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HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Peace Agreements Drafter's Handbook

Prepared by

The Public International Law & Policy Group

June 2005

USER'S GUIDE

The Public International Law & Policy Group's (PILPG) Peace Agreement Drafter's Handbook is a comprehensive guide on how to draft a peace agreement based upon comparative analysis of over sixty peace agreements in the past thirty years. This Handbook is intended to assist drafters, mediators, negotiators, and anyone else interested in the substantive and practical contents contained in peace agreements. The Handbook is designed to facilitate drafting peace agreements quickly, efficiently, and effectively.

The Handbook sets out for the drafter the essential components found in the majority of peace agreements since approximately sixty to seventy percent of all peace agreements draw on similar elements and language. However, every conflict is unique and the drafter may have to make adjustments to certain elements to enhance the agreement's relevancy and applicability to a particular conflict. Therefore, each chapter should be considered as ad hoc and reshaping the new agreement to address the nuances of each party's needs will be necessary. Similarly, the comparative provisions and sample language provided in the Handbook are by no means exclusive, recommended, or mandatory. The purpose of the Handbook is to assist a drafter prepare a well-crafted agreement and enhance the durability of future agreements by drawing upon the best practices from prior agreements.

The Handbook consists of several chapters all following the same basic format. Each chapter focuses on a particular section commonly found in peace agreements such as ceasefires, economic restructuring, and property restitution. Each chapter first identifies the basic elements in that particular section of a peace agreement. For example, in ceasefires, the basic elements include the identification and definition of prohibited acts, separation of forces, and verification, supervision, and monitoring. The primary notes found in each chapter provide a brief overview of a specific element. These elements are then addressed through comparative analysis. The analysis provides for the drafter language found in other peace agreements from which the most relevant to the drafter's conflict can be selected. Each section then concludes with sample language.

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EXECUTIVE SUMMARY

Peace agreements are intended to reduce violent conflict, and a major part of violent conflict is human rights abuses perpetrated against the population. If peace is going to thrive, then violence, intimidation and fear cannot plague the people. The people must feel protected from human rights violations by the government or other responsible parties.

International law obligates states to prevent human rights abuses; and when parties are negotiating a peace agreement, human rights should be an integral part of the negotiations. A peace agreement will not last without a commitment among all parties to respect human rights and fundamental freedoms. Due to its importance, each agreement should list the rights and freedoms that will be protected.

Peace agreements must also call for the incorporation of human rights provisions into domestic law. If they are not incorporated into domestic law, then the government and other parties are less likely to respect them, even though in most cases they otherwise represent state obligations under international law.

In post-conflict states or newly established democracies, the people must also deal with the past and identify potential relapses that could lead to a renewal of human rights abuses. The peace agreement must establish one or more monitoring bodies to ensure that human rights violations do not reoccur and to deal with past abuses. For example, agreements can establish a Human Rights Commission, an Ombudsman, a Joint Commission, a Local Monitoring Committee, and a Truth or Reconciliation Committee. These bodies are expected to respond to human rights abuses in a more aggressive manner that the prior regime, and to act with complete impartiality. They must do this to secure their legitimacy and guarantee the population's confidence in its findings, recommendations, and activities.

Achieving a culture that respects human rights is a long process. The population must develop an understanding of the importance of human rights norms and the consequences if they are not respected. Incorporating human rights language in a peace agreement is an extremely important first step to achieve a "human rights culture" in which human rights are protected, violators are held accountable, and the rule of law is upheld. All of this lays the foundation for a future without violent conflict.

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BASIC ELEMENTS

Primary Note: All peace agreements include certain core elements that protect human rights and fundamental freedoms. These elements include: language articulating specific rights and freedoms that the agreement protects, language that incorporates the specific rights and freedoms into the national legal framework, and language establishing monitoring mechanisms and commissions to ensure the protection and promotion of the rights and freedoms and to deal with past abuses.

Articulating Basic Human Rights and Fundamental Freedoms: The peace agreement must articulate the basic human rights and fundamental rights that the agreement will protect. This can be done in several ways, including, (1) the language of the agreement may incorporate by reference international conventions and regional treaties on human rights, mandating that these treaties and conventions be applied domestically; (2) agreements may list specific human rights and fundamental freedoms that the agreement will protect; and (3) agreements may combine these two methods and mandate that international conventions and regional treaties on human rights be applied domestically, while also listing specific human rights and fundamental freedoms that the agreement will protect.

Incorporating Human Rights into Domestic Law: Peace agreements include provisions designed to require the incorporation of human rights and protection mechanisms into the national legal frameworks. This incorporating language is another mechanism to assure the parties' commitment to the international agreements and treaties' provisions on human rights.

Creating or Updating Monitoring Mechanisms: Peace agreements often include independent monitoring and protection mechanisms to ensure that human rights provisions are enforced under domestic law. This is done in many ways and often through the establishment of an institution or body such as a human rights commission, an ombudsman, joint commissions, or local monitoring committees. Theses monitoring mechanisms may also call upon the use of the United Nations (U.N.).

Creating Commission to Deal with Past Abuses: Many peace agreements establish Truth and Reconciliation Commissions as a means to deal with the legacy of past human rights abuses. Establishing this type of commission facilitates the reconciliation process as a society and its individual members confront issues of loss, accountability, betrayal and mistrust due to past human rights abuses.

COMPARATIVE ANALYSIS

Articulating Basic Human Rights and Fundamental Freedoms

Primary Note: Peace agreements include provisions listing the human rights and fundamental freedoms that it protects. This is often accomplished by either referring to international conventions and regional treaties on human rights and mandating that the conventions and treaties be applied domestically; specifically enumerating the rights that the agreement protects; or doing both -- referring to international conventions and regional treaties on human rights and specifically enumerating the rights that the agreement protects.

Incorporating Human Rights and Fundamental Freedoms by Reference to International and Regional Instruments

Note: As noted above, international peace agreements often seek to protect human rights and fundamental freedoms by incorporating international conventions and regional treaties on human rights into the text of the agreement, and mandating that such treaties and conventions be applied domestically. Examples of such incorporated conventions and treaties are the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of a Child, the Convention on the Elimination of All Forms of Discrimination against Women, the 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the African Charter on Human and Peoples' Rights and the Inter-American Convention on Human Rights.

Note: Most peace agreements incorporate the international conventions and regional treaties on human rights signed and ratified by that nation. One method for determining which rights the agreement will protect is sometimes established by ensuring that a state's non-ratification of conventions and treaties does not preclude their incorporation into a peace agreement.

Note: Kosovo's peace agreement first includes a general statement that all persons in Kosovo shall enjoy human rights and fundamental freedoms without discrimination on any ground and declares that the Provisional Self-Government shall observe and ensure internationally recognized human

rights and fundamental freedoms. The agreement then lists international conventions and regional treaties that deal with various human rights issues. This is useful, because the agreement directly refers to conventions and treaties; therefore the parties know which specific rights the agreement protects.

Kosovo Framework Agreement, Article 3, "Human Rights"

> All persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms.
>
> The Provisional Institutions of Self-Government shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights and freedoms set forth in:
>
> > The Universal Declaration on Human Rights;
> >
> > The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
> >
> > The International Covenant on Civil and Political Rights and the Protocols thereto;
> >
> > The Convention on the Elimination of All Forms of Racial Discrimination;
> >
> > The Convention on the Elimination of All Forms of Discrimination Against Women;
> >
> > The Convention on the Rights of the Child;
> >
> > The European Charter for Regional or Minority Languages; and
> >
> > The Council of Europe's Framework Convention for the Protection of National Minorities.

Note: Croatia's provision on human rights simply states the region will respect the highest levels of "internationally-recognized human rights and fundamental freedoms." It does not list the specific international conventions and regional treaties to which the agreement is referring when it

says “internationally-recognized human rights and fundamental freedoms. Consequently, this is vague because the parties do not know to which specific rights the agreement respects.”

Croatia-Erdut Agreement, Article 6

> The highest levels of internationally-recognized human rights and fundamental freedoms shall be respected in the Region.

Note: Guatemala’s Peace Agreement’s provision on human rights states that the agreement will protect the rights reflect in the treaties, conventions, and other international instruments to which Guatemala is a party (as well as those already reflected in its domestic legislation). This Agreement refers particularly to the treaties, conventions, and other international instruments to which Guatemala is a party.

Guatemala Agreement, Article 2

> The aspects of this agreement which relate to the human rights recognized in the legislation of Guatemala and in the treaties, conventions and other international instruments in that area to which Guatemala is a party, shall have immediate force and application. It is requested that the verification should be carried out by the United Nations Mission for the Verification of Human Rights and of Compliance with the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA).

Note: Cambodia’s peace agreement notes that it will ensure that Cambodia takes measures to guarantee that the policies and practices of the past shall not be repeated; states that the nation will ensure respect and observance of human rights and fundamental freedoms and support the right of all Cambodian citizens to promote and protect human rights and fundamental freedoms; and affirms Cambodia’s intent to adhere to relevant international human rights instruments. The agreement also affirms the other parties’ commitment to promote and protect the rights and freedoms found in relevant international instruments.

Cambodia Agreement, Article 3

> All persons in Cambodia shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments.
>
> To this end,
>
> > Cambodia undertakes:
> >
> > to ensure respect for and observance of human rights and fundamental freedoms in Cambodia;
> >
> > to support the right of all Cambodian citizens to undertake activities that would promote and protect human rights and fundamental freedoms;
> >
> > to take effective measures to ensure that the policies and practices of the past shall never be allowed to return:
> >
> > to adhere to relevant international human rights instruments;
>
> The other parties to this Agreement undertake to promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia as embodied in the relevant international instruments in order, in particular, to prevent the recurrence of human rights abuses.

Note: The Afghanistan Agreement provides an example of incorporating the obligations set out in international instruments on human rights and international humanitarian law.

Afghanistan Agreement, Section V, Final Provisions

> The Interim Authority and the Emergency Loya Jirga shall act in accordance with basic principles and provisions contained in international instruments on human rights and international humanitarian law to which Afghanistan is a party.

Note: The Angola Lusaka Protocol specifically provides that the Government and UNITA's commit to implement the Bicesse Accords, and

relevant resolutions of the U.N. Security Council, the Lusaka Protocol, the national legislation in force and the various international legal instruments to which Angola adheres – this includes the human rights instruments.

Angola Lusaka Protocol

> The Government and UNITA commit themselves to implement the "Acordos de Paz para Angola" (Bicesse), the relevant resolutions of the United Nations Security Council and the Lusaka Protocol, respecting the principles of the rule of law, the general principles of internationally recognised human rights, more particularly, the Universal Declaration of Human Rights and the fundamental freedoms of the individual, such as defined by the national legislation in force and the various international legal instruments to which Angola adheres.

Note: For similar examples see the Kosovo Agreement; Bougainville Peace Agreement; and Afghanistan Agreement.

Sample Language: Incorporating Human Rights and Fundamental Freedoms by Reference to International and Regional Instruments

> The parties agree that the rights and freedoms set forth in the following international agreements and regional treaties defining human rights shall be applied domestically:
>
> [*insert treaties*] [*insert conventions*] [*insert relevant U.N. Security Council resolutions*]
>
> [*insert other international instruments*]
>
> [*This list of conventions below is not necessarily exhaustive, but the parties may choose to add or delete instruments depending on their specific needs and goals*.]
>
> Conventions may include the 1948 Convention on the Prevention and Punishment of the Crime of Genocide;
>
> 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto;

1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto;

1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto;

1957 Convention on the Nationality of Married Women;

1961 Convention on the Reduction of Statelessness;

1965 International Convention on the Elimination of All Forms of Racial Discrimination;

1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto;

1966 Covenant on Economic, Social and Cultural Rights;

1979 Convention on the Elimination of All Forms of Discrimination against Women;

1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

1989 Convention on the Rights of the Child;

1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

1994 Framework Convention for the Protection of National Minorities;

[*Where relevant, the agreement should also reference appropriate regional treaties, such as the 1992 European Charter for Regional or Minority Languages; 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; African Charter on Human and Peoples' Rights; The Inter-American Convention on Human Rights*]

Incorporating Human Rights and Fundamental Freedoms by Enumerating Specific Rights to be Protected

Note: Most agreements attempt to specifically enumerate the human rights that the agreement will protect within the text of the document. This includes provisions tailored to a particular political, cultural, economic, or religious situation or circumstance. Oftentimes, the specifically noted human rights are drawn from the rights and freedoms that were violated during any pre-agreement conflict or warfare. Therefore, agreements often provide a set of rights for affected populations to reference in addition to any known international instruments. Often to avoid potential problems with amending the agreement, parties note in the agreement that the list of protected human rights and fundamental freedoms is not fully comprehensive.

Note: The Northern Ireland's Peace Agreement provides a list of human rights. It acknowledges the recent history of communal conflict in the region and affirms a specific list of human rights that the agreement protects in light of that conflict.

Northern Ireland Peace Agreement, Section 6, "Rights, Safeguards and Equality of Opportunity"

> Human Rights
>
> The parties affirm their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm in :
>
> The right of free political thought;
>
> The right to freedom and expression of religion;
>
> The right to pursue democratically national and political aspirations;
>
> The right to seek constitutional change by peaceful and legitimate means;
>
> The right to freely choose one's place of residence;

> The right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity;
>
> The right to freedom from sectarian harassment; and
>
> The right of women to full and equal political participation.

Note: In the Mozambique Agreement's protocol regarding the intended drafting of its new Electoral Act, this protocol not only lists the specific human rights that the agreement will protect, but also goes further and defines exactly what those rights mean. For example, the agreement states that it protects freedom of the press and access to media then defines that right as including the right to establish and operate newspapers and other publications, radio and television broadcasting stations and other forms of written or sound communication, freedom of expression and creation for journalists, etc.

Mozambique Agreement, Protocol III

> This Protocol sets forth the general principles which should guide the drafting of the Electoral Act and any possible amendments to the laws in connection with the conduct of the electoral process. …
>
> Freedom of the Press and Access to the Media
>
> > All citizens shall enjoy the right of freedom of the press and freedom of information. These freedoms shall encompass, specifically, the right to establish and operate newspapers and other publications, radio and television broadcasting stations and other forms of written or sound communication, such as posters, leaflets and other media.
> > These rights shall not be abridged by censorship.
> >
> > Administrative and tax regulations shall in no case be used to hamper or prevent the exercise of this right on religious grounds.
> >
> > Freedom of the Press shall also include freedom of expression and creation for journalists and the protection of their independence and professional secrecy.

The Government-controlled mass media shall enjoy editorial independence and shall guarantee, in accordance with the specific regulations envisaged in section V.3.(b).1 of this Protocol, the right of all parties to access without political discrimination. Provision should be made in such regulations for access by all parties free of charge.

Advertisements which conform to the prevailing commercial practice may not be refused on political grounds.

The mass media may not discriminate against or refuse on political grounds any party or its candidates the exercise of the right of reply or the publication of corrections or retractions. Access to the courts shall be guaranteed in cases of defamation, slander, libel and other press offences.

Freedom of Association, Expression and Political Activity

All citizens shall have the right to freedom of expression, association, assembly, demonstration and political activity. Administrative and tax regulations shall in no case be used to prevent or hamper the exercise of these rights for political reasons. These rights shall not extend to the activities of unlawful private paramilitary groups or groups which promote violence in any form or terrorism, racism or separatism.

Freedom of association, expression and political activity shall encompass access, without discrimination, to the use of public places and facilities. Such use shall be conditional on submission of an application to the competent administrative authorities, who must give a decision within 48 hours after the submission of the application. Applications may be rejected only for reasons of public order or for organizational considerations.

Liberty of Movement and Freedom of Residence

All citizens shall have the right to move about throughout the country without having to obtain administrative authorization.

All citizens have the right to choose to reside anywhere in the national territory and to leave or return to the country.

Return of Mozambican refugees and displaced persons and their social reintegration

The parties undertake to cooperate in the repatriation and reintegration of Mozambican refugees and displaced persons in the national territory and the social integration of war-disabled.

Without prejudice to the liberty of movement of citizens, the Government shall draw up a draft agreement with RENAMO to organize the necessary assistance to refugees and displaced persons, preferably in their original places of residence. The parties agree to seek the involvement of the competent United Nations agencies in the drawing up and implementation of this plan. The International Red Cross and other organizations to be agreed upon shall be invited to participate in the implementation of the plan.

Mozambican refugees and displaced persons shall not forfeit any of the rights and freedoms of citizens for having left their original places of residence.

Mozambican refugees and displaced persons shall be registered and included in the electoral rolls together with other citizens in their places of residence.

Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it.

Note: Macedonia's Framework Agreement states that it protects basic rights and freedoms of the individual and citizen as recognized in international law and then it specifically lists several rights. The agreement is useful, because the listed rights are tailored to the diversity found within the country and acknowledges respect for its peoples' different languages, culture, heritage, and religious beliefs.

Macedonia Agreement, Annex A, Constitutional Amendments

> Article 8
>
> The fundamental values of the constitutional order of the Republic of Macedonia are:
>
> > the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution;
> >
> > equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life;
>
> Article 19
>
> The freedom of religious confession is guaranteed.
>
> The right to express one's faith freely and publicly, individually or with others is guaranteed.
>
> The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, and other Religious communities and groups are separate from the state and equal before the law.
>
> The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, and other Religious communities and groups are free to establish schools and other social and charitable institutions, by ways of a procedure regulated by law.

Article 48

Members of communities have a right freely to express, foster and develop their identity and community attributes, and to use their community symbols.

The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of all communities.

Members of communities have the right to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity.

Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.

Article 56

The Republic guarantees the protection, promotion and enhancement of the historical and artistic heritage of Macedonia and all communities in Macedonia and the treasures of which it is composed, regardless of their legal status. The law regulates the mode and conditions under which specific items of general interest for the Republic can be ceded for use.

Note: The provisions of the South Africa Agreement regarding human rights are very useful, because they affirm the goal of establishing a multi-party democracy, state that a climate of violence, intimidation and fear will hinder that goal; and acknowledge that fundamental rights must be upheld to achieve democracy. The agreement then lists the fundamental rights of every individual and the democratic principles from which the rights derive.

South Africa Agreement, Chapter 1, "Principles"

The establishment of a multi-party democracy in South Africa is our common goal. Democracy is impossible in a climate of violence, intimidation and fear. In order to ensure democratic political activity

all political participants must recognize and uphold certain fundamental rights described below and the corresponding responsibilities underlying these rights.

These fundamental rights include the right of every individual to:

Freedom of conscience and belief;

Freedom of speech and expression;

Freedom of association with others;

Peaceful assembly;

Freedom of movement;

Participate freely in political activity.

The fundamental rights and responsibilities derive from established democratic principles namely:

Democratic sovereignty derives from the people, whose right it is to elect their government and hold it accountable at the polls for its conduct of their affairs;

The citizens must therefore be informed and aware that political parties and the media must be free to impart information and opinion;

There should be an active civil society with different interest groups freely participating therein;

Political parties and organizations, as well as political leaders and other citizens, have an obligation to refrain from incitement to violence and hatred.

Note: For similar examples see the Angola Peace Accords, Mozambique-RENAMO Agreement, and Sudan-Machakos Protocol.

Sample Language*: *Incorporating Human Rights and Fundamental Freedoms by Enumerating Specific Rights to be Protected

The parties agree to respect and uphold the rights and freedoms of every person in the community without discrimination, including civil, social, economic, and cultural [*insert any additional rights and freedoms*]. In light of the recent history of conflict, the parties guarantee the following [*this list is not exhaustive and additional rights may be added*]:

The right to freedom of expression: this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice;

The right to freedom of thought, conscience and of religion: This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching;

The right to freedom of association: Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests;

The right of peaceful assembly: No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others;

The right to life: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his/her life;

The right to liberty: Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law

The right to self determination: All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development;

The right to seek constitutional change by peaceful and legitimate means;

The right to privacy: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation;

The right to freedom of movement: Everyone shall have the right to liberty of movement and freedom to choose his residence;

The right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity;

The right of women to full and equal political participation;

Freedom from torture: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Incorporating Human Rights and Fundamental Freedoms by Reference to International Instruments and Enumerating Specific Rights to be Protected

Note: This is perhaps the most thorough means of protecting and promoting human rights and fundamental freedoms in post-conflict societies. This assures that important human rights conventions will be respected and implemented and that people will know the specific rights that the agreement will protect. It combines the advantages from both of the methods outlined above.

Note: The provisions on human rights in Burundi's Arusha Peace and Reconciliation Agreement are extremely useful. They declare that fundamental rights, as proclaimed and guaranteed by international instruments shall form an integral part of the Constitution. The agreement then lists international instruments to which it refers and states that the list

also consists of any relevant regional human rights agreements. The agreement then lists specific human rights that the agreement protects.

Burundi Agreement, Article 3, Protocol II, Charter of Fundamental Rights

> The rights and duties proclaimed and guaranteed *inter alia* by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child, [and any relevant regional human rights agreements] shall form an integral part of the Constitution. These fundamental rights shall not be limited or derogated from, except in justifiable circumstances acceptable in international law and set forth in the Constitution.
>
> > All citizens shall have rights and obligations.
> >
> > Human dignity shall be respected and protected.
> >
> > All women and men shall be equal. No one may be discriminated against, *inter alia*, on grounds of origin, race, ethnicity, gender, colour, language, social situation, or religious, philosophical or political convictions, or by reason of a physical or mental handicap. All citizens shall enjoy equal protection of the law, as well as equal treatment under the law.
> >
> > No person shall be arbitrarily dealt with by the State or its organs.
> >
> > All women and men shall have the right to life.
> >
> > All women and men shall have the right to personal freedom, including to physical and mental integrity, and to freedom of movement. Torture and any other kind of cruel, inhuman, degrading treatment or punishment shall be prohibited. Everyone shall have the right to be free from violence from either public or private sources.
> >
> > No one shall be held in slavery or servitude. Slavery and the slave trade shall be prohibited in all their forms.

The State shall to the extent possible ensure that all citizens have the means to lead an existence consistent with human dignity.

All women and men shall have the right to respect for their private and family life, residence and personal communications.

There shall be freedom of marriage, including the right to choose one's partner. Marriage shall be entered into only with the free and full consent of the intending spouses.

The family, as the fundamental unit of society, shall be entitled to protection by society and the State.

Freedom of expression and of the media shall be guaranteed. The State shall respect freedom of religion, belief, conscience and opinion.

Freedom of assembly and association shall be guaranteed, as shall freedom to form non-profit-making associations or organizations in conformity with the law.

All Burundian citizens shall have the right to move and settle freely anywhere in the national territory, as well as to leave it and return to it.

No one shall be arbitrarily deprived of her/his nationality or denied the right to change it.

No one may be denied access to basic education. The State shall organize public education, and shall develop and promote access to secondary and post-secondary education.

The State shall ensure the good management and utilization of the nation's natural resources on a sustainable basis, conserving such resources for future generations.

Property rights shall be guaranteed for all women and men. Compensation that is fair and equitable under the circumstances shall be payable in case of expropriation, which shall be

allowed only in the public interest and in accordance with a law which shall also set forth the basis of compensation.

The right to form and join trade unions and to strike shall be recognized. The law may regulate the exercise of these rights and prohibit certain categories of persons from going on strike.

Everyone shall have the right, in judicial or administrative proceedings, for her/his case to be dealt with equitably and decided within a reasonable time limit. Everyone shall have the right to due process and a fair trial.

No one may be deprived of her/his liberty other than in conformity with the law.

The State shall be under an obligation to promote the development of the country, especially rural development.

Each individual shall have the duty to respect and show consideration for her/his fellow citizens without any discrimination.

All citizens shall be required to discharge their civic obligations, and to defend their homeland.

Every child shall have the right to special measures to protect or promote her/his care, welfare, health and physical security, and to be protected from maltreatment, abuse or exploitation.

No child shall be used directly in armed conflict, and children shall be protected in times of armed conflict.

No child shall be detained except as a measure of last resort, in which case the child may be detained only for the shortest appropriate period of time and shall have the right to be kept separately from detained persons over the age of 16 years and to be treated in a manner, and kept in conditions, that take account of her/his age.

Note: The provisions on human rights in the Bosnia and Herzegovina's Dayton Agreement declares that both entities shall ensure the highest level

of internationally recognized human rights and fundamental freedoms, and states that the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms, its Protocols and the additional international instruments listed in the agreement's annex. The agreement then lists specific rights that are to be protected.

Dayton Accords, Annex 6, Agreement on Human Rights

> The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska (the "Parties") have agreed as follows:
>
> Chapter One: Respect for Human Rights
>
> Article I: Fundamental Rights and Freedoms
>
> The Parties shall secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the other international agreements listed in the Appendix to this Annex. These include:
>
> > The right to life.
> >
> > The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
> >
> > The right not to be held in slavery or servitude or to perform forced or compulsory labor.
> >
> > The rights to liberty and security of person.
> >
> > The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
> >
> > The right to private and family life, home, and correspondence.
> >
> > Freedom of thought, conscience and religion.

Freedom of expression.

Freedom of peaceful assembly and freedom of association with others.

The right to marry and to found a family.

The right to property.

The right to education.

The right to liberty of movement and residence.

The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in the Annex to this Constitution secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Note: East Timor Agreement's provisions on human rights provide that parties shall protect and respect human rights and fundamental freedoms as described in certain enumerated international conventions. The agreement sets out specific examples of rights and fundamental freedoms that it protects. Though the list of international instruments are small in number, the agreement is an example of the dual approach to articulating basic human rights and fundamental freedoms where the parties specifically list international instruments and include an extensive list of rights.

East Timor Agreement, Article 46, "Promotion and Protection of Human Rights and Fundamental Freedoms"

The Central Government and the Government of the SARET shall promote, protect and respect human rights and fundamental freedoms without discrimination of any kind, as set forth, inter alia, in the Universal Declaration of Human Rights, the 1993 Vienna Declaration on Human Rights and the Decree of the Peopleís Consultative Assembly No. XVII/MPR/1998 Concerning Human Rights. These rights and fundamental freedoms include :

freedom of thought, conscience, and religion;

the right to life, liberty, and security of person;

freedom from torture, arbitrary arrest, detention, or exile;

the right to a full and fair hearing by an independent and impartial tribunal in the determination of any civil rights or obligations or any criminal charge;

freedom of expression in all its forms, association, and peaceful assembly;

the right to form political parties specific to East Timor without restrictions of any kind and subject to the provision of Article 57;

the right to participate in government without discrimination, through free periodic elections and non-discriminatory access to public service, subject to the provisions of Article 25;

the right to participate in Indonesian national political life, including the right to vote in general elections and to be elected as a member of the Indonesian national Parliament or be appointed as a member of the Peopleís Consultative Assembly.

the right to participate in Indonesian public and administrative services without discrimination on any grounds;

freedom of movement throughout the territory of the Republic of Indonesia;

the right of everyone to enjoy and participate in his or her culture;

the right to own property and not to be arbitrary deprived of it;

the right to protection for family life, privacy, home and correspondence;

> the right to education, including, as a minimum, the right to a free primary education for all;
>
> the right to an adequate standard of living, subject to available resources and capabilities;
>
> the right of women to full and equal participation in political, civil, economic, social, and cultural life;
>
> the rights of the child, without discrimination of any kind, as set fourth in the UN Convention on the Rights of the Child.

Note: Sudan's Protocol Between the Government of Sudan (GOS) and the Sudan People's Liberation Movement (SPLM) on Power Sharing begins by listing the Republic of Sudan's intent to fully comply with its obligations under the international human rights treaties to which it is a party. The Protocol then lists those treaties. It also lists specific rights that the agreement protects in accordance with the treaties to which Sudan is a party and defines those rights.

Sudan-SPLM Agreement, Section 1.6, Human Rights and Fundamental Freedoms

> The Republic of the Sudan, including all levels of Government throughout the country, shall comply fully with its obligations under the international human rights treaties to which it is or becomes a party. These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Slavery Convention of 1926, as amended, and the related Supplementary Convention, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the International Convention Against Apartheid in Sports, the Convention Relating to the Status of Refugees and the Related Protocol, and the African Charter on Human and People's Rights. The Republic of the Sudan should endeavor to ratify other human rights treaties which it has signed.
>
> The rights and freedoms to be enjoyed under Sudanese law, in

accordance with the provisions of the treaties referred to above, include in particular the following:-

Life

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his/her life;

Personal Liberty

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law;

Slavery

No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited. No one shall be held in servitude or be required to perform forced or compulsory labour;

Torture

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment;

Fair Trial

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his/her arrest and shall be promptly informed of any charges against him/her;

In the determination of any criminal charges against him/her, or of his/her rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law;

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed;

In the determination of any criminal charge against him/her, everyone shall be entitled, in full equality, to be tried without undue delay, to be tried in his/her presence and to defend himself/herself in person or through legal assistance of his/her own choosing and to have legal assistance assigned to him/her in any case where the interests of justice so require.

Privacy

No one shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence;

Freedom of Thought, Conscience and Religion

Everyone shall have the right to freedom of thought, conscience and religion;

Freedom of Expression

Everyone shall have the right to freedom of expression;

Freedom of Assembly and Association

The right of peaceful assembly shall be recognized. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his/her interests;

Family and Marriage

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State;

The right of men and women of marriageable age to marry and to found a family shall be recognized, according to their respective family laws.

Right to Vote

Every citizen shall have the right and the opportunity, without distinctions and unreasonable restrictions, to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

Equality Before the Law

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law;

Freedom from Discrimination

The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

Freedom of Movement

Everyone has the right to liberty of movement and freedom to choose his/her residence;

The Rights of Children

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his/her status as a minor.;

Equal Rights of Men and Women

The equal right of men and women to the enjoyment of all civil and political rights set forth in the International Covenant on Civil and Political Rights and all economic, social, and cultural rights set forth in the International Covenant on Economic, Social and Cultural Rights shall be ensured;

The human rights and fundamental freedoms embodied in the International Covenant on Civil and Political Rights (ICCPR) shall also be reflected in the Interim National Constitution. No derogation from these rights and freedoms shall be made under the Constitution or under the ICCPR except in accordance with the provisions thereof and only with the approval of the Presidency and the National Legislature, as required by Section 2.3.14 herein

Note: For similar examples see the Cambodia Political Agreement, Washington Bosnia Agreement, Sudan-UDSF Agreement, and Liberia Agreement.

Sample Language: Incorporating Human Rights and Fundamental Freedoms by Reference to International Instruments and Enumerating Specific Rights to be Protected

The rights and duties proclaimed and guaranteed by the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of a Child, the Convention on the Elimination of All Forms of Discrimination against Women, the 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the African Charter on Human and Peoples' Rights shall form an integral part of this peace agreement and shall be protected and promoted by the parties;

These fundamental rights shall not be limited or derogated from, except in justifiable circumstances acceptable in international law;

Further, the parties affirm their commitment to respect the civil rights and the religious liberties of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm in particular (*note this list is not exclusive or exhaustive*):

> The right to freedom of expression: this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice;
>
> The right to freedom of thought, conscience and of religion: This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching;
>
> The right to freedom of association: Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests;
>
> The right of peaceful assembly: No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others;
>
> The right to life: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his/her life;
>
> The right to liberty: Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law
>
> The right to self determination: All peoples have the right of self-determination. By virtue of that right they freely determine

their political status and freely pursue their economic, social and cultural development;

The right to seek constitutional change by peaceful and legitimate means;

The right to privacy: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation;

The right to freedom of movement: Everyone shall have the right to liberty of movement and freedom to choose his residence;

The right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity;

The right of women to full and equal political participation;

Freedom from torture: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Incorporating Human Rights into Domestic Law

Primary Note: Peace agreements include provisions designed to require the incorporation of human rights and protection mechanisms into the national legal frameworks. This incorporating language is another mechanism to assure the parties' commitment to the international agreements and treaties' provisions on human rights.

Note: Agreements must recognize the incorporation of human rights provisions into national laws and their enforcement by and application to the courts, agencies and governmental institutions. If public authorities and government officials violate basic human rights, then incorporation of human rights into domestic law further guarantees that violators will be held accountable. Establishing and reforming laws to protect these rights helps to

foreclose future unchecked abuses of power which too often have devastating effects on a country – even leading to such horrors as genocide, war crimes and crimes against humanity.

Note: In the Interim Agreement for Peace and Self-Government in Kosovo, the parties agree that all courts, agencies, governmental and other public institutions of Kosovo, or institutions operating in relation to Kosovo, shall conform to the human rights and fundamental freedoms set out in the agreement. Specifically, the agreement directly applies the European Convention for the Protection of Fundamental Freedoms and its Protocols and other internationally recognized human rights instruments that Kosovo enacts into domestic law. The agreement also declares that the rights and freedoms in these instruments shall have priority over all other domestic law.

Kosovo Agreement, Chapter 1, Article VI: Human Rights and Fundamental Freedoms

> All authorities in Kosovo shall ensure internationally recognized human rights and fundamental freedoms.
>
> The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Kosovo. Other internationally recognized human rights instruments enacted into law by the Kosovo Assembly shall also apply. These rights and freedoms shall have priority over all other law.
>
> All courts, agencies, governmental institutions, and other public institutions of Kosovo or operating in relation to Kosovo shall conform to these human rights and fundamental freedoms.

Note: The Dayton Accords declares that all courts, agencies, governmental organizations, and instrumentalities that operate within or by the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in the agreement. The agreement also states that domestic authorities shall cooperate with international human rights monitoring mechanisms, tribunals and any other organization mandated by the United Nations Security Council, which would include U.N. peacekeeping missions.

Dayton Accords, Annex 4 (The Constitution of Bosnia and Herzegovina)

> Article II: Human Rights and Fundamental Freedoms
>
> Implementation. Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 above.
>
> Cooperation. All competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to: any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in Annex I to this Constitution; the International Tribunal for the Former Yugoslavia (and in particular shall comply with orders issued pursuant to Article 29 of the Statute of the Tribunal); and any other organization authorized by the United Nations Security Council with a mandate concerning human rights or humanitarian law.

Note: The Northern Ireland Agreement provides for incorporation of the European Convention on Human Rights into domestic law, including direct access to the courts and remedies for breaches of the Convention, as well as court authority to overrule Assembly legislation on grounds of inconsistency. The Agreement also creates the development of statutory obligations to promote non-discrimination.

Northern Ireland Agreement, Chapter 6

> The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.
>
> Subject to the outcome of public consultation underway, the British Government intends, as a particular priority, to create a statutory obligation on public authorities in Northern Ireland to carry out all their functions with due regard to the need to promote equality of

> opportunity in relation to religion and political opinion; gender; race; disability; age; marital status; dependants; and sexual orientation. Public bodies would be required to draw up statutory schemes showing how they would implement this obligation. Such schemes would cover arrangements for policy appraisal, including an assessment of impact on relevant categories, public consultation, public access to information and services, monitoring and timetables.

Note: For similar example see the Burundi Agreement

Note: The South Africa Constitution, while not a peace agreement, is useful in that it provides an example of language that places binding human rights obligations on all branches of the government and calls for the conformity of national laws with those obligations.

South Africa Constitution, Chapter 2(8)

> The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
>
> A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
>
> When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court
>
> > in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
> >
> > may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).

Sample Language: Incorporating Human Rights into Domestic Law

> All parties agree that this Peace Agreement shall bind the legislature, executive, judiciary and all other organs of the State. All authorities shall conform to these provisions and shall seek to ensure that they have priority over all other domestic law. [T*he State or other*

governing bodies] shall take all necessary legislative and administrative measures to ensure that the human rights and fundamental freedoms protected under this agreement are given full effect.

Creating or Updating Monitoring Mechanisms

Primary Note: Peace agreements often include independent monitoring and protection mechanisms to ensure that human rights provisions are enforced under domestic law. This is done in many ways and often through the establishment of an institution or body such as a human rights commission, an ombudsman, joint commissions, or local monitoring committees. Theses monitoring mechanisms may also call upon the use of the United Nations (U.N.).

Monitoring and protection mechanisms can apply pressure to bring human rights violations to public notice and in doing so, facilitate accountability and discourage further violence. Most peace agreements also contemplate that monitors should not only expose violations, but also make the public aware of any progress made in the protection, promotion and realization of human rights.

Human Rights Commissions

Note: Human rights commissions are the most common form of monitoring mechanism provided for in peace agreements. They can take multiple shapes, depending on the situation. Some serve adjudicative roles, hearing reports and prosecuting based on the findings and investigations of an ombudsman, while in other instances the commission itself will initiate such investigations and follow through with prosecutions. Sometimes these commissions will consider draft legislation and be charged with making recommendations to the government about how to include human rights protections in government actions. Often the commission is given the duty of educating the public, making them aware of the human rights obligations of the state, and training sectors of society to comply with human rights obligations.

Note: Northern Ireland's Peace Agreement establishes a Human Rights Commission with a clearly defined role. Its role includes reviewing the adequacy and effectiveness of laws and practices, making recommendations to the government as necessary, providing information and promoting awareness of human rights, considering draft legislation, and bringing court proceedings for individuals or assisting them in doing so.

Northern Ireland Agreement, Section 6(4)

> The new Northern Ireland Human Rights Commission (see paragraph 5 below) will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be:
>
> > the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and
> >
> > a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.
>
> A new Northern Ireland Human Rights Commission, with membership from Northern Ireland reflecting the community balance, will be established by Westminster legislation, independent of Government, with an extended and enhanced role beyond that currently exercised by the Standing Advisory Commission on Human Rights, to include keeping under review the adequacy and effectiveness of laws and practices, making recommendations to Government as necessary; providing information and promoting awareness of human rights; considering draft legislation referred to them by the new Assembly; and, in appropriate cases, bringing court proceedings or providing assistance to individuals doing so.

Note: Liberia's peace agreement establishes an Independent National Commission on Human Rights whose role is to monitor compliance with the basic rights that the Agreement guarantees and promote human rights education throughout Liberian society. The Commission's role also includes working with local Liberian human rights and civil society organizations, international human rights organizations and other relevant U.N. agencies to monitor and strengthen the observance of human rights in Liberia.

Liberia Agreement, Part Six, Article XII

> The Parties agree on the need for the establishment of an Independent National Commission on Human Rights (INCHR).
>
> The INCHR shall monitor compliance with the basic rights guaranteed in the present Peace Agreement as well as promote human rights education throughout the various sectors of Liberian society, including schools, the media, the police and the military.
>
> The INCHR shall work together with local Liberian human rights and civil society organizations, international human rights organisations and other relevant U.N. agencies to monitor and strengthen the observance of human rights in the country.
>
> Technical, financial and material assistance may be sought by the INCHR from the U.N. Office of the High Commissioner for Human Rights (UNHCR), the African Commission on Human and People's Rights and other relevant international organizations.

Note: The Rwanda Agreement provides that both sides agree on establishing an independent National Commission on Human Rights whose role would be to investigate cases of human rights violations that take place on Rwandese territories – particularly those involving organs of the State and/or individuals acting as agents of the State. The Agreement further provides that the Commission uses its findings to institute legal proceedings and educate the public about human rights.

Rwanda Agreement, Article 15

The two parties agree that a National Commission on Human Rights shall be established. The institution shall be independent and shall investigate human rights violations committed by anybody on Rwandese territory, in particular by organs of the State and individuals in their capacity as agents of the State or of various organizations.

The investigation work of the Commission shall not be limited in time.

The Commission shall be provided with the necessary means, especially legal means, to efficiently accomplish its mission. It shall utilize its findings to:

sensitise and educate the population about human rights

institute legal proceedings, where necessary.

Note: For similar example see the Afghanistan Agreement

Sample Language: Human Rights Commission

The parties agree that a Human Rights Commission shall be established.

This Commission shall be independent and shall [*note: this list is not exhaustive and additional duties may be added or substituted*]:

Monitor compliance with basic human rights that this Peace Agreement guarantees.

Investigate any human rights violations and institute legal proceedings if necessary.

Promote human rights education throughout the various sectors of society, such as schools, the media, the police and the military.

Train sectors of society, such as lawyers, judges, police and security forces to observe human rights standards.

> Review the adequacy and effectiveness of laws and practices and review draft legislation to ensure conformity with human rights standards.

Ombudsman

Note: Peace agreements often provide for an Ombudsman to serve as an investigator and special prosecutor. Typically, the Ombudsman can investigate alleged human rights abuses, issue findings and conclusions, and prompt action from the appropriate organs with the power to prosecute grievances.

Note: The Dayton Accords contain very detailed provisions establishing not only a Human Rights Commission, but also a human rights Ombudsman and a Human Rights Chamber as part of the Commission. The Accords provide the details for the appointment, qualifications, jurisdiction, and independence of the Ombudsman. The Accords also set out the jurisdiction of the Human Rights Chamber, procedures for proceedings held before the Chamber, provisions detailing the content of the Chamber's decisions, and the Chamber's authority to promulgate rules for itself.

Dayton Accords, Chapter Two, The Commission on Human Rights

> Part A: General
>
> Article II: Establishment of the Commission
>
> To assist in honoring their obligations under this Agreement, the Parties hereby establish a Commission on Human Rights (the "Commission"). The Commission shall consist of two parts: the Office of the Ombudsman and the Human Rights Chamber.
>
> The Office of the Ombudsman and the Human Rights Chamber shall consider, as subsequently described:
>
> > alleged or apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, or

> alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex, where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ.

The Parties recognize the right of all persons to submit to the Commission and to other human rights bodies applications concerning alleged violations of human rights, in accordance with the procedures of this Annex and such bodies. The Parties shall not undertake any punitive action directed against persons who intend to submit, or have submitted, such allegations.

Article III: Facilities, Staff and Expenses

The Commission shall have appropriate facilities and a professionally competent staff. There shall be an Executive Officer, appointed jointly by the Ombudsman and the President of the Chamber, who shall be responsible for all necessary administrative arrangements with respect to facilities and staff. The Executive Officer shall be subject to the direction of the Ombudsman and the President of the Chamber insofar as concerns their respective administrative and professional office staff.

The salaries and expenses of the Commission and its staff shall be determined jointly by the Parties and shall be borne by Bosnia and Herzegovina. The salaries and expenses shall be fully adequate to implement the Commission's mandate.

The Commission shall have its headquarters in Sarajevo, including both the headquarters Office of the Ombudsman and the facilities for the Chamber. The Ombudsman shall have at least one additional office in the territory of the Federation and the Republika Srpska and at other locations as it deems appropriate. The Chamber may meet in other locations where it determines that the needs of a particular case

so require, and may meet at any place it deems appropriate for the inspection of property, documents or other items.

The Ombudsman and all members of the Chamber shall not be held criminally or civilly liable for any acts carried out within the scope of their duties. When the Ombudsman and members of the Chamber are not citizens of Bosnia and Herzegovina, they and their families shall be accorded the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations.

With full regard for the need to maintain impartiality, the Commission may receive assistance as it deems appropriate from any governmental, international, or non-governmental organization.

Part B: Human Rights Ombudsman

Article IV: Human Rights Ombudsman

The Parties hereby establish the Office of the Human Rights Ombudsman (the "Ombudsman").

The Ombudsman shall be appointed for a non-renewable term of five years by the Chairman- in-Office of the Organization for Security and Cooperation in Europe (OSCE), after consultation with the Parties. He or she shall be independently responsible for choosing his or her own staff. Until the transfer described in Article XIV below, the Ombudsman may not be a citizen of Bosnia and Herzegovina or of any neighboring state. The Ombudsman appointed after that transfer shall be appointed by the Presidency of Bosnia and Herzegovina.

Members of the Office of the Ombudsman must be of recognized high moral standing and have competence in the field of international human rights.

The Office of the Ombudsman shall be an independent agency. In carrying out its mandate, no person or organ of the Parties may interfere with its functions.

Article V: Jurisdiction of the Ombudsman

Allegations of violations of human rights received by the Commission shall generally be directed to the Office of the Ombudsman, except where an applicant specifies the Chamber.

The Ombudsman may investigate, either on his or her own initiative or in response to an allegation by any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, alleged or apparent violations of human rights within the scope of paragraph 2 of Article II. The Parties undertake not to hinder in any way the effective exercise of this right.

The Ombudsman shall determine which allegations warrant investigation and in what priority, giving particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.

The Ombudsman shall issue findings and conclusions promptly after concluding an investigation. A Party identified as violating human rights shall, within a specified period, explain in writing how it will comply with the conclusions.

Where an allegation is received which is within the jurisdiction of the Human Rights Chamber, the Ombudsman may refer the allegation to the Chamber at any stage.

The Ombudsman may also present special reports at any time to any competent government organ or official. Those receiving such reports shall reply within a time limit specified by the Ombudsman, including specific responses to any conclusions offered by the Ombudsman.

The Ombudsman shall publish a report, which, in the event that a person or entity does not comply with his or her conclusions and recommendations, will be forwarded to the High Representative described in Annex 10 to the General Framework Agreement while such office exists, as well as referred for further action to the Presidency of the appropriate Party. The Ombudsman may also initiate proceedings before the Human Rights Chamber based on such Report. The Ombudsman may also intervene in any proceedings before the Chamber.

Article VI: Powers

The Ombudsman shall have access to and may examine all official documents, including classified ones, as well as judicial and administrative files, and can require any person, including a government official, to cooperate by providing relevant information, documents and files. The Ombudsman may attend administrative hearings and meetings of other organs and may enter and inspect any place where persons deprived of their liberty are confined or work.

The Ombudsman and staff are required to maintain the confidentiality of all confidential information obtained, except where required by order of the Chamber, and shall treat all documents and files in accordance with applicable rules.

Part C: Human Rights Chamber

Article VII: Human Rights Chamber

The Human Rights Chamber shall be composed of fourteen members.

Within 90 days after this Agreement enters into force, the Federation of Bosnia and Herzegovina shall appoint four members and the Republika Srpska shall appoint two members. The Committee of Ministers of the Council of Europe, pursuant to its resolution (93)6, after consultation with the Parties, shall appoint the remaining members, who shall not be citizens of Bosnia and Herzegovina or any neighboring state, and shall designate one such member as the President of the Chamber.

All members of the Chamber shall possess the qualifications required for appointment to high judicial office or be jurists of recognized competence. The members of the Chamber shall be appointed for a term of five years and may be reappointed.

Members appointed after the transfer described in Article XIV below shall be appointed by the Presidency of Bosnia and Herzegovina.

Article VIII: Jurisdiction of the Chamber

The Chamber shall receive by referral from the Ombudsman on behalf of an applicant, or directly from any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights within the scope of paragraph 2 of Article II.

The Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria:

> Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the Commission within six months from such date on which the final decision was taken.
>
> The Chamber shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure or international investigation or settlement.
>
> The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.
>
> The Chamber may reject or defer further consideration if the application concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement.
>
> In principle, the Chamber shall endeavor to accept and to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.
>
> Applications which entail requests for provisional measures shall be reviewed as a matter of priority in order to determine (1) whether they should be accepted and, if so (2) whether high

priority for the scheduling of proceedings on the provisional measures request is warranted.

The Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that (a) the applicant does not intend to pursue his application; (b) the matter has been resolved; or (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the application; provided that such result is consistent with the objective of respect for human rights.

Article IX: Friendly Settlement

At the outset of a case or at any stage during the proceedings, the Chamber may attempt to facilitate an amicable resolution of the matter on the basis of respect for the rights and freedoms referred to in this Agreement.

If the Chamber succeeds in effecting such a resolution it shall publish a Report and forward it to the High Representative described in Annex 10 to the General Framework Agreement while such office exists, the OSCE and the Secretary General of the Council of Europe. Such a Report shall include a brief statement of the facts and the resolution reached. The report of a resolution in a given case may, however, be confidential in whole or in part where necessary for the protection of human rights or with the agreement of the Chamber and the parties concerned.

Article X: Proceedings before the Chamber

The Chamber shall develop fair and effective procedures for the adjudication of applications. Such procedures shall provide for appropriate written pleadings and, on the decision of the Chamber, a hearing for oral argument or the presentation of evidence. The Chamber shall have the power to order provisional measures, to appoint experts, and to compel the production of witnesses and evidence.

The Chamber shall normally sit in panels of seven, composed of two members from the Federation, one from the Republika Srpska, and four who are not citizens of Bosnia and Herzegovina or any

neighboring state. When an application is decided by a panel, the full Chamber may decide, upon motion of a party to the case or the Ombudsman, to review the decision; such review may include the taking of additional evidence where the Chamber so decides. References in this Annex to the Chamber shall include, as appropriate, the Panel, except that the power to develop general rules, regulations and procedures is vested in the Chamber as a whole.

Except in exceptional circumstances in accordance with rules, hearings of the Chamber shall be held in public.

Applicants may be represented in proceedings by attorneys or other representatives of their choice, but shall also be personally present unless excused by the Chamber on account of hardship, impossibility, or other good cause.

The Parties undertake to provide all relevant information to, and to cooperate fully with, the Chamber.

Article XI: Decisions

Following the conclusion of the proceedings, the chamber shall promptly issue a decision, which shall address:

> whether the facts found indicate a breach by the Party concerned of its obligations under this Agreement; and if so
>
> what steps shall be taken by the Party to remedy such breach, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures.

The Chamber shall make its decision by a majority of members. In the event a decision by the full Chamber results in a tie, the President of the Chamber shall cast the deciding vote.

Subject to review as provided in paragraph 2 of Article X, the decisions of the Chamber shall be final and binding.

Any member shall be entitled to issue a separate opinion on any case.

The Chamber shall issue reasons for its decisions. Its decisions shall be published and forwarded to the parties concerned, the High Representative described in Annex 10 to the General Framework Agreement while such office exists, the Secretary General of the Council of Europe and the OSCE.

The Parties shall implement fully decisions of the Chamber.

Article XII: Rules and Regulations

The Chamber shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions, including provisions for preliminary hearings, expedited decisions on provisional measures, decisions by panels of the Chamber, and review of decisions made by any such panels.

For a similar example see the Washington Bosnia Agreement.

Sample Language: Ombudsman

The parties agree that an independent Ombudsman shall be established. [*Parties may specify how the Ombudsman shall be appointed and what qualifications must be filled to be appointed*.]

The Ombudsman may investigate, either on his or her own initiative or in response to an allegation by any Party or person, non-governmental organization, or group of individuals who claim to be a victim of a human rights violation. The Ombudsman shall determine which allegations warrant investigation and in what priority, giving particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.

The Ombudsman shall issue findings and conclusions promptly after concluding an investigation. A Party identified as violating human rights shall, within a specified period [parties must decide on this period or agree on an entity that will establish this time at a later date], explain in writing how it will comply with the conclusions.

The Ombudsman may also present special reports at any time to any competent government organ or official. The receiver of such a report shall reply within a time limit specified by the Ombudsman, including specific responses to any conclusions or recommendations offered by the Ombudsman.

The Ombudsman shall publish a report, in the event that a person or entity does not comply with his or her conclusions and recommendations. This report will be forwarded to [*Parties must specify whom to forward this report*]

The Ombudsman shall have access to and may examine all official documents, including classified ones, as well as judicial and administrative files, and can require any person, including a government official, to cooperate by providing relevant information, documents and files. The Ombudsman may attend administrative hearings and meetings of other organs and may enter and inspect any place where persons deprived of their liberty are confined or work.

The Ombudsman and staff are required to maintain the confidentiality of all confidential information obtained. [*Parties may specify exceptions*]

[*Insert provisions for the prosecutorial role of the Ombudsman*] [*Or insert provision on Ombudsman's ability to refer cases for prosecution by a designated body*.]

Joint Commission

Note: Peace agreements often establish Joint Commissions to consider issues related to upholding human rights. To assist in ensuring the credibility and legitimacy of the Commission, they are typically comprised of representatives of different viewpoints, including those from the Government as well as relevant indigenous or ethnic organizations. These Commissions are established to allow a forum in which individuals with varying viewpoints can reach a consensus.

Note: The Guatemala Agreement provides for the establishment of Joint Commissions composed of an equal number of representatives

of the Government and indigenous organizations. The Agreement further specifies that these Commissions will be established between the Government and the Maya indigenous sectors of the Assembly of Civil Society. The Commissions' roles respectively are related to education reform, the participation of indigenous peoples in decision-making at the local, regional and national level, and rights relating to the land and natural resources of indigenous peoples.

Guatemala Agreement, Chapter V

> With regard to the composition and functioning of the commission on education reform referred to in part III, section G, paragraph 5, the commission on reform and participation referred to in part IV, section D, paragraph 4, and the commission on rights relating to land of the indigenous peoples referred to in part IV, section F, paragraph 10, the parties agree as follows:
>
> > The commissions shall be composed of an equal number of representatives of the Government and representatives of indigenous organizations;
> >
> > The number of members of the commissions shall be established in consultations between the Government and the Maya sectors of the Assembly of Civil Society;
> >
> > The Maya sectors of the Assembly of Civil Society shall convene the Maya, Garifuna and Xinca organizations interested in participating in the said commissions for them to designate indigenous representatives to them;
> >
> > The commissions shall adopt their conclusions by consensus;
> >
> > The commissions shall base their operation on the mandates set out in this agreement; and
> >
> > The commissions may request the advice and cooperation of national and international organs relevant to the discharge of their mandates.

Note: The Bougainville Agreement establishes a Joint Commission with very specific provisions regarding the commission's role. According to the agreement, its mandate is to examine and report on issues involved in giving the Bougainville Government power to make laws allowing courts or Councils of Elders to require clan-groups to meet customary, non-custodial obligations, while fully considering things, such as national and international human rights law as well as customary law.

Bougainville Agreement, "Human Rights"

> The National Government and the autonomous Bougainville Government will establish a joint commission to examine and report on the issues that would be involved in giving the autonomous Bougainville Government power to make laws permitting courts or Councils of Elders to require clan-groups to which persons convicted of criminal offenses belong to meet customary, non-custodial obligations.
>
> The terms of reference for the commission will direct it to have full regard for:
>
> > The aspirations of Bougainvilleans for the integration of custom and introduced law
> >
> > The national human rights regime;
> >
> > The justice system in Bougainville and Papua New Guinea as a whole; and
> >
> > The international human rights system and other relevant aspects of international law.
>
> The joint commission will be established at the initiative of either Government; its membership will be mutually agreed; the costs of the commission will be shared.
>
> The commission's report, which will be submitted by an agreed date, will be tabled for consideration in the National Parliament and the Bougainville legislature.

> The National Government and the autonomous Bougainville Government will inform one another of the outcome of the debates in their respective legislatures, and co-operate in giving effect to mutually acceptable, practical follow-up action, as may be appropriate, through consultation, the joint supervisory board or the agreed five-yearly reviews.
>
> The above procedures may also be used to follow-up on doubts about whether the autonomous Bougainville Government has power under the existing human rights provisions to make laws regulating or restricting the qualified rights other than laws made in accordance with Section 38 of the National Constitution.

Note: The Northern Ireland peace agreement establishes a Joint Committee representing the North and South Human Rights Commissions to consider human rights issues in Ireland and possibly establish a charter reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.

Northern Ireland Agreement, Section 6, paragraph 10, "Joint Committee"

> It is envisaged that there would be a joint committee of representatives of the two Human Rights Commissions, North and South, as a forum for consideration of human rights issues in the island of Ireland. The joint committee will consider, among other matters, the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.

Sample Language: Joint Commission

> The Parties agree that a Joint Commission shall be established to address issues related to human rights.
>
> The Commission's mandate shall be [*insert the Commission's mandate*]
>
> The Commission shall be composed of representatives from [*insert composition of representatives*]. [*Parties must specify the structure*

and make up of the Committee. Parties may also want to specify the qualifications or requirements to serve as a Commission member]

The commissions shall adopt their conclusions by consensus.

Local and/or Regional Monitoring Committee

Note: A peace agreement can also establish Local and/or Regional Monitoring Committees to observe the agreement's implementation on the ground. Local and/or Regional Monitoring Committees are very useful, because they can focus on localized issues and do so from a basis of greater knowledge and familiarity with local activities, governing structures, cultures and circumstances. A national committee may not have this expertise or the capacity to deal with such matters.

Note: The Sri Lanka Agreement establishes local monitoring committees whose roles are to advise the Sri Lanka Monitoring Mission (SLMM), discuss issues regarding the implementation of the agreement in their respective districts, and seek to resolve disputes concerning the peace agreements' implementation at the lowest possible level. The committees also assist in arranging for the security and freedom of movement for SLMM staff and are comprised of five members selected from among retired judges, public servants, religious leaders or similar leading citizens.

Sri Lanka Agreement, Article 3, Sri Lanka Monitoring Mission

> The SLMM shall establish a headquarters in such place as the HoM finds appropriate. An office shall be established in Colombo and in Vanni in order to liaise with the GOSL and the LTTE, respectively. The SLMM will maintain a presence in the districts of Jaffna, Mannar, Vavuniya, Trincomalee, Batticaloa and Amparai.within an area of 1 nautical mile on either side along the coast and 2 nautical miles seawards from all security forces camps on the coast; (ii) fishing will not be permitted in harbours or approaches to harbours, bays and estuaries along the coast.
>
> A local monitoring committee shall be established in Jaffna, Mannar, Vavuniya, Trincomalee, Batticaloa and Amparai. Each committee shall consist of five members, two appointed by the GOSL, two by the LTTE and one international monitor appointed by the HoM. The international monitor shall chair the committee. The GOSL and the LTTE appointees may be selected from among retired judges, public servants, religious leaders or similar leading citizens.
>
> The committees shall serve the SLMM in an advisory capacity and discuss issues relating to the implementation of this Agreement in their respective districts, with a view to establishing a common understanding of such issues. In particular, they will seek to resolve any dispute concerning the implementation of this Agreement at the lowest possible level.
>
> The Parties shall be responsible for the appropriate protection of and security arrangements for all SLMM members.
>
> The Parties agree to ensure the freedom of movement of the SLMM members in performing their tasks. The members of the SLMM shall be given immediate access to areas where violations of the Agreement are alleged to have taken place. The Parties also agree to facilitate the widest possible access to such areas for the local members of the six above-mentioned committees, cf. Article 3.7.

Note: The South African National Peace Accord establishes local and regional committees to help prevent violence and intimidation at the local and regional level. The National Peace Secretariat will guide the committees at the national level and the Justices of the Peace will guide them at the local level.

South Africa Agreement, Chapter 1, "Principles"

> Since insufficient instruments exist to actively prevent violence and intimidation at the regional and local levels, it is agreed that committees be appointed at regional and local levels to assist in this regard. Peace bodies are therefore to be established at both regional and local levels to be styled "Regional Dispute Resolution Committees" (RDRC) and "Local Dispute Resolution Committees" (LDRC) respectively. These bodies will be guided and co-ordinated at a national level by a National Peace Secretariat. At the local level the bodies will be assisted by Justices of the Peace.

Sample Language*: *Local and/or Regional Monitoring Committee

> The Parties agree that Local Monitoring Committees shall be established.
>
> These Local Monitoring Committees shall be established in [*specify where the Local Monitoring Committees shall be established (e.g. which provinces, districts or regions)*] and shall be composed of [*parties may specify the composition of the Committees (e.g. retired judges, public servants, citizens in leadership positions, etc.)*].
>
> These Local Monitoring Committees shall seek to resolve any local or regional issues in this Peace Agreement's implementation.

The United Nations

Note: Some Peace Agreements entrust monitoring human rights to a U.N. body typically working under the auspice of the U.N. Commission on Human Rights. Parties may do this, because it is a means for the international community to monitor the human rights situation in a particular region and because it is perceived that an international body such as the U.N. can carry out such activities with a certain level of impartiality and credibility. It is also considered that the U.N. has certain resources and expertise that can be beneficial to a country in transition.

Note: Cambodia's Political Agreement entrusts the United Nations (U.N.) to foster an environment that respects human rights during the nation's transitional period.

Cambodia Political Agreement, Part III, Art. 16 & 17

> UNTAC [United Nations Transitional Authority in Cambodia] shall be responsible during the transitional period for fostering an environment in which respect for human rights shall be ensured, based on the provisions of annex 1, section E.
>
> After the end of the transitional period, the United Nations Commission on Human Rights should continue to monitor closely the human rights situation in Cambodia, including, if necessary, by the appointment of a Special Rapporteur who would report his findings annually to the Commission and to the General Assembly.

Note: The Afghanistan Agreement assigned responsibility to the U.N. for investigating human rights violations, recommending actions, and developing and implementing a program of human rights education.

Afghanistan Agreement, Annex II, Role of the United Nations During the Interim Period

> The United Nations shall have the right to investigate human rights violations and, where necessary, recommend corrective action. It will

also be responsible for the development and implementation of a programme of human rights education to promote respect for and understanding of human rights.

Note: For similar examples, see the Cambodia Agreement and Croatia-Erdut Agreement.

Sample Language: The United Nations

The Parties agree that the United Nations shall have the right to monitor the human rights situation in [*insert the country or region*]. The United Nations shall also have the right to investigate alleged violations of human rights and recommend corrective action.

Creating a Commission to Deal with Past Abuses

Primary Note: Many peace agreements establish Truth and Reconciliation Commissions as a means to deal with the legacy of past human rights abuses. Establishing this type of commission facilitates the reconciliation process as a society and its individual members confront issues of loss, accountability, betrayal and mistrust due to past human rights abuses.

Truth and Reconciliation Commissions

Note: Truth and Reconciliation Commissions are a popular way to deal with past human rights abuses. They allow victims, victims' relatives and perpetrators to present evidence of past abuses. The Commission listens to these accounts, investigates and research allegations of abuse, and typically issues reports, findings and recommendations regarding measures that the society could take to hold violators accountable, avoid future violations, and/or compensate in some way victims and survivors. These commissions are unlike courts in that the rules of evidence and protections of the defendant do not typically apply. Also, truth commissions are not established to prosecute individuals or make judgments (though such Commissions may make recommendations about the granting of pardons or amnesties). Rather, they are established to assist victims and perpetrators in "exposing" the evidence and establishing a record of the truth in order to heal and truly move forward. It is a way to provide national reconciliation

through the national acknowledgment of what transpired and in some cases, the carrying out of certain measures to assist in the healing process.

Note: The Northern Ireland peace agreement declares the importance of recognizing the suffering of victims of violence as a necessary element of national reconciliation. The agreement states that the parties will continue to support existing organizations that are developing reconciliation, mutual understanding and respect between and within communities and traditions in Northern Ireland, and between the North and South. The agreement pledges to allocate sufficient resources, including statutory funding as necessary, to meet the needs of victims and to provide for additional community-based support programs.

Northern Ireland Agreement, Section 6

> Reconciliation and Victims of Violence
>
> The participants believe that it is essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation. They look forward to the results of the work of the Northern Ireland Victims Commission.
>
> It is recognised that victims have a right to remember as well as to contribute to a changed society. The achievement of a peaceful and just society would be the true memorial to the victims of violence. The participants particularly recognise that young people from areas affected by the troubles face particular difficulties and will support the development of special community-based initiatives based on international best practice. The provision of services that are supportive and sensitive to the needs of victims will also be a critical element and that support will need to be channelled through both statutory and community-based voluntary organisations facilitating locally-based self-help and support networks. This will require the allocation of sufficient resources, including statutory funding as necessary, to meet the needs of victims and to provide for community-based support programmes.
>
> The participants recognise and value the work being done by many organisations to develop reconciliation and mutual understanding and respect between and within communities and traditions, in Northern

> Ireland and between North and South, and they see such work as having a vital role in consolidating peace and political agreement. Accordingly, they pledge their continuing support to such organisations and will positively examine the case for enhanced financial assistance for the work of reconciliation. An essential aspect of the reconciliation process is the promotion of a culture of tolerance at every level of society, including initiatives to facilitate and encourage integrated education and mixed housing.

Note: Liberia's peace agreement declares that a Truth and Reconciliation Commission, made up of a cross-section of Liberian society, will be established to address issues of impunity and allow victims and perpetrators to share their experiences. The goal is for the Commission to get a clear picture of the root causes of the crises in Liberia, including past human rights abuses, and to recommend measures for the rehabilitation of victims of these abuses. The Parties further request that the international community provide the necessary financial and technical support for the Commission's operations.

Liberia Agreement, Article XIII, Truth and Reconciliation Commission

> A Truth and Reconciliation Commission shall be established to provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences, in order to get a clear picture of the past to facilitate genuine healing and reconciliation.
>
> In the spirit of national reconciliation, the Commission shall deal with the root causes of the crises in Liberia, including human rights violations.
>
> This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.
>
> Membership of the Commission shall be drawn from a cross-section of Liberian society. The Parties request that the International Community provide the necessary financial and technical support for the operations of the Commission.

Note: Sierra Leone established a Truth and Reconciliation Commission, whose membership shall be drawn from a cross-section of Sierra Leonean society with the participation and some technical support from the international community. Its mandate is to deal with the questions surrounding human rights violations since the beginning of the Sierra Leonean conflict in 1991, including breaking the cycle of violence, providing a forum for both the victims and perpetrators of human rights violations to tell their story and ascertaining a clear picture of the past in order to facilitate genuine healing and reconciliation.

Sierra Leone 1999 Agreement, Part V, Article XXVI: Human Rights Violations

> A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.
>
> In the spirit of national reconciliation, the Commission shall deal with the question of human rights violations since the beginning of the Sierra Leonean conflict in 1991. This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.
>
> Membership of the Commission shall be drawn from a cross-section of Sierra Leonean society with the participation and some technical support of the International Community. This Commission shall be established within 90 days after the signing of the present Agreement and shall, not later than 12 months after the commencement of its work, submit its report to the Government for immediate implementation of its recommendations.

Note: For similar examples, see Sudan SPLM Agreement; Rwanda Agreement; and Burundi Agreement.

Sample Language: Truth and Reconciliation Commission

Parties agree that a Truth and Reconciliation Commission shall be established to deal with past abuses.

This Commission shall provide an opportunity for the victims, victims' relatives and perpetrators of human rights violations to share their experiences, in order to get a clear picture of the past to facilitate genuine healing and reconciliation. [*The Commission shall publish a report about its findings within [insert months/years] from the date of its first day of operations.*]

This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations and to prevent the recurrence of these violations. [*Parties may specify the structure of the Commission*.]

SUMMARIES OF RELEVANT AGREEMENTS ADDRESSING HUMAN RIGHTS

Primary Note: This section summarizes the background and history of some of the major and most relevant agreements cited in the Index of Agreements and throughout this memorandum. This section also discusses some of the pertinent provisions of each of the listed agreements.

Afghanistan

Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, 5 DECEMBER 2001

This peace agreement ended a recent history of turbulence in Afghanistan. In 1979, the Soviet Union invaded the nation to set up a pro-communist regime. 10 years later, anti-Communist mujahidin forces, that the US, Saudi Arabia, Pakistan, and others trained and supplied, forced them to withdraw. The Communist forces in Kabul continued fighting until 1992, when they collapsed. Subsequent to their collapse, fighting broke out between the various mujahidin factions, which led to a state of warlordism. This warlordism eventually produced the Taliban. The Taliban developed as a political force and ultimately seized power in 1996; and captured most of the country, outside of Northern Alliance strongholds, which were mostly in the northeast. After the 11 September 2001 terrorist attacks, a US, Allied, and Northern Alliance military action toppled the Taliban.

The Afghanistan agreement deals with human rights by referring to international instruments, which Afghanistan is a party. It declares that the Interim Authority and Emergency Loya Jirga shall act in accordance with provisions and basic principles that those international instruments contain. It also provides that the Interim Authority, with the help of the U.N., shall create an independent Human Rights Commission to monitor and investigate human rights violations and develop domestic human rights institutions.

Bosnia and Herzegovina

The General Framework Agreement for Peace in Bosnia & Herzegovina, Initialed in Dayton on 21 November 1995, Signed in Paris on 14 December 1995

The Dayton Accords, signed in Dayton, Ohio in November 1995**,** ended three years of interethnic civil strife between the warring Bosnians, Croats and Serbians. The Dayton Accords retained Bosnia and Herzegovina's international boundaries (established as a result of the 1991 declaration of sovereignty, followed by a referendum for independence from the former Yugoslavia in 1992) and created a joint multi-ethnic and democratic government.

The Dayton Accords dealt with incorporating human rights and fundamental rights into the agreement via a combination of enumerated rights and incorporation of international human rights conventions. The Dayton Accords further provided for their incorporation into the national legal framework within the text of the agreement. Finally, the Dayton Accords sought to ensure compliance with the terms of the agreement by implementing a commission on human rights, charged with enforcement of the agreement's provisions.

Burundi

Arusha Peace And Reconciliation Agreement For Burundi, 28 August 2000

The hostilities between Hutu & Tutsi factions in Burundi left mass destruction, including tens of thousands of deaths and over 2 million refugees. The 2000 agreement attempts to establish peace in Burundi between these two groups.

The Burundi peace agreement dealt with incorporating human rights and fundamental rights into the agreement via a combination of enumerated rights and incorporation of international human rights conventions. The Burundi agreement further provided for their incorporation into the national legal framework within the text of the agreement.

Cambodia

Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia, 23 October 1991

After a 5-year struggle, Communist Khmer Rouge forces captured Phnom Penh in April 1975 and ordered all cities and towns to be evacuated. An estimated 1.7 million displaced people died from exhaustion or starvation, while others died from execution and torture for being "enemies of the state". A 1978 Vietnamese invasion drove the Khmer Rouge into the countryside and began almost 13 years of civil war. This led to Cambodia's peace agreements.

Cambodia's peace agreement deals with human rights by declaring that the citizens shall enjoy the human rights and freedoms in the Universal Declaration of Human Rights and other relevant international human rights instruments. The agreement also provides that the U.N. Commission on Human Rights shall continue to monitor the human rights situation in Cambodia, including a special rapporteur, if necessary, to annually report his findings to the Commission and General Assembly.

El Salvador

Agreement on Human Rights, 26 July 1990

El Salvador achieved independence from Spain in 1821 and from the Central American Federation in 1839. In 1992, a 12-year civil war, costing about 75,000 lives and damage worth 2 billion dollars, ended when the government and leftist rebels signed a treaty that provided for military and political reforms.

The El Salvador agreement lists the human rights that it protects and provides methods for international verification. The agreement agrees to the terms of a U.N. human rights verification mission and describes the purpose and mandate of that mission.

Kosovo

Interim Agreement for Peace & Self-Government in Kosovo, 23 February 1999

In the early 1990s, Yugoslavia began to unravel along ethnic lines: Slovenia, Croatia, and Macedonia all declared their independence in 1991; Bosnia and Herzegovina in 1992. The remaining republics of Serbia and Montenegro declared a new "Federal Republic of Yugoslavia" in 1992 and Serbia led various military intervention efforts to unite Serbs in neighboring republics into a "Greater Serbia." All of these efforts were ultimately unsuccessful. In 1999, massive expulsions by Serbs of ethnic Albanians living in the autonomous republic of Kosovo provoked

an international response, including the NATO bombing of Serbia and the stationing of NATO and Russian peacekeepers in Kosovo. This peace agreement was signed in February 1999.

The Kosovo Agreement dealt with the incorporation of international instruments related to human rights and fundamental. The agreement further provided for its human rights protections to be incorporated into the national legal framework.

Liberia

Peace Agreement Between the Government of Liberia (GOL), The Liberians United for Reconciliation and Democracy (LURD), The Movement for Democracy in Liberia (MODEL) and the Political Parties, 18 August 2003

In 1980, Sergeant Samuel Doe overthrew William Tolbert after food price riots, which began a period of instability for Liberia. Years of fighting, along with the flight of most businesses has upset formal economic activity. Additionally, an unsettled domestic security situation has slowed the process of rebuilding the social and economic structure of this war-torn country. President Taylor, elected in 1997, after an eight-year-long civil war, was never able to fully get rid of rebel groups seeking to oust him by force. Rebel attacks on Monrovia, coupled with two years of U.N.-imposed sanctions for Taylor's meddling in Sierra Leone's civil war, finally prompted Taylor's abdication from power in August 2003. Taylor - under international pressure to quit and hemmed in by rebels - stepped down and went into exile.

The peace agreement in Liberia dealt with human rights by declaring the parties' intent to respect and guarantee rights as listed in certain international conventions and regional treaties. The agreement also listed examples of the basic rights and freedoms protected in these conventions and treaties. In addition, the agreement declared the need to establish an Independent National Commission on Human Rights to monitor compliance with the basic rights guaranteed in the peace agreement and to promote human rights education throughout Liberian society.

Northern Ireland

The Northern Ireland Peace Agreement: The Agreement Reached In The Multi-Party Negotiations, 10 April 1998

In 1921, the southern Irish provinces gained their independence from the United Kingdom, leaving the northern provinces (Ulster) a part of Great Britain. Since that time, Irish governments have sought the peaceful unification of Ireland and have cooperated with Britain against terrorist groups. The peace agreement in Northern Ireland was approved in 1998 and signed in 1999, and established partial home-rule for Northern Ireland.

The peace agreement in Northern Ireland dealt with the incorporation of human rights and fundamental freedoms by enumerating specific rights within the text of the agreement. The Northern Ireland agreement further provided for its incorporation into the national legal framework within the text of the agreement. Finally, the agreement assured compliance with its terms by establishing a Human Rights Commission and an Equality Commission as mechanisms to oversee the human rights' processes set forth in the agreement.

South Africa

Constitution of the Republic of South Africa, 11 October 1996

Following the Boer War, the unification of South Africa in 1902 resulted in an operative policy of apartheid – the separate development of the races. This 1994 peace agreement, instigated by a citizens' revolution, ended political apartheid and ushered in black majority rule. This agreement resulted in the signing of the South African Constitution.

The South African peace agreement and constitution dealt with the incorporation of human rights and fundamental freedoms by enumerating specific rights within the text of the agreement. The South African agreement further provided for its incorporation into the national legal framework within the text of the agreement.

ABOUT THE PUBLIC INTERNATIONAL LAW & POLICY GROUP

The Peace Drafter's Handbook is a product of the Public International Law & Policy Group, a 501(c)(3) non-profit committed to providing global *pro bono* legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice. PILPG also provides policy formulation advice and training on matters related to conflict resolution. This Handbook can be found on our web site (http://www.pilgp.org). A CD-ROM version of the Handbook is also available.

PILPG has advised over a dozen countries on the legal aspects of peace negotiations and constitution drafting, and over fifteen countries in Europe, Asia and Africa concerning fundamental questions of public international law and foreign relations. PILPG has also advised four international criminal tribunals.

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