

# HUMAN RIGHTS

## INTRODUCTION

The purpose of this chapter is to examine the provisions for human rights and fundamental freedoms that peace agreements generally include; outline the provisions of the Darfur Peace Agreement related to human rights; and present sample language that parties may wish to consider including in a peace agreement providing human rights protections.

Parties often adopt peace agreement provisions that help ensure the recognition and protection of human rights and fundamental freedoms. Such provisions draw from international treaties and covenants related to the protection of human rights and fundamental freedoms. State practice illustrates that peace agreements generally include three core elements to ensure the recognition and protection of fundamental rights and freedoms. Peace agreements typically include: (1) the establishment and definition of rights and freedoms; (2) the incorporation of rights and freedoms into domestic legislation; and (3) the establishment of enforcement mechanisms for the protection of these rights and freedoms.

Provision in peace agreements that define human rights and freedoms may invoke existing human rights treaties; enumerate specific rights and freedoms; or combine both approaches. Provisions outlining the incorporation of rights and freedoms into the national legal framework may require public institutions to protect the rights and freedoms recognized in the agreement.

Finally, many states create a human rights commission as an enforcement mechanism; however, agreements provide varying levels of detail related to the establishment of such a commission and its responsibilities. Some agreements broadly define the human rights commission, while others create a more structured commission, comprised of a human rights ombudsman and human rights chamber.<sup>1</sup>

The 2006 Darfur Peace Agreement (DPA) includes a larger number of human rights provisions. The DPA provides a hybrid approach by enumerating international treaties and agreements that the Government of the Republic of the

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<sup>1</sup> For more information on human rights commissions, see Human Rights Commission chapter.

Sudan has signed while also invoking specific rights that the parties must work to guarantee.

## CORE ELEMENTS

### Defining Rights and Freedoms

International human rights treaties and conventions enumerate, define, and provide for the protection of a broad range of rights and freedoms. Parties often draw from these documents when drafting human rights provisions of a peace agreement. State practice illustrates that parties choose one of three approaches when using international human rights instruments to define human rights and fundamental freedoms in peace agreements. Parties may: (1) invoke specific international human rights treaties and conventions; (2) enumerate specific core human rights and fundamental freedoms; or (3) both enumerate core rights and freedoms and invoke the international human rights treaties and conventions that protect those rights.

#### *Invocation of International Human Rights Conventions and Treaties*

Some peace agreements include provisions that specifically invoke international human rights treaties and conventions. Incorporating the provisions of the selected human rights instruments into the agreement helps to ensure that the rights and freedoms recognized by the agreement are consistent with internationally recognized norms. As new international norms and treaties develop, parties may amend the agreement to reflect any additions or changes.

The Interim Agreement for Peace and Self-Government in Kosovo (Rambouillet Accords) is one example of such practice. Article VI of the Rambouillet Accords, titled “Human Rights and Fundamental Freedoms,” provides that the human rights and fundamental freedoms set forth in the European Convention shall apply directly in Kosovo. This article further provides that these “rights and freedoms shall have priority over all other law.”<sup>2</sup> Notably, this

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<sup>2</sup> Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 1, art. VI, sec. 2, available at [http://www.usip.org/library/pa/kosovo/kosovo\\_rambtoc.html](http://www.usip.org/library/pa/kosovo/kosovo_rambtoc.html) (last accessed Sept. 12, 2007). The Rambouillet Accords enumerate certain rights specific to the national communities, including: the right to preserve and protect their national, cultural, religious, and linguistic identities; equal access to employment in public services at all levels; and the right to use their languages and alphabets. Interim Agreement for Peace and Self-Government in

provision leaves open the possibility of future expansion of the human rights and fundamental freedoms provided for and protected under the Rambouillet Accords.

The Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia (Cambodia Agreement) invokes international human rights law to define those rights and freedoms protected under the agreement. Specifically, Article 3 of the Cambodia Agreement provides that, “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.”<sup>3</sup> The same article also provides that Cambodia must protect human rights and fundamental freedoms; support the exercise of these rights; ensure that the policies and practices of the past shall never return.<sup>4</sup> This broad language enables the Cambodia Agreement to recognize the protection of human rights and fundamental freedoms, but leaves the details of this provision open for domestic interpretation.

### *Enumeration of Specific Human Rights*

Instead of invoking international human rights treaties and conventions, some peace agreements specifically list the rights and freedoms provided for under the agreement. Enumerating specific human rights and fundamental freedoms within the language of the agreement may help avoid ambiguity as to which rights and freedoms the agreement protects. This approach enables the parties to the peace agreement to set their own specific terms with regard to the protection and insurance of human rights and fundamental freedoms. Parties may also amend such provisions to incorporate additional rights.

Northern Ireland’s Good Friday Agreement enumerates human rights and fundamental freedoms within the agreement. After noting their “commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community,” the parties to the Good Friday Agreement further affirm the following specific rights:

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Kosovo (1999), ch. 1, art. VI, sec. 2, *available at* [http://www.usip.org/library/pa/kosovo/kosovo\\_rambtoc.html](http://www.usip.org/library/pa/kosovo/kosovo_rambtoc.html) (last accessed Sept. 12, 2007).

<sup>3</sup> The Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia, (1991) art. 3.1, *available at* [http://www.usip.org/library/pa/cambodia/agree\\_sovereign\\_10231991.html](http://www.usip.org/library/pa/cambodia/agree_sovereign_10231991.html) (last accessed Sept. 12, 2007).

<sup>4</sup> The Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia (1991), art. 3.2.

. . . 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.<sup>5</sup>

These particular rights are specifically recognized “[a]gainst the background of the recent history of communal conflict.”<sup>6</sup>

*Combination Approach: Invocation of International Human Rights Conventions and Treaties & Enumeration of Specific Human Rights*

A third approach both invokes human rights conventions and enumerates specific rights and freedoms. This allows the parties to a peace agreement to tailor provisions to address particular needs. Peace agreements that adopt this approach when defining protected rights and freedoms combine the advantages of the two approaches.

The Arusha Peace and Reconciliation Agreement for Burundi adopts this approach. Under Protocol II, entitled “Democracy and Good Governance,” the agreement asserts the rights incorporated in the Universal Declaration of Human Rights, the International Covenants on Human Rights, the African Charter on Human and Peoples' Rights, and the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.<sup>7</sup>

The same article also enumerates twenty-seven human rights and fundamental freedoms recognized under the peace agreement. The rights and

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<sup>5</sup> The Good Friday Agreement Apr. 10, 1998, sec. 6, Provisions 2, 4, 9 *available at* <http://www.usip.org/library/pa/ni/nitoc.html> (last accessed Sept. 12, 2007). The Good Friday Agreement later invokes the European Convention of Human Rights, but only with regard to future sources of human rights.

<sup>6</sup> The Good Friday Agreement, Apr. 10, The Agreement reached in the multi-party negotiations (1998), sec. 6, Provision 1.

<sup>7</sup> Arusha Peace and Reconciliation Agreement for Burundi Aug. 28, (2000), Protocol II, art. 3, *available at* [http://www.usip.org/library/pa/burundi/pa\\_burundi\\_08282000\\_toc.html](http://www.usip.org/library/pa/burundi/pa_burundi_08282000_toc.html) (last accessed Sept. 24, 2007).

freedoms defined include: the equality of men and women;<sup>8</sup> the prohibition against discrimination;<sup>9</sup> the right to physical and mental integrity, and to freedom of movement;<sup>10</sup> the prohibition on torture and other forms of cruel, inhuman, or degrading treatment or punishment;<sup>11</sup> the prohibition against all forms of slavery and the slave trade;<sup>12</sup> freedom of expression and of the media;<sup>13</sup> the right to move and settle freely anywhere in the national territory, as well as to leave it and return to it;<sup>14</sup> and the prohibition of the direct use of children in armed conflict.<sup>15</sup>

Burundi's approach provides broad protections for human rights and fundamental freedoms, while allowing the parties to the agreement to highlight certain protections they identified as particularly important in the resolution of the specific conflict.

Bosnia and Herzegovina's Dayton Accords also follow the combination model, invoking both international conventions and enumerating specific human rights. The Dayton Accords specifically invoke the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.<sup>16</sup> The same article in the Dayton Accords enumerates fourteen specific rights. These include, among others, the right to life;<sup>17</sup> the prohibition of torture or inhuman or degrading treatment or punishment;<sup>18</sup> the prohibition of slavery or servitude;<sup>19</sup>

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<sup>8</sup> Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, (2000), Protocol II, art. 3.4.

<sup>9</sup> Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, art. 3.4. "No one may be discriminated against on grounds of origin, race, ethnicity, gender, color, language, social situation, or religious, philosophical or political convictions, or by reason of a physical or mental handicap."

<sup>10</sup> Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, art. 3.7.

<sup>11</sup> Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, art. 3.7.

<sup>12</sup> Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, art. 3.8.

<sup>13</sup> Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, art. 3.13.

<sup>14</sup> Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, art. 3.15.

<sup>15</sup> Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, art. 3.27.

<sup>16</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, Annex 6, ch. 1, art. I, [hereinafter "The Dayton Accords"] *available at* [http://www.usip.org/library/pa/bosnia/dayton\\_gfa.html](http://www.usip.org/library/pa/bosnia/dayton_gfa.html) (last accessed Sept. 24, 2007). The article also invokes "the other international agreements" which are listed in the agreement's appendix.

<sup>17</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 1, art. I(1).

<sup>18</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 1, art. I (2).

<sup>19</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 1, art. I (2).

freedom of thought, conscience, and religion;<sup>20</sup> and the enjoyment of these rights and freedoms without “discrimination on any ground.”<sup>21</sup>

## **Incorporating Rights and Freedoms into Domestic Legal Frameworks**

Peace agreements may also include provisions for the eventual incorporation of specific human rights and fundamental freedoms into the national legal framework. Such provisions help to ensure that these rights and freedoms will be legally binding through their incorporation into domestic laws and legislation.

Kosovo’s Rambouillet Accords provide an example of such a provision. Article VI of the Rambouillet Accords first mandates that “all authorities in Kosovo shall ensure internationally recognized human rights and fundamental freedoms.”<sup>22</sup> The agreement also stipulates, “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.”<sup>23</sup> By requiring public institutions to conform to the rights and freedoms recognized in the peace agreement, the parties to the Rambouillet Accords ensured that the provisions of the agreement would be binding and effective as domestic law.

### *Human Rights Charters*

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<sup>20</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 1, art. I (7).

<sup>21</sup> The Dayton Accords Dec. 14, 1995, Annex 6, ch. 1, art. I (.14). Such grounds specifically enumerated include “sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

<sup>22</sup> Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, (1999), ch. 1, art. VI, sec. 1.

<sup>23</sup> Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, (1999), ch. 1, art. VI, sec. 3.

Another, more comprehensive means for protecting human rights and fundamental freedoms in the domestic context is through the enactment of a human rights charter. Human rights charters are separate from peace agreements and define a government's commitment to the protection of certain human rights and fundamental freedoms.<sup>24</sup> A charter typically defines the rights and freedoms protected and provides for the scope of and mechanisms for their protection.<sup>25</sup>

Canada's Charter of Rights and Freedoms defines protected rights and freedoms and then specifically limits the government's ability to infringe on those rights and freedoms.<sup>26</sup> The Canadian Charter of Rights and Freedoms enumerates the protected human rights and fundamental freedoms, defines the scope and application of the protections, and provides for remedies for violations of the rights or freedoms.<sup>27</sup>

The European Union Charter of Fundamental Rights provides for a range of political, social, and cultural rights at the provincial level.<sup>28</sup> According to its drafters, the European Charter's primary purpose is to consolidate recognized human rights across the European states and to draw attention to commonly recognized rights and freedoms.<sup>29</sup> The European Charter covers rights related to

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<sup>24</sup> U.N. Charter *of the United Nations*, UNITED NATIONS GENERAL ASSEMBLY, *available at* <http://www.un.org/aboutun/charter/> (last accessed Sept. 24, 2007). Various levels of government have enacted human rights charters. For example, the province of Victoria, Australia enacted the Victoria Charter of Human Rights and Responsibilities Act 2006, Act No. 43/2006, *available at* <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Your+Rights/Human+Rights/Human+Rights+Charter/> (last accessed Sept. 24, 2007).

<sup>25</sup> U.N. Charter *of the United Nations*, United Nations General Assembly.

<sup>26</sup> DEPARTMENT OF JUSTICE OF CANADA, FACT SHEET: THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS, DEPARTMENT OF JUSTICE OF CANADA, *available at* [http://canada.justice.gc.ca/en/news/fs/2003/doc\\_30898.html](http://canada.justice.gc.ca/en/news/fs/2003/doc_30898.html) (last accessed Sept. 24, 2007).

<sup>27</sup> DEPARTMENT OF JUSTICE OF CANADA, FACT SHEET: THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS, DEPARTMENT OF JUSTICE OF CANADA.

<sup>28</sup> *Q&A: Charter of Fundamental Rights*, BRITISH BROADCASTING SERVICE, June 16, 2003, *available at* <http://news.bbc.co.uk/1/hi/world/europe/1166218.stm> (last accessed Sept. 24, 2007).

<sup>29</sup> EUROPEAN COMMISSION, WHY DOES THE EU NEED A CHARTER OF FUNDAMENTAL RIGHTS?, EUROPEAN COMMISSION, *available at* [http://ec.europa.eu/justice\\_home/unit/charte/en/about-need.html](http://ec.europa.eu/justice_home/unit/charte/en/about-need.html) (last accessed Sept. 24, 2007).

dignity, freedoms, equality, solidarity, citizen's rights, and justice.<sup>30</sup> The Charter also provides for the scope and protection of the recognized rights.<sup>31</sup>

Recognizing the need to promote the protection of individual rights in the face of rapid provincial market development,<sup>32</sup> the Asian Human Rights Commission enacted the Asian Human Rights Charter. According to Article 2.1, the principles recognized in the Asian Charter provide a "broad framework for public policies within which . . . rights would be promoted."<sup>33</sup> The Asian Charter then enumerates an extensive list of human rights,<sup>34</sup> the responsibility of the governments to protect those rights,<sup>35</sup> provides for enforcement mechanisms,<sup>36</sup> and emphasizes the need for a legal framework to protect human rights and fundamental freedoms.<sup>37</sup>

### **Defining Human Rights Enforcement Mechanisms**

A third way to ensure the protection of human rights and fundamental freedoms is to include a provision for a human rights enforcement mechanism in a peace agreement. Such provisions may either establish new mechanisms for enforcement or apply existing mechanisms. State practice illustrates that peace agreements use several models for enforcement mechanisms. The mechanism's design and mandate determine its ability to uphold the rights and freedoms protected under the agreement. The parties charged with the design of these

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<sup>30</sup> EUROPEAN COMMISSION, THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION, EUROPEAN COMMISSION, *available at* [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) (last accessed Sept. 24, 2007).

<sup>31</sup> The Charter of Fundamental Rights of the European Union, European Commission.

<sup>32</sup> *Background to the Charter*, ASIAN HUMAN RIGHTS COMMISSION, BACKGROUND TO THE CHARTER, *available at* <http://material.ahrchk.net/charter/mainfile.php/declaration/79/> (last accessed Sept. 24, 2007).

<sup>33</sup> Asian Human Rights Charter, A Peoples' Charter, General Provisions, art. 2.1, *available at* <http://material.ahrchk.net/charter/pdf/charter-final.pdf> (last accessed Sept. 24, 2007).

<sup>34</sup> Asian Human Rights Charter, A Peoples' Charter art. 2.2 -15.3c. Specifically, the Asian Charter recognizes the rights to life, peace, democracy, cultural identity and the freedom of conscience, and development and social justice. In addition, the Charter recognizes the rights of vulnerable groups, women, children, differently-abled persons, workers, students, prisoners, and political detainees.

<sup>35</sup> Asian Human Rights Charter, A Peoples' Charter, General Provisions, art. 2.7.

<sup>36</sup> Asian Human Rights Charter, A Peoples' Charter, General Provisions, art. 15.4a – 16.2 .

<sup>37</sup> Asian Human Rights Charter, A Peoples' Charter, General Provisions, art. 15.4a – 15.4d.

mechanisms therefore often include specific provisions to establish how the mechanism will implement and enforce the peace agreement's provisions.

Many states provide for a human rights commission within the governmental structure.<sup>38</sup> Some agreements establish commissions with the broad mandate to ensure governmental application and compliance with the peace agreement's human rights provisions. Other agreements enumerate more specific and structured mechanisms and include provisions for a human rights ombudsman or an adjudicating body to hear and decide human rights cases.

### *Broadly Defined Human Rights Commissions*

Some agreements provide for a human rights commission with a broad mandate. This establishes a basic mechanism for ensuring the protection of human rights and fundamental freedoms without detailing the commission's specific structure and function.

The Good Friday Agreement requires the establishment of the Northern Ireland Human Rights Commission, widening the role of the previous standing commission on human rights.<sup>39</sup> The agreement outlines the general responsibilities of the new commission, including:

. . . 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.<sup>40</sup>

The agreement also calls on the Irish Government to establish a similar human rights commission, "with a mandate and remit equivalent to that within Northern Ireland."<sup>41</sup> Although the Good Friday Agreement does not detail the structure and function of these human rights commissions, it does provide for a

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<sup>38</sup> The following provides a brief overview of human rights commissions. For more information on human rights commissions see the Human Rights Commissions chapter of this guide.

<sup>39</sup> The Good Friday Agreement, Apr. 10, 1998, sec. 6, Provision 5.

<sup>40</sup> The Good Friday Agreement, Apr. 10, 1998, sec. 6, Provision 5.

<sup>41</sup> The Good Friday Agreement, Apr. 10, 1998, sec. 6, Provision 9.

joint committee composed of representatives from both human rights commissions.<sup>42</sup>

The Good Friday Agreement also establishes an Equality Commission to consolidate and replace the previously existing Fair Employment Commission, the Equal Opportunities Commission, the Commission for Racial Equality, and the Disability Council.<sup>43</sup> The specified mandate of the newly unified Equality Commission is to “advise on, validate and monitor the statutory obligation[s] and will investigate complaint of default.”<sup>44</sup>

### *Structured Human Rights Commissions*

Other peace agreements both establish a human rights commission and detail the structure of the commission. Many states provide for a human rights ombudsman, as well as some form of adjudicative authority to hear and decide on complaints of human rights violation.

Bosnia and Herzegovina’s Dayton Accords include detailed provisions relating to a human rights commission. The Bosnian model outlines a comprehensive human rights enforcement mechanism through the establishment of the Commission on Human Rights.<sup>45</sup> The Commission, whose mandate is “to assist [the parties] in honoring their obligations under this Agreement,”<sup>46</sup> consists of the Office of the Human Rights Ombudsman<sup>47</sup> and the Human Rights Chamber.<sup>48</sup>

Under the Bosnian Human Rights Commission structure, the Human Rights Ombudsman and Chamber enjoy specifically defined functions and powers. For example, the Dayton Accords provide that the Human Rights Ombudsman receives complaints alleging violations of human rights.<sup>49</sup> The Ombudsman then investigates the complaint, issues findings, and writes a report.<sup>50</sup> Based on this

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<sup>42</sup> The Good Friday Agreement, Apr. 10, 1998, sec. 6, Provision 10.

<sup>43</sup> The Good Friday Agreement, Apr. 10, 1998, sec. 6, Provision 6.

<sup>44</sup> The Good Friday Agreement, Apr. 10, 1998, sec. 6, Provision 6.

<sup>45</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 2, Part A, art. 2, and 3.

<sup>46</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 2, Part A, art. 2.1.

<sup>47</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 2, Part B, arts. 4, 5, and 6.

<sup>48</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 2, Part C, arts. 7, and 8.

<sup>49</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 2, Part B, art. 5.

<sup>50</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 2, Part B, art. 5.5- – 5.7.

report, the Ombudsman may decide to initiate proceedings in the Human Rights Chamber.<sup>51</sup>

According to the provisions of the Dayton Accords, the Human Rights Chamber may also accept applications for proceedings directly from individuals or organizations.<sup>52</sup> The agreement details the procedures of the Chamber and its jurisdiction, as well as specific provision for settlements before the Chamber.<sup>53</sup>

### **DARFUR PEACE AGREEMENT**

The 2006 Darfur Peace Agreement (DPA) enumerates specific human rights and freedoms that parties should guarantee. The DPA further requires parties to comply with relevant international conventions and treaties protecting those rights.

Article 3, section 24 of the DPA calls on the parties to “respect and promote human rights and fundamental freedoms” provided for in international conventions ratified by the Government of Sudan.<sup>54</sup> The Government of Sudan has ratified numerous international human rights treaties including the International Covenant on Economic, Social and Cultural Rights<sup>55</sup> and the Convention on the Rights of the Child.<sup>56</sup> Article 3, section 28 of the DPA declares that all parties should protect the political and civil rights protected in the International Covenant on Civil and Political Rights.<sup>57</sup>

The DPA also calls on the parties to guarantee several specifically enumerated rights. The enumerated rights include the right to marry,<sup>58</sup> the rights

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<sup>51</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 2, Part B, art. 5.7.

<sup>52</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 2, Part C, art. 8.

<sup>53</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 2, Part C, arts. 8-, 9, 10, 11, and 12.

<sup>54</sup> The Darfur Peace Agreement, art. 3, para. 24.

<sup>55</sup> International Covenant on Economic, Social and Cultural Rights, *available at* [http://www.unhchr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhchr.ch/html/menu3/b/a_cescr.htm) (last accessed Sept. 12, 2007) (ratified by Sudan on June 18, 1986).

<sup>56</sup> Convention on the Rights of the Child, *available at* <http://www.unhchr.ch/html/menu3/b/k2crc.htm> (last accessed Sept. 12, 2007) (ratified by Sudan on Aug. 3, 1990).

<sup>57</sup> International Covenant on Civil and Political Rights, *available at* <http://www.ohchr.org/english/law/ccpr.htm> (last accessed Sept. 13, 2007) (ratified by Sudan Sept. 18, 1986).

<sup>58</sup> The Darfur Peace Agreement, art. 3, para. 28(b).

of children,<sup>59</sup> the prohibition of slavery,<sup>60</sup> freedom of movement,<sup>61</sup> and the equal right to safe drinking water.<sup>62</sup> The DPA also specifically enumerates specific rights for traditional tribes<sup>63</sup> and for internally displaced peoples.<sup>64</sup>

## **SAMPLE LANGUAGE**

### **Establishment and Definition of Rights and Freedoms**

#### *Invocation of International Human Rights Treaties and Covenants*

#### **Article XXX**

The rights and freedoms set forth in [list applicable international conventions and treaties] shall apply directly in The Republic of the Sudan. Other internationally recognized human rights instruments enacted into law by the legislature shall also apply. These rights and freedoms shall have priority over all other law.<sup>65</sup>

**OR**

#### **Article XXX**

The Republic of the Sudan undertakes to ensure respect for and observance of human rights and fundamental freedoms in Sudan; to support the right of all Sudanese 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.<sup>66</sup>

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<sup>59</sup> The Darfur Peace Agreement, art. 3, para. 28(e).

<sup>60</sup> The Darfur Peace Agreement, art. 3, para. 30.

<sup>61</sup> The Darfur Peace Agreement, art. 3, para. 34.

<sup>62</sup> The Darfur Peace Agreement, art. 17, para. 97(c).

<sup>63</sup> The Darfur Peace Agreement, art. 20, para. 158.

<sup>64</sup> The Darfur Peace Agreement, art. 21.

<sup>65</sup> This language is drawn from the Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch.1, art. VI. ,

<sup>66</sup> This language is drawn from The Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia, Oct. 23, 1991, art. 3.2.

**OR**

*Enumeration of Specific Human Rights*

**Article XXX**

In addition to the commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community, all parties to the Agreement further affirm 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 [this list may also include any other enumerated human rights agreed to by the parties].<sup>67</sup>

**OR**

*Combination Invocation/Enumeration Approach*

**Article XXX**

All parties to the agreement must ensure the rights and duties proclaimed and guaranteed inter alia by the [the parties may include any and all international conventions and treaties agreed to by the parties] shall form an integral part of the Interim Constitution of The Republic of the Sudan [do you want to put Constitution of Sudan, or Interim Constitution?]. These fundamental rights shall not be limited or derogated from, except in justifiable circumstances acceptable in international law and set forth in the Interim Constitution.<sup>68</sup>

**OR**

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<sup>67</sup> The Good Friday Agreement, Apr. 10, 1998, sec. 6, Provisions 2, 4, and 9.

<sup>68</sup> This language is drawn from the Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, ch. 1, art. 3.1.

## **Article XXX**

- (1) 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 [the parties may include any and all international conventions and treaties agreed to by the parties] and the other international agreements agreed to by the parties. These include:
  - (a) The right to life.
  - (b) The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
  - (c) The right not to be held in slavery or servitude or to perform forced or compulsory labor.
  - (d) The rights to liberty and security of person.
  - (e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
  - (f) The right to private and family life, home, and correspondence.
  - (g) Freedom of thought, conscience and religion.
  - (h) Freedom of expression.
  - (i) Freedom of peaceful assembly and freedom of association with others.
  - (j) The right to marry and to found a family.
  - (k) The right to property.
  - (l) The right to education.
  - (m) The right to liberty of movement and residence.
  - (n) 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.
  - (o) [The parties may enumerate any rights they see fit].<sup>69</sup>

**AND**

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<sup>69</sup> This language is drawn from The Dayton Accords, Dec. 15, 1995, Annex 6, ch. 1, art. I.

## **Human Rights Charters**

### **Article XXX**

- (1) **Guarantee of Rights and Freedoms:** The Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
- (2) **Fundamental Freedoms:** Everyone has the following fundamental freedoms:
  - (a) Freedom of conscience and religion;
  - (b) Freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication;
  - (c) Freedom of peaceful assembly; and
  - (d) Freedom of association.
- (3) **Democratic Rights:** Every citizen of The Republic of Sudan has the right to vote in an election of members of the legislature and to be qualified for membership therein.
- (4) **Mobility Rights**
  - (a) Every citizen of The Republic of the Sudan has the right to enter, remain in and leave Sudan.
  - (b) Every citizen of The Republic of the Sudan and every person who has the status of a permanent resident of Sudan has the right
    - (i) to move to and take up residence in any province; and
    - (ii) to pursue the gaining of a livelihood in any province.
- (5) **Equality Rights**
  - (a) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.
  - (b) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, color, religion, sex, age or mental or physical disability.

- (6) Other Rights: [The parties may enumerate additional rights as they see fit].
- (7) This chapter applies:
  - (a) To the [Government and relevant legislative bodies in The Republic of Sudan] in respect of all matters within the authority of legislature including all matters relating to Darfur; and
  - (b) To the legislature and government of each province in respect of all matters within the authority of the legislature of each province.<sup>70</sup>

**OR**

### **Article XXX**

- (1) The Republic of the Sudan is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities and by creating an area of freedom, security, and justice.
- (2) The Republic of the Sudan therefore recognizes the rights, freedoms, and principles set out hereafter:
  - (a) Human Dignity: Human dignity is inviolable. It must be respected and protected.
  - (b) Right to life: Everyone has the right to life.
  - (c) [The parties may include any and all rights agreed to by the parties]<sup>71</sup>

**AND**

### **Incorporating Rights and Freedoms into Domestic Legal Frameworks**

### **Article XXX**

All authorities in The Republic of the Sudan shall ensure internationally recognized human rights and fundamental freedoms.<sup>72</sup> Additionally, all

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<sup>70</sup> This language is drawn from the Canadian Charter of Rights and Freedoms (1982), *available at* <http://laws.justice.gc.ca/en/charter/> (last accessed Sept. 19, 2007).

<sup>71</sup> This language is drawn from EUROPEAN COMMISSION, THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (2000).

<sup>72</sup> Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 1, art. VI.

courts, agencies, governmental institutions, and other public institutions of the Sudan or operating in relation to the Sudan shall conform to these human rights and fundamental freedoms.<sup>73</sup>

**AND**

### **Defining Human Rights Enforcement Mechanisms**

#### **Article XXX**

The Parties shall establish a Human Rights Commission, which will be tasked with 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 legislature; and, in appropriate cases, bringing court proceedings or providing assistance to individuals doing so.<sup>74</sup>

**OR**

#### **Article XXX**

The Parties shall establish a Commission on Human Rights.<sup>75</sup> The Commission shall have the mandate to assist the parties in honoring their obligations under this Agreement.<sup>76</sup>

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<sup>73</sup> This language is drawn from the Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 1, art. VI.

<sup>74</sup> This language is drawn from the Good Friday Agreement, Apr. 10, 1998, sec. 6, Provision 5.

<sup>75</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 2, Part A, arts. 2, and 3.

<sup>76</sup> The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 2, Part A, arts. 2.1.