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Designing Elections in Conflict-Prone Divided Societies: the Case of South Sudan

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Summary

Since the end of the Cold War the international community has dedicated much attention and effort to building peace in societies torn by ethno-political violence, as well as to preventing the outbreak of violence in conflict-prone divided societies in the first place. Democratization has remained a key feature in these peacebuilding and conflict prevention efforts, even though the effect of elections is ambivalent. On the one hand, elections are essential for ensuring representation and accountability. In the long term elections contribute to peacebuilding by addressing the root causes of the conflict. They can ensure the representation of formerly excluded groups in parliament. Also, they can be designed in a way that fosters moderation and interethnic accommodation. Yet on the other hand, when hurried and poorly designed, elections can also threaten the precarious peace. This report focuses on the three main features of electoral design that crucially influence the success or failure of elections in conflict-prone divided societies: timing and sequencing, electoral administration, and electoral systems. Our report aims to go beyond purely scholarly debates and to translate the general insights into specific policy recommendations for the parliamentary elections scheduled for 2015 in South Sudan; the first elections since the country torn by ethno-political conflict gained independence in 2011.

The debate on timing and sequencing of elections has focused on societies with a recent history of ethno-political civil war that has often been brought to an end by a peace agreement proscribing elections. However, issues of timing and sequencing also arise when there is no tradition of regular free elections and questions of electoral engineering come to the fore. Proponents of early elections stress the indispensable role of elections in strengthening the legitimacy of the government. Interim governments are by definition undemocratic and the population lacks ownership of the institution. Furthermore, the longer elections are postponed the more time the former warring parties have to entrench themselves in power. Early elections strengthen the former warring factions over more moderate alternatives that have insufficient time to organize themselves and are thus unable to compete with them. Furthermore, the former warring parties are still the most powerful political actors with the means to return to violence in the case of unfavorable election results. Their commitment to democracy is questionable. Lastly, in the immediate aftermath of ethno-political conflict voters tend to vote for radical ethno-political entrepreneurs rather than moderate candidates. This gives politicians an incentive to use populist rhetoric and foster intolerance in order to get elected.

Next to timing, the sequencing of elections also impacts on the success of elections. Having national and sub-national elections simultaneously can be advantageous for poor countries, because it is cost effective and easier for the electorate and the electoral administration. However, experience has shown that having to cast several votes in the same instance can also confuse voters. It can thus be advantageous to sequence elections. Some authors argue that national elections are internationally more important and easier to organize than sub-national ones and should therefore be first in the sequence. Others claim that it is better to conduct sub-national elections before national ones. This provides more time for the political parties and candidates to gain experience and build up a

local support base. All in all, we conclude that in most conflict-prone divided societies conditions are not favorable to early elections. Although sequencing elections appears to serve both political parties and the electorate best, given the financial strains many conflict-prone divided societies are facing this is often not a viable option.

The second feature of electoral design that we study is the electoral administration. The electoral management body (EMB) is the institution primary responsible for administering the elections. It determines who is eligible to vote, receives and validates the nominations of the participating parties and candidates, conducts the polling, counts the votes and disseminates the results. The EMB thus has to decide about issues, such as eligibility criteria for candidates and voter registration, which are highly politicized in divided societies. Electoral malpractice undermines public confidence in the credibility of the elections and thus risks the outbreak of violence. This is even true for unintentional administrative errors; what matters is not if a technical irregularity occurred, but if it is *perceived* as politically inspired. It is therefore essential that the EMB gains public confidence and ensures the integrity of the elections. This is considerably easier when the EMB is (perceived as) independent from the government, impartial in its conduct, transparent in its activities, authoritative and competent, and has adequate resources. This is easiest achieved when the EMB is a commission of technocrats. Their appointment should adhere to the principles of descriptive representation to gain trust from all conflicting ethnic groups.

Last, we discuss the electoral system. This feature of electoral design has the most far-reaching consequences for peacebuilding. Just like the timing of an election and the set-up of the electoral commission, the electoral system choice has an impact on the risk of the outbreak of violence. But contrary to timing and administration the electoral system also has long-term effects on peacebuilding. In ethnopolitical conflicts groups fight against the state or each other in order to protect their collective interests. Elections can provide a “strategic substitute” to this fighting. They allow formerly excluded groups representation, which enables them to voice their groups’ concerns in a non-violent way. A key objective of electoral systems in conflict-prone divided societies is therefore to ensure the fair representation of minority ethnic groups in parliament (“descriptive representation”).

The most prominent voice in the debate on electoral systems advocates (list) proportional representation (list-PR). Almost by definition, list-PR facilitates the representation of ethnic minorities in parliament, especially when combined with large electoral districts and in absence of an electoral threshold. Yet we argue that list-PR only has this advantage vis-à-vis other electoral systems wherever ethnicities live intermingled throughout the entire country, like for example in Rwanda and Burundi. Wherever ethnic groups concentrate in specific regions, pluralist and majoritarian systems have similar inclusionary effects. This is because the minority groups form local majorities which allows their political representatives to perform quite well also under other electoral systems than list-PR. Such concentrated settlement patterns are much more common than dispersed ones. Our recommendation for societies where ethnic groups settle in particular regions is to take into account the additional merits of majoritarian systems in overcoming ethnic cleavages, especially because list-PR runs the risk of reinforcing ethnic divisions. Because

they provide incentives for candidates to campaign for the votes of members of other ethnic groups, majoritarian systems encourage interethnic bargaining and promote accommodative behavior. This contributes to the de-ethnicization of politics and society in the long term.

In summary, the design of elections in conflict-prone divided societies has a significant impact on peacebuilding. With a view to timing, the evidence suggests that the risk of renewed violence can be lowered by not having elections (too) soon after the end of the conflict. In a similar vein, observers agree that independent, technocratic EMBs are the best guarantee against elections triggering new violence. In contrast, the electoral system choice has been discussed more controversially. We caution against recommending any electoral system across the board and argue that the choice of electoral system should be made dependent on the settlement patterns of ethnic groups in society. First and foremost the electoral system should ensure high levels of descriptive representation. If multiple systems have this effect, the additional benefits of the systems should inform the final choice.

For South Sudan with its numerous political challenges, including the ongoing animosity with neighboring Sudan, the economic strain, the power struggle within the dominant political party, the SPLM, and ethnic violence, the 2015 elections can mark a turning point; positively or negatively. Through electoral engineering the risks associated with the elections can, to an extent, be mitigated. With regard to the timing and sequencing of elections it is pertinent that if the situation allows it, elections do take place in 2015. Establishing a regular election cycle, the development and professionalization of opposition parties and empowering the electorate are crucial for the stabilization of democracy and the prevention of increasing inter-ethnic violence. In terms of electoral administration, the National Electoral Commission (NEC) seems relatively well-equipped to carry out its task. This commission of technocrats is heavily supported by the international community with financial, physical and human capital. Whether the NEC will be viewed as credible and impartial will depend of course on their own behavior when politicians will try to influence them.

The 2015 elections in South Sudan will be held under a mixed electoral system. This system has the advantage that it facilitates both descriptive representation, because of the list-PR component, and local representation through single member constituencies. Although a pure list-PR or SMP (Single Member Plurality) system would be easier in terms of electoral administration, list-PR fails to provide the link between MPs and their constituencies that is so important for the development of South Sudan's remote countryside, whereas SMP risks the exclusion of minorities if district boundaries do not follow the settlement patterns of the ethnic groups. The mixed system therefore seems the most viable option for the first elections in the history of South Sudan.

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1. Introduction¹

Ethnopolitical conflicts² have been high up on the international security agenda. The international community has dedicated much attention and effort to building peace in societies torn by ethnopolitical violence as well as to preventing the outbreak of violence in conflict-prone divided societies in the first place. A minority of authors have claimed that ethnopolitical violence is inevitable as ethnicity is primordial and inherently conflict-prone (Kaplan 1993). However, such a fatalist position can hardly explain why so many ethnically plural societies have not experienced violence and why those divided societies that slid into civil war often had long periods of peaceful co-existence. Most theories of ethnopolitical conflict therefore stress that ethnopolitical conflict is ‘manageable’ through carefully designed political institutions (Varshney 2007: 281-291).

For various reasons institutional engineering – the design of new political structures and institutions – has revolved around democracy and elections. The collapse of the Soviet Union and its allies meant an end to the main ideological challenger to liberal democracy. At the same time, the third wave of democratization made democracy a widespread form of government throughout the world. Finally, academics kept presenting ever more evidence for the beneficial effects of democracy on peace (Doyle 1986). Although the so-called Democratic Peace only applies to relations between mature democracies, research inspired by it suggests that democracies are less likely to experience civil wars.³ As a consequence, democracy (and thus elections)⁴ became an unquestioned goal of institutional engineering.

Yet in violence-prone divided societies conducting elections also poses a risk and can threaten the precarious stability of these countries. With some exceptions, such as Mozambique, Cambodia and El Salvador, the elections that were part of the 1990s peacebuilding missions are associated not with peace, but with conflict (Mansfield/Snyder 2007: 253-257). According to Lars Brozus (2013: 1), more than 10,000 people have died in election-related violence since 2000. The often frustrating experience with elections in

1 Research for this article was supported by the Berghof Foundation GmbH. We would like to thank Michael Lidauer and Jonas Wolff for helpful comments and suggestions.

2 We follow Ted Robert Gurr’s definition of ethnopolitical conflict as one in which “groups that define themselves using ethnic criteria make claims on behalf of their collective interests against the state, or against other political actors” (1994: 348).

3 See Dixon 2009; Hegre et al. 2001; Krain/Myers 1997. For a more critical perspective see the contributions in Spanger 2012.

4 Democracy and elections are not synonymous. On the contrary, equating democratization with having elections, “risks confusing the goal and process with the mechanism, and often leads to a relapse into conflict” (Brahimi 2007: 10). Although building democracy indeed encompasses more than only conducting elections, elections are an essential mechanism for fostering democracy and are therefore an inherent feature of democratic peacebuilding. As Le Duc et al. point out, “the future of democracy in both established and emerging systems depends to a large extent on events related to the electoral process, because elections are the one political institution that both leads and reflects many of the social, political, and economic trends” (1996: 4).

divided societies has given rise to an enormous literature on electoral engineering, i.e. the design of electoral institutions. Reviewing and advancing the debate about the design of elections in divided societies is at the heart of this report.

Because electoral systems directly influence a country's political party system (Bogaards 2004) and thus impact on the strength of the government, the opposition and their interaction, they are widely considered the most important element in institutional engineering (Lijphart 1995: 412). We would like to emphasize from the outset, however, that successful ethnopolitical conflict management depends on a multitude of additional factors, including elite strategies, power-sharing agreements, outside support and the economy. A comprehensive treatment of all these other factors is, however, beyond the scope of this report and, as we will see, the debate about electoral engineering is already a very rich one.

Our discussion of electoral engineering revolves around three key features, namely the timing and sequencing of elections, the electoral administration and the electoral system. It is important to note that our prime concern is not the success of democratization or the quality of democracy but the mitigation of ethnopolitical conflict. Although democratization and conflict prevention/peacebuilding often overlap, they occasionally clash and create trade-offs to electoral engineers. This is most obvious with respect to the timing of elections: From a democratization perspective, postponing elections seems detrimental to building a viable democracy, but from a conflict theoretical perspective a postponement may be a prudent decision to minimize the risk of ethnopolitical violence.

Our report aims to go beyond purely scholarly debates and to translate the general insights into specific policy recommendations for the electoral design of one particular country; namely South Sudan, where the first parliamentary elections since the country gained independence in 2011 are scheduled for 2015. South Sudan is an interesting and suitable case for various reasons: It is a deeply divided society characterized by ethnopolitical conflict. To be sure, the country is not a typical case of post-conflict peace-building as it only became independent in 2011. However, the country's independence implied that decisions about the timing and sequencing of the elections, the electoral administration and the electoral system all had to be made. Whereas the international community pays much attention to the North-South conflict and the conflict in Darfur, South Sudan is also characterized by simmering intra-state ethnopolitical violence that could escalate on the occasion of competitive elections. From the perspective of electoral engineers, therefore, the challenge with a view to the South Sudanese elections in 2015 is comparable to the challenge to design elections for Bosnia-Herzegovina after the Dayton Agreement or for Timor Leste after independence.

The report is structured as follows: in the second section we address the goals of post-conflict elections as well as the risks they pose in violence-prone divided societies. In section 3 we give a brief overview of the history of the independence struggle in South Sudan as well as the current status of the democratization project. In the fourth section we examine the debate on the timing and sequencing of post-conflict elections. In section 5 we discuss electoral administration, including some guiding principles that can help electoral management bodies to ensure electoral integrity. In the sixth section we delve into the debate about electoral systems. The right timing and sequencing depends to a large extent

on the security situation, the country's institutional capability and infrastructure and possible democratic traditions. The electoral administration proves to be challenging mostly in terms of implementation. The choice of electoral system, however, is widely debated in academic literature with proponents of (list) proportional representation dominating and adherents of so-called centripetalism as a vocal minority. We argue that a country's ethnic composition should be taken into account when deciding on which electoral system to use. Finally, in the conclusion we distill from those academic debates about electoral design important policy implications for the 2015 elections in South Sudan, in the hope that by taking into account lessons learned the country can continue on a path towards ethnic conflict resolution, instead of the path of increasing inter-ethnic violence. Throughout the report we make use of various examples. Needless to say, this study is not meant to be a case comparison, but rather aims to bring together academic debate and practitioners' problems in designing elections in post-conflict divided societies. The cases mentioned in the various sections are thus for illustrative purpose only.

2. The Goals and Risks of Elections in Conflict-Prone Divided Societies

Elections serve multiple purposes. Most importantly, free and fair elections are an indispensable element in any modern democracy. Not surprisingly, therefore, elections have mostly been studied by scholars of democracy and democratization.⁵ Scholars of conflict studies, however, are less interested in the democratic merits of elections per se but rather in the effects elections have on civil peace and political violence, in particular in inter-ethnic relations. In this report, we assume the conflict studies perspective. We are less interested in the quality of democracy, but rather in the effects of elections on the prospect of peaceful inter-ethnic relations.

A number of conflict studies scholars have pointed out the risks that competitive elections bring about in divided societies. Elections may become the focal point of tensions and thus bear the risk of violence.⁶ Elections are competitions between individuals, parties and their ideas. They aim to highlight social choices and are by definition divisive: some win, others lose. Conflict and polarization are thus inherent features of elections (Paris 1997: 74). This competitive logic of elections easily aggravates tensions in divided societies. Frequently, the very subject of democracy (i.e. the *demos*) is contested and some eth-

5 See for example the contributions to the journals *Electoral Studies*, *Democratization* and the *Journal of Democracy*.

6 Following the pioneering work of Mansfield and Snyder, many scholars have focused on elections (and democratization more broadly) as a trigger for violence and (renewed) conflict (see, among many others, Paris 1997, 2004; Doyle/Sambanis 2006; Cederman/Hug/Krebs 2010). More recently, however, an interesting literature has emerged that addresses violence before and during elections (see Collier/Vicente 2012; Daxecker 2013; Kuhn 2013).

nic groups may not consider themselves as a part of a multi-ethnic society but instead aim at self-government (Mann 2005). In a process of democratization the old elites, fearful to lose power to the new groups who represent the forces behind the democratization process, may try to mobilize the masses by appealing to nationalist sentiments and raising the question of the *demos*. This sharpens the divisions that already exist in conflict-prone divided societies. Especially if competing political parties engage in ethnic outbidding, ethnicity rather than socioeconomic issues becomes the focal point of electoral campaigns and voting (Mansfield/Snyder 1995: 7-8, 24-25). Often, countries in the process of democratization lack the institutional capability to control diverging political interests and protect minorities (Paris 1997: 55-57).

Elections, however, do not only bring about risks but also make important contributions to the mitigation of conflict in divided societies. At a general level, elections (and democracy more broadly) can be seen as an alternative to violent conflict (Dunning 2011). It is for this reason that democracies have a lower risk of experiencing violent conflict in the first place (Krain/Myers 1997; Hegre et al. 2001; Lacina 2006). The conflict-mitigating effects of democracy go back to its ability to give a voice to all groups in society and to have their concerns heard, if not included in decision-making. In a recent quantitative study, Lars-Eric Cederman, Andreas Wimmer and Brian Min (2010) have demonstrated that the exclusion of politically relevant groups enhances the risk of conflict significantly. Including them into the political system therefore is a good strategy to prevent or overcome ethnopolitical conflict.

The inclusive function of democracy makes descriptive representation a key criterion for the assessment of elections. Descriptive representation means that parliament is composed in a way that accurately reflects the demographic characteristics of the society.⁷ For example, a society in which a third of the population belongs to a particular ethnic group should have roughly a third of the members of parliament from this group in order to be descriptively represented. The importance of descriptive representation goes back to the assumption that a group's substantial interests (e.g. in having education in their native language) are most effectively pursued by members of this particular group - an assumption widely shared among members of ethnic minorities in divided societies (Ruedin 2009: 335). Political theorist Jane Mansbridge has argued that especially in a climate of distrust, "descriptive representation usually furthers the substantive representation of interests by improving the quality of deliberation" (1999: 654). When discussing the merits and shortcomings of various electoral formulas, we will therefore use descriptive representation as a key criterion.

Although ensuring descriptive representation is the most important criterion for the assessment of electoral systems for divided societies, one further contribution of elections to the mitigation of conflict should be noted. In the longer term, elections can be designed in a way that fosters moderation and interethnic accommodation. By providing incentives

7 For a comprehensive discussion of descriptive and other forms of representation see Pitkin 1967 and Ruedin 2013, chapter 1.

to candidates to appeal to voters beyond the own ethnic group, electoral systems can break the cycle of ethnic voting. As such, they can contribute to the de-ethnicization of politics and society in the long run (Simonsen 2005: 298). Elections foster people's identification with and an ownership of the political system and pose constraints upon political leaders who are dependent on the electorate to stay in power (Reynolds/Sisk 1998: 15-18; Sisk 1998: 146-147).

3. South Sudan

The last two decades violence in the Sudan region has, more or less prominently, featured in the news. The conflict in Darfur is tragically still ongoing, whereas the civil war between the North and South officially came to an end with the signing of the 2005 Comprehensive Peace Agreement. Tensions between Sudan and South Sudan still exist, however, as is exemplified in the ongoing disputes about oil transportation and alleged support to rebel groups on Sudanese territory by the South Sudanese government. In contrast to the atrocities committed in both conflicts, as well as the difficult relation between Sudan and South Sudan, relatively little attention has been given to the ethnic strife within the newly independent state of South Sudan. For the future of South Sudan, however, it is crucial that ethnic relations are studied and understood in order to have targeted interventions that can prevent the current still low to medium scale ethnic violence from escalating into another full-fledged civil war. This section aims to give an insight in the current ethnic relations in South Sudan, as well as the ongoing democratization project.

3.1 Ethnicity in South Sudan

The South Sudanese society is ethnically highly diverse. According to one estimate, it has more than 56 ethnic and almost 600 sub-ethnic groups (Ferrie 2011: 1) which are subdivided into independent tribes, clans and lineages. The ethnic group taxonomy is not on socio-economic or cultural activities but on shared language.⁸ Based on ethno-linguistic affiliation, South Sudan's ethnic groups fall into three broader categories: the Nilotic, Nilo-Hamitic and the South-Western Sudanic groups. The Nilotic group includes the three politically most relevant ethnic groups, namely the Dinka (Greater Bahr El Ghazal and Greater Upper Nile regions), the Nuer (Greater Upper Nile region) and the Shilluk (Upper Nile State).⁹ The exact sizes of these groups are hard to establish. The most recent census, which was conducted in 2008, faced numerous administrative and technical chal-

8 Email correspondence between Sofie Dreef and Mr. Jacob Dut Chol, Chairperson of the Center for Democracy and International Analysis; 21 May 2013.

9 For a classification of most ethnic groups, see the South Sudan Country Profile by UNMISS, <http://bit.ly/182U75Z> (21 August 2013). A map with administrative boundaries and ethnic settlements can be found at <http://bit.ly/19ZSuJO> (21 August 2013).

lenges. The government of Southern Sudan rejected the results, accusing the Northern administrative body of manipulating the figures.¹⁰ Table 1 provides a rough estimate of ethnic group sizes of the largest ethnic groups (> 3 % of the total population).

Table 1: South Sudan's major ethnic groups (> 3% of population)

| Ethnic group | State(s) of origin | Approximate % of population |
|---------------------|---|------------------------------------|
| Dinka | Western Bahr El Ghazal, Northern Bahr El Ghazal, Warrap, Jonglei, Upper Nile, Lakes | 40 |
| Nuer | Jonglei, Upper Nile, Unity | 20 |
| Azande | Western Equatoria | 10 |
| Toposa | Eastern Equatoria | 8 |
| Shilluk | Upper Nile | 5 |
| Murle | Jonglei | 4 |

Source: Young 2006, p. 16.

The Dinka, Nuer and Shilluk are all pastoralist peoples, but where the Dinka and Nuer are mobile and migrate with the seasons, the Shilluk are settlers. For all ethnic groups cattle are of enormous symbolic, religious and economic value. Cows are a method of payment of debts, fines and bride prices, and ownership of livestock determines one's status and influence in society. Conflicts over grazing grounds and cattle raiding between ethnic (sub-) groups have been an inherent feature of inter-ethnic relations since long before independence. However, several factors including the war and later the oil dispute with the North, the influx of humanitarian aid and the monetization of the economy have made the pastoralist lifestyle increasingly difficult to sustain, which leads to increasing ethnic conflict. Furthermore, with the conflict with Sudan came an influx of small arms. This makes ethnic clashes increasingly violent and often even deadly. Conflicts occur both between ethnic groups, such as Dinka against Nuer, and between ethnic sub-groups, for example between Nuer Lou and Nuer Bul or between Dinka Bor and Dinka Agar. It could even go down to tribes or clans, such as Dinka Bor inter-clan conflicts. Ethnic conflict in South Sudan is thus frequent, diverse and can occur on the more general ethnic group level down to family feuds.

3.2 The North-South Conflict and Its Impact on Ethnic Relations in the South

Since gaining independence from the British in 1956 the Sudan region has experienced more years of conflict than of peace. The first civil war started when southern leaders

¹⁰ Interview conducted by Sofie Dreef with Mr. Isaiah Chol Aruai, Chairperson of the National Bureau of Statistics; 19 February 2013 in Juba, South Sudan.

accused the new authorities in Khartoum of renegeing on their promise to create a federal state and of trying to impose Arabic culture and Islam on the southern region. The southern Anya Nya guerrilla movement started a secessionist armed struggle against the Sudanese government, which ended in 1972 with the Addis Ababa Agreement. The peace agreement granted significant regional autonomy to Southern Sudan. It allowed the region its own legislative and executive bodies that would be responsible for all issues but national defense, national planning and foreign affairs. Also, it recognized southern religion, language and traditional laws. However, the peace agreement also caused tension in the south between the Dinka and the Equatorian groups (including, among other groups, the Bari, Zande, Acholi, Madi, Moru, and Kuku). Before 1972 southern Sudan had been split into the three provinces of Greater Bahr El Ghazal, Greater Equatoria and Greater Upper Nile, which were separately answerable to the central Sudanese government. The Addis Ababa Agreement unified these three provinces into the single autonomous region of Southern Sudan. The inhabitants of Greater Equatoria, fearing the dominant position of the Dinka in the new Southern administration, favored the old decentralized system of government. They actively pushed for *Kokora*, i.e. the re-division of Southern Sudan into the three provinces. The people of Greater Bahr El Ghazal and Greater Upper Nile, on the other hand, severely opposed fragmentation of the southern region as they felt the south acting as a bloc had greater leverage over the north.

In 1983 the Khartoum government by decree abolished the Southern government and Legislative Assembly, re-divided Southern Sudan in three provinces and greatly reduced its degree of autonomy (Branch/Mampilly 2005: 5). This re-division of the region was one of the triggers for the foundation of the Sudan People's Liberation Movement (SPLM) and its armed wing, the Sudan People's Liberation Army (SPLA) by a group of prominent Dinka under the leadership of Colonel Dr. John Garang de Miabor in the county of Bor in Greater Upper Nile (Jonglei State). In its early days the SPLM/A recruited its members mainly in Dinka and Nuer areas. Because of their disagreement about the implementation of *Kokora* the Equatorian people viewed the SPLM/A as a Dinka movement rather than a southern nationalist movement and were reluctant to join. The Dinka and Nuer-dominated SPLM/A leadership, in turn, did little to involve them. South-South ethnic relations became increasingly strained when in 1991 the SPLM/A leadership had a fall-out and the movement split along ethnic lines. Dr. Riek Machar (ethnic Nuer), Lam Akol (ethnic Shilluk) and Gordon Kong (ethnic Nuer) broke away from the SPLM/A to form the Nuer-dominated SPLA-United faction, which controlled large parts of the countryside in the Upper Nile region. The Dinka-dominated SPLM/A under the leadership of Dr. John Garang, on the other hand, controlled most of the Equatoria and Bahr El Ghazal regions. The leadership of both factions targeted each other's civilian population, thereby reinforcing the ethnic cleavage among the southern Sudanese (Jok/Hutchinson 1999: 128). One of the most dramatic events of south-south ethnic enmity was the 1991 Bor Massacre. A group of Nuer forces led by Machar raided the Dinka Bor counties (Duk, Twic East and Bor Counties) where Garang had founded the SPLM/A, killing hundreds, some say thousands, of civilians. Garang and his forces retaliated by attacking numerous Nuer villages (Hutchinson 2001: 308; The Economist 2010). In August 2011 Machar, then Vice President of South Sudan, publicly acknowledged his responsibility and apologized for the

1991 massacre, because “Giving an apology is the best way of bringing in peace” (Machar quoted in *The Sudan Tribune*, 3 April 2012).

In 1995 the SPLA-United faction split when Akol broke with Machar. Machar became the leader of the Southern Sudan Independence Movement/Army (SSIM/A), while Akol became the chairman of the SPLA-United. Both armed groups signed a deal with the Sudanese government; SSIM/A in 1996 and the SPLA-United in 1997. In subsequent years Machar and Akol both served the government of Sudan, but in 2000 Machar went back to southern Sudan to form the Sudan People’s Democratic Front.¹¹ Two years later, Machar and Garang reconciled. The merger of the Sudan People’s Democratic Front with the SPLM/A significantly strengthened the support base of the SPLM/A. In 2003, the movement was also rejoined by Akol and his militia (Young 2006: 14-15).

During the 22 years of civil war in Sudan, according to UN estimates over two million people lost their lives, another four million were displaced and around 600,000 people fled the country as refugees due to both north-south and south-south violence. In January 2005 the Sudanese government and the SPLM/A signed the Comprehensive Peace Agreement (CPA), which marked a final end to this protracted war. The CPA set out a six-year interim period during which the newly established Government of Southern Sudan (GoSS) enjoyed a high degree of autonomy. The interim period culminated in the January 2011 referendum on the independence of Southern Sudan from the north. Across all regions and ethnic groups, the people of Southern Sudan overwhelmingly voted for self-determination. Six months later the interim period came to an end and the Republic of South Sudan was officially born.

3.3 Ongoing Ethnic Strife in South Sudan

Despite the Comprehensive Peace Agreement that put an end to over two decades of violent conflict between the Sudanese government and the SPLM/A and the euphoric atmosphere in South Sudan when it became the world’s youngest state, neither the peace agreement nor independence mark an end to violence in South Sudan altogether. During the North-South conflict South Sudan’s different ethnic groups, with mixed results, tried to unite against a common enemy under the banner of the strive for independence. Yet a unified Southern Sudanese identity based on (a mix of) a shared history, language, culture, etcetera, does not exist (Branch/Mampilly 2005: 4). Two years down the road of independence ethnic violence has re-emerged in most of the country’s ten states. The Uppsala Conflict Data Program (UCDP) reports multiple low to medium scale intra-state ethnic conflicts in South Sudan in 2012.¹² Between the Murle, Bor Dinka and Lou Nuer of Upper Nile State a historic animosity exists. The groups compete over resources in the form of water and, most importantly, cattle. The Murle have a reputation of cattle raiding,

11 For a detailed account of the SPLM/A split and subsequent militarization of Dinka and Nuer ethnic identities, see Jok/Hutchinson (1999).

12 See UCDP Encyclopedia, www.ucdp.uu.se/gpdatabase/search.php (21 August 2013).

which occasionally leads to violent ethnic clashes. The hostility between the groups has been instrumentalized by politicians during the North-South conflict, when the Sudanese government tried to play the southern groups against each other in order to weaken the independence movement. Still, politicians use the tension between the ethnic groups to gain power and influence. In Western Bahr El Ghazal State, Dinka and Balanda clashed violently because of disagreement over the relocation of the administrative headquarters of Wau County, which the former group supported and the latter opposed. Cross state border fighting occurred between the Gok Dinka from Lakes State and the Rek Dinka from Warrap State. UCDP lists resources such as cattle, water and pasture, and political power as the main sources of violence. A historic rivalry between the Luac Jang Dinka from Warrap State and the Buel Nuer from Unity State has also led to violent clashes in 2012. Although the immediate cause of fighting is cattle raiding, the conflict between the two sub-ethnic groups is part of the broader Dinka-Nuer animosity and their competition for political power. The intensity of these south-south ethnic conflicts has only increased in recent years because of the wide spread of small arms, high levels of youth unemployment and the huge gap between the people's expectations of life post-independence and the challenging social reality on the ground (African Development Bank 2012: 2).

3.4 Ethnicity in Politics

South Sudan has its first democratic elections scheduled for 2015, yet the country gained some experience with elections already in 2010. The 2010 elections conducted throughout the then still unified territory of Sudan were considered "one of the key elements in the strategy to develop a more equitable, stable, and inclusive political system in Sudan" (El-Battahani 2010: 38). Six elections were conducted simultaneously: one for the President of the Republic of Sudan, one for the President of the Government of Southern Sudan (GoSS), one for the Governors of each of the 25 states, one for the Members of the National Legislative Assembly (NLA), one for the Members of the Southern Sudan Legislative Assembly (SSLA) and one for the Members of State Legislative Assemblies (SLAs). The latter three elections were held under a mixed system (see chapter 6) and each consisted of three ballot papers. Voters thus had to cast a total of 12 votes at once.

Hopes that the elections would provide a popular mandate for the Comprehensive Peace Agreement were, however, ill-founded. Originally scheduled for 2008 – the half-way point of the roadmap laid down in the CPA – the elections were postponed to 2010 due to disputes between the President Bashir's National Congress Party (NCP) and the SPLM. Instead of a mechanism providing increased political representation to the marginalized Southern region the elections were merely a last step in the process towards the 2011 referendum on independence (Curless 2010: 4). The elections were tainted by logistical and technical difficulties, such as an inaccurate voter registry and shortage of materials, insufficient civic and voter education, a lack of transparency, and intimidation and harassment of opposition candidates. Different observer missions state in their final reports that although the electoral process was generally peaceful, it fell far short of international democratic standards (Carter Center 2010; European Union 2010).

Unsurprisingly, the presidential elections were won by incumbent candidate President Bashir. The SPLM candidate, Yasir Arman, had withdrawn from the race before the polling. SPLM Chairman Salva Kiir, who had served as the First Vice President of Sudan after Dr. John Garang died in a helicopter crash on July 30, 2005,¹³ was reappointed by Bashir as his First Vice President after the 2010 elections in accordance with the stipulations of the CPA.

Since the signing of the CPA and establishment of the Government of Southern Sudan, Kiir had also served as the President of the GoSS. In 2010 he was re-elected with an overwhelming majority: 92,99%, compared to 7,01% for his only opposition, SPLM-DC candidate Lam Akol. Since the foundation of the GoSS Riek Machar had served as the Vice President, and after the 2010 elections he was re-appointed by Kiir.

Prior to the 2010 elections the allocation of seats for both the NLA (seated in Khartoum) and the SSLA (seated in Juba) was stipulated in the Comprehensive Peace Agreement. In the NLA, the NCP had 52% of the seats; the SPLM 28%; other Northern political forces 14%; and other Southern political forces 6% (CPA 2005, Protocol on Power Sharing 2004, Article 2.5.5). After the 2010 elections there was a reshuffle of seats in the NLA: the NCP won 72,42% of the seats; the SPLM 22,2%; and the remainder of the political parties (Northern and Southern) all less than 1%. In the SSLA, the allocation of seats prior to the 2010 elections was as follows: 70% SPLM; 15% NCP; and 15% other Southern political forces (CPA 2005, Protocol on Power Sharing 2004, Article 3.5.1). Afterwards, the SPLM secured 94,7% of the seats; independent candidates 4,12%; and the SPLM-DC and NCP both 0,59% (NEC 2010: 48).

Shortly after the 2011 referendum, President Kiir appointed a Constitutional Review Committee tasked with reviewing and adapting the Interim Constitution of Southern Sudan which was established in 2005 within the framework of the CPA. The Transitional Constitution proposed by the Committee was adopted by a two-third majority of the SSLA and came into force on July 9, 2011, the day of independence. The Transitional Constitution lays out the process for drafting a permanent constitution for South Sudan. In January 2012 President Kiir established the National Constitutional Review Commission (NCRC), which is tasked with reviewing the Transitional Constitution, conducting civic education and public consultation, and drafting the permanent constitution. The initial timeframe for this process was one year, but was marred by a lack of funding, sluggishness due to the large size of the NCRC and disputes about its composition – e.g. about the number of political versus civil society representatives, the number of representatives from SPLM vs. other political parties, and the underrepresentation of women and youth. In May 2013 the mandate of the NCRC was extended to December 31, 2014.

13 Article 2.3.5 of the CPA 2005, Protocol on Power Sharing 2004 stipulates that “the current SPLM Chairman (or his successor) shall be the First Vice President and shall at the same time hold the posts of President of the Government of Southern Sudan (GoSS) and Commander-in-Chief of the Sudan People’s Liberation Army (SPLA)”.

Key issues under discussion are the powers of the President vis-à-vis the legislature and the degree of federalism. The Transitional Constitution established a decentralized system of governance, with three levels of government: “(a) the national level, which will exercise authority in respect of the people and the states; (b) the state level of government, which shall exercise authority within a state, and render public services through the level closest to the people; and (c) local government level within the state, which shall be the closest level to the people” (Article 47). South Sudan has a presidential system of government, with a President who is Head of State, Head of Government, and Commander-in-Chief of the armed forces (Article 97(2)). The national legislature comprises of two houses: the National Legislative Assembly (NLA) and the Council of States. Members of the NLA are directly elected. Up until the 2015 elections the NLA includes all members of the former SSLA that were elected in 2010, plus all South Sudanese who were members of the National Assembly of the Republic of Sudan, plus additional members appointed by the President at his discretion (Article 56). The Council of States includes representatives elected by their respective State Assemblies, plus all South Sudanese who were representatives in the Council of States of the Republic of Sudan, plus additional members appointed by the President at his discretion (Article 58).

The Transitional Constitution does not include any stipulations regarding the ethnicity of the (Vice) President, nor does it set ethnic quota for the national legislature. According to Article 71 the political party with the second highest number of seats in each House should appoint a Minority Leader, which ranks fourth in protocol in conduct of business of the respective House (after the President, Vice President and the Speaker of the House). Also, he has the right of second reply to an address to the House by the President (the right of first reply lies with the Minister designated to lead government business in the respective House). Although the Minority Leaders theoretically do not have to be from a different ethnic group than the majority party, the political parties that are better organized generally have a regional support base. For example, the largest opposition party founded by Lam Akol, the SPLM-DC, draws its support mainly from the Shilluk in Upper Nile state. The current Minority Leader in the NLA is Hon. Onyoti Adigo, the SPLM-DC representative and an ethnic Shilluk.

Although the dominant party SPLM has support bases all over the country, it is generally considered to be a ‘Dinka party’. Because of its role in the liberation struggle the party long managed to get buy-in from the large majority of South Sudanese, regardless of their ethnic identity. Cultivating this identity as South Sudan’s liberation movement and stressing the virtual absence of other political parties during the struggle for independence has served the SPLM well. As Dong Samuel Luak, Chairman of the South Sudan Law Society, points out: “The SPLM tries to distract people by focusing on the liberation struggle. People see political parties as an enemy, rather than an alternative voice [to the SPLM]”.¹⁴ Nevertheless, now that South Sudan is independent the people become increasingly criti-

14 Interview conducted by Sofie Dreef with Mr. Dong Samuel Luak, Chairperson of the South Sudan Law Society; 19 February 2013 in Juba, South Sudan.

cal of the government and demand basic services. The main challenge for the SPLM is therefore to transform from a liberation movement into a political party. The party heavily dominates the NLA and has co-opted smaller opposition parties. But the public is not unreservedly positive about the SPLM's performance as the government party. Aware of this, the party struggles with how to re-position itself. Some observers even predict a split in the party – a development that could actually benefit a more vibrant, plural democratic culture in South Sudan if this split would be along ideological, instead of ethnic, lines. Unfortunately, at the moment, ethnicity is the focal point of SPLM internal strife. The main fault line is between President Salva Kiir – a Dinka – and former Vice President Riek Machar – a Nuer. The power struggle between the two most prominent SPLM members is not confined to back rooms, but played out in the open. During his Vice Presidency Machar challenged the position of Kiir by announcing that he would bid for the SPLM's chairmanship, which would automatically make him the SPLM presidential candidate in the 2015 elections. In April 2013 President Kiir stroke back by restricting Machar to his constitutionally mandated functions as VP and withdrawing his other portfolios, most notably his chairmanship of the National Reconciliation Committee. Tensions culminated on July 23, 2013, when President Kiir dismissed Machar along with all ministers and deputy ministers of the cabinet. At the moment of writing (August 2013), the situation in the country remains calm, but tense. Rumor has it that Machar may break away from the SPLM, but in order to form a successful opposition party he needs to be very organized and have a solid support base.¹⁵ The five-yearly SPLM Convention which was planned for May 2013 would have determined whether the SPLM could close the ranks. Yet because of internal divisions among the SPLM top leadership the Convention has been postponed, without a clear timeframe. This can be seen as an indication that the 2015 elections will be contentious.¹⁶

A violent split would be detrimental to the precarious security situation in South Sudan. Unfortunately, except for the large presence of the international community in the country many factors do not contribute to a stable South Sudan, but actually make the country more conflict prone. The ongoing dispute between Sudan and South Sudan about oil transportation fees and the funding of rebel groups on each other's soil does not only threaten the precarious peace between the two countries, but also severely damages South Sudan's development as the country relies on oil for 98% of its revenue. Given the enormous expenses involved with constitution making and organizing elections, this loss of revenues has direct implications for the democratization process. For example, the constitutional review process involves, among other expenses, nationwide civic education and public consultations. So far, however, the process has been stalled (partly) due to a lack of funding. Similarly the 2015 elections are a very expensive endeavor, including a nation-

15 Interview conducted by Sofie Dreef with a member of an international NGO; February 2013 in Juba, South Sudan; see also *The Economist* (23 April 2013), 'Curbing ambitions', <http://econ.st/15K5AuL> (21 August 2013).

16 Email correspondence between Sofie Dreef and Mr. Robert Irish, Field Operations Manager at IFES South Sudan; July 2013.

wide census, civic and voter education, training electoral observers, etcetera. Although budgets for the National Elections Committee (NEC) and the National Bureau of Statistics responsible for conducting the census have been approved, given the current financial situation it is unlikely that the Government of South Sudan can afford democratization unless the donor community steps in. Just as problematic as the lack of funds, however, are high levels of unemployment, corruption, the narrowing of political space, low literacy rates and virtual absence of a health care system. The history of ethnic strife between South Sudanese ethnic groups adds to this. Whether South Sudan can live up to the sky high expectations raised by independence therefore is, for the time being, rather unlikely.

4. Timing and Sequencing

The debate about timing and sequencing of elections has emerged from the broader discussion about peacebuilding.¹⁷ As a consequence, the debate has focused on societies with a recent history of ethnopolitical civil war that has often been brought to an end by a peace agreement proscribing elections. However, issues of timing and sequencing also arise when there is no tradition of regular free elections and questions of electoral engineering come to the fore. In the case of South Sudan the reference point for timing and sequencing is the country's independence, which is the end point of the roadmap created by the 2005 Comprehensive Peace Agreement.

Despite the risks associated with elections in conflict-prone divided societies, they do have the potential to foster moderation and interethnic accommodation and to address the root causes of conflict. This is not to say, however, that in response to ethnopolitical conflict elections should be organized immediately. In countries like South Sudan with a long history of civil war and hardly any experience with democratic elections, the right timing of elections and sequencing of national and sub-national elections is crucial for the success of elections as a peacebuilding mechanism.

4.1 Timing

Since the end of the Cold War the average time between the end of a civil war and the first post-conflict elections has halved: from 5.6 years prior to 1989 to 2.7 years after 1989 (Brancati/Snyder 2011: 470; 2013: 823). In the 1990s early elections were conducted in for example Angola (peace agreement in 1991, elections in 1992), Mozambique (peace agreement in 1992, elections in 1994) and Bosnia and Herzegovina (peace agreement in

¹⁷ The literature on democratization has also discussed issues of timing and sequencing with a view of building a stable and viable democracy. However, as pointed out above, we are less interested here in the impact of timing and sequencing on the prospects and quality of democracy, but instead focus on the impact on ethnopolitical conflict.

1995, elections in 1996). The success of these elections, however, varied considerably. Whereas the elections in Mozambique strengthened the peacebuilding process (Reilly 2008: 158), early elections proved detrimental to peace in Angola. The still heavily armed rebel group resumed fighting once it became clear that it would lose the elections, leading to another decade of brutal civil war (Doyle/Sambanis 2006: 312). Peacebuilding dramas like Angola did not, however, change the trend of having elections quickly after the end of a conflict (Brancati/Snyder 2011: 470; 2013: 823). The international community often pushes for early elections because they not only view it as a recipe for quick democratization, but also as their own exit strategy. Elections mark the endpoint of peacebuilding, after which the international community can start to disengage. Donor countries face strong domestic political pressure for quick results and will therefore push to have elections, the earlier the better (Reilly 2008: 167).

Advocates for early elections stress the indispensable role of elections in strengthening the legitimacy of the government (Doyle/Sambanis 2006: 312). Elections mark the transition of power from an interim government that was established in the aftermath of the war to the local authorities. This interim government can be international or domestic in nature, but is by definition undemocratic. The longer an international interim government rules, the more it risks accusations of neo-imperialism and alienating the population. Domestic interim governments generally consist of former warring factions. Without a clear and reasonable timeframe for elections these groups can entrench themselves in power, which makes it difficult for newly formed parties to compete with them in the elections (Diamond 2006: 99). Groups that are excluded from the interim regime therefore often push for early elections and may even threaten to use violence when they sense that postponing the elections limits their chances to get access to power (Brancati/Snyder 2013: 825). Although the legitimacy argument is most compelling in the aftermath of a civil war, it could also be applied to South Sudan. The current South Sudanese government was formed after the 2010 elections and is therefore not an interim government as such. But the legitimacy of the National Legislative Assembly can be called into question given the rigging¹⁸ of the 2010 elections and the presidential appointment of additional, non-elected, members to the NLA. Having new elections quickly after independence could have strengthened the legitimacy of the legislature.

On the other hand, early elections favor the former warring parties and may therefore undermine peace. Because of the short time span new political parties that articulate other than the civil war cleavages do not have sufficient time to organize themselves and build capacity to be able to compete (Brahimi 2007: 10). The former warring parties are still the most powerful political actors with the means to return to violence in the case of unfavorable election results (Reilly 2002; Paris 2004). Besides, former warring parties that win the elections are not necessarily committed to the democratic process. Instead, they may use

18 As Parvinder Singh, Country Director of IFES South Sudan, pointed out in an interview with Sofie Dreef, in some places the election result in 2010 100% for one party, with a 100% voter turnout (11 February 2013, Juba, South Sudan).

their ‘democratic’ mandate to further their conflict agenda (Reilly 2002: 121). In 1997 the Liberian electorate voted warlord Charles Taylor into power as they feared that his loss would lead to more violence. As the democratically elected leader of Liberia, Taylor governed in an arbitrary manner, repressing the opposition and dismantling the democratic institutions that had brought him to power. This triggered another outbreak of civil war (Paris 2010: 341). Furthermore, in divided societies voters tend to vote more extreme in early post-conflict elections with the memory of conflict still fresh, than after a longer transition period (Reilly 2002: 121). Politicians thus have an incentive to use populist rhetoric and foster intolerance and even violence. For these reasons, Brancati and Snyder stress the need for a longer-term election strategy in complex situations. In contrast to “states that are small, pliable, or reasonably well prepared for a democratic transition”, in societies with high levels of insecurity, bad infrastructure and little democratic tradition it takes considerable time to create the necessary preconditions for successful elections (2011: 485-487). South Sudan is one of those complex cases in which early elections may prove risky. As was discussed in section 3, insecurity is still paramount due to ethnic rivalries. The infrastructure is in a dire state: during the rainy season that lasts from April to October, large parts of the country are inaccessible by road. Political opposition is virtually absent, whereas the SPLM is still closely intertwined with the national army, the former SPLA. All in all, conditions are thus not favorable to early, vibrant, competitive elections.

4.2 Sequencing

Although national elections generally get most attention both internationally and domestically, in order to ensure proper service delivery a representative and accountable government should exist not only on the national, but also on the sub-national level. Elections should therefore be conducted on multiple levels. Holding several elections simultaneously can be advantageous for poor countries such as South Sudan, because it is cost effective and easier for the electorate. Because of the weak infrastructure it can be challenging for voters to make their way to the ballot box, so voter turnout is likely to be higher if people can vote in multiple elections at once. At the same time, however, experience has shown that casting a vote on several ballot papers in the same instance can also be confusing to voters; for example in 2010, the largely illiterate population of Southern Sudan had to cast 12 different votes in their first elections ever (Von Gienanth et al. 2008: 97). Also, simultaneous elections are demanding in terms of electoral administration, which can lead to delays in announcing the results. Another option is therefore to sequence, or log, elections. Some authors argue for conducting national elections first. They have a higher profile than sub-national elections and are therefore more likely to attract international support in the form of trainings, electoral observation and financial resources (Von Gienanth et al. 2008: 17). Others argue to conduct sub-national elections “build on village- and community-based mechanisms rooted in tradition” before national ones. According to Brahim, national elections are politically and procedurally more sensitive and therefore require a longer preparation time (2007: 11). Having sub-national elections first grants political parties time to organize themselves and build up a local support base. Furthermore, candidates can gain some political experience before they take

the step to national politics (Diamond 2006: 109). In a quantitative study Brancati and Snyder tested how the timing of national and sub-national post-conflict elections affected the likelihood of the recurrence of civil war. They found that early national elections in particular are associated with a higher risk of violence (2013: 840). This suggests that it may be worthwhile to sequence sub-national elections before national ones.

4.3 Interim Conclusion

There is no consensus on the ideal timeframe for elections in conflict-prone divided societies. The validity of the arguments given in favor and against early elections depends on the context in which they take place. The timing of elections is therefore best decided upon on a case-by-case basis. Early elections have some clear benefits and are not by definition harmful as long as the main factors hampering elections – security problems, a lack of democratic tradition and institutional capability, and bad infrastructural conditions – are absent. It is evident that in most conflict-prone societies conditions are not favorable to early elections, but there are exceptions.¹⁹

In South Sudan the preparation time for the first post-independence elections is four years. Although the 2015 elections will be the second time that the population goes to the polls, no strong democratic tradition and/or democratic institutions have developed yet. Certain election-related legislation has been adopted already, such as the Political Parties Act and the National Elections Act, but additional regulatory frameworks still need to be drafted. South Sudan intends to conduct a census prior to the elections, but this is a very costly operation that requires a lot of planning. A myriad of political parties exists, but many of them are so-called “briefcase parties” without a party manifesto, let alone an electoral program. Capacity building of political parties as well as civic and voter education for the largely illiterate population are of primary importance. A further complication is that the preparations for the elections run parallel to the review of the constitution. Although technically the constitutional review and organization of the elections are separate processes, many South Sudanese stakeholders stress that the current Transitional Constitution is undemocratic. For example, it does not stipulate a limit on the number of terms the president can serve and it grants the president the power to appoint members of the legislative assembly. The sequencing of these processes is therefore a serious issue in South Sudan. The (extended) term of the constitutional review commission ends in December 2014, shortly before the elections. Some stakeholders are afraid that the current legislative assembly will adopt a constitution that closely resembles the transitional one and lacks the changes necessary to make the government more democratic and transpar-

19 One such exception is Macedonia. The 2002 elections were conducted only a year after the government and the rebels signed a peace agreement. Prior to the conflict, however, Macedonia had conducted three democratic elections. Political parties already existed and voters had gained some experience with elections, so the 2002 elections fitted into the regular election cycle. The conflict in Macedonia lasted for less than a year, the number of casualties remained limited to several dozen on either side and there was no severe infrastructural damage. Early elections therefore did not pose a problem to the stability of the country.

ent.²⁰ Furthermore, many regions in South Sudan are still plagued with ethnic clashes. It is of great importance that a basic level of security is established before the elections take place. Whether the four year time period between independence and the elections is sufficient remains to be seen, but it is clear that having elections much earlier would have posed a serious risk to the stability in South Sudan.

The South Sudanese polls of 2015 will cover the Presidency, the National Legislative Assembly, the election of State Governors and the State Legislative Assemblies. Observers indicate that although this poses a challenge to democratically inexperienced population of South Sudan, given the economic strain this is the most viable option at the moment, both logistically and financially.²¹ However, in the future sequencing elections could have some distinct advantages. Polling could be brought back from seven days to one election day, which would be easier in terms of organization.²² Also, it would most likely lead to higher voter turnout, as voting will be quicker and voters do not have to stand in line for hours. Especially for women who have to take care of the household, the current procedures are too time-consuming. Furthermore, by logging elections one election will not overshadow another. In light of the ongoing decentralization process in South Sudan, ample attention for sub-national elections is crucial. For their basic services citizens will be increasingly dependent on their sub-national governments. It is, however, difficult for voters to deepen their understanding of sub-national elections when they have to vote on eight different ballot papers at once, especially when the debate in the media will most likely focus on the more prominent national elections.

Whatever the choice – early or postponed elections, multiple elections at once or national elections only – instead of setting a strict electoral agenda, a time frame should be drafted that establishes the sequence of events with the dates of these events relative to each other. For example, instead of stipulating that elections will be held on date X regardless of the progress made on the preparations, the time frame should indicate that elections will be held Y time after the electoral commission is established and Z time after the completion of the census. Once the election date has been set, however, it is best to change it as little as possible to avoid accusations of manipulation (Von Gienanth et al. 2008: 97).

20 Interview conducted by Sofie Dreef with members of a South Sudanese NGO; February 2013 in Juba, South Sudan.

21 Ibid.

22 For this reason, the International Foundation for Electoral Systems (IFES) in South Sudan would favor logging elections, both national and sub-national and parliamentary and presidential. Interview by Sofie Dreef with Parvinder Singh, Country Director of IFES South Sudan, 11 February 2013, Juba, South Sudan.

5. Electoral Administration

Elections, wherever in the world they are conducted, pose an enormous challenge to the administrative body mandated with their organization. To a large extent this challenge is technical in the sense that it requires administrative skills and resources to meet them. In conflict-prone divided societies, however, the challenge is often compounded because many technicalities are highly politicized.

The electoral management body (EMB) is the institution primarily responsible for administering the elections. Its core activities are (1) determining who is eligible to vote, (2) receiving and validating the nominations of the participating parties and candidates, (3) conducting the polling, (4) counting the votes, and (5) disseminating the results (Wall et al. 2006: 5). By carrying out these activities, the EMB has to ensure that the elections are organized and managed in a way that is efficient, transparent and fair. Failure to do so can trigger ethnopolitical violence; this is what happened in Kenya in 2007 (Jacobs 2011: 6).

There are different types of electoral administration and international practice is diverse. Elections can be administered by the government; by the government but under supervision of an independent authority; or by an independent commission (López-Pintor 2000: 21-25). Although the former two models are the standard in established democracies, in conflict-prone divided countries government-based electoral administrations may face legitimacy issues and accusations of manipulation by the incumbent (Pastor 1999: 12; López-Pintor 2000: 120). It is for this reason that López-Pintor points out that “historical evidence as well as recent conclusions by observers, analysts and practitioners, almost unanimously indicates that elections run by independent electoral bodies are preferable to those run by executives” (2000: 122). However, just like the electoral system (as will be discussed in the next section) the electoral administration model is often not deliberately chosen but a product of the colonial past (Jinadu 1997: 2; Wall et al. 2006: 6).

5.1 Electoral Integrity

In divided societies the issues on which the EMB has to decide, such as eligibility criteria for candidates and voter registration, are highly politicized. Because of simmering mistrust among competing ethnic groups, ethnic entrepreneurs may claim certain decisions by the EMB as partial to the rival ethnic group and therefore contest the entire electoral process. The eligibility to vote is a case in point. Because the *demos* is often contested in divided societies, the voter registry raises highly political questions about citizenship and the status of refugees. In the 1990s in Macedonia, for example, the ethnic Macedonian majority used the citizenship law to exclude many ethnic Albanians who had migrated from Kosovo to Macedonia in the 1980s from Macedonian citizenship because they had not acquired the citizenship of the Yugoslav Republic of Macedonia in addition to their

Yugoslav one.²³ In addition, the status of those working and living abroad has been heavily contested. Whereas the censuses of 1948, 1953, 1961, 1971, 1981 and 1991 referred to the concept of permanent residents, the 1994 and 2002 censuses refer to the concept of legal (usual) residents including “persons who have an official (legal) place of residence in the Republic of Macedonia, who at the time of the Census and for a maximum of one year prior to its conducting are temporarily working abroad” (Republic of Macedonia, State Statistical Office 2010: 49). Many ethnic Albanians have criticized this provision, as they are overrepresented among those working abroad for more than one year. What is more, they argue that they have been forced to work abroad as a result of discrimination in Macedonia, which is perpetuated by excluding them from the census. The embroilment of any census in inter-ethnic competition has led to the abandonment of the census that was begun in 2011.

To complicate the work of the EMB further, it not only has to deal with politically sensitive issues; its own composition, and related, the behavior of its members, can also become a focal point of ethnic tensions. For elections in conflict-prone divided societies to be successful, it is essential that the EMB ensures the integrity of the elections. This can significantly reduce the likelihood of election-related violence. Conversely, electoral malpractice undermines public confidence in the credibility of the elections. It increases the risk of protests, which in the fragile environments of conflict-prone divided societies easily turn violent (Norris 2012: 2-4). Crucial to the concept of electoral malpractice is that electoral administrative errors have to be, or perceived to be, made on purpose in order for them to spark popular discontent. Elections in conflict-prone divided societies take place in a context of uncertainty, fear and mistrust. In such an environment administrative errors are likely to trigger violence if one group senses that their former adversary is purposely spoiling the electoral process and feels disadvantaged. As Robert A. Pastor points out, “many elections fail because one party interprets a ‘technical irregularity’ as politically-inspired by its opponents, whereas it might be due to administrative failures” (1999: 1). It is thus of vital importance that the EMB can reassure the population in general and the former warring parties in particular that an administrative error was unintended and an exception, rather than the rule. Pastor lists a number of guiding principles for EMBs to gain this public confidence. According to him, an EMB that is “independent, impartial, authoritative, and competent, and perceived as such, with adequate resources, has a far greater likelihood of conducting an election that is judged fair and free by all parties in a country and by the international community than one that does not have these attributes” (1999: 17-18). The EMB should take decisions independently, without being subjected to partisan influences. Furthermore, it should be impartial in its conduct. Even the slightest impression of favoritism towards certain candidates or parties will damage the integrity of the elections, which can have detrimental consequences for the stability of the country. An electoral commission that is structurally independent from

23 In the Socialist Federal Republic of Yugoslavia citizens had citizenship of both Yugoslavia and the Republic they lived in. Since the latter became increasingly irrelevant, however, many citizens did not bother to change it when moving within Yugoslavia (Spaskovska 2011; Ragazzi/Balalovska 2011).

government and consists of neutral experts will generally be perceived as impartial because it has no political affiliation. Impartiality is more difficult to establish when the EMB members are political party representatives. Government-based models, especially in post-conflict states, may be suspected of favoring the incumbent (Wall et al. 2006: 22-23). Transparency of EMB activities, such as the registration of parties and voters, counting, and financial management will boost the public's perception of the EMB's impartiality (Elklit/Reynolds 2002: 90; Wall et al. 2006: 24). The authority and competence of the EMB are dependent on the motivation and technical ability of its members (Elklit/Reynolds 2002: 89-90). Newly established EMBs may suffer from a lack of knowledge and experience, which may be confused with corruption or malpractice. Professional trainings for election officials to boost professionalism and efficiency are crucial in this regard. Lastly, an EMB should have adequate resources to organize and conduct the elections in an effective way.

Theoretically, an EMB existing of technocrats with no political affiliation would fulfill these criteria for political integrity best. Forming such a commission of technocrats has therefore been the strategy in South Sudan. In order to qualify as a member of the National Elections Commission (NEC), which is responsible for the organization and management of the elections, a person should be "of proven integrity, independent, competent, non-partisan and impartial"²⁴. Commissioners are nominated by the President "after consultation with women and civil society groups" (NEA Article 10.2) and should be approved by the National Legislative Assembly. The risk of having a commission of technocrats is, however, that the impartiality of its members is not quantifiable and is therefore bound to lead to differences of opinion. In Sierra Leone, for example, during the 2002 elections the National Electoral Commission was accused of being biased towards the incumbent SLPP, which draws the majority of its voters from the country's largest ethnic group, the Mende (Pratt 2012; The Carter Center 2003: 25). During the subsequent elections in 2007, some newspapers criticized the commission for favoring the opposition party All People's Congress (APC), which has a traditional support base among the ethnic Limba and, since its merger with the Revolutionary United Front (RUF) in 2007, can also count on considerable support from the ethnic Temne²⁵ (Rosset/Pfister 2013: 12). In South Sudan, the rather vague selection criteria for the Commissioners combined with the prominent role of the President in their nomination can similarly lead to accusations of ethnic bias towards certain groups over others, as some groups undoubtedly feel underrepresented. Indeed, as NEC Commissioner Mac Maika Deng pointed out: "Commissioners' appointments are a delicate process, which everyone tries to influence. Some people argue that there has to be ethnic representation, but the National Elections Act stipulates that only ability and capability matter".²⁶ To prevent allegations about the (per-

24 Furthermore, the candidate should fulfil some technical criteria relating to nationality, age, education, criminal record and past political activity. National Elections Act (NEA) 2012, Article 10.2(b).

25 Minorities at Risk Data: Assessment for Temne in Sierra Leone, <http://bit.ly/173wKMy> (21 August 2013).

26 Interview by Sofie Dreef with Mr. Mac Maika Deng, Chief Electoral Officer at the NEC; 12 February 2013 in Juba, South Sudan.

ceived) incompetence and/or partiality of the electoral management body, it could be an advantage to apply the principles of descriptive representation also to the composition of the EMB in divided societies. Having a member of their own ethnic group represent them in the EMB can build trust among people that the EMB will handle its politically sensitive mandate in an objective manner. The downside of having ethnic quota for the EMB is that ethnicity becomes an even more dominant factor in the electoral process. Although in the longer term a commission of technocrats will indeed foster the de-ethnicization of politics, when relations between ethnic groups are tense and may easily spiral into violence, accommodating all groups seems to be the least risky strategy.

5.2 Interim Conclusion

The core assignment of the National Electoral Commission (NEC) of South Sudan is to ensure the integrity of the 2015 elections in order to prevent different ethnic groups from accusing each other of fraud. When designing the criteria for membership of the NEC, South Sudan has chosen for a commission of technocrats. The NEC is non-partisan and although it is difficult to predict if it will indeed be able to take decisions independently and impartially under pressure, at least it has committed itself to these principles. On the question what they would do if government officials or politicians would try to meddle into the affairs of the NEC, one commissioner said: "We will tell them we are implementing the law [the National Elections Act 2012] that they have passed."²⁷ The question remains of course whether the Commissioners can retain this firm stand in the heat of the electoral competition. It does not harm that the commissioners all had an academic and/or professional career and are generally well-respected in society. Some of them already have experience with organizing elections (in 2010 or the 2011 referendum). Nevertheless, in the context of tense ethnic relations ensuring descriptive representation in the commission could have helped to prevent accusations of bias towards certain ethnic groups that will undoubtedly arise during the election period. Given its high stakes in the current peace in South Sudan, the international community is involved in the professionalization of the NEC. The commission gets intensive capacity building trainings from the international non-profit organization International Foundation for Electoral Systems (IFES), whose South Sudan program is funded by the United States Agency for International Development (USAID). But resources pose an enormous challenge to the NEC. For example, during their first months in office the commissioners did not get paid a salary due to government austerity resulting from the oil crisis. Only if the international community continues to be willing to assist the NEC both financially and in terms of human capacity building the commission has a chance to minimize the number of disputes that will arise as a result of the electoral administration.

27 Ibid.

6. Electoral Systems

Of the three features of electoral design that are discussed in this report the electoral system has the most far-reaching consequences. Whereas the timing of an election and the set-up of the electoral management body impact on the likelihood that election success is undermined by violence, the electoral system also has long-term effects on politics. As Arend Lijphart points out, “if one wants to change the nature of a particular democracy, the electoral system is likely to be the most suitable and effective instrument for doing so” (1995: 412). The electoral system sets the rules by which candidates are elected into parliament. It impacts on the number of political parties represented in the legislature, their coalition and campaigning strategies and may ultimately facilitate or inhibit co-operation among the political representatives of different ethnic groups. This section first gives a brief overview of the three main types of electoral systems. It then goes on questioning the dominant orthodoxy in favor of one particular electoral system, namely list proportional representation (list-PR). Instead, it argues that ethnic settlement patterns need to be taken into account. Finally, it discusses the electoral system adopted for the 2015 elections in South Sudan with a view to the main advantages and drawbacks of the different types of electoral systems.

6.1 Framework of Electoral Systems

Electoral systems are typically divided into three broad categories – plurality-majority systems, proportional representation, and mixed systems – which in turn are divided into sub-categories. Note that this typology refers to ideal types; in practice, not two electoral systems are identical as they are all subject to specific provisions. Nevertheless, electoral systems can be clustered on the basis of their key features.

There is an inherent tension between plurality-majority systems and proportional representation systems. The former are “winner-takes-all” systems which use mostly small, single-member electoral districts. They are simple to understand and to use and, according to their proponents, lead to decisive policy making by the single-party government. Furthermore, they generate local representation as the candidate that wins will represent the needs and concerns of his/her district in parliament. The major disadvantage of using plurality-majority systems in conflict-prone divided societies is that they strongly favor larger political parties, which impedes the representation of ethnic minorities. The exclusion of certain ethnic, regional or religious interests from the political arena might undermine the political stability (Diamond 1999: 14; Lijphart 2004: 100). The most commonly used plurality majority system is Single Member Plurality, or “first past the post”.²⁸

28 Related electoral systems are the Block Vote, Party Block Vote, Alternative Vote, and Two-Round System.

Proportional Representation systems, on the other hand, favor proportionality through the use of multi-member electoral districts.²⁹ Most importantly, this facilitates descriptive representation, especially when large electoral districts are combined with an absence of thresholds. The dominant form of proportional representation is list-proportional representation (list-PR). Under list-PR each party presents a list of candidates³⁰ to the electorate, who vote for a party rather than a candidate. Seats are distributed in proportion to the overall share of votes that the parties receive, which fosters the inclusion of minorities. The downside of using list-PR in divided societies is that this electoral system institutionally reinforces ethnic group boundaries and provides little incentive for de-ethnicizing politics. Also, the missing geographical link between the parliamentarian and his or her constituency may hamper political accountability.

Mixed systems aim to combine the benefits of list-PR and single-member electoral districts, and are gaining popularity. During the 1990s they were widely adopted by democratizing states all over the world. In mixed systems the legislature is elected partially through plurality-majority methods and partially through list-PR. Countries use different plurality-majority methods and the balance between the number of proportional seats and plurality-majority seats varies greatly. Because the list-PR component of the system does not compensate for disproportionality within the single member districts, mixed systems do not guarantee overall proportionality and generally benefit larger parties over smaller parties (Reilly/Reynolds 1999: 21; Reynolds et al. 2005: 104).³¹

6.2 Descriptive Representation and Ethnic Settlement Patterns

Given the impact of electoral systems on representation and politics more broadly, it is remarkable that they are often not deliberately chosen but inherited from colonial times or simply copied from neighboring countries (Reilly 2001: 14; Norris 1995: 4). Once established, electoral systems are remarkably stable. Political leaders have few incentives to change the rules of a game that brought them to power. Thus, until today most former British colonies use Single Member Plurality systems whereas two round systems are wide-spread in former French colonies.

29 In a multi-member electoral district more than one representative is elected into office.

30 The ordering of candidates on the list can be determined by voters' preferences (open-list PR, as used, for example, in Bosnia and Herzegovina) or by the party top (closed-list PR, as used, for example, in Burundi). Another option is that the predetermined ordering of the candidates prevails unless a candidate meets a certain threshold of preference votes (flexible-list PR, as used, for example, in The Netherlands). Open-list PR best ensures accountability between voters and candidates, because the ordering of the candidates on the list is determined entirely by voters' preferences instead of the party top (Samuels, 2005 p. 679).

31 A related system is the Mixed Member Proportional (MMP) system that is used in for example Germany. In MMP systems the plurality-majority seats are allocated first. The list-PR seats are then used to compensate for the under-representation of small parties and over-representation of larger parties created in the single member constituencies. The list-PR component thus balances out the disproportionality produced by the plurality-majority component. This leads to more proportional results than in mixed systems (Reilly/Reynolds 1999: 22).

The secession of new states (such as South Sudan in 2011) and the negotiation of peace agreements (like in Bosnia in 1995) are among the few occasions when electoral systems are under discussion. Electoral system choice has been widely debated among academics. In this debate, proponents of list proportional representation have been dominant and have – in their capacity as advisors to governments and/or international organizations – exerted considerable influence on the actual choices made. Indeed, list-PR has become the *de facto* norm of UN-initiated post-conflict elections (Reilly 2003: 7). The system is often recommended as one element in a more complex system of consociationalism.³² According to consociational theory the risk of political instability in conflict-prone divided societies can be mitigated by list-PR because it ensures fair descriptive representation. This is why many scholars find consociationalism, and therefore list-PR, an attractive option for conflict-prone divided societies (Lijphart 2004; Reynolds/Sisk 1998; Reilly/Reynolds 1999; Norris 2008).

Against this dominant orthodoxy in favor of list-PR we argue that the success of electoral systems in conflict-prone divided societies is dependent on a society's ethnic composition, i.e. the number, size and settlement patterns of politically relevant ethnic groups (for a comprehensive discussion, see Wagner/Dreef 2013). Our key criterion for assessing the success of electoral systems is the extent to which they facilitate descriptive representation. Members of ethnic groups often “seem to think that their interests can only be appropriately represented by another group member” (Ruedin 2009: 335, with references to further studies on this issue). Descriptive representation – a composition of parliament that accurately corresponds to the composition of society (Pitkin 1967) – is therefore seen as a crucial element of ethno-political conflict resolution. Giving formerly excluded groups a voice in the political system removes a prime driving force of conflict (Cederman et al. 2010).

Almost by definition list-PR facilitates the representation of small political parties in parliament, especially when combined with large electoral districts and in absence of an electoral threshold (in contrast to for example the 5% threshold in Germany and the 10% threshold in Turkey). Wherever minorities do not settle in a particular region but instead live throughout the entire country, proponents of proportional representation rightly claim that only their preferred system can ensure fair descriptive representation whereas plurality-majority systems cannot.

However, recently published data by Wucherpfennig et al. (2011) on the settlement patterns of “politically relevant ethnic groups” demonstrate that dispersed settlements are the exception, not the rule. Of the 809 ethnic groups that they coded as politically relevant in 2009, 574 (71%) have a set area whereas only 129 (15,9%) are territorially dispersed (another 5,3% are “urban” and 1% is “immigrant”). Figures for earlier periods indicate

32 The other three features of consociationalism are: (1) a grand coalition in which executive power is shared by all significant segments of society; (2) a veto for minorities which they can use when their community's vital interests are at stake; and (3) group autonomy, granting each community internal self-governance in areas such as education and culture (Lijphart 1977: 25-44).

even higher proportions of groups settling in particular regions, rather than across the entire country. In a study of elections in post-war societies, Wagner and Dreef (2013) found that in 18 out of 23 cases (78%) of post-conflict elections since 1989 ethnic groups did not settle throughout the country but clustered in specific regions; the most prominent exceptions are Hutu and Tutsi in both Rwanda and Burundi.

Where ethnic groups concentrate in specific regions, they often form local majorities. The parties and/or candidates representing the ethnic group can therefore win (almost) all votes in these particular districts. Thus in societies where ethnic groups are geographically concentrated and constitute local majorities, minority groups can win a fair proportion of seats in parliament even under a winner-takes-all system (Bochsler 2007: 11). Macedonia is an ideal case to study the effect of electoral systems on the descriptive representation of minorities (for a more detailed account, see Wagner 2013). The country is a textbook example of a divided society pitting the majority titular nation against the largest minority, the ethnic Albanians who mostly settle in the North West of the country around the cities of Tetovo, Gostivar and Kičevo.³³ Because parliamentary elections were held under a pluralist system in 1990 and 1994 and under a list PR system in 2002, 2006, 2008 and 2011,³⁴ there are “quasi-experimental conditions” to study the impact of electoral systems on descriptive representation. A comparative analysis of the elections demonstrates that ethnic Albanians have always been under-represented, i.e. their share of seats in parliament has always been lower than their share in the population, regardless of the electoral system used.³⁵ According to Ruedin (2009: 340), this is not unusual as “most ethnic minority groups are underrepresented relative to the share in the population” although “a few cases” of overrepresentation do exist. Most importantly, however, ethnic Albanians have reached high relative representation scores under both types of electoral systems. Indeed, the highest score ever reached (90% in 1990) was under a pure majoritarian system.

Wherever ethnic groups concentrate in particular areas and the effects of electoral systems hardly differ in terms of facilitating fair representation, the choice for the electoral system should take into account the possible risks posed by list-PR as well as additional advantages of plurality-majority systems. For example, in agrarian societies “with their low levels of occupational specialization and class identity”, the case can be made for adopting Single Member Plurality. In these societies, “most people define their interests and differentiate themselves from one another on the basis of where they live, rather than what they do” (Barkan 1995: 107). Because of the importance of local service provision, Single Member Plurality (SMP) is a good option for agrarian societies. It establishes close ties between parliamentarians and their constituencies and ensures local representation.

33 Further minorities include Serbs, Turks, Vlachs and Roma.

34 The 1998 elections were held under a mixed system. 85 MPs were elected by a majoritarian principle and an additional 35 seats were distributed on the basis of proportional representation.

35 When calculating relative representation scores for ethnic Albanians, it is important to take into account that their relative share in the population has been growing from ca. 21% (1990) to ca. 28% (2011). For a comprehensive discussion of these calculations see Wagner 2013: 8-10.

The most prominent alternative to list-PR is the theory of *centripetalism*³⁶ developed by Donald Horowitz (1985, 2003) and Benjamin Reilly (2001). Its starting point is that list-PR in conflict-prone divided societies carries the risk of exacerbating ethnic tensions. The system encourages political parties to “adopt bonding strategies”, i.e. to “bring together citizens who are homogeneous in certain important respects” (Norris 2004: 10). In divided societies bonding is likely to happen within and not between ethnic groups. Especially in the aftermath of a civil war, this often leads to ethnic outbidding. The system therefore reinforces ethnic divisions and freezes ethnic group boundaries in the political system, instead of integrating and depolarizing society. In the short run the system has the potential to consolidate the precarious stability, but it may not be conducive to conflict resolution in the long run (Cohen 1997: 628; Reilly 2002: 156; Sisk 2009: 221).³⁷

According to centripetalism, interethnic accommodation is the basis for peace and democracy in divided societies. Reilly defines centripetalism as a “political system or strategy designed to focus competition at the moderate centre rather than the extremes – primarily by presenting rational, office-seeking politicians with incentives to seek electoral support from groups beyond their own ethnic community” (2001: 11). By providing incentives for candidates to campaign for the votes of members of other ethnic groups, electoral systems can encourage interethnic bargaining and promote accommodative behavior. Centripetalists therefore favor majoritarian systems that encourage parties to “adopt bridging strategies designed to gather votes promiscuously and indiscriminately wherever campaign support can be found among diverse sectors of the electorate” (Norris 2004: 10).

Centripetalists strongly favor the Alternative Vote (AV). In this system, voters rank candidates in order of preference instead of declaring only their first candidate of choice. If a candidate wins an absolute majority of votes (s)he is immediately elected. If no candidate gains an absolute majority, however, the candidate with the fewest first preference votes is eliminated from the count. The second preferences on these ballots are then allocated to the remaining candidates. This process is repeated until one candidate has an absolute majority. As candidates are reciprocally dependent on the votes of members of ethnic groups other than their own, the system provides a strong incentive for candidates to broaden their support base beyond the own ethnic group and to form pre-electoral interethnic coalitions in order to gain election. The key merit of AV is thus that it requires a moderate and accommodative attitude of the candidates in order to effectively gain

36 The term ‘centripetalism’ has been coined by Sisk (1995: 19).

37 The example of Bosnia proves a case in point. Taking into account the history of violence and consequent deep ethnic divisions in society and the maximalist objectives of the dominant parties, list-PR has been effective in fostering stability in the country (Caspersen 2004: 569). Yet the system has been unsuccessful in promoting moderate and accommodative politics. The negotiations following the most recent elections of 2010 were deadlocked for over a year. Parties failed to come to an agreement about a working coalition, the division of ministerial posts and reform agendas, or refused to participate in the negotiations altogether (ICG Crisis Watch 90, 2011). Proportional representation may have been the only viable option at the end of the conflict, but more than a decade later the system has not facilitated interethnic accommodation.

votes from other groups. Furthermore, it guarantees local representation through the use of small single-member electoral districts (Horowitz 2003: 122-124).

The Two-Round System (TRS) shares important features with AV. In a TRS candidates also need a majority of the votes to be elected. If no candidate reaches a majority in the first round a second round of voting is conducted. Most commonly the two candidates from the first round who gained the most votes compete in the second round. Another method is to have all candidates that passed a certain threshold in the first round, compete in the second round. Like AV, Two-Round Systems “encourage candidates to broaden their support base in search of a majority” (Reilly 2001: 28). However, in contrast to AV, TRS encourages campaigning beyond a candidate’s ethnic core constituency only once (s)he has made it into the second round. As a consequence, the centripetal effect of TRS is limited as candidates may feel encouraged to first maximize their core constituency’s vote before reaching out to other groups. According to Reilly, TRS have “a much weaker (and later) set of incentives for accommodative behavior than is the case with preferential systems” (2001: 30).

The debate between proponents of list-PR and centripetalist systems for conflict-prone divided societies is couched in generic terms, without taking into account the effect of ethnic settlement patterns. Advocates of either model dismiss the differences between divided societies and instead recommend “their” system across the board. This approach misses the nuances of the workings of electoral systems. Divided societies are not homogeneous, but differ among other things in terms of the settlement patterns of ethnic groups. We argue that this should be taken into account when choosing the electoral system. Whereas list-PR is the only viable option for societies where ethnic groups live intermingled throughout the country, wherever ethnic groups form local majorities other electoral systems can have similar inclusionary effects. In these cases it may therefore be worthwhile to look into other electoral systems than list-PR and their potential benefits for peacebuilding. The centripetalist model presents an interesting alternative, especially with a view to long-term ethnopolitical conflict resolution.

6.3 Interim Conclusion

The National Elections Act 2012 that establishes the electoral system in South Sudan was drafted by the Ministry of Justice with the support from the International Foundation for Electoral Systems. The assignment the Ministry gave to IFES was to keep the National Elections Act of Sudan, under which the 2010 elections were held, as much as possible intact. As a result, South Sudan adopted a mixed system similar to the system of Sudan. Members of the National Legislative Assembly are elected partially through Single Member Plurality (60%) and partially through list-proportional representation, with 15% of the seats allocated through closed-list PR and 25% through closed-list PR reserved exclusively for women.³⁸

³⁸ National Elections Act 2012, Article 60(2).

The main problem with having a mixed system in a country like South Sudan is that it is quite complicated both for voters, parties and the National Electoral Commission that is tasked with the administration of the elections. Voters have to cast their votes on three different ballot papers for the National Legislative Assembly only,³⁹ which is even more problematic in a country where illiteracy rates are as high as in South Sudan. Political parties have to organize themselves both nationally and per state, and have to present both a party list and a women's list. Except for the SPLM – and to an extent, the SPLM-DC – political parties in South Sudan are poorly organized, lack finances and will have great difficulty preparing adequate candidate lists. Lastly, a mixed system poses additional challenges to the NEC in terms of for example civic and voter education.⁴⁰ For this reason, IFES pointed out to the Ministry of Justice the possibility to adopt either Single Member Plurality or list-PR with a women quota,⁴¹ but the MoJ decided to stick with the mixed system.

Given the plurality of ethnic groups living in South Sudan, many of which live in a state of animosity with one another, it is crucial that the electoral system fosters descriptive representation. Ethnic groups in South Sudan live concentrated in particular regions. Therefore, both SMP and list-PR can facilitate descriptive representation. There are, however, two caveats that have to be taken into account. First, given the absence of an up-to-date census there are no accurate numbers on the size and settlement areas of the ethnic groups. The map of UN OCHA (see footnote 9), for example, was drawn up in 2009: before independence and during a period when vast numbers of refugees and IDPs were on the move. Drawing boundary demarcations on the basis of these data poses the risk of minority exclusion under SMP, if boundaries are drawn on the 'wrong' side of the ethnic divide. Furthermore, even if a new census would be done prior to the 2015 elections as the basis for boundary demarcation the pastoralist lifestyle of many South Sudanese ethnic groups makes it difficult to determine the exact settlement location of these groups. Indeed, most ethnic violence occurs on the, rather fluid, 'borders' between ethnic groups. For these reasons, SMP may actually have a hard time facilitating descriptive representation. On the contrary, it may provoke ethnopolitical violence if one of the groups feels excluded.

The obvious alternative to SMP is list-PR. Regardless of the settlement patterns of ethnic groups list-PR will facilitate descriptive representation and thus mitigates the risk of ethnopolitical conflict. Although list-PR would serve the purpose of including minority ethnic groups in parliament, the lack of local representation would be problematic in

39 Plus, they have to cast votes for the President, Governor, and three votes for the State Legislative Assembly that uses the same mixed system as the NLA, because the elections have not been logged (see chapter 3 on Timing and Sequencing).

40 Interview conducted by Sofie Dreef with Mr. Matthew Dominic, Senior Electoral Affairs Officer of the Political Division of the United Nations Mission In South Sudan (UNMISS); 13 February 2013 in Juba, South Sudan.

41 Interview conducted by Sofie Dreef with Ms Eliane Torres, Electoral Management Adviser at IFES South Sudan; 8 February 2013 in Juba, South Sudan.

South Sudan. Besides the population of Juba most people live in remote areas where hardly any public services are in place. In order for service delivery to improve, a strong geographical link between parliamentarians and their constituencies is crucial. Local representation also improves accountability. Because candidates compete with each other directly for a seat, they are likely to take responsibility for the people of their constituency and represent their interest in the NLA.⁴² Candidates competing under list-PR, on the other hand, are likely to be loyal first and foremost to their party secretariat as they compose the candidate list. One interviewee observed that the stronger MPs generally are those elected under SMP.⁴³

Therefore, despite the administrative difficulties we nevertheless believe that a mixed system at this point is the best electoral system for South Sudan. It fosters a considerable degree of descriptive representation, while at the same time it also ensures strong geographical links between parliamentarians and their constituencies. Civic and voter education will certainly prove challenging, but this would be true also for other electoral systems simply because South Sudan has no democratic tradition and very low levels of education. We would recommend, however, replacing the closed-list system, which is the least democratic form of list-PR, with an open-list system. Most importantly, unlike in most countries the electoral system should remain a topic for debate and open to change if the situation requires so.

7. Conclusions and Implications for the 2015 Elections in South Sudan

In conflict-prone divided societies, elections carry the risk of triggering ethnic violence because of their competitive and polarizing nature. Given the intrinsic and instrumental merits of democracy, however, avoiding elections is no serious alternative. Rather, the challenge is to design elections in a way that minimizes the risk of violence.

In this report we have discussed three key features of electoral engineering: timing and sequencing; electoral administration; and electoral system design. The lessons learned from the growing number of elections in conflict-prone divided societies seem clearest with a view to timing and electoral administration. Scholars with different theoretical and methodological preferences concur that in countries with a recent history of ethnic civil war, the risk of renewed violence can be lowered by not having elections soon after the end of the conflict. In a similar vein, observers agree that the success of electoral administrations is heavily dependent on the amount of human, physical and financial resources

42 Interview conducted by Sofie Dreef with the staff of a South Sudanese NGO; 19 February 2013 in Juba, South Sudan.

43 Ibid.

available. The ideal composition of the EMB is, however, more ambiguous. The main task of the EMB is to ensure electoral integrity. This may be best left to a commission of technocrats, which are appointed by applying the principles of descriptive representation. Such an ethnic quota may serve as a reassurance to the ethnic groups that they will not be disadvantaged.

In contrast to timing and electoral administration, electoral system choice has been discussed most controversially. This debate has been dominated by consociationalists whose preferred list-PR system has risen to the golden standard in electoral engineering. The aim of this report is not to replace this standard by a new one but to caution against overstating the case for list-PR. To be sure, list-PR hardly ever does major harm in conflict-prone divided societies because it indeed facilitates the fair representation of all politically relevant ethnic groups in parliament. At the same time, however, the system encourages bonding strategies that often go hand in hand with ethnic outbidding. As a consequence, the long-term prospects of overcoming ethnic divisions are not well served by a list-PR system. Majoritarian systems, particularly the Alternative Vote, are better suited to encourage bridging strategies of political parties and thus contribute to overcoming ethnic divisions. Furthermore, countries with a high need for local service delivery may be served by SMP which fosters a strong bond between MPs and their constituencies.

Unfortunately, in our view, the debate about electoral systems has been focused on finding one-size-fits-all solutions with proponents of list-PR, Single Member Plurality and centripetalist electoral models arguing in favor of “their” pet system for all societies across the board. In contrast, we argue that divided societies are too diverse to allow for such recommendations. Regionally concentrated minorities, if constituting local majorities, can achieve fair representation in parliament under both plurality-majority and proportional systems. The same would certainly not work when ethnic groups do not form regional majorities but settle throughout the country. The choice of electoral system should therefore be made dependent on the settlement patterns of ethnic groups. First and foremost the electoral system should ensure high levels of descriptive representation. If multiple systems have this effect, the additional benefits of the systems should inform the final choice.

More than a year before the first South Sudanese elections since independence, it is hard to predict how the elections will impact inter-ethnic relations in the country. Much will depend on how the current power struggle within the SPLM – with as the most recent development, the dismissal of Vice President Machar (a Nuer) by President Kiir (a Dinka) – will develop. Will there be a split in the SPLM, the former liberation movement and *de facto* only political party in South Sudan, and if so, will this split be along ethnic lines? Will other political parties get the political space and resources to organize themselves? What will be the role of the SPLA, the former military wing of the SPLM and now the official army of South Sudan?

Although these and undoubtedly many other political issues will determine the success of the 2015 elections – defined here as the absence of ethnic violence – through electoral engineering the uncertainty of the political situation can, to an extent, be mitigated. With

regard to the timing and sequencing of elections it is pertinent that if the situation allows it, elections do take place in 2015. Preparations have started already, and establishing a regular election cycle (the last elections – in the whole of Sudan – were in 2010) is vital for the stabilization of both the fragile democratic regime and the prevention of increasing inter-ethnic violence. Elections provide an incentive for opposition parties to form and professionalize and to challenge the current monopoly of the SPLM. Also, elections will empower the people of South Sudan by providing them a means to hold their government accountable. Although the administration of the elections will be highly challenging, especially since the various elections are not sequenced but held all at once, the situation is unlikely to improve in the short to medium-term. There is therefore no point to postponing the elections.

The National Electoral Commission stands before the Herculean task of administering elections in South Sudan. They are hindered by the long rainy season that makes large parts of the country inaccessible, a chronic lack of financial and human resources, the absence of a democratic culture and a largely uneducated population, to name only a few challenges. Yet the stakes are high for the international community that for so many years supported the peace process between the North and the South, and having South Sudan spiraling into an ethnic civil war is what they want to avoid at all costs. International donors, most noticeably UNMISS and USAID, are strongly committed to the 2015 elections and provide support in the form of financial, physical and human capital. With this support to the NEC, electoral administration will not prove a major issue in 2015. Whether the NEC will be viewed as credible and impartial will depend of course on their own behavior when politicians will try to influence them.

Unless the permanent constitution will provide for another electoral system (and is ready before the 2015 elections, which given the pace of the constitutional review process is unlikely), the elections will be held under a mixed system. This system has the advantage that it facilitates both descriptive representation, because of the list-PR component, and local representation through single member constituencies. Although a pure list-PR or SMP system would be easier in terms of electoral administration, list-PR fails to provide the link between MPs and their constituencies that is so important for the development of South Sudan's remote countryside, whereas SMP risks the exclusion of minorities if district boundaries do not follow the settlement patterns of the ethnic groups. The mixed system could be improved, however, by replacing the closed-lists with open-lists. This would shift the power away from the political party bosses to the people and is thus much more democratic. Because in an open-list system voters determine the candidates' position on the list, candidates will have to work on their relationship with the voters more directly.

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List of Abbreviations

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| APC | All People's Congress |
| AV | Alternative Vote |
| CPA | Comprehensive Peace Agreement |
| EMB | Electoral Management Body |
| GoSS | Government of Southern Sudan |
| IDP | Internally Displaced Person |
| IFES | International Foundation for Electoral Systems |
| MoJ | Ministry of Justice |
| MP | Member of Parliament |
| NCP | National Congress Party |
| NCRC | National Constitutional Review Commission |
| NEC | National Electoral Commission |
| NLA | National Legislative Assembly |
| OCHA | Office for the Coordination of Humanitarian Affairs |
| PR | Proportional Representation |
| RUF | Revolutionary United Front |
| SLA | State Legislative Assembly |
| SMP | Single Member Plurality |
| SPLA | Sudan People's Liberation Army |
| SPLM | Sudan People's Liberation Movement |
| SPLM-DC | Sudan People's Liberation Movement for Democratic Change |
| SSIM/A | South Sudan Independence Movement/Army |
| SSLA | Southern Sudan Legislative Assembly |
| TRS | Two-Round System |
| UCDP | Uppsala Conflict Data Program |
| UN | United Nations |
| UNMISS | United Nations Mission In South Sudan |
| USAID | United States Agency for International Development |
| VP | Vice President |