

ELECTIONS

INTRODUCTION

This chapter identifies the core elements of electoral systems through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement related to elections and provides sample language parties may wish to consider when drafting provisions elections provisions in any peace agreement.

Parties may wish to consider several core elements which help to ensure a balanced electoral system including: (1) an elections commission to monitor and organize the election(s);¹ (2) measures to ensure transparency of elections and electoral campaigns; (3) methods for voter registration and civic education; (4) mechanisms to convey candidate information; (5) a timeframe of the electoral process; (6) international observers to monitor the electoral process; and (7) an appropriate structure for the voting system.

The 2006 Darfur Peace Agreement (DPA) does not establish a new voting system for the Republic of the Sudan and does not establish a provincial voting mechanism in Darfur. The DPA, however, does provide Darfurians with representation in the National Elections Commission.² The National Elections Commission is responsible for organizing and supervising elections.³ The DPA expands the National Elections Commission's authority by granting the commission the power to organize and supervise the referendum on Darfur in coordination with international monitors.⁴

¹ For more information on Elections Commissions see Elections Commissions chapter of this guide.

² Darfur Peace Agreement, art. 31, para. 84, May 5, 2006, *available at* http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf (last accessed Sept. 30, 2007).

³ SUDANESE INTERIM NATIONAL CONST. (2005) part 8, para 141(1) (2005) , *available at* http://www.mpil.de/shared/data/pdf/inc_official_electronic_version.pdf (last visited Sept. 30, 2007).

⁴ Darfur Peace Agreement, art. 6, para. 58.

CORE ELEMENTS

Creation of an Elections Commission and Defining its Responsibilities

Peace agreements generally provide for the establishment of elections commissions to coordinate and organize elections.⁵ In most cases, the international community has either selected or influenced the composition of the elections commission for the post-conflict state. In cases where international involvement has been minimal, the government often will select an elections commission after consultation with the other parties to the agreement.⁶ Sometimes a transitional government also serves as an elections commission.⁷ The elections commission's primary role is usually to supervise and ensure the fairness of the elections. The assignment to an elections commission is usually assigned specific duties including but not limited to organizing the election process, supervising the casting of ballots, and verifying the results of elections.⁸

Measures to Ensure Transparency of Elections and Electoral Campaign

Electoral aspects of peace agreements often include provisions related to transparency. Transparency provisions often include disclosure to citizens of campaign spending amounts; the processes for ballot distribution and vote counting; regulations related to party activity and decision-making; and election

⁵ Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, (1999), ch. 3, art. III, *available at* http://www.usip.org/library/pa/kosovo/kosovo_rambouillet.html#chap3, (last accessed Sept. 22, 2007).

⁶ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 6, *available at* <http://www.info.gov.za/gazette/acts/1996/a51-96.htm>, (last accessed Sept. 18, 2007); Electoral Commission Act (Zambia, 1996), part II, sec. 14, *available at* http://www.elections.org.zm/electoral_comm_act/elect_comm_act.html, (last accessed Sept. 22, 2007); Electoral Code of the Republic of Armenia (1999), ch. 8, art. 35(1), *available at* <http://www.elections.am/images/elcode.pdf> (last accessed September 18, 2007).

⁷ Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone Jul. 7, 1999, pt. 2, [hereinafter Lome Agreement] *available at* http://www.usip.org/library/pa/sl/sierra_leone_07071999.html (last accessed Sept. 21, 2007).

⁸ Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec.5(1)(b), (c), & (d); PHILIPPINES CONST. art. IX, pt. C, sec. 2 (1987), *available at* <http://www.gov.ph/aboutphil/constitution.asp> (last accessed Sept. 22, 2007); Electoral Code of the Republic of Armenia (1999), ch. 9; MALAYSIA CONST. part, VII, art. 115 (1957), *available at* <http://www.trybunal.gov.pl/constit/constitu/constit/malaysia/malays-e.htm> (last accessed Sept. 22, 2007); Electoral Commission Act (Zambia, 1996), part III, sec. 12.

results. Some agreements provide measures for secret balloting but do not determine the specifics of the balloting process.

The elections commission established in Kosovo has a broad mandate to ensure the transparency of electoral campaigns and elections. The commission prepares, conducts, and supervises all aspects of the electoral process, including the election logistics involving ballot security, transportation, and tabulation. The powers of the commission extend to remedying violations of election provisions through the removal of parties or individuals from elections lists or ballots.⁹

Methods of Voter Registration and Civic Education

Peace agreements do not usually specify the procedures for registering voters, but rather assign this task to an elections commission. Often, new voter registration provisions conform to international standards and aim to keep voter registration costs to a minimum to prevent disenfranchised voters (i.e. requiring photographs if citizens cannot afford having their photographs taken). Some peace agreements also include provisions designed to educate citizens on the electoral process and the major political issues facing the state.

The Kosovo electoral commission is responsible for registering voters and political parties in preparation for elections.¹⁰ Liberia in its 2003 Comprehensive Peace Agreement also called for voter education and registration programs organized by the National Elections Commission, with the help of the international community.¹¹ The methods used in Angola's 1994 Lusaka Protocol are nearly identical to those of the more recent Kosovo and Liberia peace agreements.¹²

Measures to Ensure Freedom and Openness of Media

Several peace agreements include provisions for a free and open media during electoral contests. During elections, some governments establish a

⁹ Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. III, para. 2(a), (c).

¹⁰ Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. III, para. 2 (a).

¹¹ Liberia Comprehensive Peace Agreement, Aug. 18, 2003, art. IX, sect. 4, *available at* http://www.usip.org/library/pa/liberia/liberia_08182003_cpa.html (last accessed Sept. 22, 2007).

¹² Lusaka Protocol (Angola, 1994), annex 7, sect. III, para. 5, *available at* http://www.usip.org/library/pa/angola/lusaka_11151994.html (last accessed Sept. 21, 2007).

mechanism to guarantee equal access to the press for all political candidates and include provisions for media to assist in voter communication and civic education initiatives. In Angola, the utilization of state resources by the parties was to be on an equal basis.¹³ It is often appropriate to incorporate into a peace agreement relevant provisions regarding freedom and openness of the media during elections, such as those contained in international treaties and instruments including the Universal Declaration of Human Rights.¹⁴

In Kosovo, the Interim Agreement for Peace and Self-government called for a free media that was “accessible to registered political parties and candidates, and available to voters throughout Kosovo.”¹⁵ In Angola, the Lusaka Protocol recognized the inalienable freedom of the press; however, the “publication of the election results ... as well as any statistical projections of the outcome of the final determination of the results” was in accordance with election laws.¹⁶ This restriction on the reporting of election results in Angola is an outgrowth of the 1992 elections, where state controlled media quickly reported a victory for the ruling coalition, which precipitated armed conflict.¹⁷

Timeframe of Electoral Process

Many peace agreements contain specific language indicating either a date or a timeframe for holding elections. By establishing a specific timeframe for holding elections, a peace agreement limits the ability of the central government to maintain its power by delaying elections. However, specifying a timeframe may also prove a challenge if the parties have difficulty in meeting the proposed schedule.

The Memorandum of Understanding (MOU) between the Government of the Republic of Indonesia and the Free Aceh Movement established dates for a series of elections. The first election was for the head of the Aceh administration and

¹³ Lusaka Protocol (Angola, 1994), Annex 7, sect. II, para. 5.

¹⁴ Liberia Comprehensive Peace Agreement Aug. 18, 2003, art. XIIX.

¹⁵ Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. I, para. 1 (f).

¹⁶ Lusaka Protocol (Angola, 1994), Annex 7, art. II, para. 7.

¹⁷ DAVID KRAMER, LAURIE COOPER, ET AL., INTERNATIONAL FOUNDATION FOR ELECTION SYSTEMS, INTERNATIONAL REPUBLICAN INSTITUTE, NATIONAL DEMOCRATIC INSTITUTE, ANGOLA PRE-ELECTION ASSESSMENT REPORT, (May 2002), at 15, *available at* <http://www.iri.org/africa/angola/pdfs/angola-eng.pdf> (last accessed Sept. 22, 2007).

other elected officials, and then the MOU required elections for the regional legislature three years later.¹⁸ Conversely, in Sierra Leone, the constitution set the election period and therefore the timeframe was not included in the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone.¹⁹

International Observers and Monitoring of Electoral Process

In addition to the international community's involvement in the creation of an elections commission, most peace agreements also provide for the assistance of international monitors to verify the election process. Peace agreements do not always enumerate the exact mandate of observers and may sometimes assign their responsibilities to an elections commission or international organization.

Parties can take a very general approach to international election observers in peace agreements. In Aceh the peace agreement called for outside monitors to be invited to monitor the elections in Aceh, but left the identity and timing of the monitors undefined.²⁰ In Bougainville, international election monitors are not called for in regional elections, but the Bougainville referendum on independence requires international observers when it occurs.²¹

Parties may also specify a more explicit role for international observers. The Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone required the National Election Commission to “request the assistance of the International Community, including the United Nations, the Organization of African Unity, Economic Community of West African States and the Commonwealth of Nations, in monitoring the next presidential and parliamentary elections in Sierra Leone.”²² Kosovo differed slightly, delegating decisions to the Organization for Security and Cooperation in

¹⁸ Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, Aug. 15, 2005, para. 1.2.3-1.2.4, *available at* http://www.thejakartapost.com/RI_GAM_MOU.pdf, (last accessed Sept. 22, 2007).

¹⁹ LomePeace Agreement, Jul. 7, 1999, part 3, art. XI.

²⁰ Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, Aug. 15, 2005, para. 1.2.7.

²¹ Bougainville Peace Agreement (Papau New Guinea, Aug. 30, 2001), para. 315, *available at* <http://rspas.anu.edu.au/melanesia/documents/bougainville/PDF/BougainvillePeaceAgreement29Aug01.pdf> (last accessed Sept. 22, 2007)

²² LomePeace Agreement, Jul. 7, 1999, pt. 3, art. XII, para. 4.

Europe, which was to supervise the elections and bring in any other international organizations it thought important.²³

Finally, international organizations may also assist in determining the timing of an election. The Interim Agreement for Peace and Self-Government in Kosovo provided that the President of the Joint Commission determine (after consultation with the parties) the exact timing of the elections, but mandated the elections occur within nine months of the agreement.²⁴ In Angola, the violence disrupted the election process; the ensuing agreement only requires holding elections after the United Nations declares that the parties have met all of the requisite conditions.²⁵ The determination of the United Nations was not final however, because the National Assembly then needed to establish a date in accordance with the 1992 election law.²⁶

Voting System

Most peace agreements specify the type of voting system created. Often, peace agreements structure the voting system so that it gives a voice to the entire population to the fullest extent possible, including women and traditionally underrepresented groups. Democratic institutions to assist with the voting process vary, but in general, states use a majoritarian system, a proportional representation system, or some combination of the two.

Majoritarian voting systems, some time called plurality-voting systems, allow the candidate with the majority of votes cast or who receives the most votes to take office. Majoritarian systems tend to promote candidate accountability and governments where one party is clearly in charge. Majoritarian voting schemes can create a discrepancy between the percentage of votes a party receives and their representation in the legislature. “In the 1993 federal election in Canada, the Progressive Conservatives won sixteen percent of the votes but only 0.7 percent of

²³ Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. II, para. 2.

²⁴ Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. II, para. 4.

²⁵ Lusaka Protocol (Angola, 1994), Annex 7, art. I, para. 3.

²⁶ Lusaka Protocol (Angola, 1994), Annex 7, art. II, para. 1.

the seats and in the 1998 general election in Lesotho, the Basotho National Party won twenty-four percent of the votes but only one percent of the seats.”²⁷

Canada is an example of a state that uses majoritarian voting, specifically the first past the post system, where the candidate who gets the most votes wins.²⁸ India is another country that uses a majoritarian system in elections; the use of the majoritarian system had the goal of providing stability to a country with over 670 million voters.²⁹

States concerned about disproportionate representation that may arise in majoritarian voting systems, may instead choose a proportional voting system. Under proportional representation if a party wins a certain percentage of the vote, it wins that exact same percentage of the legislative seats.³⁰ Proportional representation has the drawback of requiring elections to occur in multi-seat districts, which often reduces accountability of office holders.³¹ Additionally, the governments that result from the system are frequently coalitions where small parties can have a large influence than is reflected in the percentage of votes received.³²

In South Africa, the apartheid government used a majoritarian system for the enfranchised whites, but after 1994, the state implemented a proportional

²⁷ ACE ELECTORAL KNOWLEDGE NETWORK, ADVANTAGES DISADVANTAGES OF FIRST PAST THE POST, *available at* <http://aceproject.org/ace-en/topics/es/esd/esd01/esd01a/esd01a01> (last accessed Sept. 22, 2007).

²⁸ ACE ELECTORAL KNOWLEDGE NETWORK, CANADA: THE CANADIAN ELECTORAL SYSTEM, *available at* http://aceproject.org/ace-en/topics/es/esy/esy_ca (last accessed Sept. 22, 2007).

²⁹ ACE ELECTORAL KNOWLEDGE NETWORK, INDIA: FIRST PAST THE POST ON A GRAND SCALE, *available at* http://aceproject.org/ace-en/topics/es/esy/esy_in (last accessed Sept. 22, 2007).

³⁰ ACE ELECTORAL KNOWLEDGE NETWORK, PROPORTIONAL REPRESENTATION, *available at* <http://aceproject.org/ace-en/topics/es/esd/esd02/default> (last accessed Sept. 22, 2007).

³¹ ACE ELECTORAL KNOWLEDGE NETWORK, DISADVANTAGES OF PROPORTIONAL REPRESENTATION, *available at* <http://aceproject.org/ace-en/topics/es/esd/esd02/esd02esd02b> (last accessed Sept. 22, 2007).

³² ACE ELECTORAL KNOWLEDGE NETWORK, DISADVANTAGES OF PROPORTIONAL REPRESENTATION.

representation system.³³ The proportional representation was an integral power-sharing mechanism and helped create a sense of inclusion.³⁴

Some states implement hybrid majoritarian and proportional representation systems in order combine the positive aspects of majoritarian voting, e.g. accountability and a unified government, with the proportional outcomes of the proportional representations system.³⁵ The hybrid system does not necessarily resolve the issues related to proportional or majoritarian voting, but states may use this system to adjust the balance of the pro and cons of an electoral system.

Argentina has instituted a hybrid system. The state elects its President and Senators through majoritarian direct elections. The state elects the Argentine Chamber of Deputies through a proportional representation system.³⁶

DARFUR PEACE AGREEMENT

The Darfur Peace Agreement (DPA) envisions power sharing between the parties and the central and provincial governments as a means of peacefully devolving power through democratic means to guarantee the stability and unity of Sudan.³⁷ The transfer of power is to be based on “free and fair elections, [which are] the foundation for democratic governance in the Sudan.”³⁸ The DPA asserts that elections are an important element of political reconciliation.

The DPA grants all citizens of specified age the right to vote through secret ballots and to run for office in elections based on the principle of universal adult suffrage.³⁹ The DPA also provides for freedom of association, including the

³³ ACE ELECTORAL KNOWLEDGE NETWORK, SOUTH AFRICA: ELECTORAL SYSTEMS, CONFLICT MANAGEMENT, AND INCLUSION, *available at* http://aceproject.org/ace-en/topics/es/esy/esy_za (last accessed Sept. 22, 2007).

³⁴ ACE ELECTORAL KNOWLEDGE NETWORK, SOUTH AFRICA: ELECTORAL SYSTEMS, CONFLICT MANAGEMENT, AND INCLUSION.

³⁵ ACE ELECTORAL KNOWLEDGE NETWORK, MIXED SYSTEMS, *available at* <http://aceproject.org/ace-en/topics/es/esd/esd03/default> (last accessed Sept. 22, 2007).

³⁶ ACE ELECTORAL KNOWLEDGE NETWORK, ARGENTINA, *available at* http://aceproject.org/ace-en/topics/es/esy/esy_ar (last accessed Sept. 22, 2007).

³⁷ Darfur Peace Agreement, art. 1, para. 4.

³⁸ Darfur Peace Agreement, art. 1, para. 8.

³⁹ Darfur Peace Agreement, art. 3, para. 31.

formation of political parties,⁴⁰ and freedom of expression, including a guarantee of free press, so long as the media maintains professional ethics and does not incite hatred or violence.⁴¹ The “independent and impartial office of the Registrar” carries out the registration and supervision of political parties.⁴²

The DPA acknowledges Sudan’s federal system of government and the devolution of power to the provinces.⁴³ Additionally, the DPA recognizes each province’s right to determine its local government organization and to hold elections for its respective institutions.⁴⁴

A referendum will determine the final status of the Darfur Region and is to occur no later than July 2010.⁴⁵ The referendum will present the option of either maintaining the status quo of three provinces or creating a region composed of the three provinces.⁴⁶ The National Elections Commission is responsible for organizing and supervising this referendum in accordance with the rules and procedures of the National Elections Law. The international community is responsible for monitoring this referendum.⁴⁷ The DPA also establishes that the provisions of the Interim National Constitution will govern elections in Sudan, including in Darfur.

SAMPLE LANGUAGE

ARTICLE XXX **Citizens Rights**

- (1) Every citizen has the right to free, fair and regular elections for any legislative body established in the Constitution.
- (2) Every adult citizen has the right-
 - (a) To vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and

⁴⁰ Darfur Peace Agreement, art. 3, para. 38, secs. b,c.

⁴¹ Darfur Peace Agreement, art. 3, para. 37.

⁴² Darfur Peace Agreement, art. 3, para. 38, sec. d.

⁴³ Darfur Peace Agreement, art. 4, para. 44.

⁴⁴ Darfur Peace Agreement, art. 6, para. 47.

⁴⁵ Darfur Peace Agreement, art. 6, para. 56.

⁴⁶ Darfur Peace Agreement, art. 6, para. 57.

⁴⁷ Darfur Peace Agreement, art. 6, para. 58.

- (b) To stand for public office and, if elected, to hold office.⁴⁸

ARTICLE XXX

Election Conditions

- (1) The Parties shall ensure that conditions exist for the organization of free and fair elections, which include but are not limited to:⁴⁹
- (a) Freedom of movement for all citizens;
 - (b) An open and free political environment;
 - (c) An environment conducive to the return of displaced persons;
 - (d) A safe and secure environment that ensures freedom of assembly, association, and expression;
 - (e) Free media, effectively accessible to registered political parties and candidates, and available to voters throughout Darfur⁵⁰
- (2) The Parties shall request international organizations to certify when elections will be effective under current conditions in Darfur, and to assist the Parties in creating conditions for free and fair elections.⁵¹

ARTICLE XXX

Election Monitoring

- (1) The parties confirm the request for international supervision by [the African Union/United Nations] of a census to be conducted in [insert applicable date].

⁴⁸ SOUTH AFRICA CONST. ch. 2, para. 19 (1996). *See also* Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (2005), para. 1.2.6.

⁴⁹ This language is taken from the Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. I.

⁵⁰ This language is taken from the Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. I para. 2. The Copenhagen Document contains a set of principles, which pledge a state to carrying out genuine, contested elections. The membership of the Organization for Security and Cooperation in Europe drafted the document and endorse its principles.

⁵¹ This language is taken from the Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. I. *See also* Lusaka Protocol (Angola, 1994), Annex 3, para. 3.

- (2) Parliamentary elections will be held by [insert date]. International organizations, [insert international organizations], will be invited to observe these elections.⁵²

ARTICLE XXX

The Media and Elections

- (1) Election campaigns may be carried out through the mass media, election related public events (pre-election meetings and meetings with voters, public discussions, debates, rallies, marches, demonstrations), by printing various materials and disseminating audio and video materials.
- (2) During campaigns, it shall be prohibited for [candidates and/or parties] to give or promise to give - personally or through other means - any money, food, securities, or goods to citizens free of charge or on favorable terms, or to render or promise to render any services.⁵³
- (3) During pre-election campaign, it shall be prohibited to advocate violence, war, or the overthrowing of constitutional order by force, to incite national, racial, or religious hatred, as well as to publish or disseminate materials causing racial, national, or religious hatred.⁵⁴
- (4) Presidential candidates and [parties and/or party alliances] running for the legislature shall have the right to use paid and free airtime on public radio and public television, on equal conditions.
- (5) For every national election, the procedures for allocating free air time on Public Radio and Public Television to presidential candidates and parties

⁵² This language is drawn from Macedonia Framework is drawn from the Macedonia Framework (2001), Annex C, para. 1, and 2, *available at* http://www.usip.org/library/pa/macedonia/pa_mac_08132001.html (last accessed Sept. 21, 2007).

⁵³ This language is drawn from Electoral Code of the Republic of Armenia (1999), ch. 4, art. 18(6).

⁵⁴ This language is drawn from the Electoral Code of the Republic of Armenia (1999), ch. 4, art. 19.

(party alliances) running for the legislature, as well as the scheduling of such air time shall be set by the [electoral commission] on the day following the deadline for registration of candidates.⁵⁵

- (6) Notwithstanding the inalienable freedom of the press, official publication of the election results by the mass media as well as any official statistical projections of the outcome of the final determination of the results shall be in accordance with the provisions of the [domestic law].⁵⁶

⁵⁵ This language is drawn from the Electoral Code of the Republic of Armenia (1999), ch. 4, art. 20 (1-2). Similar language is provided for in the Lusaka Protocol (Angola, 1994), Annex 7, sec. II, para. 5.

⁵⁶ This language is drawn from the Lusaka Protocol (Angola, 1994), Annex 7, art. II, para. 7.