services have also been imposing a censorship on newspapers and journalists have been arrested in relation to this censorship and because of their coverage of the April 2010 elections. Amnesty International recorded incidents of harassment by law enforcement agencies targeting individuals calling for unity. Amnesty International is concerned about restrictions on freedom of expression in Sudan and their impact on the space it leaves for public consultation and debate, ahead of the referendum.

In the context of the referendum, Amnesty International's concerns include:

- Harassment, arbitrary arrest, detention, torture or other forms of ill-treatment by southern Sudanese police and security forces, including by members of the Sudan People's Liberation Army (SPLA);
- Human rights violations against southerners living in the north of Sudan, particularly by the NISS. The 2010 National Security Act continues to provide the NISS with sweeping powers of arrest, detention, search and seizure in addition to immunities for human rights violations carried out in the course of their work;
- Limitations on freedom of movement by various groups, in addition to the continuing conflict in parts of southern Sudan which may deter people from travelling to polling stations. The proliferation of small arms, particularly in areas of inter-communal violence, may also be used to intimidate voters;
- Threats to freedom of expression, association and peaceful assembly. These include violent dispersal of peaceful protests and demonstrations, arbitrary arrests and detention of journalists and observers, and intimidation of voters; Amnesty International is particularly concerned about restrictions on freedom of expression and human rights violations targeting voters calling for unity in the south, and similar restrictions and measures against journalists and newspapers in the north when making references to a possible secession of southern Sudan.

There is national and international pressure on Sudan to hold a free and fair referendum, and to end the cycle of violence, insecurity and human rights violations in the country. At this crucial time the respect, protection and promotion of human rights by all those involved in the referendum is of critical importance.

In particular, the ability to exercise the rights to freedom of expression, peaceful assembly, freedom of association, and freedom of movement is essential to the establishment of a climate in which people can participate in the referendum process without fear of intimidation or reprisals. Respect for human rights must be a central element to the referendum process and the Sudanese government must take steps to ensure that everyone is able to exercise these rights without fear of reprisals.

It is essential that referendum monitoring, in addition to observing the referendum process itself, takes full account of contextual human rights factors, including during the preceding period and in the aftermath. Monitoring bodies should call on the authorities to put a stop to any human rights violations observed by or reported to the referendum observers ; a human rights assessment should form an integral element of the overall report on the referendum.

Amnesty International encourages referendum observers to include human rights monitoring as a key element of their brief, and to take the following recommendations into consideration:

### **1. The role of the international community**

International organizations sending observers to monitor the referendum in Sudan should give attention to human rights concerns. Observers should assess whether the context in which the referendum is held ensures respect for human rights and people's protection from human rights violations and abuses. Some of the factors to look for as indicators in this regard include:

- Clear public signals from the Government of National Unity, the Government of southern Sudan, as well as from the Southern Sudan Referendum Commission that human rights abuses will not be tolerated;
- An effective system for registering and dealing with complaints about restrictions on the freedom to vote;
- Effective avenues to complain about intimidation or other abuses and clarity on ways in which to report these abuses together with adequate public awareness of these avenues;
- Clear instructions issued to the police by senior police authorities and mechanisms to ensure that people are safe from intimidation and harassment in relation to the peaceful exercise of their right to freedom of opinion and expression and other related rights.

Amnesty International is calling on governments and international organizations who send observers to bring any shortcomings in these, or similar requirements, urgently to the attention of the relevant Sudanese authorities as they arise, and to take full account of them in assessing the situation on an ongoing basis prior to and during the referendum, and in their overall assessment afterwards.

### **2. Proper preparation of observers**

Election observers should have the necessary knowledge and training to monitor human rights violations and abuses that may take place in the context of the referendum. In particular, observers should monitor and report on respect for human rights in the following key areas:

Freedom of expression, association and movement of voters and other stakeholders;

The right to peaceful assembly at public gatherings of all political and civil society groups, including those lobbying for secession or for unity;

Be alert to any incidents of harassment, intimidation and arbitrary arrest of journalists, members of the civil society, political groups, or ordinary citizens.

Observers should be provided with texts of relevant human rights standards including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights; and should familiarise themselves with the provisions of these instruments that are particularly relevant in the context of the referendum, including, but not limited to the right to freedom of expression, freedom of association, peaceful assembly, and freedom of movement, and the right to liberty and security of person.

### **3. No international "silent witnesses"**

International organizations sending observers should establish proper reporting channels that require observers to report any human rights violations and abuses they may witness or allegations of human rights abuses they receive. The international organizations should take appropriate steps to raise these issues with relevant government authorities without delay, and to call on them to take urgent appropriate remedial action.

### **4. Human rights monitoring at polling stations**

On the registration and voting days, referendum observers should be given unhindered access to all polling stations, to be able to observe any human rights abuses. The observers should be mandated to be able to ask the authorities urgently to take remedial action to put a stop to such abuses. They should record and report what action the authorities take or refrain from taking.

## **5. Broader human rights observation**

In order for citizens to participate in the referendum process freely and without intimidation or harassment, the authorities must ensure that all the rights that are pivotal to such participation can be enjoyed by all without discrimination. Observers should take note of and record human rights violations and abuses which impact on people's ability to exercise their rights, whether they occur before, during, or after the actual dates of polling, both in the north and south of Sudan. Human rights abuses could take place well before the date of the referendum and away from the immediate vicinity of polling stations. Accordingly, referendum observers should monitor not only the actual voting procedure but also the environment and human rights situation in the run-up to the voting days and in areas away from the polling stations.

## **6. Public reporting of human rights abuses**

Referendum observers must report any concerns about politically motivated violence and intimidation. This is important to ensure, as far as possible, a context where everyone is able to exercise his or her rights to freedom of expression, peaceful assembly, freedom of association, and freedom of movement without any intimidation or harassment.

Referendum observers should also immediately report any arbitrary arrests that are made prior to, during or following the referendum by any security forces, police, or members of the SPLA. Monitoring bodies should call for prompt, impartial and independent investigations into all human rights abuses that are documented that hold those responsible for human rights abuses accountable.

## **7. The role of the police and security forces**

Referendum observers should monitor the conduct of the national police and security forces, to ensure that they do not commit human rights violations. Referendum monitors should also ensure that police and security forces protect the rights to freedom of peaceful assembly among others in a way that upholds international human rights standards. Observers should note whether their action is prompt, appropriate and proportionate in accordance with international policing standards.

Referendum observers should be provided with the texts of, and should familiarize themselves with, international human rights standards relevant to the conduct of the police and security forces, in particular with regard to the use of force and firearms and the policing of assemblies. These should include the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Observers should also be provided for reference with appropriate manuals such as Human Rights Standards and Practice for the Police, Professional Training Series No. 5/Add.3, Office of the UN High Commissioner for Human Rights, Geneva, 2004.

## **8. Support for Sudanese civil society**

Sudanese civil society organizations will also be monitoring the referendum. Civil society monitors may be at risk of harassment, intimidation and other abuses for their activities. It is important that international referendum observers work together with civil society groups and devise effective ways to ensure their protection.

## **9. Continuing protection of human rights either side of the referendum**

International observers should be deployed well in advance of the referendum in order to monitor the preparations and to be fully functional for the voter registration. They should promptly bring to the attention of the authorities any human rights violations and abuses they identify, and call on the authorities to take urgent remedial measures and steps to prevent further such abuses. Some international observers should remain in the country after the referendum to monitor the human rights situation in the immediate aftermath. If they observe human rights abuses during this period, monitoring bodies should continue to call on the authorities to bring an end to the abuses, and should report on the occurrence of the abuses and on what action the authorities take or do not take in response.

## **10. Documenting political discourse**

Referendum observers should note the language used and statements made by officials of the Sudan People's Liberation Movement (SPLM), the National Congress Party (NCP) and opposition parties, as well as the language used by the media that has a bearing on human rights. Systematically recording the exact words used in a threat, or a pledge of commitment to upholding human rights, and the date and location where they were spoken, is an important means to measure adherence to and respect for human rights within the context of the referendum process.

### **11. Freedom of expression and information**

Access to the media, especially newspapers and radio, is crucial in ensuring that all voters are able to exercise their right to freedom of expression which includes the right to receive and impart information. It is important, therefore to monitor if there is a balanced access to the print and broadcast media throughout the country, and if they are able to exercise the right to freedom of movement enabling them to have access to all areas.

### **12. The right to peaceful assembly**

Referendum observers should monitor public meetings, including acts of disruption or harassment, and policing actions by law enforcement officials including any arrest or, ill-treatment of party workers and members of the public. They should document these incidents and report them to the relevant authorities and include details in their reports. Referendum monitors should also monitor and report on any clashes or violence between various political groups and their supporters, and how law enforcement authorities respond, or fail to respond to any such violence.