

EXECUTIVE STRUCTURES

INTRODUCTION

This chapter identifies the core elements of executive structures through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement related to executive structures and provides sample language parties may wish to consider when drafting provisions of a peace agreement related to Sudan's executive structure.

States typically either balance the executive power with the power of other branches of government or distribute power among members of the executive branch. Four different executive systems exist including a presidential system, a president council system, a parliamentary system, and a semi-presidential system. States generally provide for their systems of executive structure in their constitutions.

The 2006 Darfur Peace Agreement (DPA) creates a position of Senior Assistant to the President as the fourth ranking member in the Presidency.¹ This position reserved for a Darfurian. The DPA also provides for a Darfurian Advisor to the President.²

CORE ELEMENTS

Presidential System

In presidential systems, the president is both the head of state and head of government. The president is responsible for the military, selects his own cabinet, and enjoys limited legislative authority, such as a veto. The executive and legislative branches in presidential systems are independent from one another, with separate elections for each. By virtue of its fixed election cycle and the separation of legislative and executive branches, the presidential system provides checks on executive authority. Such systems can be somewhat inflexible, however, because it is difficult to remove presidents before their term ends. In some states, this may

¹ Darfur Peace Agreement, art. 8, paras. 65, 66, 68, May 5, 2006, *available at* http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf (last accessed Sept 20, 2007).

² Darfur Peace Agreement, art. 8, para. 67.

raise concerns of authoritarianism or create tension between the legislative and executive branches of government.

An example of a presidential system is Indonesia. Indonesians directly elect the president, who acts as both chief of state and head of government, to a five-year term.³ Once elected, the Indonesian Constitution provides the president with unlimited authority to appoint the United Indonesia Cabinet.⁴

Presidential Council System

The presidential council system vests the executive power in a small group of officials with either a static or a revolving leadership. Simultaneous elections typically determine the membership of the council, and the candidate with the highest percentage of votes generally becomes the initial chairperson of the group. The presidential council appoints the cabinet or council of ministers, often with the approval of the legislature.

Bosnia and Herzegovina utilizes a presidential council system in which three presidents hold four-year terms, during which each member is chair of the rotating Presidency for two eight-month periods.⁵ The Presidency collectively nominates the Council of Ministers, which, upon House of Representatives approval, is responsible for administering policy.⁶

Particularly in post-conflict states, presidential council systems may ensure broad representation of the population. Due to the potential for integration of diverse parties in the governing structure, the efficiency and long-term viability of

³ CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK, INDONESIA, *available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html> (last accessed, Sept. 21, 2007) The president of Indonesia also maintains sole control over the administrative functions of the government, foreign affairs, and the armed forces.).

⁴ INDONESIAN CONST. ch. V, art. 17 (1945), *available at* <http://asnic.utexas.edu/asnic/countries/indonesia/ConstIndonesia.html> (last accessed Sep. 20, 2007). The United Indonesian Cabinet is the executive cabinet.

⁵ BOSNIA AND HERZEGOVINA CONST. art. V (1995) *available at* http://www.ccbh.ba/eng/p_stream.php?kat=518 (last accessed Sep. 20, 2007). The Presidency's grant of authority extends primarily to foreign affairs, administration of the law, and proposing the budget. It is accountable to the legislature by annual report.

⁶ BOSNIA AND HERZEGOVINA CONST. arts. V, III (1), (4), (5), (1995). The Council of Minister's grant of authority extends primarily to domestic affairs, specifically domestic policy and coordination.

this model rely on the ability of parties to coexist by creating collaborative or complementary policy. If the rotation in a presidential council results in drastically different policies during the tenure of different chairs, there is a danger that this could destabilize institutions or policies that require cohesion or long-term investment.

Parliamentary System

Under the parliamentary system, the head of government is the prime minister or president, and is either elected by the parliament, or appointed by royalty or a legislatively elected president. Often, the leader of the party that receives the most votes in a parliamentary election becomes prime minister or president. The prime minister appoints a cabinet of ministers, which usually require a parliamentary vote of approval.

The prime minister's position is contingent on parliament's confidence in the prime minister. This dependence creates a strong incentive for broadly supported policies and legislation. However, in some instances the collegial relationship between the legislature and the executive raises concerns of over-consolidated authority and opportunistic election manipulation.

Parliamentary systems have no minimum fixed terms of office, and the parliament generally retains the power to call for a vote of “no confidence” to remove the prime minister. In South Africa, the National Assembly elects the president to a five-year term as head of state and government.⁷ The president selects his or her own cabinet, although the National Assembly may remove either the cabinet and the president or only the cabinet with a majority vote of “no confidence.”⁸

Semi-Presidential System

⁷ SOUTH AFRICA CONST. ch. 5, secs. 83-102 (1996), *available at* <http://www.constitutionalcourt.org.za/site/constitution/english-web/ch5.html> (last accessed Sept. 20, 2007). Responsibilities of the president of South Africa include constitutional review, foreign affairs, and, with members of the Cabinet of Ministries, administration of enacted legislation. The South African president heads the Cabinet of Ministers, who serves at the president's pleasure. However, the president may only select two ministers from outside of the National Assembly.

⁸ SOUTH AFRICA CONST. ch. 5, sec. 102 (1996).

The semi-presidential system divides executive power between a popularly elected president and an appointed or legislatively elected prime minister. This system differs from the parliamentary system in that the president is not a ceremonial figurehead, but retains authority over selected subject areas. The prime minister is either elected or appointed and maintains a relationship with the legislature, in addition to his or her executive branch responsibilities.

Finland presents a semi-presidential system of government where the president nominates his or her candidates for prime minister and deputy prime minister, and then submits the nominations to the parliament for approval.⁹ Once approved by parliament, the new prime minister, with the approval of the president, appoints the Finnish Council of State.¹⁰

The semi-presidential system, unlike the presidential or parliamentary systems, creates a duality of leadership. Like the presidential council system, the effectiveness of this model often depends on the operational relationship of the prime minister and president. Although the dual leadership can broaden representation, especially in policy formation, it can also create deadlock or inconsistent policy through jurisdictional, ideological, or practical divides.

The semi-presidential system provides a significant amount of flexibility in sub-head of state or sub-head of government executive structures. Most commonly, the president is either ceremonial or administers foreign relations, whereas the prime minister is the head of a ministerial council that requires parliamentary approval.

⁹ The prime minister or deputy prime minister candidate appointed is usually the leader of the majority political party or coalition after parliamentary elections. CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK, FINLAND, *available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/fi.html> (last accessed, Sept. 21, 2007). The prime minister or deputy prime minister candidate appointed is usually the leader of the majority political party or coalition after parliamentary elections.

¹⁰ OFFICE OF THE PRESIDENT OF FINLAND, *available at* <http://www.tpk.fi/netcomm/news/ShowArticle.asp?intNWSAID=34050&LAN=EN> (last accessed Sep. 20, 2007). The Finnish Constitution grants the president authority over foreign affairs, although international treaties and declarations of war require the ratification of Parliament. The president is the commander-in-chief of the Defense Forces, although mobilization requires the convening of Parliament. The president also approves or appoints the governor of the autonomous Åland Islands and retains the right of veto over Åland legislation. The Council of State in Finland is equivalent of an executive cabinet.

DARFUR PEACE AGREEMENT

The Darfur Peace Agreement emphasizes the importance of the separation of the executive, legislative, and judicial powers in Sudan's federal system.¹¹ The DPA also highlights the necessity of free and direct voting to determine the President and all legislative levels of government.¹²

After national elections, the DPA mandates that the President provide representation in the executive for Darfurians. Specifically, the elected governors of the three Darfur states are to provide the President with a list of nominees from which he will appoint a Senior Assistant.¹³ The Senior Assistant will be the fourth ranking member in the Presidency, and a member of the National Council of Ministers, the National Security Council, and the National Planning Council.¹⁴ The DPA also calls on the President to appoint a Darfurian as Advisor to the President.¹⁵

SAMPLE LANGUAGE

Article XXX **Presidential System**

- (1) The President of Sudan shall hold the power of government in accordance with the Constitution. In exercising his duties, the President shall be assisted by a Vice-President.¹⁶
- (2) In agreement with the legislature, the President declares war, makes peace, and concludes treaties with other states.
- (3) The President declares the state of emergency. The conditions for such a declaration and the measures to deal with the emergency shall be governed by law.

¹¹ Darfur Peace Agreement, art. 1, para. 5,9.

¹² Darfur Peace Agreement, art. 1, para. 9-10.

¹³ Darfur Peace Agreement, art. 8, para. 68.

¹⁴ Darfur Peace Agreement, art. 8, para. 65-66.

¹⁵ Darfur Peace Agreement, art. 8, para. 67.

¹⁶ This language is drawn from the INDONESIA CONST. ch. III, art. 4 (1945).

- (4) The President appoints ambassadors and consuls.
- (5) The President receives the credentials of foreign ambassadors.
- (6) The President grants mercy, amnesty, pardon, and restoration of rights.
- (7) The President grants titles, decorations and other distinctions of honor.¹⁷

OR

Article XXX

Presidential Council System

- (1) The Presidency of Sudan shall consist of three Members: one directly elected from Sudan, one directly elected from the territory of Darfur, and one directly elected from the territory of Southern Sudan.¹⁸
- (2) The Presidency shall have responsibility for:
 - (a) Conducting the foreign policy of Sudan;
 - (b) Appointing ambassadors and other international representatives of Sudan;
 - (c) Executing decisions of the legislature;
 - (d) Proposing an annual budget to the legislature;
 - (e) Reporting as requested, but not less than annually, to the legislature on expenditures by the Presidency; and
 - (f) Performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the legislature.¹⁹

OR

Article XXX

Parliamentary System

The President

¹⁷ This language is drawn from the INDONESIA CONST. ch. III, art. 12 (1945).

¹⁸ This language is drawn from the BOSNIA AND HERZEGOVINA CONST. art. V (1995).

¹⁹ This language is drawn from the BOSNIA AND HERZEGOVINA CONST. art. V, sec. 3 (1995).

The President is the Head of State and head of the national executive.²⁰

Election of President

At its first sitting after its election, and whenever necessary to fill a vacancy, the legislature must elect a woman or a man from among its members to be the President.²¹

Removal of President

- (1) The legislature may, by a resolution receiving the votes of two thirds of its members, remove the President from office only in the following circumstances:
 - (a) A serious violation of the Constitution or the law;
 - (b) Serious misconduct; or
 - (c) Inability to perform the functions of the office.”²²

Powers and Functions of President

- (1) The President has the powers entrusted by the Interim Constitution and legislature, including those necessary to perform the functions of Head of State and head of the national executive.
- (2) The President is responsible for:
 - (a) Assenting to and signing Bills;
 - (b) Referring a Bill back to the legislature for reconsideration of the Bill’s constitutionality;
 - (c) Summoning the legislature to an extraordinary sitting to conduct special business;
 - (d) Making any appointments that the Interim Constitution or legislature requires the President to make, other than as head of the national executive;
 - (e) Appointing commissions of inquiry;
 - (f) Calling a national referendum in terms of an act of the parliament;

²⁰ This language is drawn from the SOUTH AFRICA CONST. ch. 5, sec. 83 (1996).

²¹ This language is drawn from the SOUTH AFRICA CONST. ch. 5, sec. 86 (1996).

²² This language is drawn from the SOUTH AFRICA CONST. ch. 5, sec. 89 (1996).

- (g) Receiving and recognizing foreign diplomatic and consular representatives;
- (h) Appointing ambassadors and diplomatic and consular representatives;
- (i) Pardoning or reprieving offenders and remitting any fines, penalties or forfeitures; and
- (j) Conferring honors.²³

Article XXX

Semi-Presidential System

Election of the President and the Government

- (1) The President of Sudan is elected by a direct vote for a term of [X] years.²⁴
- (2) The Government consists of the Prime Minister and the necessary number of Ministers.²⁵
- (3) The legislature elects the Prime Minister, who is thereafter appointed to the office by the President of Sudan. The President appoints the other Ministers in accordance with a proposal made by the Prime Minister.²⁶

Duties of the President

- (1) The President of Sudan carries out the duties stated in the Sudanese Interim Constitution [or specifically stated in another Act].
- (2) The President of Sudan makes decisions in Government based on proposals for decisions put forward by the Government.
- (3) If the President does not make the decision in accordance with the proposal for a decision put forward by the Government, the matter is returned to the Government for preparation. Thereafter, the decision to submit or to withdraw a government proposal shall be made in accordance with the Government's new proposal for a decision.

²³ This language is drawn from the SOUTH AFRICA CONST. ch. 5, sec. 84 (1996).

²⁴ This language is drawn from the FINLAND CONST. ch. 5, sec. 54 (2000).

²⁵ This language is drawn from the FINLAND CONST. ch. 5, sec. 60 (2000).

²⁶ This language is drawn from the FINLAND CONST. ch. 5, sec. 61 (2000).

- (4) The President makes decisions on matters relating to military orders in conjunction with a Minister, as provided for in more detail by legislative act.
- (5) Notwithstanding section (1), the President makes decision on the following matters without a proposal for a decision from the Government:
 - (a) The appointment of the Government or a Minister and the acceptance of the resignation of the Government or a Minister;
 - (b) The issuance of an order concerning extraordinary legislative elections; and
 - (c) Presidential pardons and other matters concerning private individuals.²⁷

Duties of the Prime Minister

The Prime Minister directs the activities of the Government and oversees the preparation and consideration of matters that come within the mandate of the Government. The Prime Minister chairs the plenary meetings of the Government.²⁸

²⁷ This language is drawn from the FINLAND CONST. ch. 5, sec. 58 (2000).

²⁸ This language is drawn from the FINLAND CONST. ch. 5, sec. 66 (2000).