

# IMPLEMENTATION

## INTRODUCTION

This chapter discusses the core elements that negotiators may consider with respect to the implementation of a peace agreement. This chapter also discusses the provisions relating to the implementation of the 2006 Darfur Peace Agreement (DPA). In addition, this chapter provides sample language for future implementation provisions.

The degree of constitutional change that a government undertakes following a conflict depends on the nature of the conflict and the preexisting governmental structure. An agreement resulting from a civil war might require the state to enact revisions to the existing constitution or to adopt an entirely new constitution.

## CORE ELEMENTS

### **Clear Statement Regarding the Role of the Constitution**

The adoption of a new constitution – or the amendment of an existing one – represents an important event in the development of the state’s legal and social norms. A clear statement (preferably with an enforcement mechanism)<sup>1</sup> that the constitution represents the supreme law of the land builds respect for the rule of law and increases the legitimacy of the constitution and the government. The constitutions of Albania,<sup>2</sup> South Africa,<sup>3</sup> and Ukraine<sup>4</sup> clearly state the supremacy of constitution in law.

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<sup>1</sup> IRELAND CONST. art. 26, sec. 1, (1937), *available at* <http://constitution.ie/reports/ConstitutionofIreland.pdf> (last accessed Sept. 20, 2007); SOUTH AFRICA CONST. chap. 1, sec. 2, (1996), *available at* <http://www.info.gov.za/documents/constitution/1996/96cons1.htm#2> (last accessed Sept. 19, 2007). The Irish Constitution establishes mechanisms for the judicial review of certain legislation that is passed by both houses of the National Legislature. After consulting the Council of State, the President may refer legislation “repugnant to this Constitution” to the Supreme Court. The South African Constitution provides mechanisms, such as the Public Protector and the South African Human Rights Commission, to protect and enforce the Constitution.

<sup>2</sup> ALBANIA CONST. art. 4, para. 2, (1998), *available at* [www.president.al/english/pub/doc/Albanian%20Constitution.pdf](http://www.president.al/english/pub/doc/Albanian%20Constitution.pdf) (last accessed Sept. 19, 2007).

<sup>3</sup> SOUTH AFRICA CONST. chap. 1, sec. 2 (1996).

In addition to advancing these general goals, the parties' stated dedication to a strong constitution also helps to facilitate successful peace negotiations. It will also reassure minorities that the ruling party's power will be constrained by the new government.

### **Statement of Democratic Principles**

A strong constitution based on democratic principles may help to ensure a stable and enduring government. Including a statement of democratic principles in the peace agreement also provides a starting point for the development of a democratic society. Documents like the Constitution of South Africa<sup>5</sup> recognize that democratic principles will play an important role in determining how government will go forward.

Unlike other important values (for example, human rights), it is necessary to reiterate the importance of democracy in the peace agreement itself, since this principle will guide the constitutional reform process from which all other substantive values will emerge. The principles set forth in the peace agreement establish a floor for the accountability of the government to its people.

### **Substantive Changes to the Constitution**

Many peace agreements include provisions that make substantive changes to a state's constitution. These include provisions that detail new rights for the state's citizens, new structures for the government, or power sharing arrangements between groups within the state.

Peace negotiations present opportunities to negotiate substantial changes to the structure of government, since an agreement plays a significant role in defining the post-conflict state and since it might be difficult for the parties to engage in such fundamental change in the future.

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<sup>4</sup> UKRAINE CONST. art. 8, (1980), *available at* <http://www.rada.gov.ua/const/conengl.htm#r1> (last accessed Sept. 19, 2007).

<sup>5</sup> SOUTH AFRICA CONST. Preamble (1996) ("We therefore . . . lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law.").

The Ohrid Agreement between the Government of Macedonia and ethnic Albanian rebel groups illustrates how peace agreements may work to accelerate constitutional change. The Ohrid Agreement required that the parties present the agree-on constitutional amendments to the Assembly for implementation “immediately.”<sup>6</sup> The agreement said that the parties would “take all measures to assure adoption of these amendments within 45 days”<sup>7</sup> of signing the agreement.

Substantive provisions may also make the peace agreement more effective by curbing potential abuses of power and guaranteeing citizens basic rights and living conditions. While it is possible for the parties to accomplish these goals in the agreement itself, constitutional changes are more enduring and authoritative than the clauses in an agreement.

### **DARFUR PEACE AGREEMENT**

The 2006 Darfur Peace Agreement (DPA) requires the National Constitutional Review Commission to incorporate the text of the agreement into the Interim National Constitution.<sup>8</sup> The DPA also provides for the establishment of the Darfur Assessment and Evaluation Commission (DAEC), charged with promoting the implementation of the agreement’s power sharing provisions.<sup>9</sup> The DAEC also must assess, evaluate, and resolve difficulties that arise during the implementation process.<sup>10</sup> The composition of the DAEC includes: (1) three representatives from the Government of Sudan, “including the Advisor to the President on matters relating to Darfur,”<sup>11</sup> and (2) three representatives from the SLM/A and the JEM.<sup>12</sup>

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<sup>6</sup> The Ohrid Agreement, art. 8, sec. 1, Aug. 13, 2001, *available at* [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/police\\_and\\_internal\\_security/OHRID%20Agreement%2013august2001.asp](http://www.coe.int/t/e/legal_affairs/legal_co-operation/police_and_internal_security/OHRID%20Agreement%2013august2001.asp) (last accessed Sept. 19, 2007).

<sup>7</sup> The Ohrid Agreement, art. 8, sec. 1.

<sup>8</sup> Darfur Peace Agreement, art. 32, sec. 504, May 5, 2006, *available at* [http://www.unmis.org/english/2006Docs/DPA\\_ABUJA-5-05-06-withSignatures.pdf](http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf) (last accessed Sept. 19, 2007).

<sup>9</sup> Darfur Peace Agreement, art. 33, para. 511.

<sup>10</sup> Darfur Peace Agreement, art. 33, para. 515, sec. a.

<sup>11</sup> Darfur Peace Agreement, art. 33, para. 512, sec. a.

<sup>12</sup> Darfur Peace Agreement, art. 33, para. 512, sec. b.

To fulfill its responsibilities, the DAEC shall maintain contacts with regional and international organizations to ensure their cooperation.<sup>13</sup> In addition to these organizations, the DAEC maintains close contacts with the parties to “promote full compliance . . . and facilitate the Parties’ efforts toward that end.”<sup>14</sup>

The mechanism for implementing the wealth sharing provisions is the Fiscal and Financial Allocation and Monitoring Commission (FFAMC), an independent institution approved by the President.<sup>15</sup> The FFAMC is in charge of allocating of resources as agreed upon in the DPA.<sup>16</sup> In order to ensure its independence, the President shall appoint an independent panel of experts recommended by the FFAMC, to monitor its activities.<sup>17</sup> The Commission must submit a report outlining policy recommendations to the President, which the President shall then submit to the national legislature for approval.<sup>18</sup>

### SAMPLE LANGUAGE

#### **Article XXX**

##### **Statement of Democratic Principles**

The Parties shall implement the provisions of this agreement through good governance, accountability, transparency, democracy, and the rule of law at all levels of government to achieve lasting peace.<sup>19</sup>

#### **Article XXX**

##### **Party Action**

The Parties to this agreement shall take the necessary steps [The necessary steps depend on the available procedures the Government of Sudan uses to amend the Constitution.] to adopt its provisions into the Constitution.<sup>20</sup>

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<sup>13</sup> Darfur Peace Agreement, art. 33, para. 515, secs. e-f.

<sup>14</sup> Darfur Peace Agreement, art. 33, para. 515, sec. d.

<sup>15</sup> Darfur Peace Agreement, art. 18, para. 120.

<sup>16</sup> Darfur Peace Agreement, art. 18, para. 120.

<sup>17</sup> Darfur Peace Agreement, art. 18, para. 121.

<sup>18</sup> Darfur Peace Agreement, art. 18, para. 122.

<sup>19</sup> This language is drawn from the chapter 2, part 1, section 4.5 of the Comprehensive Peace Agreement between the Government of Sudan and the rebel groups of South Sudan.

<sup>20</sup> This language is drawn from the Ohrid Agreement between the Government of Macedonia and ethnic Albanian Rebel Groups, art. 8.1. The Belfast Agreement (also known as the Good

## **Article XXX**

### **Implementing Authority**

The Implementing Authority shall [ensure, promote, or facilitate] the implementation of the agreement. The Implementing Authority shall also [monitor, evaluate] the implementation of the agreement [the Implementing Authority may also make recommendations regarding the agreement's implementation].<sup>21</sup>

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Friday Agreement) also required the Government of Ireland to follow its constitutional procedures and amend its constitution in order to comply with the accord's provisions. The Good Friday Belfast Agreement, Strand Three, Validation, Implementation and Review, para. 2, (April 10, 1998), *available at* <http://www.nio.gov.uk/agreement.pdf> (last accessed Sept. 17, 2007).

<sup>21</sup> This language is drawn from the Darfur Peace Agreement, art. 33, para. 511 & art. 18, para. 120. The mechanism language establishing the FFAMC, structures the organization "in order to ensure" the completion of its objectives. The FFAMC also makes recommendations to the Government of Sudan in regards to the wealth sharing provisions. The DAEC, on the other hand, must "promote" the DPA's implementation. The language in the South Sudan Comprehensive Peace Agreement requires the establishment of an "independent Assessment and Evaluation Commission...to monitor the implementation of the Peace Agreement during the Interim Period." Comprehensive Peace Agreement, chap. 1, The Right to Self-Determination for the People of South Sudan, sec. 2.4.