

ELECTIONS COMMISSIONS

INTRODUCTION

The purpose of this chapter is to identify the core elements of elections commissions; outline the Darfur Peace Agreement's (DPA) provisions relating to elections commission and their role in Sudan; and present sample language parties may wish to consider when drafting provisions for an elections commission.

Elections commissions are neutral independent entities that generally oversee and administer elections to ensure fair democratic elections. The purpose of elections commissions is to ensure that elections are free and fair, increasing the likelihood that each party will have confidence in the outcome. State practice illustrates that agreements establishing elections commissions typically include provisions for the commission's composition, mandate, governing rules, and financing.

The DPA references the National Elections Commissions and provides Darfurians with representation in the Commission.¹ The Interim National Constitution of Sudan grants the National Elections Commission the power to organize and supervise elections.² The DPA expanded this authority by granting the National Elections Commission the power to organize and supervise the referendum on Darfur in coordination with international monitors.³

CORE ELEMENTS

Legal Framework

A state's constitution or legislation typically establishes the elections commission and lay out the roles and responsibilities of the commission. While some states provide detailed provisions related to a commission's responsibilities and authorities, other states give the elections commission broad discretion in

¹ Darfur Peace Agreement (2006), art. 13, para. 84, May 5, 2006, *available at* http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf (last accessed Sept. 18, 2007).

² SUDANESE INTERIM NATIONAL CONST. (2005), pt. 8, para. 141(1), *available at* http://www.mpil.de/shared/data/pdf/inc_official_electronic_version.pdf (last accessed Sept. 23, 2007).

³ Darfur Peace Agreement, art. 6, para. 58.

carrying out its activities. A small number of states allow their elections commissions to delegate responsibilities to a third party.

South Africa's Electoral Commission derives its authority from the Constitution,⁴ while the Electoral Commission Act governs the Commission's activities and functions.⁵ The majority of the provisions in the Act are non-specific, with no defined guidelines or limits on the Electoral Commission's activities in maintaining and supervising elections.⁶ The general nature of these provisions thus grants the Electoral Commission considerable authority and discretion.

In contrast, the Philippines' Constitution and the legislation establishing the Commission on Elections are explicit and detailed.⁷ The Omnibus Election Code includes specific provisions relating to the Commission's staffing, authorities, and responsibilities before, during, and after elections.⁸ Despite these specific provisions, the Commission retains significant authority related to other government offices. The Omnibus Election Code authorizes the Philippine commission to manage and supervise the elections by exercising "direct and immediate supervision and control over national and local officials or employees, including members of any national or local law enforcement agency and instrumentality of the government required by law to perform duties relative to the conduct of elections."⁹

Malaysia's Election Commission, similar to the commissions in South Africa and the Philippines, is also responsible for the management and supervision

⁴ SOUTH AFRICA CONST. ch. 9, para, 190-191 (1996), *available at* <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf> (last accessed September 18, 2007).

⁵ Electoral Commission Act (South Africa, 1996), Act No. 51, *available at* <http://www.info.gov.za/gazette/acts/1996/a51-96.htm> (last accessed Sept. 18, 2007).

⁶ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 5(1)(a).

⁷ PHILIPPINES CONST. art. IX, part A, sec. 1 (1987), *available at* <http://www.gov.ph/aboutphil/constitution.asp> (last accessed Sept. 22, 2007; Omnibus Election Code of the Philippines (1985), art. VII, sec. 52(a), *available at* <http://www.chanrobles.com/electioncodeofthephilippines.htm> (last accessed Sept. 18, 2007).

⁸ Omnibus Election Code of the Philippines (1985), art. VII, sec. 52(a).

⁹ Omnibus Election Code of the Philippines (1985), art. VII, sec. 52(a).

of elections.¹⁰ Malaysia's Election Act, however, permits the Election Commission to delegate its responsibilities, with the exception of the power to make regulations, to other private agencies or government entities.¹¹ While this may reduce the workload of a commission, it may also undermine the commission's independence if it delegates responsibility to an interested third party.

Functions

Elections commissions also function to safeguard and promote free and fair elections. A commission's responsibilities may include managing and supervising elections; maintaining the voter rolls; regulating political parties and candidates; managing the polling; and announcing and certifying the election results. Additionally, elections commissions often play a role in adjudicating disputes related to the elections or the electoral process. It is important that the design of these functions ensures and protects the independence of an elections commission in carrying out its responsibilities.¹²

Drafting Electoral Regulations

Many elections commissions serve as advisory bodies to their respective states' legislatures, and in some states, commissions have the authority to enact regulations relating to the logistics and administration of the electoral process. Elections commissions do not typically have discretion to adopt regulations related

¹⁰ MALAYSIA CONST. part, VII, art. 113, (1957), *available at* <http://www.trybunal.gov.pl/constit/constitu/constit/malaysia/malays-e.htm>, (last accessed Sept. 22, 2007).

¹¹ Election Act of 1958 (Malaysia), Act No. 19, pt. II, art. 5(2), *available at* <http://www.spr.gov.my/index/act19.pdf>, (last accessed Sept. 18, 2007). The Malay Elections Commission the authority to delegate its responsibilities provided that, "(a) nothing in this subsection shall apply to any power to make regulations under this Act; and (b) no such delegation shall affect the exercise of such powers or the performance of such duties by the Commission."

¹² OFFICE OF DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, GUIDELINES FOR REVIEWING THE LEGAL FRAMEWORK FOR ELECTIONS, sec. VI, pt. A, at 10, *available at* http://www.osce.org/publications/odihr/2001/01/13588_128_en.pdf (last accessed Sept. 22, 2007). "The administration of democratic elections requires that election commissions/bodies are independent and impartial. This is a critical area as the election administration machinery makes and implements important decisions that can influence the outcome of the elections."

to carrying out the intentions of the election law or elections commission legislation.

Malaysia's Election Commission has the authority to enact regulations regarding the elections to the National Assembly and the legislative assemblies of Malaysia's regions.¹³ The Election Commission also has the authority to draft regulations to govern most aspects of the elections including registration of political parties, vote-counting procedures, and the establishment of voting districts.¹⁴

In contrast, Armenia authorizes and encourages its Central Election Commission (CEC) to submit recommendations on election-related legislation to the state's parliament.¹⁵ The Central Election Commission's role is more limited than Malaysia's Election Commission as it cannot adopt regulations.¹⁶

Managing Voter Lists

Most states' elections commissions establish, develop (generally through voter registration), certify, and maintain voter lists. A voter list – or electoral roll – is a comprehensive list of all the eligible voters in a particular national, provincial, or local geographic area. Voter lists typically contain the voter's name, mailing address, date of birth, date of registration, and political party (if there is party registration).

State practice illustrates that most legislation relating to elections commissions include detailed provisions with respect to voter lists. Malaysia's Election Act and the corresponding elections regulations include comprehensive provisions regarding the form of the voter lists. These regulations specifically govern the districts included in each of the voter lists, the order of the names in the particular lists, and the maintenance of the principal and supplementary voter lists.¹⁷ Likewise, Armenia's Electoral Code includes detailed provisions related to

¹³ Election Act of 1958 (Malaysia), Act No. 19, part VI, art. 16(1).

¹⁴ Election Act of 1958 (Malaysia), Act No. 19, part VI, art. 16(2).

¹⁵ Electoral Code of the Republic of Armenia (1999), ch. 9, art. 41(4), *available at* <http://www.elections.am/images/elcode.pdf> (last accessed September 18, 2007).

¹⁶ Comparing the Election Act of 1958 (Malaysia), Act No. 19, part VI, art. 16(2) with Electoral Code of the Republic of Armenia (1999), ch. 9, art. 41(4).

¹⁷ Elections (Registration of Electors) Regulation of 2002 (Malaysia), art. 3-22.

issues including maintenance of voter lists, coordination of lists for multiple elections, access to voter lists, and review of errors in voter lists.¹⁸

Registration of Political Parties

Elections commissions usually oversee the registration of political parties and candidates. Registration and the timeframe within which parties and candidates must register are important to provide sufficient time for the names of candidates and/or political parties to appear on ballots. Registration of parties by an elections commission, rather than by a branch of the government, can help to promote organized and fair elections by ensuring objective and impartial processes for registering parties and candidates. Requirements for registration of a political party that are overly restrictive, discriminatory, or in any way obstruct legitimate parties or candidates from registering can taint an election outcome and affect the free and fair nature of the elections.¹⁹

South Africa provides an instance of state practice where the elections commission is responsible for the registration of political parties. In order to register, a political party must provide the commission with a name, an insignia, an abbreviation for the party name, and the party's constitution.²⁰ If the party is not already registered and represented in Parliament, a provincial legislature, or a local legislature, additional registration requirements exist. These include providing the deed of foundation (charter), the number of voters in the party, and proof of publication in the Gazette of the pending application for registration.²¹

The New Elections Law in Liberia and the corresponding regulations also contain provisions relating to registration and accreditation of political parties. To register a political party the Elections Commission has two initial requirements. First, the applying party must submit a certified copy of their articles of

¹⁸ Electoral Code of the Republic of Armenia (1999), ch. 2, art. 9 (14).

¹⁹ OFFICE OF DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, GUIDELINES FOR REVIEWING THE LEGAL FRAMEWORK FOR ELECTIONS, sec. VIII, part A and B, at 15-16. The OSCE Guidelines for Reviewing the Legal Framework for Elections note that the election law should guarantee equal treatment for all parties and candidates and that the "legal framework [for elections] should provide for uniformity in the registration process so that the same process applies to all candidates at all levels."

²⁰ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 15(2).

²¹ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 15(3).

incorporation.²² Second, the party must submit a notarized membership list that includes at least 500 “eligible voters in each of at least twelve (12) counties of the republic.”²³ In addition to the threshold criteria, the applying party must also comply with further requirements. These requirements stipulate that membership in the party must be open to every citizen of Liberia irrespective of sex, religion, or ethnicity. Further, the requirements mandate that the party operates in a democratic manner, with free elections of its officers, and that the emblem, motto, and name do not have negative ethnic, provincial, or religious connotations.²⁴

Rejection of Party Registration and Appeals Process

As part of the registration process for political parties and candidates, many regulations include the reasons that the elections commission can refuse registration, as well as a process for appealing an application if the commission denies registration to a political party or individual candidate.

The South African Electoral Commission Act provides several reasons the Chief Electoral Officer (the main administrative officer of the commission) may refuse to register a political party. First, if the applying party’s insignia, name, or abbreviated name closely resembles that of another party already registered.²⁵ Second, if the insignia, name, or abbreviated name seeks to incite any sort of violence or hatred aimed at any person or group.²⁶ If the Chief Electoral Officer denies any party’s registration, they may appeal to the full Electoral Commission within 30 days.²⁷

Liberia’s electoral regulations also include provisions that allow citizens to challenge the registration and accreditation of political parties. Any citizen who

²² Guidelines Relating to the Registration of Political Parties and Independent Candidates (Liberia, 2005), ch. 1, sec. 8.1 (a), *available at* <http://www.necliberia.org/content/legaldocs/guidelinesandreg/regofpoliticalparties.pdf>, (last accessed Sept. 22, 2007).

²³ Guidelines Relating to the Registration of Political Parties and Independent Candidates (Liberia, 2005), ch. 1 sec. 8.1 (b).

²⁴ Guidelines Relating to the Registration of Political Parties and Independent Candidates (Liberia, 2005), ch. 1, sec. 8.3.

²⁵ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 16(1). This provision seeks to prevent deception on the part of the applying party or any effort to confuse voters by masquerading as another political party.

²⁶ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 16(1).

²⁷ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 16(2).

has legal standing can bring a claim against an applying political party to challenge the membership list.²⁸ Among the grounds for challenging the membership list are: (1) that the names were fraudulently obtained and included on the list; (2) that people whose names are on the list are already members of another party; (3) that the names of people on the list are deceased persons; and (4) that the names on the list are of people who are not Liberian citizens or do not exist.²⁹ The Commission has fourteen days to adjudicate the dispute and notify the parties of its ruling.³⁰

Registration and Certification of Candidates for Office

State practice illustrates that the process for nominating political candidates, as well as political parties, is usually under the authority of a state's elections commission. A candidate may be a member of a political party registered with elections commission, or may be an independent candidate running for office without an official party designation.³¹ It may be important to ensure that regulation requirements do not discriminate against independent candidates. An elections commission, through the drafting of regulations and administration of registration requirements, can play a key role in ensuring equal access and treatment for independent candidates.

The Philippines requires that all candidates for national and local elections file a certificate of candidacy with the state's elections commission.³² This filing acts as a safeguard to prevent candidates from running for more than one elected position and provides a record of all candidates for organizational purposes. The certificate of candidacy typically includes the name, contact information, political affiliation of the candidate, and proof that the candidate is eligible to run for the particular office (proof of citizenship or naturalization).³³

²⁸ Guidelines Relating to the Registration of Political Parties and Independent Candidates (Liberia, 2005), ch. 1 sec. 10.3.

²⁹ Guidelines Relating to the Registration of Political Parties and Independent Candidates (Liberia, 2005), ch. 1 sec. 10.3.

³⁰ Guidelines Relating to the Registration of Political Parties and Independent Candidates (Liberia, 2005), ch. 1 sec. 10.5.

³¹ Office of Democratic Institutions and Human Rights, Organization for Security and Cooperation in Europe, Guidelines for Reviewing the Legal Framework for Elections, sec. VIII, pt. A, p. 15.

³² COMELEC Resolution No. 3253, (Philippines, 2001), *available at* <http://www.chanrobles.com/comelecresolutionno3253.htm> (last accessed Sept. 18, 2007).

³³ COMELEC Resolution No. 3253, sec. 2 (Philippines, 2001).

Some states operate a party list system of election, where the percentage of the total votes that a particular political party receives determines the delegation of seats in the legislature.³⁴ In such states, including the Philippines, elections commissions sometimes have separate candidacy requirements for party list elections. The registration requirements for party-affiliated candidates in the Philippines are generally the same as those for independent candidates, except that if a candidate that is affiliated with a party, that candidate's political party files registration for that party's candidates.³⁵

Managing Ballot Tabulation Activities

Most electoral commissions are responsible for tabulating the results of elections, and legislation and/or regulations relating to the state's elections commission typically govern the tabulation.

Many states, including Armenia, have different tabulation processes for local, regional, and national contests. The Central Election Commission in Armenia is responsible for tabulating the results of the presidential election and national assembly elections.³⁶ The Central Election Commission does not receive any assistance from other branches of government and acts independently in tabulating votes, which can help to reduce the possibility of election fraud.

Armenia's Central Election Commission also has two local branches, the Territorial Election Commission and the Precinct Election Commission. In local elections, these two regional elections commissions follow a protocol in the

³⁴ Under a list system, a state's political parties prepare a list of nominees before the election. After the tabulation and certification of votes, the parties then delegate the seats won from the top of their list.

³⁵ COMELECCOMOLEC Resolution No. 3253 (Philippines, 2001).

³⁶ Electoral Code of the Republic of Armenia (1999), ch. 9, art. 60-63. According to the Electoral Code, the Commission must calculate the preliminary results of the elections within 28 hours of the polls closing based on information received from the Territorial Election Commission. The Central Election Commission must verify the results by protocol and broadcast the results on public television and radio. The decision of the Commission does not need to be unanimous and any abstaining members will attach a note to the results explaining the abstention.

Electoral Code to tabulate election results and report to the Central Election Commission.³⁷

Adjudicating Electoral Disputes

Most states delegate some degree of authority to their election commission to resolve election disputes. This authority can range from complete jurisdiction over all election-related disputes to a limited advisory role. Many states also allow the state's highest court to review the decisions of the elections commission.

The Commission on Elections in the Philippines is responsible for adjudicating a significant number of election disputes. The Commission exercises exclusive jurisdiction over all disputes arising out of "elections, returns, qualifications of all elective provincial, provincial, and city officials, and appellate jurisdiction over all contests involving elected municipal officials decided by trial courts of general jurisdiction."³⁸ All decisions, orders and rulings of the Commission are final and are not open to appeal.³⁹

Alternately, the South African Electoral Commission has only a limited role in resolving election disputes. South Africa has a separate Electoral Court; the executive branch appoints the Court's judges who have the authority to resolve election disputes. The Electoral Commission has a limited adjudicative role that mainly involves hearing challenges regarding the registration of political parties.⁴⁰

Civic Education Activities

Most constitutions and electoral laws also include general language that establishes the state's elections commission as the oversight mechanism to help ensure free and fair elections. In addition, many states' electoral commissions are responsible for civic education programs related to elections and democratic norms.

³⁷ Electoral Code of the Republic of Armenia (1999), ch. 9, art. 60 and 61. The Armenian elections law establishes and lists the protocols for precinct and territory elections as well as the protocol for tabulating inaccuracies in the voting process.

³⁸ PHILIPPINES CONST. art. IX, part C, sec. 2(2) (1987).

³⁹ PHILIPPINES CONST. art. IX, part C, sec. 2(2) (1987).

⁴⁰ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 16.

Australia's Commonwealth Electoral Act provides a mandate that focuses primarily on electoral processes and elected officials. The Australian elections commission is responsible for promoting free and fair elections and educating the public about the Electoral Commission.⁴¹ The Act also directs the Commission "to promote public awareness of electoral and Parliamentary matters by means of the conduct of education and information programs and by other means."⁴²

Other commissions, including South African's Electoral Commission, have broader mandates that include educating citizens on issues regarding human rights and democratic governance. South Africa authorizes the Electoral Commission to promote conditions conducive to free and fair elections through educating the voting public on democratic processes.⁴³

Structure

While elections commissions differ in their authority and composition, state practice illustrates that most states' commissions share some similar structural elements. Commissions usually have a decision-making body, often called the board of commissioners, as well as a separate administrative staff to implement the policies of the commission and election regulations. Depending on the structure of the state and the elections, some states establish elections commissions at the provincial and/or local levels to assist with national, provincial, and local elections.

Board of Commission

Most electoral commissions have a decision-making body, often known as the board of commissioners. This board usually has a chairperson, vice-chairperson, and a number of other commissioners. The chairperson and vice-chairperson have differing responsibilities from state to state, although the vice-chairperson has limited authority in most states.

South Africa's Electoral Commission consists of five commissioners, including a chairperson and a vice-chairperson.⁴⁴ The only explicit responsibility

⁴¹ Commonwealth Electoral Act (Australia, 1918), No. 27, sec. 7(1), *available at* http://www.austlii.edu.au/au/legis/cth/consol_act/cea1918233/s7.html, (last accessed September 18, 2007).

⁴² Commonwealth Electoral Act (Australia, 1918), No. 27, sec. 7(1).

⁴³ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 5(1)(b), (c), and (d).

⁴⁴ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 8.

of the chairperson is, at his discretion, to call meetings of the Commission.⁴⁵ In contrast, the chairperson of the Philippines Commission on Elections has significantly more authority than the commission's other five members. The chairperson's responsibilities include: (1) calling sessions of the Commission; (2) presiding over sessions of the Commission; (3) enforcing any order or ruling of the Commission; and (4) taking any other action he deems necessary after consultation with other commissioners.⁴⁶ The chairperson thus has considerable discretionary authority, as he is responsible for enforcing orders of the Commission.

Administrative Staff

Many elections commissions have an administrative staff that implements the policies of the commission and carries out election regulations. The administrative staff can be important to ensure the effective administration and management of the electoral process.

Most elections commissions nominate a chief electoral officer. The chief electoral officer usually oversees the administration of the elections commission's activities, although he may also have other additional responsibilities.

Zambia's Electoral Commission appoints a director who is the chief executive officer of the Commission.⁴⁷ The director is responsible for the day-to-day administration of the Commission and for implementing any decisions of the Commission.⁴⁸ Similarly, the South African Electoral Commission appoints a chief electoral officer immediately after the President appoints the Commission.⁴⁹ The chief electoral officer is the administrative head of the Commission and is responsible for financial and auditing issues related to the Commission.⁵⁰ The

⁴⁵ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 11.

⁴⁶ COMELEC Rules of Procedure (Philippines, 1993), part II, rule 2, sec. 5, (Philippines, 1993), *available at* . <http://www.chanrobles.com/comelecrulesofprocedure.htm> (last accessed Sept. 21, 2007).

⁴⁷ Electoral Commission Act (Zambia, 1996), part III, sec. 12, *available at* http://www.elections.org.zm/electoral_comm_act/elect_comm_act.html (last accessed Sept. 22, 2007).

⁴⁸ Electoral Commission Act (Zambia, 1996), part III, sec. 12.

⁴⁹ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 3, sec. 12.

⁵⁰ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 3, sec. 12.

Commission may also delegate additional responsibilities to the chief electoral officer if it deems necessary.⁵¹

Local Electoral Commissions

Some states provide for the creation of provincial and local elections commissions. These local entities are subordinate to the national elections commission and provide primarily administrative and logistical support. This support can take the form of administering national regulations at the local level or overseeing provincial and/or local elections.

Armenia's provincial and local elections commissions, the Territorial Election Commissions and the Precinct Election Commissions, provide assistance during statewide elections and administer elections at the provincial (territorial) and local (precinct) levels.⁵² In general, territorial commissions oversee, and receive reports from, the precinct commissions. The territorial commissions are then directly responsible to the national elections commission. However, both the territorial and precinct commissions operate in accordance with the Central Election Commission bylaws.⁵³

The responsibilities of the Territorial and Precinct Election Committees include conveying information about local elections to the Central Election Committee; tabulating and summarizing the results of local elections; and referring violations of the election law to appropriate state authorities.⁵⁴ While the Territorial Election Commissions are permanent entities, the Precinct Election Commissions are established only for specific elections.

Membership

The composition of elections commissions and the method of selecting a commission's members vary from state to state. While many states delegate the appointment of commission members to the executive branch, most also require involvement of the state's legislature in the nomination process. In a small number

⁵¹ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 3, sec. 12.

⁵² Electoral Code of the Republic of Armenia (1999), ch. 9, art. 42 and 43. The Armenian electoral law establishes and lists the functions of Territorial and Precinct Election Commissions. Electoral Code of the Republic of Armenia (1999), ch. 9, art. 42 and 43.

⁵³ Electoral Code of the Republic of Armenia (1999), ch. 9, art. 42, and 43.

⁵⁴ Electoral Code of the Republic of Armenia (1999), ch. 9, art. 42, & 43.

of states, both governmental and political actors are involved in selecting members of elections commissions.

The qualification requirements for the commissioners vary from state to state as well; although commissioners typically must be citizens of the state and not affiliated with a political party.

Selection of Commissioners

Most states that delegate appointment authority to the executive branch also require approval or nomination by the state's legislative branch. In South Africa, while the President appoints the members of the elections commission, two committees outside the executive branch have extensive involvement in the selection of qualified candidates.⁵⁵ An "independent committee"⁵⁶ prepares a list of at least eight qualified candidates and submits it to a committee in the National Assembly. The National Assembly committee then proposes a candidate from the list to the President who can choose to appoint him to the Electoral Commission.⁵⁷ Zambia's executive branch and legislature are also both involved in selecting and nominating commissioners. The President appoints the commissioners but the national assembly must ratify the appointees.⁵⁸

In a smaller number of states, including Armenia, both governmental and political actors are involved in the selection of commission members. The selection of members of Armenia's Electoral Commission occurs in the following manner: (1) one by each party or alliance that is represented in the national assembly; (2) one by the President of the Republic; (3) one by the Board of Chairmen of the Republic of Armenia Courts, from among judges of the Armenian courts; and (4) one by the Court of Cassation, from among the judges of the Court of Cassation.⁵⁹

⁵⁵ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 6.

⁵⁶ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 6. The independent committee is composed of the President of the Constitutional Court, a representative of the Human Rights Commission, a representative of the Gender Equality Commission, and the Public Protector.

⁵⁷ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 6. It is important to note that committee within the National Assembly is representative of all political parties.

⁵⁸ Electoral Commission Act (Zambia, 1996), pt. II, sec. 11 4.

⁵⁹ Electoral Code of the Republic of Armenia (1999), ch. 8, art. 35(1).

Qualifications of Commissioners

States have various eligibility requirements to *become* an electoral commissioner, and many have additional requirements that a commissioner must adhere to during his tenure on the commission. These requirements can help promote the independence and legitimacy of the commission by eliminating real and perceived political influence and bias.

Almost all states require that commission members are citizens with no political party affiliation. Additional requirements potentially are complex and lengthy. Liberia's New Elections Law, for instance, requires that all appointees must: (1) be Liberian citizens; (2) be at least thirty-five years of age; (3) be of good moral character; (4) be the only commissioner from their county; (5) not be a member of any political party or organization; and (6) not be running for any elected public office.⁶⁰

After the appointment of a commissioner, many states limit the types of political activities in which a commissioner may participate during his tenure. South Africa's Electoral Commission has several requirements that the commissioners must adhere to while serving on the commission. The commissioners must: (1) remain impartial and independent; (2) not campaign for another political office; (3) not support or show bias to any candidate in any election; (4) not profit from any information gained through appointment to the Commission; and (5) not divulge any information obtained in his capacity as a commissioner to a third-party.⁶¹ The president may dismiss any commissioner who is in breach of a requirement.⁶²

Financing

⁶⁰ The New Elections Law (Liberia, 1986), sec. 2.3, and 2.5, *available at* <http://www.necliberia.org/content/legaldocs/laws/1986electionlaws.pdf> (last accessed Sept. 22, 2007).

⁶¹ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 9(1),) and (2).

⁶² Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 7(3).

Most states' budgets provide financing for the elections commission and the organization and administration of elections. In many states, the funding varies depending on the number and type of elections scheduled in the particular budget cycle. In general, elections for parliament and president are more expensive than provincial or local elections.

This funding may include provisions for national elections commissions, as well as for provincial or local commissions. In Armenia, the national budget funds provincial and local electoral commissions. Funds include allocations for maintaining voter rolls, conducting elections, and covering any expenses associated with the operations of the elections commissions.⁶³

Some states' elections commissions may also procure additional funds, either from the government or from an outside source. The Armenian Electoral Code allows the Central Election Committee to procure additional funds, in addition to the standard budget allocation, from the state's central bank reserve fund, if necessary.⁶⁴

Zambia's Electoral Commission Act specifies that the parliament will fund the Commission, but also allows the Commission to seek funds through grants and donations.⁶⁵ The state authorized the Commission in Zambia to invest any funds that it does not spend.⁶⁶ Similar to Zambia, the South African Electoral Commission has authorization to seek funds from sources outside of the government.⁶⁷

DARFUR PEACE AGREEMENT

The Darfur Peace Agreement (DPA) provides for "a peaceful devolution of power through democratic means is a guarantor of stability and unity in the country."⁶⁸ Under the DPA, free and fair elections are the basis for the transfer of

⁶³ Electoral Code of the Republic of Armenia art. 24(1).

⁶⁴ Electoral Code of the Republic of Armenia art. 24(3).

⁶⁵ Electoral Commission Act (of Zambia, 1996), pt. IV, sec., 13.

⁶⁶ Electoral Commission Act (of Zambia, 1996), pt. IV, sec., 13.

⁶⁷ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 3, sec. 13.

⁶⁸ Darfur Peace Agreement, art. 1, para. 4.,

power,⁶⁹ and the National Elections Commission is responsible for the supervision of the elections.⁷⁰

The DPA references the National Elections Commission, an independent national commission provided for in the Interim National Constitution of the Republic of Sudan.⁷¹ The DPA provides that the National Elections Commission shall include adequate representation of “Darfurians, including members of the SLM/A and JEM,” while providing that members must meet competence and qualification requirements.⁷² The President, in consultation with the first Vice-President, is to select nine “independent, competent, non-partisan, impartial, and representative personalities” as commissioners.⁷³

The Interim Constitution gives the National Elections Commission the sole power to prepare election roles; organize and supervise the elections of “the President of the Republic, the President of Government of Southern Sudan, Governors, the National Legislature, Southern Sudan Assembly and state legislatures;” organize and supervise a referendum; and perform other relevant functions.⁷⁴ The DPA expands the scope of the National Elections Commission, giving it the power to organize and supervise a referendum on the permanent status of Darfur.⁷⁵ The DPA also provides that international monitors will assist the National Elections Commission in this role.⁷⁶

SAMPLE LANGUAGE

ARTICLE XXX

Functions

- (1) The functions of the National Elections Commission shall be to:
 - (a) Manage any election;
 - (b) Ensure that any election is free and fair;
 - (c) Promote conditions conducive to free and fair elections;

⁶⁹ Darfur Peace Agreement, art. 1, para. 8.

⁷⁰ Darfur Peace Agreement, art. 1, para. 21.

⁷¹ SUDANESE INTERIM NATIONAL CONST. part 8, para. 141 (2005).

⁷² Darfur Peace Agreement, art. 13, para. 84.

⁷³ SUDANESE INTERIM NATIONAL CONST. part 8, para. 141 (1) (2005).

⁷⁴ SUDANESE INTERIM NATIONAL CONST. part 8, para. 141 (2) (2005).

⁷⁵ Darfur Peace Agreement, art. 6, para. 58.

⁷⁶ Darfur Peace Agreement, art. 6, para. 58.

- (d) Promote knowledge of sound and democratic electoral processes;
 - (e) Compile and maintain voters' rolls by means of a system of registering of eligible voters by utilizing data available from government sources and information furnished by voters
 - (f) Compile and maintain a register of parties;
 - (g) Establish and maintain liaison and co-operation with parties;
 - (h) Undertake and promote research into electoral matters;
 - (i) Develop and promote the development of electoral expertise and technology in all spheres of government;
 - (j) Continuously review electoral legislation and proposed electoral legislation, and to make recommendations in connection therewith;
 - (k) Promote voter education;
 - (l) Promote co-operation with and between persons, institutions, governments and administrations for the achievement of its objects;
 - (m) Demarcate wards in the local sphere of government or to cause them to be demarcated;
 - (n) Declare the results of elections for national, provincial, and municipal legislative bodies within seven days after such elections;
 - (o) Adjudicate disputes which may arise from the organization, administration or conducting of elections and which are of an administrative nature; and
 - (p) Appoint appropriate public administrations in any sphere of government to conduct elections when necessary.⁷⁷
- (2) The Commission shall, for the purposes of the achievement of its objects and the performance of its functions:
- (a) Acquire the necessary staff, whether by employment, assignment from another agency, appointment on contract or otherwise;
 - (b) Establish and maintain the necessary facilities for collecting and disseminating information regarding electoral matters;
 - (c) Cooperate with educational or other institutions with to provide instruction to or the training of persons in electoral and related matters; and
 - (d) Generally, perform any act necessary for or conducive to enact the above provisions.⁷⁸

⁷⁷ This language is drawn from Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec.5(1)(b), (c), & (d). *See also* PHILIPPINES CONST. art. IX, part C, sec. 2 (1987); Electoral Code of the Republic of Armenia (1999), ch. 9.

ARTICLE XXX

Structure

- (1) The Commission shall consist of nine members, one of whom shall be a judge, appointed by the President in accordance with the provisions of this section. The commissioners shall be representative of the People of Sudan, consisting of [X] number of commissioners from Region 1, [X] number of commissioners from Region 2, and [X] number of commissioners from Region 3.
- (2) No person shall be appointed as a member of the Commission unless he or she:
 - (a) Is a citizen;
 - (b) Does not at that stage have a high party-political profile;
 - (c) Has been recommended by the National Assembly by a resolution adopted by a majority of the members of that Assembly; and
 - (d) Has been nominated by a committee of the National Assembly, proportionally composed of members of all parties represented in that Assembly, from a list of recommended candidates submitted to the committee by the panel referred to in subsection (3).
- (3) The independent panel shall submit a list of no fewer than eight recommended candidates to the committee of the National Assembly referred to in subsection (2)(d).
- (4) The panel shall act in accordance with the principles of transparency and openness and make its recommendations with due regard to a person's suitability, qualifications, and experience.⁷⁹

OR

- (1) The Commission as established by Article 141 of the Interim National Constitution shall have the functions specified in that Article.

⁷⁸ This language is drawn from Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 5(1)(b), (c), & (d). *See also* MALAYSIA CONST. pt. VII, art. 115 (1957); Electoral Commission Act (Zambia, 1996), pt. III, sec. 12.

⁷⁹ This language is drawn from Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 6.

- (2) The Commission shall consist of the following full-time members:
 - (a) A Chairperson; and
 - (b) Not more than eight other members.
 - (c) [X number of commissioners] from Region 1, [X number of commissioners] from Region 2, and [X number of commissioners] from Region 3.
- (3) The members shall be appointed by the President, subject to ratification by the National Assembly.
- (4) The Chairperson shall be a person who has held, or is qualified to hold, high judicial office or, any other suitably qualified person.⁸⁰

OR

- (1) There shall be a National Elections Commission composed of a Chairman and six Commissioners who shall be natural-born citizens of the State and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective position in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be Members of the State Bar who have been engaged in the practice of law for at least ten years.
- (2) The Chairman and the Commissioners shall be appointed by the President with the consent of the [legislature or authorized independent commission] for a term of [seven years] without reappointment. Of those first appointed, three Members shall hold office for [seven years], two Members for [five years], and the last Members for [three years], without reappointment. Appointment to a vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.⁸¹

ARTICLE XXX

Financing

⁸⁰ This language is drawn from Electoral Commission Act (Zambia, 1996), pt. II, sec. 4.

⁸¹ This language is drawn from PHILIPPINES CONST. art. IX, pt. C, sec. 1 (1987); Electoral Commission Act (Zambia, 1996), pt. II, sec. 5.

- (1) Expenses for organization and conduct of elections, including for compilation of voter lists, as well as expenses that are required for the activities of electoral commissions, shall be covered from the state budget. Such expenses shall be reflected in a separate line in the state budget.
- (2) Financial means allocated for elections shall be provided within five days of setting the date for the elections.
- (3) In the case of extraordinary elections, such elections shall be financed from the state budget's reserve fund; if this is impossible, then they shall be financed from the Central Bank's reserve fund on the condition of future reimbursement from the state budget. If the state budget financing is not provided on time, or there are no funds available in the Central Bank's reserve fund, or the allocated means are insufficient for financing the extraordinary elections or the second round of elections, then the Central Electoral Commission shall have the right to seek a loan from private banks on competitive basis, on the condition that the government will repay the loan within a three-month period.
- (4) Finances earmarked for elections, including funds for running electoral commissions, shall be allocated to the [National Elections Commission staff or other national administrative institution] in accordance with procedures defined by the Government of the Republic of Sudan. [National Elections Commission staff or other national administrative institution] shall manage the financial means in accordance with procedures set out by legislation of the Republic of the Sudan and shall be responsible for using the funds in accordance with the estimates approved by the National Elections Commission.⁸²

AND

- (5) The Commission may, subject to the approval of the President, accept moneys by way of grants or donations from any source and subject to the approval of the President, and may raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.⁸³

⁸² This language is drawn from Electoral Code of the Republic of Armenia (1999), ch. 5, art. 24; PHILIPPINES CONST. art. IX, pt. A, sec. 5 (1987); Electoral Commission Act (Zambia, 1996), pt. IV.

⁸³ Electoral Commission Act (Zambia, 1996), pt. IV, sec. 13(2).

