Peace Agreement Drafting Guide: Darfur

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PEACE AGREEMENT DRAFTING GUIDE:

DARFUR

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About the Public International Law & Policy Group

The Public International Law & Policy Group, a 2005 Nobel Peace Prize nominee, is a non-profit organization, which operates as a global pro bono law firm providing free legal assistance to states and governments involved in peace negotiations, drafting post-conflict constitutions, and prosecuting war criminals. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution.

PILPG’s four primary practice areas are:

- Peacebuilding
- War Crimes
- Post-Conflict Political Development
- Public International Law

To provide pro bono legal advice and policy formulation expertise, PILPG draws on the volunteer services of over sixty former legal advisors and former Foreign Service officers from the US Department of State and other foreign ministries. PILPG also draws on pro bono assistance from major international law firms including Covington & Burling; Curtis, Mallet-Prevost, Colt and Mosle; DLA Piper Rudnick; Steptoe & Johnson; Sullivan & Cromwell; Vinson & Elkins; Wilmer, Cutler & Pickering; and graduate international affairs and law students at American University and Case Western Reserve Schools of Law. Annually, PILPG is able to provide over $10 million worth of pro bono international legal services.

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PILPG was founded in London in 1995 and moved to Washington, D.C. in 1996, where it operated under the auspices of the Carnegie Endowment for International Peace for two years. PILPG currently maintains an association with American University in Washington, D.C., and Case Western Reserve University in Cleveland, Ohio. In July 1999, the United Nations granted official Non-Governmental Organizations status to PILPG.

In January 2005, a half dozen of PILPG’s pro bono clients nominated PILPG for the Nobel Peace Prize for “significantly contributing to the promotion of peace throughout the globe by providing crucial pro bono legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice.”
NOTE FOR USERS

The Public International Law & Policy Group’s (PILPG) Peace Agreement Drafting Guide: Darfur is a comprehensive peace agreement drafting book tailored to the upcoming Darfur peace negotiations.

The chapters of the Peace Agreement Drafting Guide: Darfur are organized alphabetically for ease of use. Within each chapter, the user will find analysis of the core elements of each topic, a summary of the 2006 Darfur Peace Agreement language related to the topic, and sample language the parties may wish to consider.

For more information about the Peace Agreement Drafting Guide: Darfur or PILPG’s peace-negotiation capabilities, please contact Christina J. Sheetz at csheetz@pilpg.org or Matthew T. Simpson at msimpson@pilpg.org.
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- Implementation Mechanisms
- International Cooperation and Support

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ANTI-CORRUPTION AGENCIES

INTRODUCTION

This chapter presents an overview of the models states use to establish an anti-corruption agency. This chapter also outlines the Darfur Peace Agreement provisions related to anti-corruption agencies and provides sample language parties may wish to consider when drafting provisions creating an anti-corruption agency.

States respond to corruption in various ways based on their needs and the particular governmental framework. The term “anti-corruption agency” is broadly used to describe institutions established to reduce corruption within a state. Anti-corruption agencies are also known as Public Integrity Commissions.

The structures and powers of anti-corruption agencies and commissions vary greatly from state to state. Most states use models that incorporate one or more of five key functions: (1) investigatory powers; (2) education and public awareness; (3) corruption prevention; (4) prosecution; and (5) coordination of related activities among government entities.

The Darfur Peace Agreement (DPA) does not explicitly establish an anti-corruption agency. However, the DPA does provide for the establishment of the Fiscal and Financial Allocation and Monitoring Commission (FAMC).1 The FAMC is responsible for coordinating shared revenue between Darfur and the Government of Sudan.2 The FAMC is an independent and autonomous institution with transparent processes.3 In addition to the establishment of the FAMC, the DPA requires Darfur to report expenditures on a periodic basis and ensure transparency in financial transactions.4

2 Darfur Peace Agreement, art. 18, para. 120.
3 Darfur Peace Agreement, art. 18, paras. 123, 126.
4 Darfur Peace Agreement, art. 18, para. 133.
CORE ELEMENTS

International Framework for Anti-Corruption Efforts

The non-governmental organization, Transparency International, defines corruption as the “misuse of entrusted power for private gain.”\(^5\) Corruption exists in industrialized and developing states alike, discrediting the belief that corruption is merely a stage of development.

In the last decade, many international organizations established anti-corruption instruments to fight and prevent corruption. These instruments include the UN Convention against Corruption,\(^6\) the Inter-American Convention against Corruption,\(^7\) the European Union Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union,\(^8\) and the African Union Convention on Preventing and Combating Corruption,\(^9\) amongst others. Through various means and mechanisms, each of these instruments seek to prevent, detect, and punish corruption in either the public or private sector or both. Member states of these conventions and institutions aim to work together to deter and punish corruption.

In some cases, anti-corruption strategies address specific industries or activities. The Extractive Industries Transparency Initiative (EITI) represents one such sectoral approach. EITI supports improved governance in resource-rich countries through the full publication and verification of company payments and

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government revenues from oil, gas, and mining. Some 20 countries either endorse or are now actively implementing EITI standards around the world.\textsuperscript{10}

Similarly, the Middle East and North Africa Financial Action Task Force (MENAFATF) is a voluntary regional body that combats money laundering and the financing of terrorist activities through financial systems. The MENAFATF complements the Financial Action Task Force created at the G-7 summit in Paris in 1989.\textsuperscript{11}

These international instruments and sectoral approaches provide helpful frameworks for states’ anti-corruption strategies. Controlling corruption, however, involves establishing comprehensive national solutions that involve all the affected parties in the particular state. A systematic assessment of the local socio-political and cultural context, and the particular needs and priorities of the state may be necessary when establishing an anti-corruption agency.\textsuperscript{12}

A number of international organizations contribute to anti-corruption efforts worldwide. Transparency International provides assistance to states involved in the design and application of national anti-corruption reform measures.\textsuperscript{13} Transparency International also supports the establishment of country-specific offices to facilitate state-based solutions to corruption problems.\textsuperscript{14} In its efforts to

\textsuperscript{10} EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE, ABOUT EITI, \textit{available at} http://www.eitransparency.org/section/abouteiti (last accessed Sept. 23, 2007).


\textsuperscript{13} TRANSPARENCY INTERNATIONAL, \textit{ANTI-CORRUPTION HANDBOOK}, \textit{available at} http://www.transparency.org/policy_research/ach (last accessed Sept. 29, 2007).

\textsuperscript{14} Civil society in a number of states in the Middle East and North Africa has established local Transparency International branches. Unfortunately, many believe these efforts have not been effective because of the unwillingness of governments to allow civil society to hold public officials accountable. UNITED NATIONS DEVELOPMENT PROGRAMME-PROGRAM ON
aid state development of anti-corruption mechanisms, the World Bank encourages the use of diagnostic tools for assessing government performance.\textsuperscript{15}

These organizations, among others, propose that corruption is not a necessary stage of development but rather a phenomenon that occurs in both developing and industrialized states alike.\textsuperscript{16} Based on the research and study of these organizations, effective anti-corruption measures involve high levels of transparency and accountability and a strong political will at all levels of government and in a society as a whole.\textsuperscript{17}

\textbf{Independence of an Anti-Corruption Agency}

The independence of an anti-corruption agency is fundamental to its success. Independence from the government can allow the agency to resist the influence of individuals or groups with specific agendas (political or otherwise) that may be in conflict with the interests of government transparency and accountability. Some states have constitutional provisions that guarantee an anti-corruption agency’s independence. Others implement institutional safeguards to counter the possibility of undue influence and the potential for imbalances of power (such as the appointment of agency members by more than one branch of government). Others design oversight mechanisms to ensure the unbiased functioning of corruption agencies. These functions include specific reporting requirements as well as monitoring by multiple parties.

Hong Kong is one instance illustrating the independence of an anti-corruption agency. Institutional safeguards and a legal mandate guarantee the independence of Hong Kong’s Independent Commission against Corruption (ICAC).\textsuperscript{18} Legislation and the Hong Kong Constitution guarantee this

\footnotesize{16 TRANSPARENCY INTERNATIONAL, ANTI-CORRUPTION HANDBOOK.}
\footnotesize{17 TRANSPARENCY INTERNATIONAL, ANTI-CORRUPTION HANDBOOK.}
independence. In addition, while the Commission reports directly to Hong Kong’s Chief Executive, four independent committees monitor the activities of the ICAC. These committees include representatives from civil society and an independent ICAC Complaints Committee, which reviews all complaints against the Commission itself.

Australia/New South Wales, Latvia, and South Korea also use institutional mechanisms to ensure the independence of their states’ anti-corruption agencies. In Australia/New South Wales, a multi-party Parliamentary Joint Committees monitors and oversees the activities of the Independent Commission against Corruption and guarantees that the commission does not abuse its autonomy. In Latvia and South Korea, different branches of government share the selection and appointment of anti-corruption agency staff. In Latvia, the Parliament appoints the head of the anti-corruption agency after a recommendation by the Executive Cabinet. The President of South Korea appoints the Chairman and standing members of the agency, and Parliament and the Chief Justice recommend three members each.

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24 UNDP, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.
Like Hong Kong and Australia/New South Wales, other states also enhance their agencies’ reach, as well as its independence from undue influence, by requiring the submission of regular reports to multiple government authorities. Indonesia’s Commission for the Eradication of Corruption\(^\text{26}\) must submit reports to the President, the National Assembly, and the State Auditor.\(^\text{27}\) Lithuania’s Special Investigative Service\(^\text{28}\) submits annual reports to both the President and Parliament.\(^\text{29}\)

**Investigation Authority**

Anti-corruption agencies in most states primarily serve an investigative role. The investigatory powers of an anti-corruption agency vary by state from broad to limited in scope. For example, an agency’s powers often include the examination of the assets of public officials or the processes for procurement by government bodies, and may extend into the private sector. This investigatory power may also need the approval of another government entity, and effective investigation can require safeguards to protect individuals reporting abuses. As a result, most of these agencies have a process for assessing whether or not to initiate an investigation.

**Scope of Investigatory Powers**

The scope of state investigatory powers varies greatly by state. Both Singapore and Hong Kong have anti-corruption agencies with broad powers. Singapore’s Corrupt Practices Investigation Bureau (CPIB)\(^\text{30}\) has broad discretionary powers and investigatory authority. The powers of the CPIB include

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\(^{27}\) **UNDP, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY,** 2005.

\(^{28}\) **REPUBLIC OF LITHUANIA, SPECIAL INVESTIGATION SERVICE** website, *available at* \text{http://www.stt.lt/?lang=en} (last accessed Sept. 29, 2007).


the right to seize the assets of civil servants accused of corruption and the authority to establish the terms and conditions of punishment.\textsuperscript{31} Similar to Singapore, in Hong Kong the Independent Commission against Corruption (ICAC) is an agency with the broad authority to investigate and pursue corruption in both the public and private sectors.

In contrast, Lithuania’s Special Investigative Service (SIS) authority is limited in scope. The SIS may only investigate potential corruption among state officials and civil servants, but, unlike the Hong Kong ICAC, it may not explore misconduct in the private sector.\textsuperscript{32}

\textit{Approval Prior to Investigation}

Some states require agencies to obtain the approval of another government or judicial entity to exercise investigatory authority. Although Singapore’s Corrupt Practices Investigation Bureau (CPIB) has broad authority to investigate allegations of corruption, before beginning an investigation the investigating officer must first seek prior written approval from the state Prosecutor.\textsuperscript{33} In addition, the CPIB must seek the consent of the Prime Minister or the President to investigate high-level officials, such as Ministers.\textsuperscript{34} Likewise, in Tanzania an investigation officer must first obtain the approval of the head of the respective anti-corruption agency before initiating an investigation.\textsuperscript{35}

In contrast to Singapore and Tanzania, Hong Kong’s ICAC must investigate every report of alleged corruption that it receives and does not have to seek or

\begin{footnotes}
\item[31] John R. Heilbrunn, \textit{WORLD BANK INSTITUTE, ANTI-CORRUPTION COMMISSIONS PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION?}
\item[33] \textit{UNDP, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY}, 2005.
\item[35] \textit{UNDP, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY}, 2005.
\end{footnotes}
obtain the approval of any other government office. This gives Hong Kong’s Commission against Corruption greater independence than the agencies of Singapore and Tanzania.

**Monitoring of Public Assets and Procurement**

Most anti-corruption investigative units also monitor the asset declarations of public officials and/or oversee government procurement procedures. The purpose of obtaining public officials’ asset declarations is to identify what wealth is not attributable to illegitimate income, gift, or loan. In many states, such as Lithuania, the anti-corruption agency works in conjunction with a governmental office charged with registering these asset declarations. Specifically, the Lithuanian Special Investigative Service works with the Chief Officials Ethics Commission to analyze the integrity of the disclosure of all income and assets declarations by public officials.

Some Arab states have implemented rigorous monitoring mechanisms to supervise public procurement procedures. In Jordan, the General Supplies Department of the Ministry of Finance regulates all public procurement by government departments in accordance with the Supply Act 32 of 1993. Egypt’s Law on Organizing Tenders and Bids, likewise, applies to all public tenders and procurement. In 2003, Egypt’s General Organization for the Governmental Services took charge of all the Public Procurement Tenders on behalf of five ministries, including those of Finance, Trade, and Industry. According to Bahrain’s Public Tenders Law, the Council for Tenders audits the allocation of all

36 UNDP, REGIONAL CENTRE IN BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.
37 Where resources are limited, states have only required disclosure of assets from specific public officials (for instance, only elected or appointed officials, high-level civil servants, or those employed in sectors prone to high levels of corruption). TRANSPARENCY INTERNATIONAL, NATIONAL INTEGRITY SYSTEMS COUNTRY STUDY REPORT – LITHUANIA, 2001.
40 UNDP, FIGHTING CORRUPTION, EGYPT COUNTRY PROFILE.
government contracts. Members of the Council and their relatives cannot bid for government contracts.

*Mechanisms for Reporting Corruption*

Mechanisms to facilitate public access to the anti-corruption agency for sharing of information, and measures to guarantee ease of reporting help ensure that the anti-corruption agency can effectively investigate corruption. However, fear of reprisal can impede public involvement in anti-corruption efforts.

Many states have therefore instituted anonymous reporting practices. Moreover, many anti-corruption agencies have direct legislative mandates to protect witnesses and whistleblowers. To ensure accessibility to its citizenry, the Hong Kong ICAC established regional district offices throughout the state. Similarly, to enhance ease of reporting, South Korea has established a Corruption Report Center.

*Education and Public Awareness Activities*

Raising public awareness about corruption and anti-corruption efforts may enhance the success of an anti-corruption strategy. Many anti-corruption agencies use public awareness campaigns to increase citizens’ understanding of the importance of reporting and denouncing corruption. These campaigns also serve as useful tools to monitor public perceptions about corruption.

Hong Kong’s ICAC has implemented a vigorous public awareness campaign as part of its anti-corruption strategy. The ICAC uses press releases, public

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42 UNDP, *FIGHTING CORRUPTION, BAHRAIN COUNTRY PROFILE*.
43 The term “whistleblower” refers to an informant, most often an employee, who reports employer misconduct.
46 María del Mar Landette, *COMBATING CORRUPTION: WHAT THE ECUADORIAN ANTI-CORRUPTION AGENCY CAN LEARN FROM INTERNATIONAL GOOD PRACTICE*. 

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information announcements, interviews, documentaries, posters, informational leaflets, and cooperation with schools and universities to convey an anti-corruption message to the public.\textsuperscript{47} Similarly, the Australia/New South Wales Independent Commission against Corruption regularly holds public meetings to expose corruption.\textsuperscript{48} Botswana’s Directorate on Corruption and Economic Crimes (DCEC) uses the media to promote public awareness and educational campaigns.\textsuperscript{49}

**Prevention Activities**

Many states’ anti-corruption agencies are required to implement preventative measures as part of the respective state’s anti-corruption strategy. Such measures include reviewing the practices and procedures of government departments to facilitate the discovery of corruption and to assist in the revision of work procedures that may lead to corruption.

The Hong Kong ICAC has an extensive mandate to prevent corruption. The ICAC provides guidance to government offices and institutions on ways in which they can eliminate corrupt practices. The ICAC also advises the heads of government departments of changes in practices or procedures that they can implement to reduce corrupt practices.\textsuperscript{50}

Botswana’s DCEC is required to examine the practices and procedures of public agencies and advise public officials on the means to eliminate the potential for corrupt activities.\textsuperscript{51} The DCEC created a specialized body, the Corruption Prevention Group (CPG), to carry out these preventative objectives. The mission of the CPG is to identify areas in government that are particularly susceptible to corrupt transactions, such as purchasing and contract bidding. The CPG also

\textsuperscript{47} UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.
\textsuperscript{48} UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.
\textsuperscript{50} UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.
\textsuperscript{51} TRANSPARENCY INTERNATIONAL, NATIONAL INTEGRITY SYSTEMS COUNTRY STUDY REPORT – BOTSWANA, 2001.
advises government leadership on work practices that limit the potential for corruption.52

Some states, such as Australia/New South Wales, have anti-corruption agencies that focus primarily on corruption prevention and only reserve limited resources for investigation. While the Australia/New South Wales Independent Commission against Corruption maintains an investigation unit, corruption prevention is the primary focus of the agency. The ICAC disseminates information to government offices and to the public about the costs of corruption.53 Similarly, the mandate of the United States Office of Government Ethics (OGE)54 is to deter conflicts of interest by disseminating information on laws and regulations that govern public sector employment.55 Accordingly, the OGE defines corrupt practices and informs public servants about United States’ laws to prevent corruption.56 The OGE has no investigative capacity. Rather, the role of the OGE is entirely preventative and aimed at improving bureaucratic understanding of laws and regulations.

A limited number of states’ anti-corruption agencies may also enhance prevention by proposing amendments to laws and regulations. For instance, the Corruption Prevention and Combating Bureau in Latvia and the SIS in Lithuania may review legislation and make proposals for review.57 The SIS in Lithuania also has the power to propose legislation to the President and the Parliament.58

Prosecution Authority

52 Maria del Mar Landette, COMBATING CORRUPTION: WHAT THE ECUADORIAN ANTI-CORRUPTION AGENCY CAN LEARN FROM INTERNATIONAL GOOD PRACTICE.
53 John R. Heilbrunn, WORLD BANK INSTITUTE, ANTI-CORRUPTION COMMISSIONS PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION?
55 John R. Heilbrunn, WORLD BANK INSTITUTE, ANTI-CORRUPTION COMMISSIONS PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION?
56 John R. Heilbrunn, WORLD BANK INSTITUTE, ANTI-CORRUPTION COMMISSIONS PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION?
57 UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.
State practice shows that a limited number of anti-corruption agencies also assume responsibility for the prosecution of cases of corruption. The authority of an anti-corruption agency to prosecute cases of corruption can be important if a state does not have an adequate prosecution system. This is in part because, in such instances, the anti-corruption agency may be the only functioning body with sufficient independence to bring a case to court.\textsuperscript{59}

Tanzania and Botswana are two states that endow their anti-corruption agencies with the power to prosecute cases of corruption. In Tanzania, the Prevention of Corruption Bureau (PCB)\textsuperscript{60} may prosecute cases with the approval of the Director for Public Prosecution.\textsuperscript{61} Botswana’s Constitution requires the Attorney General to oversee all criminal prosecutions. However, due to a heavy workload, the responsibility to prosecute cases of corruption has shifted to the DCEC.\textsuperscript{62}

In most states, prosecution of corruption cases remains the responsibility of the judiciary. For instance, Singapore’s Corrupt Practices Investigation Bureau (CPIB) cannot prosecute a suspect on its own. It can only investigate and present evidence to the Singapore Attorney General. The Attorney General then decides whether to prosecute the case.\textsuperscript{63} The Hong Kong ICAC cannot prosecute cases; instead, it presents evidence to the state’s Secretary of Justice who then makes a decision regarding prosecution.\textsuperscript{64} Similarly, the United States OGE submits any evidence of misconduct to the state’s Department of Justice for further investigation and prosecution.\textsuperscript{65}

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\textsuperscript{59} UNDP, \textsc{Regional Centre Bangkok, Institutional Arrangements to Combat Corruption: A Comparative Study}, 2005.  \\
\textsuperscript{60} Tanzania Prevention of Corruption Bureau, \textit{available at} http://www.tanzania.go.tz/pcb/ (last accessed Sept. 23, 2007).  \\
\textsuperscript{61} UNDP, \textsc{Regional Centre Bangkok, Institutional Arrangements to Combat Corruption: A Comparative Study}, 2005.  \\
\textsuperscript{62} UNDP, \textsc{Regional Centre Bangkok, Institutional Arrangements to Combat Corruption: A Comparative Study}, 2005.  \\
\textsuperscript{63} Maria del Mar Landette, \textsc{Combating Corruption: What the Ecuadorian Anti-Corruption Agency Can Learn from International Good Practice}.  \\
\textsuperscript{64} Maria del Mar Landette, \textsc{Combating Corruption: What the Ecuadorian Anti-Corruption Agency Can Learn from International Good Practice}.  \\
\textsuperscript{65} John R. Heilbrunn, \textsc{World Bank Institute, Anti-Corruption Commissions Panacea or Real Medicine to Fight Corruption?}
\end{flushright}
Coordination of Anti-Corruption Agency and Government Offices

In some states, particularly those with complex governmental structures, anti-corruption agencies are also involved in coordinating the national anti-corruption effort. Government entities sometimes have overlapping mandates related to anti-corruption efforts. This redundancy can ensure the pursuit of every case irrespective of political biases. Such overlapping mandates can be problematic, however, if they cause an ineffective use of resources or conflicts between different entities.

In the United States, a number of distinct government offices work together to form a network of agencies to combat corruption. The Office of Government Ethics (OGE) coordinates the cooperation among offices. Latvia’s Corruption Prevention and Combating Bureau (CPCB) also has a mandate to coordinate the implementation of anti-corruption efforts amongst government institutions. All other bodies with investigative mandates are required to assist the CPCB in carrying out its investigations.

DARFUR PEACE AGREEMENT

The Darfur Peace Agreement (DPA) provisions related to the competencies of the Fiscal and Financial Allocation and Monitoring Commission (FAMC) are the most closely related to anti-corruption. The FAMC’s primary responsibility is to formulate the amount of revenue shared between the Government of Sudan and Darfur.

In the DPA, the parties agree to the independence and autonomy of the FAMC. To ensure its independence, removal of the head of the FAMC requires

66 UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.
67 UNDP, REGIONAL CENTRE BANGKOK, INSTITUTIONAL ARRANGEMENTS TO COMBAT CORRUPTION: A COMPARATIVE STUDY, 2005.
69 Darfur Peace Agreement, art. 18, para. 123.
due cause. Further, decisions require consensus, and there must be “appropriate representation” for Darfur in the Commission.

To facilitate the FAMC’s duties, the president must appoint, and the National Legislature approves, an independent Panel of Experts. The Panel will propose formulae for vertical allocation of resources between the Government of Sudan and Darfur. Additionally, the Panel will also propose “criteria for horizontal allocation between states.” The Panel must submit a report within six months of its appointment to the president through the FAMC. Within a month of receiving the report, the president must submit the report to the National Legislature for approval. After approval, the FAMC implements the report’s proposals.

To ensure the predictability in the transfer of funds to Darfur, the FAMC must institute a transparent, formula-based process. Moreover, the National government may not refuse the transfer of funds to Darfur.

The DPA also requires Darfur to submit to accountability mechanisms. Periodically, Darfur must report its amount of expenditures and revenues. A

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70 Darfur Peace Agreement, art. 18, para. 123.
71 Darfur Peace Agreement, art. 18, para. 123.
72 Darfur Peace Agreement, art. 18, paras. 120, 129(c). The Commission head is appointed for a specific term. Darfur Peace Agreement, art. 18, para. 120, para. 129(c).
73 Darfur Peace Agreement, art. 18, para. 121. The President must choose from a group recommended by the Commission. The Panel will include “highly qualified economists” and other experts from the academic, government and also the private sector.
74 Darfur Peace Agreement, art. 18, para. 121.
75 Darfur Peace Agreement, art. 18, para. 121.
76 Darfur Peace Agreement, art. 18, para. 122.
77 Darfur Peace Agreement, art. 18, para. 122.
78 Darfur Peace Agreement, art. 18, para. 122.
79 Darfur Peace Agreement, art. 18, para. 126.
80 Darfur Peace Agreement, art. 18, para. 126.
81 Darfur Peace Agreement, art. 18, para. 133. Darfur must report expenditures and revenues on a quarterly, semi-annual, and annual basis.
82 Darfur Peace Agreement, art. 18, para. 133. Revenues are those funds raised from taxes, non-tax fees and charges.
budget, drafted according to transparent national government standards, reports all expenditures and revenues.\textsuperscript{83}

\textbf{SAMPLE LANGUAGE}

\textbf{Article XXX}

\textbf{Establishment of an Anti-Corruption Agency}

The Parties hereby establish an independent anti-corruption agency. The agency shall consist of an agency head, a deputy agency head and other officers as may be appointed [by the Executive] [or] [by the Executive and confirmed by the National Legislature] [or] [nominated by the Legislature and appointed by the Executive] [or/and] [allow a certain number of agency members to be appointed by the other branches of government].\textsuperscript{84}

\textbf{Article XXX}

\textbf{Independence of the Agency}

The agency shall be independent and autonomous.\textsuperscript{85}

\textbf{AND/OR}

The agency shall forward the [Executive or the Legislature or both], for approval, estimates of the expenditures of the agency for the next financial year.\textsuperscript{86}

\textbf{AND/OR}

\textsuperscript{83} Darfur Peace Agreement, art. 18, para. 126.
\textsuperscript{84} This language is drawn from the selection and appointment processes used in Latvia, South Korea and Hong Kong. In Latvia, the Parliament appoints the agency head after a recommendation by the Executive Cabinet. In South Korea, the President appoints the chairman and standing members of the agency, while Parliament and the Chief Justice recommend three members each. In Hong Kong, the Executive appoints the agency’s head, however the agency answers to both the Executive and four independent committees.
\textsuperscript{85} This language is drawn from the Basic Law of the Hong Kong Special Administrative Region (Hong Kong, 1997), art. 57.
\textsuperscript{86} This language is drawn from the language of Hong Kong’s Independent Commission Against Corruption Ordinance, ch. 204, sec. 14.
The agency is required annually to report to the relevant committees [in the National Legislature, the Executive, or both].

**Article XXX**

**Independence of the Agency’s Officers**

The agency’s officers shall be responsible [only to the Executive or the National Legislature, or both].

AND/OR

Agency officers shall not discharge the duties of another office.

AND/OR

Agency officers may only be removed for [good cause or on the finding of misconduct, incapacity, or incompetence by either the National Legislature or the Executive].

**Article XXX**

**Investigatory Powers**

The anti-corruption agency shall commence an investigation pursuant to [a determination by the agency, or an Executive or Legislative determination]

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87 This language is drawn from the practices of Indonesia’s Commission for the Eradication of Corruption and Lithuania’s Special Investigative Service.
88 This language is drawn from Hong Kong’s Independent Commission Against Corruption Ordinance and the Australia/New South Wales approaches to the monitoring of anti-corruption agencies.
89 This language is drawn from Hong Kong’s Independent Commission Against Corruption Ordinance, ch. 204, sec. 5.
90 This language is drawn from article 18, para. 123 of the Darfur Peace Agreement. The language is also drawn from the SOUTH AFRICAN CONST. ch. 9, sec. 194 (1996) available at http://www.info.gov.za/documents/constitution/1996/96cons9.htm#194 (last accessed Sept. 24, 2007), which requires a National Assembly committee to find that the individual has acted wrongfully, is incapacitated, or incompetent. The committee’s finding is then adopted by the National Assembly in a resolution calling for that person’s removal. The President can suspend the person while a committee investigation is on going, but can only remove the person after the National Assembly adoptions a resolution.
(or a determination by both branches), or allow all three to commence investigations).\(^{91}\)

AND/OR

The anti-corruption agency shall investigate complaints or reports of alleged corruption made to the agency.\(^ {92}\)

**Article XXX**

**Education and Public Awareness**

The agency shall provide general information to the public regarding ways they can report and prevent corrupt activities to the authorities.\(^ {93}\)

**Article XXX**

**Prevention**

(1) In an effort to prevent corruption, the agency shall:

(a) Propose changes to the National Legislature and the Executive regarding pending and enacted legislation that risks being used for corrupt purposes.

(b) Review practices and procedures of government departments, ministries, and agencies.\(^ {94}\)

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\(^{91}\) This language is drawn from the investigatory procedures of Singapore’s Corrupt Practices Investigation Bureau and Hong Kong’s Independent Commission Against Corruption.

\(^ {92}\) This language is drawn from investigatory procedures of Hong Kong’s Independent Commission Against Corruption.

\(^ {93}\) This language is drawn from education methods utilized by Australia/New South Wales, Hong Kong’s Independent Commission Against Corruption and Botswana’s Directorate on Corruption and Economic Crimes.

\(^ {94}\) This language is drawn from prevention methods followed by Hong Kong’s Independent Commission Against Corruption, Australia/New South Wales’ Independent Commission Against Corruption, Latvia’s Corruption Prevention and Combating Bureau, and Lithuania’s Special Investigative Unit.
Article XXX
Prosecution

Where the standard to bring a court action is met, the agency shall [recommend the judiciary bring a court action against, or bring a court action against, or shall prosecute] persons involved in a corruption investigation.95

Article XXX
Coordination of Related Activities among Government Entities

The agency shall coordinate anti-corruption efforts between the different government entities.96

95 This language is drawn from prosecutorial procedures followed by Singapore’s Corrupt Practices Investigation Bureau, Tanzania’s Prevention of Corruption Bureau, Botswana’s Directorate on Corruption and Economic Crimes and the United States’ Office of Government Ethics.
96 This language is drawn from coordinated efforts followed by the United States’ Office of Government Ethics and Latvia’s Corruption Prevention and Combating Bureau.
AUDITOR GENERAL

INTRODUCTION

This chapter identifies the core elements of the Auditor General position through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement related to the position or activities of an Auditor General and provides sample language parties may wish to consider when drafting provisions establishing an Auditor General.

Many states establish a government office or official, often called a Comptroller or Auditor General, tasked with overseeing and auditing expenditures of the government. The Comptroller or Auditor General is typically responsible for conducting independent government expenditures audits and reporting to the legislative branch of government. Many states establish this position in the constitution and provide for the roles and responsibilities of the office in enabling legislation.

The Darfur Peace Agreement (DPA) briefly lists the National Audit Chamber as one of six institutions responsible for implementing the fiscal aspects of the DPA.97

CORE ELEMENTS

Position of Auditor General

A state’s Auditor General is usually the head of a government or quasi-governmental office that carries out the audits of government expenditures. For instance, the United States Auditor General oversees the Government Accountability Office (GAO), an independent non-partisan institution; the Indian Comptroller and Auditor General directs the Indian Audit and Accounts Department; and the Comptroller and Auditor General of the United Kingdom heads the National Accounting Office (NAO).98

The President or head-of-state often appoints an Auditor General, or the equivalent official. Removal of the Auditor General, however, typically requires the approval by the state’s legislative branch,\(^9^9\) or a ruling by the state’s highest court.\(^1^0^0\)

Audits

Auditor Generals in most states have broad discretion to conduct audits of federal government ministries, offices, and agencies. Some states, including India\(^1^0^1\) and Pakistan,\(^1^0^2\) also provide the authority to conduct review of provincial and municipal spending. Alternately, the United Kingdom has established a separate body to audit local government spending.\(^1^0^3\)

An Auditor General may also be responsible for auditing independent or non-government entities. In the United Kingdom, for instance, the Comptroller and Auditor General audit approximately half of the public bodies that are public in nature but are not official departments of the government.\(^1^0^4\) South Africa’s

\(^1^0^1\) INDIA CONST. art. 151 (1950).
\(^1^0^2\) PAKISTAN CONST. art. 171 (1973).
\(^1^0^3\) NATIONAL AUDIT OFFICES, THE ROLE OF THE NATIONAL AUDIT OFFICE, available at http://www.nao.org.uk/about/role.htm (last accessed Sept. 29, 2007). In the United Kingdom, the Comptroller and Auditor General, through the National Audit Office (NAO), is responsible for auditing government department and agencies related to national policies. The Audit Commission is responsible for reviewing local expenditures in England and Wales; Ireland, Scotland and Wales also have their own auditing offices.
\(^1^0^4\) NATIONAL AUDIT OFFICES, THE ROLE OF THE NATIONAL AUDIT OFFICE. These institutions are known as “arms-length” public bodies, or non-Departmental public bodies. Examples include the Legal Services Commission and the Regional Development Agencies.
Auditor General has the authority to review the expenditures of other institutions that obtain government funding or resources for public purposes.\textsuperscript{105}

**Reporting**

The Auditor General typically submits reports to the legislative branch, as well as to the Executive and the ministry, agency, or other government entity that was audited, as is the case in South Africa\textsuperscript{106} and the United States.\textsuperscript{107} In states that allow audits of provincial offices and agencies, such as India,\textsuperscript{108} Pakistan,\textsuperscript{109} and South Africa,\textsuperscript{110} the Auditor General submits the report to the provincial legislature and appropriate executive office within the provincial government.

**Additional Roles**

The activities of the Auditor General are not typically restricted to auditing government expenditures. Many state’s Auditor Generals also take on other responsibilities within the realms of investigating allegations of inappropriate expenditures and assisting government agencies to ensure responsible spending. For instance, the United States Government Accountability Office (GAO) promulgates accounting principles related to GAO standards and works with federal ministry officials to develop their accounting systems.\textsuperscript{111} The United Kingdom’s National Audit Office regularly publishes reports on good practices and briefing documents for Parliament as well as the public.\textsuperscript{112}

**Organization of Auditor General Office or Agency**

\textsuperscript{105} SOUTHERN AFRICA CONST. art. 188 (1996).
\textsuperscript{108} INDIA CONST. art. 151 (1950).
\textsuperscript{109} PAKISTAN CONST. art. 171 (1973).
\textsuperscript{110} South Africa Auditor-General Act No. 12 of 1995, art. 4(5).
\textsuperscript{112} NATIONAL AUDIT OFFICES: “ABOUT US: THE ROLE OF THE NATIONAL AUDIT OFFICE.”
The Auditor General in most states is the head of an agency or office that carries out the related responsibilities in auditing and monitoring federal expenditures. Such offices are often organized by topic to facilitate a wide spectrum of activities.

In Canada, for instance, the Office of the Comptroller General is divided into the following offices: (1) Financial Management Branch; (2) Financial Reporting and Advisory Services; (3) Internal Audit and Advisory Services; (4) Corporate Compliance and Controls Monitoring Branch and Corporate Operations; and (5) Procurement Governance Office.\textsuperscript{113}

**DARFUR PEACE AGREEMENT**

The Darfur Peace Agreement (DPA) lists the National Audit Chamber as one of six institutions responsible for implementing the fiscal aspects of the DPA.\textsuperscript{114} Other than this reference, the DPA does not address the position or activities of an Auditor General.

**SAMPLE LANGUAGE**

**Article XXX**

**Auditor General of Sudan**

There shall be an Auditor General of Sudan who shall be selected without regard to political affiliation and on the basis of integrity, proven leadership, training and experience in accounting, auditing, financial analysis, management analysis, public administration or related fields.\textsuperscript{115} The terms of selection shall be regulated by law.

**OR**


\textsuperscript{114} Darfur Peace Agreement, art. 18, para. 134.

\textsuperscript{115} This is drawn from the Iraq Board of Supreme Audit Law of 2004 article 1 (Third) which provides for these qualifications, available at http://www.cpa-iraq.org/regulations/20040425_CPAORD_77_Board_of_Supreme_Audit.pdf (last accessed Oct. 2, 2007).
(1) There shall be an Auditor General of Sudan who shall be appointed by the Prime Minister [and who shall hold his office for no more than two five-year terms, whether or not the terms are consecutive].

(2) The Auditor General shall not be eligible during his tenure, to hold any other executive, legislative, or judicial position or practice any other profession except teaching at the university and publishing personal works.

(3) The Auditor General and Deputies may only be removed for clear incompetence, incapacity, or on grounds of unlawful conduct, after a finding to that effect by legislative resolution.\textsuperscript{116}

(4) At any time when the office of the Auditor General is vacant or the Auditor General is absent or is unable to perform the functions of his office due to any cause, [the Deputy Auditor General][any person as the Prime Minister may direct] shall act as Auditor General and perform the functions of that office.\textsuperscript{117}

\textbf{Article XXX}

\textbf{Duties and Powers of the Auditor General}

(1) The Auditor General must audit and report on the accounts, financial statements, and financial management of:\textsuperscript{118}

\begin{enumerate}
\item[(a)] The national, provincial, and municipal government agencies and administrations;
\item[(b)] Any other institution as stipulated by law.
\end{enumerate}

(2) In addition to the duties prescribed in subsection (1), and subject to any legislation, the Auditor General may audit and report on the accounts, financial statements, and financial management of:\textsuperscript{119}

\begin{itemize}
\end{itemize}

\textsuperscript{116} This language is similar to that provided in the IRELAND CONSTITUTION article. art. 33 (5), for the removal of the Comptroller and Auditor General.

\textsuperscript{117} This language is drawn from the PAKISTAN CONST. art. 168(6) (1973). It should be noted that the means for this may be established in enacting legislation rather than inserted as a constitutional amendment but should be drafted keeping in mind who ultimately is granted the authority to appoint the Auditor General.

\textsuperscript{118} This language is drawn from the SOUTH AFRICA CONST. art. 188(1) (1996).
(a) Any institution funded by government revenue;
(b) any institution that is authorized in the terms of any law to receive money for a public purpose;
(c) Any other institution as stipulated by law.

(3) The reports of the Auditor General relating to the accounts of the federal government shall be submitted to any legislature that has a direct interest in the audit, and to any other authority prescribed by law. All reports must be made public.  

OR

(1) The Auditor General must submit audit reports [annually][quarterly] to the President who shall cause them to be laid before the legislature. If the audit relates to a provincial government authority, the audit report must be submitted to the [Governor] of the province who shall cause them to be laid upon the provincial legislature.

(2) The Auditor General has the additional powers and function prescribed by national legislation.

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119 This language is drawn from the SOUTH AFRICA CONST. art. 188(1) (1996).
120 This language is drawn from the SOUTH AFRICA CONST. art. 188(3) (1996).
121 This language is drawn from the SOUTH AFRICA CONST. art. 188(3) (1996).
122 This language is drawn from the SOUTH AFRICA CONST. art. 188(4) (1996).
BORDERS

INTRODUCTION

This chapter identifies the core elements of border agreements through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement demarcating borders and provides sample language parties may wish to consider when drafting provisions of a border agreement.

Border agreements typically take into account factors specific to the disputed area. These factors may include ethnic divides, geographic considerations, traditional borders, trade routes, and access to natural resources. While there is no universal remedy for border disputes, six basic elements can help ensure the effectiveness of border provisions in peace agreements. These elements include: (1) border demarcation; (2) border monitoring systems; (3) dispute resolution mechanisms; (4) natural resources; and (5) financial arrangements.

The 2006 Darfur Peace Agreement (DPA) reestablished the borders of Darfur, demarcating the border of Darfur as the border that existed as of 1956. 123

CORE ELEMENTS

Demarcating the Border

The majority of peace agreements contain provisions demarcating the borders in dispute. The provisions often detail the location of the border or address which party, organization, or person (often in the form of a special commission) is responsible for establishing the border at a future point in time. In South Africa 124 and the Ecuador-Peru dispute, 125 border agreements assigned boundaries simply by referencing their original status in an earlier agreement or constitution. States may

also include fallback provisions to prevent a revival of hostilities in case the demarcation provisions, established by a border commission or within the peace agreement itself, are impractical or contentious.

**Border Monitoring Mechanisms**

States often establish monitoring organizations or border commissions to determine a border and to facilitate negotiations between parties when a border has not been determined. In these agreements, the language establishing a border commission often addresses the composition of the commission, the leader of the commission, the powers of the commission, and a tentative timeframe for the commission to reach decisions on issues with the commission’s authority. Border agreements generally designate either an international third party organization or a domestic agency comprised of both local and national representatives to implement the decisions of the border commission, monitor and secure the border.

**Dispute Resolution Systems**

Most peace agreements contain a dispute resolution system, such as arbitration or mediation, for problems that may arise from provisions within the agreement. In agreements that establish a mechanism to monitor the implementation of the agreement, the dispute resolution provisions tend to involve this mechanism. For instance, the Rio Protocol, which demarcated the disputed border between Peru and Ecuador, called for the governments of the United States, Argentina, Brazil, and Chile to ensure the peaceful resolution of disputes by presiding over any disagreement between the parties. The Rio Protocol also provided the third party states with oversight authority regarding any reciprocal concessions that Ecuador and Peru agreed upon during the demarcation process. In agreements without a monitoring system, the state may enlist an international organization to serve as a neutral arbiter or mediator.

**Natural Resources**

If natural resources, such as rivers, minerals, or petroleum deposits are an issue near the border, border agreements typically contain provisions addressing the resource. These provisions range from regulations of the resource to provisions dictating a course of action if the resource physically changes over time. For

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126 Rio Protocol, Jan. 29, 1942, art. 5.
instance, a border agreement between Russia and the Ukraine required the states to protect and fund the reconstruction of existing oil pipelines and to comply with the 2003 agreement on the joint use of waterways on the border.  

**Financial Arrangements**

Border agreements can provide for the disbursement or allocation of funds for the border commission established by the agreement. Funding can be used to support security and monitoring activities along the border, and the allocation of funds may often facilitate a resolution to the border dispute. State practice illustrates that the international community or the parties to the agreement may supply these funds. Some border agreements, like the International Border Treaty between the Republic of Yemen and the Kingdom of Saudi Arabia (Treaty of Jeddah), simply requires the parties to the agreement to be responsible for financial obligations relating to demarcation efforts. Alternatively, border agreements may contain extensive provisions regarding the financial arrangements related to a border dispute.

**DARFUR PEACE AGREEMENT**

The Darfur Peace Agreement (DPA) provides that the borders of Darfur cannot interfere with any previous agreements made between the Republic of the Sudan and Southern Sudan or Sudan’s neighboring states. Further, the DPA provided that the boundaries of Darfur “shall return to the positions as at 1 January 1956.” The DPA further provided for the establishment of a “technical ad hoc team” to demarcate the border in accordance with the 1956 boundary lines.

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129 Darfur Peace Agreement, art. 6, para. 61.

130 Darfur Peace Agreement, art. 6, para. 61.
SAMPLE LANGUAGE

Article XXX
Border Definition

(1) The boundary line which defines the province(s) of Darfur in its/their relation to the greater Republic of the Sudan shall follow the points named below. [This line is considered as a fixed dividing boundary between the provinces subject to each].

(a) In the west:
   (i) [geographical landmark];
   (ii) [geographical landmark].

(b) In the east:
   (i) [geographical landmark];
   (ii) [geographical landmark].

(c) In the north:
   (i) [geographical landmark];
   (ii) [geographical landmark].

(d) In the south:
   (i) [geographical landmark];
   (ii) [geographical landmark].

OR

The boundaries of Darfur shall be…. [those that existed when the Constitution took effect].

OR

The borders of the Darfur Region are [geographic description of boundaries]. Borders may only be altered in accordance with international law, by peaceful means, and by agreement.

131 This language is drawn from the Rio Protocol, Jan. 29, of 1942, art. 8. Similar language can be found in article 4 (1934), of the Treaty of Taif, between Saudi Arabia and Yemen which provides: “The frontier line which divides ..[the region].. is explained in sufficient detail hereunder. This line is considered as a fixed dividing boundary between the [territories] subject to each.”

132 This language is drawn from the SOUTH AFRICA CONST. chap. 6, sec. 103, para. 2 (1996).
**Article XXX**

**Demarcation**

(1) For the purpose of demarcating borders, desiring to set markers on the line of the border, the contracting parties will commission [an international company/ad hoc commission] to undertake the project. The specialized [international company/ad hoc commission] carrying out the work and the contracting parties must follow absolutely the distances and directions between each point and the next one, and the other specifications which appear in the border reports attached to the positions as they were defined on 1 January 1956. These provisions are binding on the two parties.

(2) The specialized [international company/ad hoc commission] shall undertake preparation of detailed maps of the line of the land border surrounding the region. These maps, when signed by representatives of the region of Darfur and the government of the Republic of Sudan, will be considered, for all future purposes, as official maps demarcating the border of the region and will become an integral part of this agreement.\(^{133}\)

(3) The contracting parties will sign an agreement to cover the cost of work by the [international company/ad hoc commission] commissioned to erect the markers along the land border between the provinces in question.\(^{134}\)

**Article XXX**

**Future Allowance**

It is understood that the line above described shall be accepted by [all parties] for the demarcation of the border of the Darfur Region[s], by technical experts, on the ground. The parties may, however, when the line is being laid out on the ground, grant such reciprocal concessions, as they may consider advisable in order to adjust the previously mentioned line to geographical realities. These rectifications shall be made with the

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\(^{133}\) This language is drawn from the Treaty of Jeddah between Saudi Arabia and Yemen and referred back to the borders as delineated in the previous Treaty of Taif. Treaty of Jeddah, art. 3(i) and (ii) (1934).

\(^{134}\) Treaty of Jeddah, art. 3(ii) (1934).
collaboration of the representatives of the [African Union, the United Nations, and all participating parties].

**Article XXX**  
**Dispute Resolution**

Any doubt or disagreement which may arise in the execution of this [agreement] shall be settled by the parties concerned, with the assistance of the representatives of the [African Union and United Nations], in the shortest possible time.

**OR**

Any alteration to boundaries between provinces may be made by resolutions of the national legislature and of the provincial legislature of each province to which the alteration applies.

**Article XXX**  
**Border Villages**

The [regional] identity of the villages lying on the course of this border will be defined according to what was stipulated by the [January 1956 demarcation (and its appendices)].

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135 This language is drawn from the Rio Protocol, Jan. 29, 1942, art. 9.  
136 This language is drawn from the Rio Protocol, Jan. 29, 1942, art. 7.  
138 This language is drawn from the Treaty of TaifJeddah, art. 2(a) (1934).
DEMOBILIZATION, DISARMAMENT, AND REINTEGRATION

INTRODUCTION

This chapter provides a discussion of the core elements of demobilization, disarmament, and reintegration (DDR) of former combatants. This chapter also presents an overview of the Darfur Peace Agreement’s (DPA) provisions relating to DDR. Finally, this chapter provides sample language on DDR provisions.

Demobilization, disarmament, and reintegration programs serve to demobilize troops by removing them from offensive positions, disarm troops by encouraging non-governmental forces to place their weapons in storage and under the supervision of a neutral body, and reintegrate troops by providing civil society transition programs. The ultimate objective of DDR programs is to create a secure and stable environment conducive to lasting and sustainable peace.

Numerous post-conflict states incorporate demobilization, disarmament, and reintegration programs into their peace-building plans as a means of deescalating the conflict. The programs implemented in Aceh, Angola, Bougainville, Burundi, Cambodia, El Salvador, Guatemala, Kosovo, Mozambique, and Sierra Leone offer examples of the core elements of demobilization, disarmament, and reintegration processes, as well as lessons applicable to states engaging in future demobilization, disarmament, and reintegration programs.

CORE ELEMENTS

Demobilization

The goal of demobilization is to reduce or eliminate the possibility of renewed hostilities during the implementation of a peace agreement. Demobilization involves disbanding armed units, separating opposing forces, or withdrawing forces from positions where they are likely to engage each other. This phase of a demobilization, disarmament, and reintegration program can effectively initiate and facilitate the process by which the parties later disarm and reintegrate former combatants.
Obstacles

Demobilization programs may face both internal and external obstacles to their success. Internally, if either party believes that the ceasefire, peace agreement, or negotiations are temporary, that party may try to maintain or enhance their military capability. In 1999, Colombia’s president, Andrés Pastrana initiated a formal dialogue with representatives of the Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia – FARC). Some people accused FARC of using the gap in fighting to rearm and the talks collapsed after three years. Similarly, in Uganda, the government, and the Lord’s Resistance Army (LRA) engaged in peace talks sporadically for years. During these talks, the Lord’s Resistance Army never sufficiently demobilized its forces but instead used the gaps in fighting to re-arm and recruit more combatants.

External interference may also be an obstacle to demobilization. In conflicts where neighboring states, foreign nationals, or terrorist organizations are involved in the fighting, an inability to minimize the influence of outside actors may cripple stabilization efforts. The Democratic Republic of the Congo (DRC) and Rwanda face the twin problems of the Rwandan military supporting rebels in the Democratic Republic of the Congo and the Democratic Republic of the Congo providing Rwandan paramilitary factions with arms and bases. The ongoing situation threatens conflict resolution efforts in the Democratic Republic of the Congo and post-conflict reconstruction efforts in Rwanda.

To prevent similar problems, Cambodia’s peace agreement contained a provision for the removal of all military forces, domestic and foreign, from the state. The agreement provided for third-party verification and allowed border controls so that foreign forces would not return.  

Disengagement

During demobilization, government and opposing forces generally either withdraw their troops from potential battlegrounds or confine their troops to assembly camps. Burundi’s 2000 Arusha Peace and Reconciliation Agreement

Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, Oct. 23, (1991), Part I, sec. IV, art. 8, available at
required each party to break contact with the opposing military forces by a specified date and withdraw beyond the effective range of their weapons. Where this was impossible, the ceasefire allowed the use alternative measures, as determined necessary.  

Similarly, the 1992 peace agreement between the Government of El Salvador and the Frente Farabundo Marti para la Liberacion Nacional (FMLN) assigned FMLN forces to specified disarmament zones. In Guatemala’s demobilization process, the peace agreement restricted government forces to their barracks or otherwise prevented from coming near the rebels’ disarmament zones. This provision allowed only U.N. verification units or police units in coordination with the U.N., to access the security zones.

Parties also may establish a coordination zone outside of a security zone for movement of armed forces with the verification authority’s approval. Guatemala’s coordination zones were located a further six miles around each security zone. The cease-fire also specified transit routes through both zones for rebel forces to use in accessing the assembly points.

Monitoring Demobilization

To ensure opposing forces remain in positions or areas specified in the agreement, a neutral third party often monitors demobilization. In El Salvador, the United Nations Observer Mission monitored the separation and movement of both El Salvadoran and FMLN forces. Cambodia created provincial committees and invited non-governmental organizations to monitor its demobilization process.

To ensure the demobilization of all troops within a force, many demobilization programs register each soldier, generally providing soldiers with either identification cards or certificates. For example, the Burundi agreement specified which parties needed to register and provided all soldiers with an identification certificate and an allowance until they completed the process of


reintegrating into society. Similarly, the Guatemala agreement required the concentration of opposing soldiers in specified areas and the issuance of temporary identification cards to them.

**Disarmament**

Similar to demobilization, the objective of disarmament is to prevent a return to violence in post-conflict provinces. The number of weapons available to recently demobilized troops and civilians poses a significant challenge to demobilization, disarmament, and reintegration efforts. Disarmament programs attempt to remove weapons from society through collection, storage, or destruction. These programs often require the parties to hand weapons over to a neutral third party for storage and eventual destruction. Some programs, such as buy-back or trade-in programs, allow former combatants to receive money or tools in exchange for their weapons.

**Surrender of Weapons**

To prevent the use of weapons in the event of a return to conflict, established programs require former combatants turn their weapons over to a monitoring entity for storage or destruction. Parties to the peace agreement may store the weapons indefinitely, destroy them, or inspect and reissue the weapons as part of the reintegration process. Members of the international community often assist in weapon return monitoring.

Parties often choose to destroy weapons immediately after former combatants surrender them. In Indonesia’s now-autonomous province of Aceh, the disarmament process began with the parties helping the Aceh Monitoring Mission (AMM) identify ten locations where Free Aceh Movement (GAM) combatants could safely surrender weapons within Aceh. The Indonesian government and Free Aceh Movement decided Aceh Monitoring Mission officials would collect weapons at these sites and immediately destroy them in front of Indonesian soldiers, police, and government officials.  

142 Arusha Peace and Reconciliation Agreement for Burundi, Protocol III, art. 21.
Other post-conflict states choose to start the disarmament process and later determine handling of the weapons. During the disarmament process in Bougainville, former combatants turned their weapons over to their commanders, who sealed them in weapons containers. A dual-lock system ensured that no one could gain access to the weapons without the approval of the United Nations Observer Mission on Bougainville. The Peace Monitoring Group, a group of civilian and unarmed military personnel from neighboring states, monitored the process and tracked all weapons received. In December 2003, the parties jointly decided to destroy the weapons.

Similarly, in Guatemala, ceasefire provisions required parties to submit an accurate inventory of troops and weapons for future disarmament. The provisions required all parties to submit this information to the U.N. verification authority within fifteen days of signing the ceasefire agreement. The ceasefire agreement required the U.N. then to verify the troop levels and weapons concentrations by requiring troops from both parties to register at assembly points. The U.N. then determined if there was a discrepancy between reported troop levels and actual levels and set a troop level limit pursuant to the ceasefire's limitation on troop size and weapons allowances.

**Buyback and Trade-In Programs**

A buy-back or trade-in program may help provide the necessary financial support to former combatants who are trying to re-enter civilian society while simultaneously removing weapons from the community. A weapons buy-back program allows fighters to exchange their weapons for money or tools anonymously. For example, after the Dayton peace agreement, which ended the civil war between Serbs and Croats in Croatia, the United Nations monitoring authority initiated a weapons buy-back program in western Croatia. Croatian government weapons experts paid cash directly to former Serb combatants in exchange for their weaponry.

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One criticism of buy-back programs is that they often lack mechanisms to guarantee that participants do not turn in old or malfunctioning weapons and use the money to buy better weapons. In Aceh, for example, the Indonesian government offered $0.50 USD per day for up to six months to former Free Aceh Movement combatants who surrendered and turned in their weapons. On reviewing this strategy, the World Bank suggested that the voucher be redeemable only when former combatants return to their villages and communities to encourage the reintegration of former combatants into civilian life.

A weapons trade-in program can promote a return to civilian life by providing demobilized soldiers with industry equipment or household items in exchange for weapons. After decades of civil war, Mozambique implemented a trade-in program that provided tools, sewing machines, bicycles, and other items in exchange for weapons.

Monetary or tangible items do not provide the only incentive for former combatants. Parties to the conflict have also tailored incentives to the situation. For example, when the government of Papua New Guinea and the separatist Bougainville Revolutionary Army came to an agreement on autonomy for Bougainville, the parties determined that it was necessary to amend Papua New Guinea’s constitution. As protection against a return to violence, the parties agreed that they would not amend the Papua New Guinea constitution to grant this increased autonomy until the United Nations Observer Mission on Bougainville verified that the weapons were in secure containers, out of reach of combatants.

Restrictions on Airspace

Restrictions on airspace limit aircraft from flying over specified zones, except in emergencies where a verification authority approves of the fly-over. In Bosnia, ceasefire provisions prohibited military flights over security zones unless a natural disaster or public emergency warranted an exception and the party notified the U.N.. The U.N. mandated no-fly zone was ineffective until the international peacekeeping forces received approval to take action against Serbian aircrafts that violated the airspace restrictions. State practice indicates that airspace

146 Bougainville Peace Agreement, Introduction and Outline, para 1.
restrictions generally require a third-party verification authority with the resources and political will to enforce the no-fly zone.

**Reintegration**

In reintegration programs, parties to the peace agreement assist decommissioned former combatants as they begin reincorporation into civilian life. In a number of states, a lack of post-conflict opportunities for former combatants has threatened the peace process. By providing former combatants with job training, employment, financial support, and services to meet special needs, the reintegration process can prevent a return to violence and help establish peace in a post-conflict region.

*Job-Training and Creation*

Job training programs assist former combatants during the difficult transition to civilian life. Former combatants generally lack skills applicable to other employment; job-training programs can provide these skills so that former combatants are able to enter the workforce. Many experts believe that the stability this provides may contribute to the economic development of the post-conflict region.

Most job-training programs in post-conflict states provide training in multiple fields of work. Sierra Leone’s demobilization, disarmament, and reintegration program trained former combatants in areas such as masonry, carpentry, and tailoring. In Bougainville, the job-training program included skills such as accounting and business management.

Some states incorporate former combatants into reconstruction programs, which simultaneously create jobs for former combatants while training them in various skills. For example, Kosovo established the Kosovo Protection Corps (KPC), a civilian agency mandated to help with reconstruction efforts, such as rebuilding hospitals and clearing obstructed roads, and providing emergency assistance following natural or human-made disasters.\(^{148}\) By integrating former combatants into the region’s reconstruction efforts, the Kosovo Protection Corps

also created a sense of local ownership of development projects, giving local participants a greater stake in their success.

Limiting training programs to only a few types of jobs, however, may be detrimental to reintegration. For example, in Sierra Leone, economic stagnation has meant that some graduates of job-training programs were unable to find employment. Some experts in post-conflict resolution suggest that one possible way to avoid high unemployment is to train former combatants in a wider variety of fields, including agriculture or business.149

Integration into a National Defense Force

Many post-conflict states choose to integrate former combatants into provincial or national defense forces. Because of their experience using military equipment, working in military groups, and executing orders, former combatants can contribute meaningfully to the defense force while gaining legitimate employment. For example, as part of its reintegration program, Aceh permitted former combatants from Free Aceh Movement to serve in the province’s police and military forces. This helped to ensure that former Free Aceh Movement combatants would be able to find employment.150 Similarly, Sierra Leone aimed to integrate Revolutionary United Front (RUF) and guerilla forces into national security forces under its 1999 Agreement. The parties established the recruiting criteria for former combatants and paramilitary groups to enter the new national armed forces.151

The integration of former combatants into local and national police and defense forces can be difficult in some circumstances. For example, troops that previously fought on opposing sides may have difficulty working together. In other situations, former rebel forces may not share loyalty to the government. After integrating members of the Revolutionary United Front into its national

150 Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, para. 3.2.7.
security forces, Sierra Leone’s leaders discovered that some former combatants were not loyal to the state government. Additionally, the integration of Revolutionary United Front forces into the national army led to a military force well beyond the state’s needs.

Reintegration Funds

To help rehabilitate a post-conflict region, states may establish reintegration funds, which provide financial support for former combatants and the conflict-affected region. The Bougainville agreement, for example, created the Bougainville Ex-Combatants Trust Account (BETA), which provided financial support and vocational training to former combatants or their widows. Similarly, Aceh’s Reintegration Fund provided support for former combatants, but also earmarked money to rehabilitate public and private property destroyed during the conflict.

Providing funding for former combatants can create complications, however. For example, the Bougainville Ex-Combatants Trust Account panel in Bougainville had difficulty defining which persons qualified as former combatants. In addition, the Bougainville Ex-Combatants Trust Account process faced allegations of corruption, including stolen funds and unfair allocation of the funds. In Aceh, many locals were displeased that former combatants received financial support, while so many civilians affected by both the conflict and the 2004 tsunami received less support.

Child Soldiers

Because certain populations, such as child soldiers, may have specific reintegration needs, some states tailor reintegration programs to them. Establishing targeted demobilization, disarmament, and reintegration programs may help these populations become productive members of society. For example, Sierra Leone had a high number of child soldiers during its civil war. The 1999 Lomé Agreement paid unique attention to child soldiers’ needs in the rehabilitation and reconstruction process, including tailored psychological counseling, education, and job skills training.152

152 Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, pt. 5, art. XXX.
To provide proper assistance for child soldiers, parties may turn to organizations that have had experience in this area. The parties to the Sierra Leone conflict sought assistance from groups such as the United Nations Children’s Fund (UNICEF). United Nations Children’s Fund cooperated with partner organizations to found interim care centers for children affected by armed conflict, including child soldiers.\(^{153}\)

Public Education

While the above mechanisms help transition former combatants into civilian life, it is also important to design programs with an emphasis placed on assisting the community to accept former combatants into society. To promote community acceptance as well as government transparency, post-conflict states often educate the population about demobilization, disarmament, and reintegration through public education campaigns.

Public education programs can also help to ensure that the parties understand demobilization, disarmament, and reintegration activities and guidelines, such as decommissioning center locations or registration requirements for job training services. In Aceh, for example, the Aceh Monitoring Mission formed the Department for Information and Communications to educate the Acehnese public about the demobilization, disarmament, and reintegration process. To ensure that the parties met decommissioning deadlines, the parties paid particular attention to educating former combatants from Free Aceh Movement about the requirements and logistics for the decommissioning process. The public education process made certain to use language that former combatants could easily understand.

Public education through media outlets such as radio or newspapers, and through interim government, non-governmental organization staff members, or the international community is productive. In Bougainville, members of the United Nations Observer Mission to Bougainville (UNOMB) attended public meetings in villages throughout the region to discuss the demobilization, disarmament, and reintegration process. They also distributed documents to the public that provided further information about the programs in simple terms.

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Involving the local community in public education campaigns tends to increase the benefit that these educational programs will have. Accordingly, the failure to involve the local community in the design of public education programs tends to render the educational programs ineffective. For example, Aceh’s demobilization, disarmament, and reintegration public education programs stressed the importance of peace, rather than focusing on practical concerns, such as housing and access to basic services. Critics claim that this failure to address many of the local population’s needs was due to Aceh’s failure to incorporate the local community in planning the demobilization, disarmament, and reintegration public education programs.

Informing the local population of the demobilization, disarmament, and reintegration process not only builds confidence in the peace process, but also gives people a sense of ownership over the peace process and may encourage some to convince former combatants to disarm. In Bougainville, United Nations Observer Mission was particularly effective in informing the public about demobilization, disarmament, and reintegration programs because it incorporated local community members in public education campaigns. For example, the group encouraged church leaders and women’s groups to organize educational programs in their communities.

The Role of the International Community

States designing demobilization, disarmament, and reintegration programs usually use the support of a neutral, third party throughout the process. The international community can provide various services during the demobilization, disarmament, and reintegration process, including financial support, technical assistance, and neutral monitors.

The international community may also provide financial or technical assistance during implementation of the demobilization, disarmament, and reintegration programs. In Sierra Leone, for example, United Nations Observer Mission in Sierra Leone and the Economic Community of West African States Monitoring Group provided implementation assistance. These groups and the World Bank also provided financial support to the demobilization, disarmament, and reintegration programs.

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154 Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, pt. 4, art. XIII; pt. 4, art. XVI, paras. 1-2.
Other states invited the international community to oversee and supervise the process. Bougainville employed the international community to monitor and manage their demobilization, disarmament, and reintegration programs.\(^{155}\) Monitors included a non-profit organization and the United Nations. As part of the Bougainville Agreement, the parties established a committee to design and manage the demobilization, disarmament, and reintegration process. This committee consisted of representatives from Bougainville’s provincial government, Papua New Guinea’s central government, the governments of Australia and New Zealand, as well as a non-governmental organization.

Guatemala also explicitly enlisted the assistance of the international community. The Guatemalan peace agreement specifically granted supervision and verifications authority to the U.N. to monitor the implementation of a ceasefire agreement. The U.N. was responsible for on-site monitoring of the ceasefire.\(^{156}\)

States also may provide for international third party verification authorities to ensure implementation of ceasefire and DDR provisions. Sri Lanka provided for a Norwegian verification authority to monitor ceasefire provisions and to enquire into any alleged violations of the ceasefire. The parties agreed that the Norwegian verification mission would conduct its activities through “on-site monitoring” of each signatory party’s commitments.

**Implementation Timetable**

To ensure the demobilization process moves forward, parties often agree to a timeline of events. When parties meet deadlines, this helps build confidence in the peace process as well as trust between the parties.

The peace agreement can set deadlines for each phase of the demilitarization process. Aceh’s Memorandum of Understanding (MoU) between the government of Indonesia and the Free Aceh Movement outlined four decommissioning and demobilization stages and deadlines between September 15, 2005 and December


Kosovo also set deadlines in its agreement, including when the establishment of weapon storage sites would occur, when forces would cease wearing uniforms and insignia, and when full demilitarization would occur.  

Other demobilization, disarmament, and reintegration programs simply establish a deadline for completion of the entire process. Angola, for example, set the deadline for demobilization, training of demobilized personnel, and integration of former combatants into the national police for 455 days after implementation of the peace agreement began.

**COMPARATIVE STATE PRACTICE**

**Indonesia: Memorandum of Understanding on Aceh**

*Parties Involved*

The parties to the negotiations include the Government of the Republic of Indonesia (GOI) and representatives of the Gerekan Aceh Merdeka (Free Aceh Movement / GAM).

*Basic Objectives and Components*

The parties signed a Memorandum of Understanding to end the conflict on August 15, 2005. Under the terms of the Memorandum of Understanding, the Free Aceh Movement relinquished its demands for secession and agreed to disarm, on the condition that the Indonesian government provided a range of economic and political privileges and withdrew some of its military forces from Aceh.

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157 Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, para. 4.4.


Substantive Issues

Decommissioning combatants was a gradual process in Aceh. Upon signing the Memorandum of Understanding, Free Aceh Movement members were prohibited from wearing the Free Aceh Movement uniform or insignia.\textsuperscript{161} The successful decommissioning of Free Aceh Movement members occurred in four stages over a period of three-and-a-half months.\textsuperscript{162} In that time, the Aceh Monitoring Mission, tasked with monitoring the implementation of the Memorandum of Understanding and demobilization, disarmament, and reintegration process, received and verified the collection of 840 arms, ammunition, and explosives from the Free Aceh Movement, as provided in the Memorandum of Understanding.\textsuperscript{163} The decommissioning paralleled the withdrawal of an agreed-upon number of government military and police forces from Aceh.\textsuperscript{164} Both the decommissioning of the Free Aceh Movement and the withdrawal of government forces concluded on time.\textsuperscript{165}

Amnesty and Reintegration were also part of the peace agreement in Aceh. The Memorandum of Understanding provided amnesty to participants in Free Aceh Movement activities. However, any Free Aceh Movement member using a weapon after the signing of the Memorandum of Understanding became ineligible for amnesty.\textsuperscript{166} The Memorandum of Understanding also provided for the release of political prisoners within fifteen days of signing.

The Memorandum of Understanding included several measures intended to help Free Aceh Movement members reintegrate into society. These measures included the establishment of a reintegration fund, the allocation of land or

\textsuperscript{161} Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 4.2.
\textsuperscript{162} Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 4.6.
\textsuperscript{163} Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 4.3.
\textsuperscript{164} The number of national police and military was reduced from 14,700 to 9,100. Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 4.7.
\textsuperscript{166} Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), arts. 3.1.1-4.
employment to former combatants, and the availability of social security for those unable to work. Former Free Aceh Movement combatants could also seek employment in the national police and military in Aceh without discrimination, so long as they met national standards for employment with these groups. The parties allocated reintegration expenses based on the Free Aceh Movement’s report on the number of former combatants. However, during implementation the number of former combatants was much higher than the Free Aceh Movement originally predicted. The parties therefore needed additional, unanticipated funds to extend reintegration programs to all former combatants. Concerns over the targeting of listed individuals if the peace agreement were to collapse, might have caused the initial underreporting of former combatants. Another possibility may be that the original estimate did not take into account Free Aceh Movement members serving as police or administrators, as well as Free Aceh Movement widows.

Local Elections and Representation is useful in demobilization, disarmament, and reintegration. The Memorandum of Understanding allowed for the creation of political parties within Aceh to run in provincial elections. The government and legislature of Indonesia developed legal standards for the creation of political parties in accordance with the Memorandum of Understanding. This marked a major departure from Indonesian law, which requires political parties to

167 Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), arts. 3.2.3, 3.2.5, 3.2.5 (a).
168 Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 3.2.7.
169 INTERNATIONAL CRISIS GROUP, ACEH: NOW FOR THE HARD PART (2006); INTERNATIONAL CRISIS GROUP, ACEH: SO FAR SO GOOD (2006), 4-5.
170 INTERNATIONAL CRISIS GROUP, ACEH: NOW FOR THE HARD PART (2006); INTERNATIONAL CRISIS GROUP, ACEH: SO FAR SO GOOD (2006), 4-5.
171 Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 1.2.1.
172 Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 1.2.1.
organize nationally, in order to discourage secessionist political forces.\textsuperscript{173} The Free Aceh Movement cannot organize candidates as a political party until 2009.\textsuperscript{174}

The Memorandum of Understanding does not clearly state whether independent parties may run in Aceh’s elections. Permitting independent candidates was important to the Free Aceh Movement, which needed to convince its members that disarmament and the end of the call for secession had resulted in a political gain. After several delays, the Indonesian parliament agreed to permit independent candidates to run in the upcoming elections. The postponement of elections from April 2006 to December 2006 was due to delays.\textsuperscript{175} The Free Aceh Movement has now begun to promote independent candidates for the December 2006 election.\textsuperscript{176} As the Memorandum of Understanding stipulates, outside monitors will be present to oversee the elections.\textsuperscript{177} Elections for Aceh’s legislature will take place in 2009.\textsuperscript{178}

The Memorandum of Understanding also stipulates that the Free Aceh Movement may nominate representatives to participate fully in the commission created to conduct the post-tsunami reconstruction.\textsuperscript{179}

\textsuperscript{176} \textit{Aceh Elections Likely to be Held in August 2006, WorldWatch Institute}; \textit{Aceh Set to Elect Governor in August, The Jakarta Post}, May 10, 2006.
\textsuperscript{177} Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 1.2.7. The Indonesian government has invited a European Union monitoring team to oversee the December elections. \textit{Peace Monitors Extend Mission in Indonesia’s Aceh}, \textit{Reuters India}, Sept. 11, 2006.
\textsuperscript{178} Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 1.2.3.
\textsuperscript{179} Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 1.3.9.
Liberia: Comprehensive Peace Agreement

Parties Involved

The parties to the peace agreement are the Government of Liberia (GOL), the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL), and political parties.  

Basic Objectives and Components

On August 18, 2003, Liberia’s Comprehensive Peace Agreement (the Agreement) provided for the disarmament of approximately 40,000 combatants. The Agreement also provided for the formation of a transitional government that would prepare the state for elections in 2005.

Substantive Issues

Disarmament, Decommissioning and Reintegration is most likely successful when the commission organizing it has representatives from all the parties. The Agreement called for a ceasefire and a demobilization, disarmament, and reintegration process that would result in the full disarmament of all paramilitary groups. The commission coordinating demobilization, disarmament, and reintegration activities included representatives from paramilitary groups. The International Stabilization Force (ISF) conducted the disarmament, and all arms were under the International Stabilization Force’s surveillance.

The Agreement stipulated that, following demobilization, members of paramilitary groups were to remain in designated locations until the former combatants began reintegration activities or entered the national armed forces. The

\[\text{\stepcounter{equation}\textbf{180}}\]
\[\text{\stepcounter{equation}\textbf{181}}\]
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\[\text{\stepcounter{equation}\textbf{180}}\] The political parties who were party to the agreement were the All-Liberian Coalition Party, the Equal Rights Party, the Free Democratic Party, the Labor Party, the Liberia National Union, the Liberia Unification Party, the Liberian Action Party, the Liberian People's Party, the National Democratic Party, the National Patriotic Party, the National Reformation Party, the New Deal Movement, the People's Democratic Party, the Progressive Peoples Party, the Reformation Alliance Party, the True Whig Party, the United People's Party, and the Unity Party.


\[\text{\stepcounter{equation}\textbf{182}}\] Liberia Comprehensive Peace Agreement, art. V.

\[\text{\stepcounter{equation}\textbf{183}}\] Liberia Comprehensive Peace Agreement, art. IV, sec. 1; art. VI, secs. 2, 4.
poor preparation and an insufficient number of peacekeepers, caused the
suspension of the demobilization, disarmament, and reintegration program after a
few months, but restarted it was successfully a few months later. 184 Although
reports of violence continued for almost a year following the signing of the
Agreement, violence never spread to other communities or lasted for more than a
few days. 185

The Agreement also called for the immediate and unconditional release of
prisoners of war from all sides. 186 Further, the transitional government considered
a policy regarding amnesty for members of paramilitary groups that are party to the
Agreement. 187

Political Representation can serve as an enticement for former combatants to
give up their arms. Upon complete disarmament, all paramilitary groups agreed to
cease their activities as military forces. 188 Under the Agreement, former
paramilitary groups are free to form political parties or otherwise engage lawfully
in national politics. 189 Additionally, the two main paramilitary groups, Liberians
United for Reconciliation and Democracy and Movement for Democracy in
Liberia were each allocated twelve seats in the seventy-six-member transitional
legislature. The Agreement also granted twelve seats to the Government of
Liberia, so that the Government and the paramilitary groups each had equally
represented. 190 The remaining seats were for representatives of political parties,
civil society organizations, special interest groups, and the provinces. 191

184 Josephus Moses Gray, The Resumption of the Disarmament, Demobilization, Rehabilitation
185 INTERNATIONAL CRISIS GROUP, LIBERIA’S ELECTIONS: NECESSARY BUT NOT SUFFICIENT
(2005), available at http://www.crisisgroup.org/home/index.cfm?id=3646&l=1 (last accessed
Sept. 21, 2007).
186 Liberia Comprehensive Peace Agreement, art. IX.
187 Liberia Comprehensive Peace Agreement, art. XXXIV.
188 Liberia Comprehensive Peace Agreement, art. XXI, sec. 5.
189 Liberia Comprehensive Peace Agreement, art. XXI, sec. 6.
190 Liberia Comprehensive Peace Agreement, art. XXIV, secs. 3, 4.
191 Liberia Comprehensive Peace Agreement, art. XXIV, secs. 3, 4.
Paramilitary leaders initially attempted to block the disarmament process in order to gain desired posts in the transitional government.¹⁹² In December 2003, paramilitary leaders withdrew their objections, and the disarmament process moved forward.¹⁹³ Nearly two years later, in December 2005, Liberia successfully held elections.¹⁹⁴ In these elections, no party won enough seats to dominate either of the two houses of parliament.¹⁹⁵

United Kingdom and Ireland: Northern Ireland Accords

Parties Involved

The parties to Northern Ireland Accords (the Accords, also known as the Belfast Agreement and the Good Friday Accords) were the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland. The Accords prohibited the Irish Republican Army (IRA) from negotiating on the same basis as other parties unless it disarmed. The Irish Republican Army was therefore not a signatory to the agreement but rather an interested party, meaning a party with a stake in the outcome of the process.

Basic Objectives and Components

The purpose of the Accords was to end the violence in Northern Ireland and determine the status of the territory of Northern Ireland. The parties signed the Accords on April 10, 1998.

Substantive Issues

The parties agreed to use their influence with paramilitary groups on both sides of the conflict to achieve the decommissioning and full disarmament of all

paramilitary groups in Northern Ireland within two years.\textsuperscript{196} Accordingly, disarmament was not a precondition to the Agreement.\textsuperscript{197} This separated the decommissioning process from ongoing discussions on the devolution of power.

Due to the use of less specific terms like “commitment” and “influence” rather than specific statements such as “a requirement to disarm” and “will implement legislation to achieve decommissioning,” the clauses pertaining to disarmament were interpreted differently by the parties to the agreement. Some parties interpreted the Accords to mean that they had an explicit obligation to disarm, while others believed disarmament was not a strict requirement.\textsuperscript{198}

Significant disagreement and controversy over the Irish Republican Army’s decommissioning process led to political instability in Northern Ireland. In October 2002, the UK suspended the Northern Ireland Assembly, a body for home rule established by the Accords.\textsuperscript{199} In July 2005, the Irish Republican Army announced the end of its campaign, and promised complete decommissioning of all weapons, which clergymen from Catholic and Protestant churches would witness. By September 2005, the decommissioning body and the two clergymen declared that to their satisfaction the Irish Republican Army had put all of their weapons beyond use.\textsuperscript{200} Critics of the process claimed that the Irish Republican Army’s decommissioning process was “too secretive.”\textsuperscript{201}

On April 6, 2006, the prime ministers of the United Kingdom and the Republic arrived in Northern Ireland to unveil a blueprint for restoring devolution to Northern Ireland. On May 10, 2006, the United Kingdom passed the Northern

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\textsuperscript{199} NORTHERN IRISH PARLIAMENT, \textit{available at} \url{http://www.niassembly.gov.uk/} (last accessed Sept. 21, 2007).
\textsuperscript{200} IRA has Destroyed All its Arms, BBC.com, Sept. 26, 2005, \textit{available at} \url{http://news.bbc.co.uk/1/hi/northern_ireland/4283444.stm}, (last accessed Sept. 21, 2007)
\end{flushright}
Ireland Act 2006, outlining the principles for resuming the process of devolution. Northern Ireland's political parties had until November 24, 2006, to decide on the structure of a power-sharing government.

A complicating factor in the devolution process is that the Unionist political party has said it will not be involved in any power-sharing government until the Irish Republican Army disbands completely. Ultimately, the Unionist demands may link the decommissioning process with the process of devolution of power, despite the Accords’ deliberate separation of the two processes.

**Macedonia: Ohrid Framework Agreement**

*Parties Involved*

The then-President’s party, the Internal Macedonian Revolutionary Organization-Democratic Party for Macedonian National Unity (VMRO-DPMNE), and the Social Democratic Union of Macedonia (SDSM) represented the Macedonian government. The Democratic Party of Albania (DPA) and the Party for Democratic Prosperity (PDP) represented the ethnic Albanians. Although the actions of the National Liberation Army an important consideration at the talks, the paramilitary group was not party to the talks.

*Basic Objectives and Components*

The primary goals of the Ohrid Framework Agreement, signed on August 13, 2001, were to: (1) end the armed conflict between ethnic Albanians in the National Liberation Army and Macedonian security forces that erupted after the Kosovo refugee crisis; (2) establish equality for ethnic Albanians, while preserving the Macedonian state and its culture; and (3) involve the international community in assisting in the implementation of the agreement, where necessary.

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203 *Britain: No New Chance for Northern Ireland Power-Sharing until 2009 if Deadline Missed, INTERNATIONAL HERALD TRIBUNE- EUROPE, Sept. 9, 2006.*
204 *Britain: No New Chance for Northern Ireland Power-Sharing until 2009 if Deadline Missed, INTERNATIONAL HERALD TRIBUNE- EUROPE, Sept. 9, 2006.*
**Substantive Issues**

The Agreement called for a voluntary ceasefire and the complete, voluntary disarmament and disbanding of ethnic Albanian armed groups, including the National Liberation Army.\(^{205}\) A North Atlantic Treaty Organization force, as agreed, collected and destroyed the weapons and supervised the demobilization in an operation known as “Essential Harvest.”\(^{206}\) The Agreement conditioned the passage of constitutional amendments upon the collection of one-third of the weapons by North Atlantic Treaty Organization forces.\(^{207}\) A law passed subsequent to the Agreement provided amnesty to National Liberation Army fighters who surrendered their arms by a specific date.\(^{208}\)

Many of the former members of, the now dissolved, National Liberation Army, are now active in the political arena.\(^{209}\) Former National Liberation Army members won the majority of Albanian votes in the 2002 election and became part of the ruling national coalition. The Albanian National Army, a breakaway faction of the National Liberation Army, opposes the Agreement and continues hostilities, with little regard to their lack of popular support.\(^{210}\)

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\(^{207}\) Macedonia Framework Agreement, sec. 2.


\(^{209}\) [OPERATION ESSENTIAL HARVEST, NATO FACT SHEET.](http://www.nato-pa.int/archivedpub/trip/av067gen-skopje.asp)

The 2006 Darfur Peace Agreement (DPA) devotes Chapter 3 to demobilization, disarmament, and reintegration. The DPA affirms that a lasting peace may only come through a “comprehensive Ceasefire Agreement and final Security Arrangements that address the root cause and different aspects of the armed conflict.” Further the DPA, as a general principle, pledges the parties to “create and maintain a conducive atmosphere,” neutralize and disarm the Janjaweed and armed militias, create a professional and inclusive armed forces, put in place “proper mechanisms for the demobilization, rehabilitation and social integration of former combatants.” The DPA also pledges that the parties will ensure that “troops and force under their command” observe and implement the agreement.

The Darfur Peace Agreement establishes a process of disengagement, redeployment, and arms control that is to “take place in incremental steps; in a reciprocal fashion; with appropriate security guarantees; through agreements reached in the Ceasefire Commission; and with verification by AMIS.” The first phase is disengagement; the second phase is redeployment; and the third phase is arms control. Under the direction of the Ceasefire Commission, AMIS will determine the parties’ areas of control. AMIS must also verify each parties' troop levels and location. The DPA also establishes demilitarized zones, humanitarian supply routes and redeployment zones.

Oversight Structure

The DPA creates the Darfur Security Arrangements and Implementation Commission (DSAIC), a subsidiary of the Transitional Darfur Regional Authority (TRDA), with authority over the demobilization, disarmament, and reintegration

212 Darfur Peace Agreement, art. 22, para. 214.
213 Darfur Peace Agreement, art. 22, para. 214, secs. c, f, h, k, i.
214 Darfur Peace Agreement, art. 27, para. 290-292.
215 Darfur Peace Agreement, art. 27, para. 293.
216 Darfur Peace Agreement, art. 22, paras. 295-297.
process. The members of the DSAIC include: the Governors of the three Darfur States, the Chief of Staff of the Sudanese Armed Forces, a representative of the National Council for Demobilization, Disarmament, and Reintegration, three representatives nominated by the Movements, a representative of the Joint Commission, Representatives of the African Union Mission in Sudan (AMIS) and the Chairperson of the Security Advisory Team. DSAIC may establish subsidiary entities as necessary to carry out security force integration, disarmament, demobilization, and reintegration, provided such entities have representatives from the same groups as the DSAIC.

Pursuant to Annexure 3 of the DPA, the Ceasefire Commission is responsible for “planning, verifying and ensuring the implementation of the rules and provisions of the ceasefire.” The DPA requires that the Force Commander for AMIS be the Chairman of the Ceasefire Commission. Other members of the Ceasefire Commission include the Deputy Force Commander of AMIS, the Civilian Police Commissioner of AMIS and representatives of the Government of Sudan, JEM and SLM/A. Representatives from the European Union, U.N., and United States are to serve as observers. The DPA requires the Ceasefire Commission to consult and coordinate with AMIS. When the Ceasefire Commission is unable to reach a consensus on an issue, the Ceasefire Commission must refer the issue to the Joint Commission for a final and binding decision.

The Special Representative of the Chairperson of the African Union Commission is the chairman of the Joint Commission. The DPA requires the Joint Commission to take “decisive action” regarding any ceasefire violation including, publicizing violations, recommending prosecutions of individual violators, “recommending appropriate action in cases of grave violations,” and

\[\text{References}\]

217 Darfur Peace Agreement, art. 29, para. 390.
218 Darfur Peace Agreement, art. 29, para. 392.
219 Darfur Peace Agreement, art. 29, paras. 391, 393.
221 Darfur Peace Agreement, art. 25, para. 240.
222 Darfur Peace Agreement, art. 25, para. 241.
223 Darfur Peace Agreement, art. 25, para. 246.
224 Darfur Peace Agreement, art. 25, para. 247.
make recommendations to the African Union in relation to further punitive action.\textsuperscript{225} The DPA requires the Joint Commission to reach decisions by consensus. If the Joint Commission fails to reach a consensus, the DPA provides that the Chairperson consult with the international members of the Joint Commission before making a decision if it is “necessary in the vital interest of maintaining the ceasefire.”\textsuperscript{226}

The DPA establishes the Security Advisory Team (SAT) as an entity to “build confidence and guarantee fairness” between the parties.\textsuperscript{227} It is composed of technical experts from other countries and international organizations that are acceptable to the parties. The SAT is to support the integration of former combatants, help restructure security institutions, and consult with African Union Mission in Sudan and other entities where appropriate to carry out these functions.\textsuperscript{228} Additionally, the SAT must help the DSAIC mediate disputes between parties regarding integration.\textsuperscript{229} The Government of Sudan is responsible for financial and logistical support but may seek international assistance to implement integration programs.\textsuperscript{230}

The DPA also provides for the creation of a Technical Integration Committee, chaired by representatives of the Movements and the Sudanese Armed Forces, and including representatives from SAT and AMIS. The Technical Integration Committee must develop a plan for the integration of former combatants into the security institutions.\textsuperscript{231} The DPA mandates the integration of former combatants within sixteen months and emphasizes the importance of integrating combatants with the goal of increasing the “professionalism, inclusiveness, and capabilities” of the security institutions.\textsuperscript{232}

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\textsuperscript{225} Darfur Peace Agreement, art. 25, para. 250.
\textsuperscript{226} Darfur Peace Agreement, art. 25, paras. 254-255.
\textsuperscript{227} Darfur Peace Agreement, art. 29, para. 395.
\textsuperscript{228} Darfur Peace Agreement, art. 29, paras. 395, 397.
\textsuperscript{229} Darfur Peace Agreement, art. 29, para. 398.
\textsuperscript{230} Darfur Peace Agreement, art. 29, para. 396.
\textsuperscript{231} Darfur Peace Agreement, art. 29, para. 399.
\textsuperscript{232} Darfur Peace Agreement, art. 29, para. 400.
\end{flushright}
**Disarmament**

The DPA requires the Government of Sudan to ensure that the Janjaweed/militias are not active in areas of “civilian habitation and internally displaced person camps.” The Government of Sudan is required to neutralize the Janjaweed/militias in coordination with AMIS and notify the Ceasefire Commission of its plans. The disarmament plan includes enforcement operations to apprehend and disarm militants; confiscate heavy and long-range weapons; prosecute and punish criminals.

After the parties redeploy and the disarmament of the Janjaweed/militias, the parties shall relinquish their heavy artillery and long-range weapon systems. The DPA mandates that AMIS store these weapons be held in secure locations under a dual lock, “with the Movements in control of one key and African Union Mission in Sudan in control of the other key.” The chairman of the Ceasefire Commission shall oversee the arms control process and AMIS shall be responsible for verification of compliance. If AMIS discovers any breach of these rules or the ceasefire, AMIS must report to the Ceasefire Commission immediately. The Government of Sudan, with assistance from international organizations, is to provide funding, non-military logistics, and technical assistance in process of assembly, disarmament, and demobilization.

**Demobilization**

The DPA provides that the demobilization process shall start after the disarmament process. The DPA establishes Movements’ Assembly sites where demobilization shall occur. The Darfur Security Arrangements and Implementation Commission (DSAIC) has the authority to develop “a plan that specifies the timing, sequencing, and processes of disarmament and demobilization.

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233 Darfur Peace Agreement, art. 27, para. 366.
234 Darfur Peace Agreement, art. 27, para. 370.
235 Darfur Peace Agreement, art. 27, para. 367.
236 Darfur Peace Agreement, art. 29, para. 426, sec. c.
237 Darfur Peace Agreement, art. 27, paras. 371, 373.
238 Darfur Peace Agreement, art. 27, para. 374.
239 Darfur Peace Agreement, art. 29, para. 420.
of former combatants.” This authority is to be conducted with the assistance of African Union Mission in Sudan and other international partners.\textsuperscript{240}

Prior to demobilization, the DPA requires former combatants to be registered, screened, and categorized.\textsuperscript{241} The process begins with the designation of assembly areas by the Ceasefire Commission in consultation with the parties.\textsuperscript{242} The assembly areas are the designated locations where Movements forces remain during the demobilization process and where they will receive logistical support from the Government of Sudan and the international community.\textsuperscript{243} AMIS is responsible for monitoring the assembly areas.\textsuperscript{244} The Movements are responsible for internal security in the assembly sites and cannot leave the sites with their weapons without first notifying African Union Mission in Sudan at least 72 hours in advance.\textsuperscript{245}

**Reintegration**

The DPA requires that the Government of Sudan, with the assistance of international partners, ensure that “all former combatants who wish to return to civilian life” or are not eligible for integration into the security forces are supported through reintegration programs.\textsuperscript{246} The reintegration process is to be fair, transparent, and consistent with regard to the eligibility of former combatants, regardless of their affiliations.\textsuperscript{247}

The reintegration process is community based to benefit both returnees and local communities. The former combatants are to receive “awareness orientation, sensitization, and training regarding on Demobilization, Disarmament and Reintegration, the peace process and their roles and responsibilities,”\textsuperscript{248} and are

\begin{footnotes}
\item[240] Darfur Peace Agreement, art. 29, paras. 424-425.
\item[241] Darfur Peace Agreement, art. 29, para. 426, sec. d.
\item[242] Darfur Peace Agreement, art. 27, para. 372.
\item[243] Darfur Peace Agreement, art. 29, paras. 419, 420, 423.
\item[244] Darfur Peace Agreement, art. 29, para. 419. African Union Mission in Sudan will develop the plan for assembly in consultation with the parties, with monitoring by African Union Mission in Sudan. Darfur Peace Agreement, art. 29, paras. 419, 421.
\item[245] Darfur Peace Agreement, art. 29, paras. 422-423.
\item[246] Darfur Peace Agreement, art. 29, para. 431.
\item[247] Darfur Peace Agreement, art. 29, para. 434.
\item[248] Darfur Peace Agreement, art. 29, para. 426, sec. a.
\end{footnotes}
allowed to choose their path to reintegration.\textsuperscript{249} The reintegration programs must include follow-up monitoring and continuing support measures as needed to ensure long-term sustainability.\textsuperscript{250} The DPA encourages the participation of communities and civil society “to strengthen their capacity to play their role in improving and sustaining the social and economic reintegration of former combatants.”\textsuperscript{251}

\textit{Integration into a National Defense Force}

The DPA specifies that 4,000 former combatants will undergo integration into the Sudan Armed Forces, 1,000 will be integrated into the police and other security forces, and 3,000 will be supported through education and training programs.\textsuperscript{252} The DPA also provides guidelines regarding the composition of integrated units and the conditions under which integration is to occur.\textsuperscript{253} The integration of former combatants, however, is not to increase the troop level in Darfur.\textsuperscript{254}

The DPA grants the Technical Integration Committee the authority to recommend specific numbers of former combatants, based on the availability of accelerated officer training, to fill positions at all levels of Sudanese security services.\textsuperscript{255} The Government of Sudan, the African Union, and international partners will then offer former combatants additional training so that they meet the requirements of their rank and positions.\textsuperscript{256} Former combatants who have previously served in the police or armed forces are entitled to return to the police or armed forces with their former rank.\textsuperscript{257} During the first five years after integration, the former combatants will not be released from service due to any reduction in force size and will not have an assignment outside of Darfur.\textsuperscript{258}

\textsuperscript{249} Darfur Peace Agreement, art. 29, para. 434.  
\textsuperscript{250} Darfur Peace Agreement, art. 29, para. 435.  
\textsuperscript{251} Darfur Peace Agreement, art. 29, para. 436.  
\textsuperscript{252} Darfur Peace Agreement, art. 29, paras. 408, 409.  
\textsuperscript{253} Darfur Peace Agreement, art. 29, paras. 410, 411.  
\textsuperscript{254} Darfur Peace Agreement, art. 29, para. 413.  
\textsuperscript{255} Darfur Peace Agreement, art. 29, para. 401.  
\textsuperscript{256} Darfur Peace Agreement, art. 29, paras. 402-403.  
\textsuperscript{257} Darfur Peace Agreement, art. 29, paras. 406, 408, sec. b.  
\textsuperscript{258} Darfur Peace Agreement, art. 29, paras. 404-405.
Reintegration Funds and Special Programs

The Government of Sudan, with international support, is to fund the reintegration of former combatants.\textsuperscript{259} The DPA recognizes the special reintegration needs of women, children, and disabled former combatants.\textsuperscript{260} The DPA specifically recognizes the special needs of orphans of combatants and those who were combatants themselves.\textsuperscript{261} The DPA requires that the Reintegration Plan allocate resources to develop specific programs for them.\textsuperscript{262}

Implementation Timetable & Sequencing

The Darfur Peace Agreement establishes a timeline for completion of the demobilization, disarmament, and reintegration process.\textsuperscript{263} The timeline begins with the signing of the ceasefire, and continues two and a half years after its implementation.\textsuperscript{264} The established timetable specifies dates for the commencement of all phases of disarmament, demobilization, and reintegration including disengagement, redeployment, limited arms control, and assembly of forces reintegration. The DPA requires the parties to complete all phases of disarmament, demobilization and reintegration by 1,065 days after signing of the DPA.\textsuperscript{265}

\begin{itemize}
\item \textsuperscript{259} Darfur Peace Agreement, art. 29, paras. 431, 437.
\item \textsuperscript{260} Darfur Peace Agreement, art. 29, para. 442.
\item \textsuperscript{261} Darfur Peace Agreement, art. 29, para. 444.
\item \textsuperscript{262} Darfur Peace Agreement, art. 29, paras. 438, 442-445.
\item \textsuperscript{263} Darfur Peace Agreement, art. 30, para. 454-457.
\item \textsuperscript{264} Darfur Peace Agreement, art. 27, para. 301 & art. 30, para. 457.
\item \textsuperscript{265} Darfur Peace Agreement, Implementation Timetable for Comprehensive Ceasefire and Final Security Arrangements.
\end{itemize}
**SAMPLE LANGUAGE**

**Article XXX**

**Demobilization**

*Disengagement*

(1) Disengagement shall mean the immediate breaking of contact between the opposing military forces of the Parties to the Agreement at places where they are in direct contact by the effective date and time of the ceasefire.

(2) Immediate disengagement at the initiative of all military units shall be limited to the effective range of all weapons. Disengagement to put all weapons out of range shall be conducted under the guidance of the Ceasefire Commission and monitored by the Monitoring Mission.\(^{266}\)

**AND**

(3) Where disengagement by a party is impossible or impractical, the Ceasefire Commission shall find an alternative solution to render the weapons safe.\(^{267}\)

**OR**

(3) When immediate disengagement is not possible, a framework and sequence of disengagement shall be agreed upon by all parties to the Ceasefire through the Ceasefire Commission.

(4) Wherever disengagement by movement is impossible or impractical, alternative solutions requiring that weapons are rendered safe shall be designated by the Monitoring Mission.\(^{268}\)

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\(^{266}\) This language is drawn from the Arusha Peace and Reconciliation Agreement for Burundi (2000), Protocol III, art. 26 (2). Similar language is used in the Liberia Comprehensive Agreement, art. V (1-3).

\(^{267}\) This language is drawn from the Arusha Peace and Reconciliation Agreement for Burundi (2000), Protocol III, art. 26 (2).

\(^{268}\) This Language is drawn from the Liberia Comprehensive Agreement, art. V (4-5).
Ceasefire Commission

(1) The Ceasefire Commission shall consist of representatives of the Government, the combatants of the political parties and movements, the United Nations other International organizations.  

(2) The Ceasefire Commission shall be a decision-making body. 

(3) The Ceasefire Commission shall take its decisions by consensus. 

(4) The Ceasefire Commission shall be responsible, among other things, for:
   (a) Establishing the location of units at the time of the ceasefire;
   (b) Establishing liaison between the parties for the purpose of the ceasefire;
   (c) Finding appropriate solutions in the event of difficulty in disengagement;
   (d) Conducting investigations of any ceasefire violations;
   (e) Verifying all information, data and activities relating to military forces of the parties;
   (f) Verifying the disengagement of the military forces of the Parties where they are in direct contact;
   (g) Monitoring the storage of arms, munitions equipment;
   (h) Monitoring the quartering of troops and police;
   (i) Undertaking the disarmament of all illegally armed civilians;
   (j) Undertaking mine clearance throughout the country.

(5) The Parties undertake to provide the Ceasefire Commission immediately with all relevant information on the organization, equipment and positions of

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269 This language is drawn from Arusha Peace and Reconciliation Agreement for Burundi (2000), Protocol III, art. 27 (1). A similar structure is used in The Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, pt. 4, art. II; para. 1, and in the Lusaka Protocol (Angola 1994), Annex 8, sec. C, para. 1.

270 This language is drawn from Arusha Peace and Reconciliation Agreement for Burundi (2000), Protocol III, art. 27 (1).

271 This language is drawn from Arusha Peace and Reconciliation Agreement for Burundi (2000), Protocol III, art. 27 (1).
their forces, on the understanding that such information shall be held in strict confidence.\textsuperscript{272}

\textit{Monitoring Mission}

(1) A Monitoring Mission will be established by international organizations and contributing states with the mandate to monitor the implementation of the commitments taken by the parties in this Agreement.\textsuperscript{273}

(2) The tasks of the Monitoring Mission are to:\textsuperscript{274}

(a) Monitor the demobilization of former combatants and decommissioning of their armaments;
(b) Monitor the relocation of non-organic military forces and non-organic police troops;
(c) Monitor the reintegration of former combatants;
(d) Monitor the human rights situation and provide assistance in this field;
(e) Monitor the process of legislation change;
(f) Rule on disputed amnesty cases;
(g) Investigate and rule on complaints and alleged violations of the Agreement; and
(h) Establish and maintain liaison and good cooperation with the parties.

(3) The Parties will support the implementation of Monitoring Mission’s the mandate. To this end, the Parties will each write a letter to the international organizations and contributing states expressing its commitment and support to the Monitoring Mission.\textsuperscript{275}

\textsuperscript{272} This language is drawn from Arusha Peace and Reconciliation Agreement for Burundi (2000), Protocol III, art. 27 (1).
\textsuperscript{273} The Language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 5.1. Other agreements using a monitoring mission include Liberia Comprehensive Peace Agreement, art. III, sec. 1; The Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, pt. 1, art. II; para. 1; and The Macedonia Framework Agreement (2001), Annex C, sec. 1.
\textsuperscript{274} This Language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 5.2. This language is similar to the Liberia Comprehensive Peace Agreement, art. III, sec. 2.
\textsuperscript{275} This language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 5.4-5.5.
(4) The Parties commit themselves to provide the Monitoring Mission with secure, safe, and stable working conditions and pledge their full cooperation with the Monitoring Mission.\textsuperscript{276}

(5) Monitors will have unrestricted freedom of movement in Darfur. The Monitoring Mission will accept only those tasks within the provisions of the Agreement. The Parties do not have a veto over the actions or control of the Monitoring Mission operations.\textsuperscript{277}

(6) The Monitoring Mission reports to the Head of Monitoring Mission who will provide regular reports to the parties and to others as required.\textsuperscript{278}

(7) Upon signature of this Agreement, each party will appoint a senior representative to deal with all matters related to the implementation of this Agreement with the Head of Monitoring Mission.\textsuperscript{279}

(8) The Parties commit themselves to notify the Monitoring Mission of all military and reconstruction issues pursuant to an established procedure.\textsuperscript{280}

(9) To facilitate transparency, the Government of Sudan will allow full access for the representatives of national and international media to Darfur.\textsuperscript{281}

\textit{Timetable}

The Parties agree to develop a timetable for the phased withdrawal of Monitoring Mission, including measures for securing all of the Darfur territory by the restructured armed forces. The phased withdrawal of the

\textsuperscript{276} This language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 5.6.
\textsuperscript{277} This language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 5.7.
\textsuperscript{278} This language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 5.11.
\textsuperscript{279} This language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 5.12.
\textsuperscript{280} This language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 5.13.
\textsuperscript{281} This language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 5.15.
Monitoring Mission will be linked to the phased creation and deployment of the restructured armed forces. 282

Dispute Resolution

A Mixed Military Working Group (MMWG) will be established to resolve any problems that may arise in the observance of the ceasefire. It will be chaired by the most senior United Nations military officer in the State or his representative. Each Party agrees to designate an officer of the rank of brigadier or equivalent to serve on the MMWG. Its composition, method of operation and meeting places will be determined by the most senior United Nations military officer in consultation with the Parties. Similar liaison arrangements will be made at lower military command levels to resolve practical problems on the ground. 283

De-mobilization Process

(1) Under the supervision of the ceasefire commission and the Monitoring Mission, the following will be carried out:
(a) Lists of people to be demobilized shall be compiled.
(b) Members to be demobilized shall be provided with some form of appropriate identification.
(c) Demobilization criteria and a demobilization package shall be drawn up.
(d) An organ to deal with the socio-professional reintegration of demobilized troops shall be established.
(e) A technical committee to work out the program and modalities of demobilization shall be set up.
(f) Following the demobilization process, a certificate shall be issued to demobilized troops.

(g) Each demobilized person shall receive a demobilization allowance.284

(2) The parties hereby commit themselves to demobilize all their remaining forces before or shortly after the elections and, to the extent that full demobilization is unattainable, to respect and abide by whatever decision the newly elected government that emerges in accordance with this Agreement takes with regard to the incorporation of parts or all of those forces into a new national army.285

(3) Upon completion of the demobilization referred to in paragraph 2, the Parties and the United Nations Special Representative of the Secretary General shall undertake a review regarding the final disposition of the forces remaining in the cantonments, with a view to determining which of the following shall apply:

(a) If the Parties agree to proceed with the demobilization of all or some of the forces remaining in the cantonments, preferably prior to or otherwise shortly after the elections, the Special Representative shall prepare a timetable for so doing, in consultation with them;

(b) Should total demobilization of all of the residual forces before or shortly after the elections not be possible, the Parties hereby undertake to make available all of their forces remaining in cantonments to the newly elected government that emerges in accordance with this Agreement, for consideration for incorporation into a new national army.

(c) They further agree that any such forces, which are not incorporated into the new national army, will be demobilized forthwith according to a plan to be prepared by the Special Representative.286

284 This language is drawn from Arusha Peace and Reconciliation Agreement for Burundi (2000), Protocol III, art. 21 (4-6, 8, 9, 11, and 12). The Agreement on a Comprehensive Political Settlement of the Cambodia Conflict (1991), Annex 2, art. III, presents a similar and detailed plan for demobilization process.


286 This language is drawn from Agreement on a Comprehensive Political Settlement of the Cambodia Conflict (1991), Annex 2, art. V (1 and 2).
Article XXX
Disarmament

Disarmament Sub-Committee

(1) The Ceasefire Committee hereby establishes a sub-committee to develop, manage and implement weapons disposal in accordance with this Resolution. The agreed membership of the sub-committee will be as follows: Chairman: Director, International Organization Representative; Deputy Chair: Commander, Monitoring Mission, or his representative and Representatives of all parties.  

(2) The sub-committee may, by agreement, co-opt other members, including representatives of other groups.

(3) The sub-committee will seek support for, and co-ordinate:
   (a) An active joint program to promote public awareness, understanding, and support of weapons disposal;
   (b) Development and implementation of this Resolution, including mechanisms to ensure location, identification, control, withdrawal from the community and secure storage of weapons, with special regard for factory-made arms and ammunition;
   (c) Means of ensuring the full and accurate recording of weapons, and securing the co-operation and participation by individuals and other groups.

(4) The sub-committee shall take such account of the need for confidentiality as the parties may require for security.

(5) The sub-committee shall resolve such differences as may arise in relation to implementation under this Resolution.

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287 This language is drawn from Bougainville Peace Agreement (2001), sec. E, para. 3.
288 This language is drawn from Bougainville Peace Agreement (2001), sec. E, para. 3.
289 This Language is drawn from Bougainville Peace Agreement (2001), sec. E, para 4. Similar language is used in Liberia’s Comprehensive Peace Agreement, art. VI, paras. 8-11.
290 This language is drawn from Bougainville Peace Agreement (2001), sec. E, para. 4.
291 This language is drawn from Bougainville Peace Agreement (2001), sec. E, para. 4.
Surrender of Weapons

(1) Former combatants will hand into their commanders their weapons, which will be stored by the commanders at central locations, designated by the Disarmament Sub-committee, to await verification by the Monitoring Mission.

(2) The Monitoring Mission will verify the weapons have been turned in at which point the weapons will be held in containers under Monitoring Mission supervision and secured by two locks – with one key held by the relevant commander and the other held by the Monitoring Mission – pending a final decision on the ultimate fate of the weapons.292

OR

(1) The Parties commit themselves to ensuring the prompt and efficient implementation of a national process of cantonment, disarmament, demobilization, rehabilitation, and reintegration.

(2) The Monitoring Mission shall conduct the disarmament of all combatants of the Parties including paramilitary groups.

(3) The Monitoring Mission is requested to deploy to all disarmament and demobilization locations in order to facilitate and monitor the program of disarmament.293

OR

With regard to the ultimate disposition of the remaining forces and all the arms, ammunition and equipment, the Monitoring Mission, as it withdraws from the state, shall retain such authority as is necessary to ensure an orderly

292 This language is drawn from Bougainville Peace Agreement (2001), sec. E, paras 6, 7.
293 This Language is drawn from Liberia Comprehensive Peace Agreement, art. VI, para. 1, 2, and 7. Similar language is used in the Lusaka Protocol (Angola 1994), Annex 8, para. 1.25 and 1.26; and in the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict (1991), Annex 2, art. V (4).
transfer to the newly elected government of those responsibilities it has exercised during the transitional period.\footnote{294}

\textbf{Article XXX}  
\textbf{Reintegration}  

(1) As citizens of the State, all persons having been granted amnesty or released from prison or detention will have all political, economic, and social rights as well as the right to participate freely in the political process both in the Region and on the national level.\footnote{295}

(2) The Government of Sudan will allocate suitable farming land as well as funds to the authorities of the Region for the purpose of facilitating the reintegration to society of the former combatants. All former combatants will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of the Region.\footnote{296}

(3) Former combatants will have the right to seek employment in the police and military forces in the region without discrimination and in conformity with national standards.\footnote{297}

\textit{Reintegration funds}  

The Government of Sudan will allocate funds for the rehabilitation of public and private property destroyed or damaged as a consequence of the conflict to be administered by the authorities of the Region.\footnote{298}

\begin{footnotesize}
\begin{itemize}
\item \footnote{294}{This language is drawn from Agreement on a Comprehensive Political Settlement of the Cambodia Conflict (1991), Annex 2, art. V (2).}
\item \footnote{295}{This language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 3.1.2.}
\item \footnote{296}{This language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 3.2.5.}
\item \footnote{297}{This language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 3.2.7.}
\item \footnote{298}{This language is drawn from Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (2005), art. 3.2.4.}
\end{itemize}
\end{footnotesize}
OR

The Parties invite the International Community and the World Bank to rapidly convene a meeting of international donors after adoption this agreement to support the financing of measures to be undertaken for the purpose of implementing the Agreement, including measures to strengthen local self-government and reform the police services, to address macro-financial assistance to the State, and to support the rehabilitation and reconstruction measures identified in the developed action plan.  

Child Soldiers

The Government of Sudan shall accord particular attention to the issue of child soldiers. It shall, accordingly, mobilize resources, both within the state and from the International Community, and especially through the Office of the UN Special Representative for Children in Armed Conflict, UNICEF and other agencies, to address the special needs of these children in the existing disarmament, demobilization, and reintegration processes.

300 This language is drawn from Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, pt. 5, art. XXX.
DISPLACED PERSONS

INTRODUCTION

This chapter provides an overview of the mechanisms by which states facilitate the return of displaced persons. This chapter also outlines the related provisions of the Darfur Peace Agreement (DPA) and provides sample language regarding displaced persons that parties may wish to consider in drafting a peace agreement. This chapter refers to both internally displaced persons (IDPs) and refugees together as “displaced persons.”

States recovering from periods of armed conflict often face the challenge of providing for the return of refugees and IDPs. States must address several issues to facilitate the return of displaced persons, including providing security for the displaced persons, interim housing for those seeking to return to their pre-conflict homes, and social services for those who do return to their pre-conflict homes. To ease the process of resettlement and reintegration of displaced persons, the parties may wish to include a framework for addressing the issue of displaced persons in a peace agreement. Peace agreements including these provisions can ease the process of resettling displaced persons and can ensure that all parties respect the human rights of returning displaced persons.

The provisions related to displaced persons typically include four core elements. These core elements: (1) provide a definition of refugees and internally displaced persons; (2) provide guarantees by all parties regarding the return and reintegration of displaced persons; (3) define the rights of displaced persons; and (4) create implementation and enforcement mechanisms to facilitate their return and reintegration.

CORE ELEMENTS

Definitions of Refugees and Internally Displaced Persons

Peace agreements often define specific refugees and internally displaced persons to whom the agreement applies. This clarifies the legal protections and obligations that are due to such persons.

The parties may provide technical definitions of the terms “refugees” and “internally displaced persons” within the peace agreement itself. In Uganda, the
National Policy for Internally Displaced Persons includes a “Glossary of Terms” section that defines internally displaced persons as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-induced disasters, and who have not crossed an internationally recognized State border.”

The National Policy for Internally Displaced Persons includes a separate term for returning displaced persons. It defines a returnee as “any Internally Displaced Person who returns to his or her home or place of habitual residence.” In Georgia, the Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons refers collectively to refugees and internally displaced persons and describes them as “people who have fled from areas of the conflict zone to the areas of their previous permanent residence.”


A peace agreement may use one term to discuss both refugees and IDPs, or it may reference them separately. The Arusha Peace and Reconciliation Agreement for Burundi refers to all IDPs and returnees as “Sinistrés.”

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302 The National Policy for Internally Displaced Persons, Glossary of Terms.
Conflict in Guatemala refers to all displaced persons and returnees as the “uprooted population.”  

**Guarantees of Security and International Cooperation**

Before returning home, displaced persons require assurances from their home states that their place of return is safe. A sustainable peace is necessary to create an environment that will allow displaced persons to return, resettle, and resume their lives. By committing to end the violent conflict in a peace agreement, the parties may reassure the returnees that they will be safe and secure during the resettlement process. If the international community is assisting the return process, the parties also can cooperate fully by ensuring that resources and access to all territories within their control are available to those assisting.

**Guarantees for Safety and Security**

A lack of security and safety can prevent the return of displaced persons to their areas of origin. Displaced persons may be in danger both during the process of return and after resettlement. A peace agreement can address these concerns by establishing each party’s affirmative obligation to ensure the safety and security of affected populations during times of return and reintegration.

Disarmament, demobilization, and reintegration of armed groups involved in the conflict can significantly increase the safety and security of returnees. Peace agreements in El Salvador and Guatemala provided for disarmament programs to protect civilians following the conflicts that caused their displacement. Both disarmament programs featured multiple weapons collection sites and limited access to weapons storage warehouses. In both states, the programs initially

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307 Disarmament refers to a gradual reduction in the number of available weapons. Demobilizing combatants in the region removes them from potential points of conflict. Reintegration provides ex-combatants with the skills and education necessary to make them viable members of a post-conflict society.

restricted the movements of government forces, and non-government combatants relocated to specified disarmament zones. Successful reintegration efforts in Sierra Leone provided more than 21,000 ex-combatants with a six-month skills training program, basic education, and a stipend that was available as long as the ex-combatants remained in training. Such provisions help to keep former combatants apart from returnees and avoid further endangerment to the returnees.

Cooperation with the International Community

Parties to a peace agreement can facilitate the return and resettlement of displaced persons by explicitly invoking international laws governing refugees and IDPs in a peace agreement. The parties can also cooperate with the international community by ensuring the security of international organizations that provide repatriation assistance, including aid and trans-border transportation to return displaced persons.

In Sierra Leone, the government and the rebel group, the Revolutionary United Front, agreed to allow the United Nations and other international organizations to have access to the state so that they could provide humanitarian assistance to populations in need. In the peace agreement, the parties specified that they would allow the humanitarian groups safe and unhindered access to areas under the parties’ control. The peace agreement also specified that the parties

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311 Statement by the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone on the Delivery of Humanitarian Assistance in Sierra Leone, June 3, 1999. The parties reaffirmed this statement and included it as Annex 4 to the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone.
would provide for the safety of the goods, personnel, and beneficiaries of the humanitarian assistance.\textsuperscript{312} The Secretary-General of the United Nations noted that the Sierra Leone government itself may not have been able to handle a large influx of returning displaced persons, so the provision of humanitarian assistance by international organizations was essential to sustain the return of displaced persons.\textsuperscript{313}

Similarly, in Liberia the government agreed to allow the United Nations and other humanitarian organizations to monitor its displaced persons camps. The declaration by the Liberian government provided that the United Nations and other humanitarian organizations would work with the Liberian Ministry of Justice “in monitoring, protecting and managing the treatment of IDPs in accordance with International Humanitarian and Human Rights laws and standards.”\textsuperscript{314}

Rights of Displaced Persons

There are four essential rights of displaced persons. First, displaced persons have the right to make an informed, voluntary return, which requires that states neither hinder nor force displaced persons’ return. States can encourage displaced persons to return voluntarily by providing them with information about the conditions in the areas of their pre-conflict homes. Second, displaced persons have the right to citizenship, identity, and participation, which includes the right to have all identification documentation necessary to enjoy their citizenship rights. Third, displaced persons have the right to property, including the return or compensation for their lost property. Fourth, displaced persons have general human rights, as enumerated in international human rights conventions and treaties.

\textsuperscript{312} Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone art. XXVII.

\textsuperscript{313} The Secretary-General, Report of the Secretary-General on the issue of refugees and internally displaced persons pursuant to resolution 1346 (2001), paras. 16, 19, UN Doc. S/2001/513 (May 23, 2001).

The Right to Informed, Voluntary Return

Agreements that protect displaced persons recognize the right to informed, voluntary return.\textsuperscript{315} States have an international legal obligation to respect, allow, and ensure the right to return.\textsuperscript{316} Forced repatriation is illegal as long as the conditions from which the refugee fled still exist.\textsuperscript{317}

Parties may agree to cooperate with international humanitarian agencies to facilitate “go-and-see visits,” which allow displaced persons to assess the security situations in their former communities and make informed, voluntary decisions to return.\textsuperscript{318} The United Nations Mission in Kosovo arranged for displaced persons to make “go-and-see” visits to help them make an informed decision to return.\textsuperscript{319} The United Nations Mission in Kosovo’s detailed guidelines for implementing these “go-and-see” visits emphasized the need for enhanced security for the displaced persons making these visits.\textsuperscript{320} The United Nations Mission in Kosovo provided transportation for displaced persons to visit their pre-conflict homes and reestablish contacts with neighbors and the community.\textsuperscript{321} The guidelines also mandated that local authorities conduct briefings when the displaced persons arrive to their pre-

\textsuperscript{319} UNITED NATIONS MISSION IN KOSOVO, REVISED MANUAL FOR SUSTAINABLE RETURN, at 31-34.
\textsuperscript{320} UNITED NATIONS MISSION IN KOSOVO, REVISED MANUAL FOR SUSTAINABLE RETURN, at 33.
\textsuperscript{321} UNITED NATIONS MISSION IN KOSOVO, REVISED MANUAL FOR SUSTAINABLE RETURN, at 33.
conflict homes to inform them of the opportunities to receive social welfare, education, health care, and other services available.\textsuperscript{322}

In Sierra Leone, the peace agreement between the Sierra Leone government and the Revolutionary United Front of Sierra Leone encouraged the return of displaced persons. The peace agreement recognized the right of voluntary return of displaced persons and provided that the parties would agree to a resettlement plan.\textsuperscript{323} The resettlement plan included provisions for displaced persons who sought to return to insecure areas as well as secure areas.\textsuperscript{324} The Sierra Leonean government allowed displaced persons who could not return to an area because it was not secure to stay in camps, where the government provided all basic services.\textsuperscript{325} The government provided refugees returning to secure areas with access to transportation to those areas, food rations for resettlement, and start-up assistance through welfare programs. These provisions helped displaced persons reintegrate in their pre-conflict homes.\textsuperscript{326}

\textit{The Right to Citizenship, Identity, and Participation}

The United Nations Convention Relating to the Status of Refugees provides that governments and their officials cannot discriminate against displaced persons because of their status as refugees or IDPs.\textsuperscript{327} One method states may use to fully

\textsuperscript{322} \textsc{United Nations Mission in Kosovo, Revised Manual for Sustainable Return}, at 33-34. Although providing this information is important in encouraging displaced persons to return home, the United Nations noted that progress in Kosovo had been slow because of a lack of economic opportunities and a lack of certainty regarding the future status of Kosovo. \textit{The Secretary-General, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo}, para. 16, U.N. Doc. S/2007/134 (March. 9, 2007).

\textsuperscript{323} Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, art. XXII.


\textsuperscript{325} Sierra Leone Resettlement Strategy (2001), sec. 3.4.1.

\textsuperscript{326} Sierra Leone Resettlement Strategy (2001), sec. 3.5.

restore displaced persons’ citizenship rights is to provide government-issued identification and other documentation.\textsuperscript{328}

The National Policy for Internally Displaced Persons in Uganda, provides that state and local governments cannot discriminate against displaced persons and that local governments must provide displaced persons with all documentation necessary to allow them the full enjoyment of their rights.\textsuperscript{329} Similarly, in Guatemala, the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict provides that displaced persons shall not face discrimination and recognizes the special need of displaced persons for identity documentation.\textsuperscript{330} As such, the Guatemalan agreement provides several methods for the government to provide the required documentation, including free registration of displaced persons and consideration of registration records kept by groups of displaced persons in establishing their identities.\textsuperscript{331} To avoid fraud in establishing a displaced person’s identity, states may consider requiring corroboration of a displaced person’s identity with other documents or witnesses.\textsuperscript{332}

\textit{The Right to Property and Home}

State practice illustrates that displaced persons have a right to regain their property or receive compensation for that property upon their return. The Universal Declaration of Human Rights guarantees the right to property and

\textsuperscript{329} The National Policy for Internally Displaced Persons, ch. 3.5.
\textsuperscript{330} Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, sec. I, Principles, para. 6 and ch. 2, para. 7.
\textsuperscript{331} Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, sec. II, para. 7.
\textsuperscript{332} The United Nations Internally Displaced Persons Interagency Working Group suggested that the governments of Serbia and Montenegro allow displaced persons from Kosovo to establish their identities by the sworn testimony of two witnesses. IDP INTERAGENCY WORKING GROUP, \textsc{Analysis of the Situation of Internally Displaced Persons from Kosovo in Serbia and Montenegro: Law and Practice}, \textit{available at} http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=42120e554 (last accessed Sept. 11, 2007) (suggesting that the governments of Serbia and Montenegro allow displaced persons from Kosovo to establish their identities by the sworn testimony of two witnesses).
home. Property concerns are a significant obstacle to the return of displaced persons. Secondary occupants often have destroyed, stolen, or occupied the property of displaced persons. For this reason, states find it necessary to develop mechanisms to resolve property disputes, reassign land, and compensate displaced persons for their losses.

To address property rights and restitution, peace agreements usually provide for the right to property restitution. The General Peace Agreement for Mozambique provides displaced persons with a right to take legal action to secure restitution or compensation for their property. Similarly, in the General Framework Agreement for Peace in Bosnia and Herzegovina, the parties agreed that displaced persons had the right to restoration or compensation for lost property.

Once the parties have established the right to property restitution, states can pass legislation or include provisions in a peace agreement creating mechanisms to adjudicate property restitution claims. The General Framework Agreement for Peace in Bosnia and Herzegovina included provisions establishing a Commission to resolve property restitution claims. For more information on Property Restitution, see the chapter on Property Restitution.

336 Croatia passed the Programme of Return and Accommodation of Expellees, Displaced Persons, and Refugees, which established Housing Commissions to oversee the return of occupied private properties to their pre-conflict owners. PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, RECOMMENDATION 1406 (1999): RETURN OF REFUGEES AND DISPLACED PERSONS TO THEIR HOMES IN CROATIA, available at http://assembly.coe.int/Documents/AdoptedText/ta99/erec1406.htm (last accessed Sept. 7, 2007). Croatia passed the Programme of Return and Accommodation of Expellees, Displaced Persons, and Refugees, which established Housing Commissions to oversee the return of occupied private properties to their pre-conflict owners.
337 For more information about the Commission in Bosnia and Herzegovina, see the Implementation Mechanisms chapter in this guide.
Respect for Human Rights

Peace agreements generally define the human rights of all citizens or incorporate the protections guaranteed by international human rights treaties by reference. Parties to a peace agreement may cooperate with the states to which refugees have fled to ensure that the host states respect the human rights of refugees and permit the refugees to leave in a safe and dignified manner. Additionally, the parties may recognize that some groups of displaced persons, such as women and children, are more vulnerable than others and require special protections.

In Sierra Leone, the peace agreement between the Sierra Leonean government and the Revolutionary United Front of Sierra Leone explicitly provided for the protection of human rights by agreeing that the parties would uphold the Universal Declaration of Human Rights. The peace agreement also specifically listed the rights guaranteed to the people of Sierra Leone. In Uganda, the government adopted the National Policy for Internally Displaced Persons, which adheres to international treaties governing the rights of IDPs, including the African Charter on Human and People’s Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the United Nations Guiding Principles on Internal Displacement, among others. The Ugandan government also created the Uganda Human Rights Committee and the Human Rights Protection and Promotion Subcommittee to ensure the protection of displaced persons’ human rights at both the state and local levels.

338 For more information on human rights provisions in peace agreements, see the Human Rights chapter in this guide.
339 Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, sec. II, para. 12.
340 Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone art. XXVIII, para. 2; Aug. 28, 2000, Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, ch. 1, art. 10.
341 Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone art. XXIV.
343 The National Policy for Internally Displaced Persons, ch. 2.3.
Implementation Mechanisms

Effective peace agreements generally address two primary issues to enforce and implement the right of return for displaced persons. First, peace agreements address funding for repatriation. Second, peace agreements provide for mechanisms to monitor and enforce the repatriation process. Drafters of displaced persons provisions in peace agreements may wish to develop implementation mechanisms incorporating international funding assistance and creating monitoring and enforcement mechanisms.

Formation of a Commission and its Composition

Many peace agreements create a commission or task force to develop the mechanisms for return of displaced persons. The Arusha Peace and Reconciliation Agreement for Burundi established a National Commission for the Rehabilitation of displaced persons to create and implement return and reintegration mechanisms. The peace agreement between the Sierra Leonean government and the Revolutionary United Front of Sierra Leone also established a National Commission for Reconstruction, Resettlement, and Rehabilitation, which developed the Sierra Leone Resettlement Strategy. Sierra Leone successfully implemented its Resettlement Strategy and returned and reintegrated 223,000 IDPs (most of the IDP population) in less than two years.

Commission members vary depending on the parties involved. If displaced persons have fled to a neutral third state, that third state also could participate in drafting the agreement and provide a representative for the commission. In addition, the drafters may consider other relevant representational issues and may include commissioners from different tribes and political parties. The Arusha Peace and Reconciliation Agreement for Burundi specified that the commission

344 Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol IV, ch. 1, art. 3.
345 Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, art. XXVIII.
would include members representing each of the parties to the agreement as well as the Burundi government. In Guatemala, the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict established a Technical Committee to implement the principles and mechanisms in the peace agreement. The agreement provided that the Technical Committee would include representatives of the displaced persons, as well as representatives from the government and from participating international organizations.

*Functions of the Commission: Planning for Resettlement & Reintegration*

Commissions may create and implement programs for the sustainable reintegration of displaced persons. A resettlement plan that encompasses humanitarian, economic, and security concerns further facilitates the return of displaced persons. The Technical Committee in Guatemala conducted surveys of displaced persons to evaluate their needs before the resettlement agreement entered into force. Once the Guatemalan government enacted the resettlement agreement and began implementing its resettlement mechanisms, the Technical Committee was responsible for overseeing the implementation of the resettlement agreement, including prioritizing resettlement programs and allocating funds to the programs.

In addition to implementing and overseeing the resettlement process, other states have established specialized commissions to address issues that were central to the conflict. In Sierra Leone, where the armed conflict caused many instances of human rights violations, the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone provided for the establishment of a Human Rights Commission to redress the grievances of victims.

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348 Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol IV, ch. 1, art. 3.
349 Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, sec. V.
350 Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, sec. V.
351 Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, sec. V, para. 4.
352 Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, sec. V, para. 5.
of human rights violations. In the Balkans, many displaced persons made claims for property restitution. To address the issue of property restitution, the General Framework Agreement for Peace in Bosnia and Herzegovina established a Commission for Displaced Persons and Refugees, which was responsible for handling property claims by displaced persons. The General Framework Agreement for Peace in Bosnia and Herzegovina described how the commission would conduct its proceedings and included standards for determining whether displaced persons may either recover or receive compensation for their property.

Support and Assistance from the International Community

The parties may seek assistance from the international community to help fund and implement the resettlement programs. The parties to the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict in Guatemala called on the United Nations Development Program and the international community to assist with its resettlement strategy by providing funding and by overseeing its distribution among the resettlement programs. Similarly, the parties to the Arusha Peace and Reconciliation Agreement for Burundi agreed to seek assistance from the World Bank, the United Nations Development Program, the Office of the United Nations High Commissioner for Refugees, and the European Commission to provide funding and oversee the implementation of its resettlement strategies. The international community may be able to provide more funding and better oversight for repatriation programs than if states attempted to implement the programs on their own.

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353 Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone art. XXV.
354 General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, ch. 2.
355 General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, ch. 2, art. XII.
357 Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, sec. V, para. 6.
**DARFUR PEACE AGREEMENT**

The 2006 Darfur Peace Agreement (DPA) defines “internally displaced persons” as “persons or groups of persons who have been forced or obliged to flee their homes or places of habitual residence, in particular as a result of, or in order to avoid, the effects of armed conflict, situations of generalized violence, violations of human rights or natural or man-made disaster and who have not crossed an international border,” in accordance with the Guiding Principles on Internal Displacement. 359 The DPA refers to refugees and internally displaced persons collectively as “displaced persons.” 360

The DPA provides that the parties will work with the African Union (AU) to provide physical security to displaced persons, including security from violations of human rights, as well as harassment or coercion. 361 In addition, the DPA provides for displaced persons to have access to basic amenities, such as food, water, and shelter, while they are returning. 362

**Rights of Displaced Persons**

The DPA provides displaced persons with the right to make an informed, voluntary return. 363 To facilitate this right, the DPA provides that displaced persons have the right to “objectively reliable information about conditions in their places of origin,” and the AU has the authority to monitor the return of displaced persons to ensure their protection and proper treatment. 364 Although the DPA does not provide explicitly for the right of citizenship, the DPA effectively provides displaced persons with this right by requiring the Darfur Rehabilitation and Resettlement Commission (DRRC) to “issue to displaced persons all documents necessary for the exercise of their legal rights,” including passports, birth certificates, and titles to property. 365 The DPA also provides, “When necessary,

360 Darfur Peace Agreement, Definitions.
361 Darfur Peace Agreement, art. 21, paras. 185-186.
362 Darfur Peace Agreement, art. 21, para. 187.
363 Darfur Peace Agreement, art. 21, para. 178.
364 Darfur Peace Agreement, art. 21, para. 178.
365 Darfur Peace Agreement, art. 21, para. 191.
traditional administration or community leadership shall be used for proof of identity.\textsuperscript{366}

The DPA gives displaced persons the right to restitution of their property or to compensation if they cannot recover their lost property.\textsuperscript{367} The DPA establishes a property restitution system in which local Property Claims Committees resolve property disputes.\textsuperscript{368} The DPA also provides for protection of the human rights of displaced persons, including the right to freedom of movement and of choice of residence.\textsuperscript{369} The DPA guarantees respect for human rights as set out in international humanitarian law.\textsuperscript{370}

**Implementation Mechanisms**

The DPA grants the Transitional Darfur Regional Authority the primary responsibility for developing and implementing repatriation programs for displaced persons.\textsuperscript{371} The DPA establishes the Darfur Rehabilitation and Resettlement Commission (DRRC) to assess the effectiveness of the repatriation programs.\textsuperscript{372} The DRRC's responsibilities include providing basic amenities to returning displaced persons and conducting surveys to assess the situation of displaced persons.\textsuperscript{373} Additionally, the DRRC is responsible for issuing documentation to displaced persons, facilitating the reunion of unaccompanied minors with their parents, and establishing a property restitution system.\textsuperscript{374}

The DPA also creates a separate Compensation Commission to address the grievances of victims of armed conflict in Darfur.\textsuperscript{375} The Compensation

\textsuperscript{366} Darfur Peace Agreement, art. 21, para. 191.
\textsuperscript{367} Darfur Peace Agreement, art. 21, para. 194.
\textsuperscript{368} Darfur Peace Agreement, art. 21, para. 197. For more information on the property restitution system in the DPA, see the DPA section in the chapter on Property Restitution of this Guide.
\textsuperscript{369} Darfur Peace Agreement, art. 21, para. 176.
\textsuperscript{370} Darfur Peace Agreement, art. 21, para. 176.
\textsuperscript{371} Darfur Peace Agreement, art. 6, para. 53, sec. a.
\textsuperscript{372} Darfur Peace Agreement, art. 21, para. 182.
\textsuperscript{373} Darfur Peace Agreement, art. 21, paras. 182, 187.
\textsuperscript{374} Darfur Peace Agreement, art. 21, para. 191.
\textsuperscript{375} Darfur Peace Agreement, art. 21, para. 193.
\textsuperscript{376} Darfur Peace Agreement, art. 21, para. 195.
\textsuperscript{377} Darfur Peace Agreement, art. 21, para. 200.
Commission can hear claims of victims of “physical or mental injury, emotional suffering or human and economic losses, in connection with the conflict.” The DPA requires that the parties nominate the members of the Compensation Commission. The DPA intends that the members represent the affected communities. The DPA also requires the Compensation Commission to refer any property claims to the Property Claims Committees.

**International Cooperation and Support**

The DPA allows the United Nations and other international organizations to provide humanitarian aid to displaced persons “whether they are in urban, rural or camp settings.” The DPA also provides that the Government of Sudan and the AU should work together to ensure protection of human rights, to ensure the security of returning displaced persons, and to meet the basic needs of displaced persons. The Government of Sudan agrees to provide the funds necessary to implement the repatriation programs. The DPA also provides for international funding contributions to the Darfur Reconstruction and Development Fund, which the Government of Sudan can use to fund repatriation programs.

**SAMPLE LANGUAGE**

**Article XXX**

**Definition of Refugees and Internally Displaced Persons**

(1) Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or

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378 Darfur Peace Agreement, art. 21, para. 200.
380 Darfur Peace Agreement, art. 21, para. 204. For more information on the Compensation Commission, see the chapter on Victim Compensation in this guide.
381 Darfur Peace Agreement, art. 21, para. 184.
382 Darfur Peace Agreement, art. 21, para. 185.
383 Darfur Peace Agreement, art. 21, paras. 185-186.
384 Darfur Peace Agreement, art. 21, para. 181.
385 Darfur Peace Agreement, art. 21, para. 180.
386 Darfur Peace Agreement, art. 19, para. 154, sec. a.
human-induced disasters, and who have not crossed an internationally recognized State border.

(2) Refugees are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-induced disasters, and who have crossed an internationally recognized State border. \(^{387}\)

(3) The term “displaced persons” designates all internally displaced persons and refugees. \(^{388}\)

OR

For the definition of the term “refugee,” reference is made to international conventions, including the 1951 Geneva Convention Relative to the Status of Refugees, the 1966 Protocol Relative to the Status of Refugees and the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. \(^{389}\)

**Article XXX**

**Guarantee of Safety**

As a reaffirmation of their commitment to the observation of the conventions and principles of human rights and the status of refugees, the Parties shall take effective and appropriate measures to ensure that the right of displaced persons...

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\(^{387}\) This language is drawn from the Glossary of Terms of the Ugandan National Policy for Internally Displaced Persons. These definitions are consistent with the Guiding Principles on Internal Displacement and the Convention Relating to the Status of Refugees.

\(^{388}\) This language is drawn from the Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, art. 1. Similarly, in Guatemala, the Agreement on the Resettlement of the Population Groups Uprooted by the Armed Conflict refers to all IDPs, refugees, and returnees as the “uprooted population.” Agreement on the Resettlement of the Population Groups Uprooted by the Armed Conflict, sec. I, Definitions, para. 1.

\(^{389}\) This language is drawn from the Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, art. 1.
persons to asylum is fully respected and that no camps or dwellings of refugees or displaced persons are violated.  

Article XXX
Cooperation with the International Community

(1) The parties agree that all duly registered humanitarian agencies shall be guaranteed safe and unhindered access to all areas under the control of the respective parties in order that humanitarian assistance can be delivered safely and effectively, in accordance with international conventions, principles and norms governing humanitarian operations.

(2) In this respect the Parties shall:
   (a) Guarantee safe access and facilitate the fielding of independent assessment missions by duly registered humanitarian agencies;
   (b) Identify, in collaboration with the [United Nations and African Union], mutually agreed routes (road, air and waterways) by which humanitarian goods and personnel shall be transported to the beneficiaries to provide needed assistance;
   (c) Allow duly registered humanitarian agencies to deliver assistance according to needs established through independent assessments; and
   (d) Guarantee the security of all properties and of and goods transported, stocked or distributed by the duly registered humanitarian agencies, as well as the security of their project areas and beneficiaries.

(3) The parties agree to set up at various levels in their areas of control, the appropriate and effective administrative and security bodies which will monitor and facilitate the effective delivery of humanitarian assistance in all approved points of delivery, and ensure the security of the personnel, goods and project areas of the humanitarian agencies as well as the safety of the beneficiaries.  

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390 This language is drawn from the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, art. XXIII. The Arusha Peace and Reconciliation Agreement for Burundi makes a similar reference to the guarantee of security for returning displaced persons. Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, art. 2, sec. 2, para. c.

391 This language is drawn from the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, Annex IV. The Arusha Peace and Reconciliation Agreement for Burundi also provides for the safety of humanitarian agencies.
Article XXX
Rights of Displaced Persons

(1) Displaced persons have the right to reside and live freely in Sudanese territory. Accordingly, the Government of Sudan undertakes to ensure that conditions exist which permit and guarantee the voluntary return of displaced persons to their places of origin or to the available place of their choice, in conditions of dignity and security.\textsuperscript{392}

(2) Displaced persons must have their rights as citizens restored to them in accordance with the laws and regulations in force in the Republic of Sudan after the entry into force of the Agreement.\textsuperscript{393}

(3) Displaced persons shall have the right to have restored to them property of which they were deprived in the course of hostilities and to be compensated for any property that cannot be restored to them.\textsuperscript{394}

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\textsuperscript{392} This language is drawn from paragraph 1 of the Principles section of section 1 of the Guatemalan Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict. The General Framework Agreement for Peace in Bosnia and Herzegovina also provides displaced persons with the right to informed, voluntary return. General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, art. 1, para. 1. Article XXII of the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone contains a similar provision.

\textsuperscript{393} This language is drawn from the Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, art. 7. Liberia agreed to allow the United Nations to monitor its displaced persons camps. Declaration of the Rights and Protection of Liberian Internally Displaced Persons, sec. 2.

\textsuperscript{394} This language is drawn from the General Framework Agreement for Peace in Bosnia and Herzegovina, annex 7, art. 1. The Ugandan National Policy for Internally Displaced Persons provides that IDPs should have “all necessary documents to enable them to realise fully enjoyment and exercise of their rights.” National Policy for Internally Displaced Persons, ch. 3.5. The Guatemalan Agreement on the Resettlement of the Population Groups Uprooted by the Armed Conflict also provides for the return of identity documentation to displaced persons. Agreement on the Resettlement of the Population Groups Uprooted by the Armed Conflict, sec. II, para. 7.
(4) Full respect for the human rights of displaced persons shall be an essential condition for their resettlement. 395

OR

(1) The basic civil and political liberties recognized by the Sudanese legal system and contained in the declarations and principles of Human Rights adopted by the UN and OAU, especially the Universal Declaration of Human Rights and the African Charter on Human and People’s Rights, shall be fully protected and promoted within the Republic of Sudan. These include the right to life and liberty, freedom from torture, the right to a fair trial, freedom of conscience, expression, and association, and the right to take part in the governance of one’s country. 396

Article XXX
Formation of a Commission for Displaced Persons

The Government shall establish and constitute a Commission for Displaced Persons, which shall have the mandate of organizing and coordinating, together with international organizations and countries of asylum, the return of displaced persons and assisting in their resettlement and reintegration. 397

OR

The Parties hereby establish an independent Commission for Displaced Persons. The Commission for Displaced Persons shall receive and decide any claims for real property in Darfur, where the property has not voluntarily been sold or otherwise transferred, and where the claimant does not now

395 This language is drawn from the Guatemalan Agreement on the Resettlement of the Population Groups Uprooted by the Armed Conflict, Principles Section, sec. 1, para. 1.
396 This language is drawn from the Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, art. XXIV.
397 This language is drawn from the Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, art. 3. The Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone also provides for the establishment of a National Commission for Resettlement, Rehabilitation, and Reconstruction to design and implement a repatriation plan. Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, art. XXII.
enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.  

Article XXX
Composition of the Commission for Displaced Persons

The members of the Commission for Displaced Persons shall be drawn from the participating parties and the Government of Sudan and shall elect the Commission's chairperson.  

OR

The Commission for Displaced Persons shall be composed of X members. The Government of Sudan shall appoint X members, and the region of Darfur shall appoint X members. The United Nations [or other international organization] shall appoint the remaining members and shall designate one such member as the Chairman. The members of the Commission may be reappointed. 

Article XXX
Support from the International Community

The Parties shall facilitate the provision of adequately monitored, short-term repatriation assistance on a nondiscriminatory basis to all returning displaced persons who are in need, in accordance with a plan developed by the United Nations High Commissioner for Refugees [or other international humanitarian organization] and other relevant organizations, to enable the

398 This language is drawn from the General Framework Agreement for Peace in Bosnia and Herzegovina, annex 7, arts. VII, XI. The General Framework Agreement for Peace in Bosnia and Herzegovina does not provide for a general Commission for Displaced Persons to oversee the return of displaced persons. Rather, the parties to the General Framework Agreement for Peace in Bosnia and Herzegovina agree to work with the United Nations High Commissioner for Refugees to develop a repatriation plan.  
399 This language is drawn from the Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, art. 3. 
400 This language is drawn from the General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, arts. VII, XI, and XII.
families and individuals returning to reestablish their lives and livelihoods in local communities.\textsuperscript{401}

OR

For the purpose of ensuring implementation of the resettlement strategy, the Parties agree to establish a fund to implement the agreement on resettlement of displaced persons essentially with contributions from the international community. The United Nations Development Programme (UNDP) shall be asked to administer the funds of each of the projects to be executed.\textsuperscript{402}

\textsuperscript{401} This language is drawn from the General Framework Agreement for Peace in Bosnia and Herzegovina, annex 7, art. IV. The Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone also stipulates that the parties agree to seek assistance from the United Nations and other international organizations in designing and implementing a repatriation program. Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, art. XXII.

\textsuperscript{402} This language is drawn from the Guatemalan Agreement on the Resettlement of the Population Groups Uprooted by the Armed Conflict, para. 6, sec. V. The Arusha Peace and Reconciliation Agreement for Burundi also establishes a fund to implement its repatriation program, with money coming from the state budget as well as from donations from international organizations. Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, art. 9. The Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone establishes a similar fund for its repatriation program. Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, art. XXIX.
ELECTIONS

INTRODUCTION

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

Parties may wish to consider several core elements which help to ensure a balanced electoral system including: (1) an elections commission to monitor and organize the election(s);\(^\text{403}\) (2) measures to ensure transparency of elections and electoral campaigns; (3) methods for voter registration and civic education; (4) mechanisms to convey candidate information; (5) a timeframe of the electoral process; (6) international observers to monitor the electoral process; and (7) an appropriate structure for the voting system.

The 2006 Darfur Peace Agreement (DPA) does not establish a new voting system for the Republic of the Sudan and does not establish a provincial voting mechanism in Darfur. The DPA, however, does provide Darfurians with representation in the National Elections Commission.\(^\text{404}\) The National Elections Commission is responsible for organizing and supervising elections.\(^\text{405}\) The DPA expands the National Elections Commission's authority by granting the commission the power to organize and supervise the referendum on Darfur in coordination with international monitors.\(^\text{406}\)

\(^{403}\) For more information on Elections Commissions see Elections Commissions chapter of this guide.
\(^{406}\) Darfur Peace Agreement, art. 6, para. 58.
CORE ELEMENTS

Creation of an Elections Commission and Defining its Responsibilities

Peace agreements generally provide for the establishment of elections commissions to coordinate and organize elections. In most cases, the international community has either selected or influenced the composition of the elections commission for the post-conflict state. In cases where international involvement has been minimal, the government often will select an elections commission after consultation with the other parties to the agreement. Sometimes a transitional government also serves as an elections commission. The elections commission’s primary role is usually to supervise and ensure the fairness of the elections. The assignment to an elections commission is usually assigned specific duties including organizing the election process, supervising the casting of ballots, and verifying the results if elections.

Measures to Ensure Transparency of Elections and Electoral Campaign

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

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

The elections commission established in Kosovo has a broad mandate to
ensure the transparency of electoral campaigns and elections. The commission
prepares, conducts, and supervises all aspects of the electoral process, including
the election logistics involving ballot security, transportation, and tabulation. The
powers of the commission extend to remedying violations of election provisions
through the removal of parties or individuals from elections lists or ballots. 411

Methods of Voter Registration and Civic Education

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

The Kosovo electoral commission is responsible for registering voters and
political parties in preparation for elections.412 Liberia in its 2003 Comprehensive
Peace Agreement also called for voter education and registration programs
organized by the National Elections Commission, with the help of the international
community.413 The methods used in Angola’s 1994 Lusaka Protocol are nearly
identical to those of the more recent Kosovo and Liberia peace agreements.414

411 Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. III,
para. 2(a), (c).
412 Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. III,
para. 2 (a).
413 Liberia Comprehensive Peace Agreement, Aug. 18, 2003, art. IX, sect. 4, available at
Measures to Ensure Freedom and Openness of Media

Several peace agreements include provisions for a free and open media during electoral contests. During elections, some governments establish a mechanism to guarantee equal access to the press for all political candidates and include provisions for media to assist in voter communication and civic education initiatives. In Angola, the utilization of state resources by the parties was to be on an equal basis.\footnote{Lusaka Protocol (Angola, 1994), Annex 7, sect. II, para. 5.} It is often appropriate to incorporate into a peace agreement relevant provisions regarding freedom and openness of the media during elections, such as those contained in international treaties and instruments including the Universal Declaration of Human Rights.\footnote{Liberia Comprehensive Peace Agreement Aug. 18, 2003, art. XIIX.}

In Kosovo, the Interim Agreement for Peace and Self-government called for a free media that was “accessible to registered political parties and candidates, and available to voters throughout Kosovo.”\footnote{Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. I, para. 1 (f).} In Angola, the Lusaka Protocol recognized the inalienable freedom of the press; however, the “publication of the election results … as well as any statistical projections of the outcome of the final determination of the results” was in accordance with election laws.\footnote{Lusaka Protocol (Angola, 1994), Annex 7, art. II, para. 7.} This restriction on the reporting of election results in Angola is an outgrowth of the 1992 elections, where state controlled media quickly reported a victory for the ruling coalition, which precipitated armed conflict.\footnote{DAVID KRAMER, LAURIE COOPER, ET AL., INTERNATIONAL FOUNDATION FOR ELECTION SYSTEMS, INTERNATIONAL REPUBLICAN INSTITUTE, NATIONAL DEMOCRATIC INSTITUTE, ANGOLA PRE-ELECTION ASSESSMENT REPORT, (May 2002), at 15, available at http://www.iri.org/africa/angola/pdfs/angola-eng.pdf (last accessed Sept. 22, 2007.).}

Timeframe of Electoral Process

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

The Memorandum of Understanding (MOU) between the Government of the Republic of Indonesia and the Free Aceh Movement established dates for a series of elections. The first election was for the head of the Aceh administration and other elected officials, and then the MOU required elections for the regional legislature three years later.\(^{420}\) Conversely, in Sierra Leone, the constitution set the election period and therefore the timeframe was not included in the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone.\(^{421}\)

**International Observers and Monitoring of Electoral Process**

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

Parties can take a very general approach to international election observers in peace agreements. In Aceh the peace agreement called for outside monitors to be invited to monitor the elections in Aceh, but left the identity and timing of the monitors undefined.\(^{422}\) In Bougainville, international election monitors are not called for in regional elections, but the Bougainville referendum on independence requires international observers when it occurs.\(^{423}\)

Parties may also specify a more explicit role for international observers. The Peace Agreement between the Government of Sierra Leone and the Revolutionary


\(^{421}\) Lome Peace Agreement, Jul. 7, 1999, part 3, art. XI.

\(^{422}\) Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, Aug. 15, 2005, para. 1.2.7.

United Front of Sierra Leone required the National Election Commission to “request the assistance of the International Community, including the United Nations, the Organization of African Unity, Economic Community of West African States and the Commonwealth of Nations, in monitoring the next presidential and parliamentary elections in Sierra Leone.” Kosovo differed slightly, delegating decisions to the Organization for Security and Cooperation in Europe, which was to supervise the elections and bring in any other international organizations it thought important.

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

Voting System

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

Majoritarian voting systems, some time called plurality-voting systems, allow the candidate with the majority of votes cast or who receives the most votes

Majoritarian systems tend to promote candidate accountability and
governments where one party is clearly in charge. Majoritarian voting schemes
create a discrepancy between the percentage of votes a party receives and their
representation in the legislature. “In the 1993 federal election in Canada, the
Progressive Conservatives won sixteen percent of the votes but only 0.7 percent of
the seats and in the 1998 general election in Lesotho, the Basotho National Party
won twenty-four percent of the votes but only one percent of the seats.”

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

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

429 ACE ELECTORAL KNOWLEDGE NETWORK, ADVANTAGES DISADVANTAGES OF FIRST PAST THE
POST, available at http://aceproject.org/ace-en/topics/es/esd/esd01/esd01a/esd01a01 (last
430 ACE ELECTORAL KNOWLEDGE NETWORK, CANADA: THE CANADIAN ELECTORAL SYSTEM,
431 ACE ELECTORAL KNOWLEDGE NETWORK, INDIA: FIRST PAST THE POST ON A GRAND SCALE,
432 ACE ELECTORAL KNOWLEDGE NETWORK, PROPORTIONAL REPRESENTATION, available at
433 ACE ELECTORAL KNOWLEDGE NETWORK, DISADVANTAGES OF PROPORTIONAL
REPRESENTATION, available at http://aceproject.org/ace-en/topics/es/esd/esd02/esd02/esd02b (last
434 ACE ELECTORAL KNOWLEDGE NETWORK, DISADVANTAGES OF PROPORTIONAL
REPRESENTATION.
In South Africa, the apartheid government used a majoritarian system for the enfranchised whites, but after 1994, the state implemented a proportional representation system.\textsuperscript{435} The proportional representation was an integral power-sharing mechanism and helped create a sense of inclusion.\textsuperscript{436}

Some states implement hybrid majoritarian and proportional representation systems in order combine the positive aspects of majoritarian voting, e.g. accountability and a unified government, with the proportional outcomes of the proportional representations system.\textsuperscript{437} The hybrid system does not necessarily resolve the issues related to proportional or majoritarian voting, but states may use this system to adjust the balance of the pro and cons of an electoral system.

Argentina has instituted a hybrid system. The state elects its President and Senators though majoritarian direct elections. The state elects the Argentine Chamber of Deputies through a proportional representation system.\textsuperscript{438}

**DARFUR PEACE AGREEMENT**

The Darfur Peace Agreement (DPA) envisions power sharing between the parties and the central and provincial governments as a means of peacefully devolving power through democratic means to guarantee the stability and unity of Sudan.\textsuperscript{439} The transfer of power is to be based on “free and fair elections, [which are] the foundation for democratic governance in the Sudan.”\textsuperscript{440} The DPA asserts that elections are an important element of political reconciliation.

The DPA grants all citizens of specified age the right to vote through secret ballots and to run for office in elections based on the principle of universal adult

\begin{footnotes}
\item[436] ACE ELECTORAL KNOWLEDGE NETWORK, South Africa: Electoral Systems, Conflict Management, and Inclusion.
\item[439] Darfur Peace Agreement, art. 1, para. 4.
\item[440] Darfur Peace Agreement, art. 1, para. 8.
\end{footnotes}
The DPA also provides for freedom of association, including the formation of political parties, and freedom of expression, including a guarantee of free press, so long as the media maintains professional ethics and does not incite hatred or violence. The “independent and impartial office of the Registrar” carries out the registration and supervision of political parties.

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

A referendum will determine the final status of the Darfur Region and is to occur no later than July 2010. The referendum will present the option of either maintaining the status quo of three provinces or creating a region composed of the three provinces. The National Elections Commission is responsible for organizing and supervising this referendum in accordance with the rules and procedures of the National Elections Law. The international community is responsible for monitoring this referendum. The DPA also establishes that the provisions of the Interim National Constitution will govern elections in Sudan, including in Darfur.

**SAMPLE LANGUAGE**

**ARTICLE XXX**

**Citizens Rights**

(1) Every citizen has the right to free, fair and regular elections for any legislative body established in the Constitution.

(2) Every adult citizen has the right-
(a) To vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
(b) To stand for public office and, if elected, to hold office.\textsuperscript{450}

\textbf{ARTICLE XXX}

\textbf{Election Conditions}

(1) The Parties shall ensure that conditions exist for the organization of free and fair elections, which include but are not limited to:\textsuperscript{451}
(a) Freedom of movement for all citizens;
(b) An open and free political environment;
(c) An environment conducive to the return of displaced persons;
(d) A safe and secure environment that ensures freedom of assembly, association, and expression;
(e) Free media, effectively accessible to registered political parties and candidates, and available to voters throughout Darfur\textsuperscript{452}

(2) The Parties shall request international organizations to certify when elections will be effective under current conditions in Darfur, and to assist the Parties in creating conditions for free and fair elections.\textsuperscript{453}

\textsuperscript{450} South Africa Const. ch. 2, para. 19 (1996). See also Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (2005), para. 1.2.6.
\textsuperscript{451} This language is taken from the Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. 1.
\textsuperscript{452} This language is taken from the Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. 1 para. 2. The Copenhagen Document contains a set of principles, which pledge a state to carrying out genuine, contested elections. The membership of the Organization for Security and Cooperation in Europe drafted the document and endorse its principles.
\textsuperscript{453} This language is taken from the Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 3, art. 1. See also Lusaka Protocol (Angola, 1994), Annex 3, para. 3.
ARTICLE XXX
Election Monitoring

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

(2) Parliamentary elections will be held by [insert date]. International organizations, [insert international organizations], will be invited to observe these elections. 454

ARTICLE XXX
The Media and Elections

(1) Election campaigns may be carried out through the mass media, election related public events (pre-election meetings and meetings with voters, public discussions, debates, rallies, marches, demonstrations), by printing various materials and disseminating audio and video materials.

(2) During campaigns, it shall be prohibited for [candidates and/or parties] to give or promise to give - personally or through other means - any money, food, securities, or goods to citizens free of charge or on favorable terms, or to render or promise to render any services. 455

(3) During pre-election campaign, it shall be prohibited to advocate violence, war, or the overthrowing of constitutional order by force, to incite national,

455 This language is drawn from Electoral Code of the Republic of Armenia (1999), ch. 4, art. 18(6).
racial, or religious hatred, as well as to publish or disseminate materials causing racial, national, or religious hatred.\footnote{456}{This language is drawn from the Electoral Code of the Republic of Armenia (1999), ch. 4, art. 19.}

(4) Presidential candidates and [parties and/or party alliances] running for the legislature shall have the right to use paid and free airtime on public radio and public television, on equal conditions.

(5) For every national election, the procedures for allocating free air time on Public Radio and Public Television to presidential candidates and parties (party alliances) running for the legislature, as well as the scheduling of such air time shall be set by the [electoral commission] on the day following the deadline for registration of candidates.\footnote{457}{This language is drawn from the Electoral Code of the Republic of Armenia (1999), ch. 4, art. 20 (1-2). Similar language is provided for in the Lusaka Protocol (Angola, 1994), Annex 7, sec. II, para. 5.}

(6) Notwithstanding the inalienable freedom of the press, official publication of the election results by the mass media as well as any official statistical projections of the outcome of the final determination of the results shall be in accordance with the provisions of the [domestic law].\footnote{458}{This language is drawn from the Lusaka Protocol (Angola, 1994), Annex 7, art. II, para. 7.}
ELECTIONS COMMISSIONS

INTRODUCTION

The purpose of this chapter is to identify the core elements of elections commissions; outline the Darfur Peace Agreement’s (DPA) provisions relating to elections commission and their role in Sudan; and present sample language parties may wish to consider when drafting provisions for an elections commission.

Elections commissions are neutral independent entities that generally oversee and administer elections to ensure fair democratic elections. The purpose of elections commissions is to ensure that elections are free and fair, increasing the likelihood that each party will have confidence in the outcome. State practice illustrates that agreements establishing elections commissions typically include provisions for the commission's composition, mandate, governing rules, and financing.

The DPA references the National Elections Commissions and provides Darfurians with representation in the Commission. The Interim National Constitution of Sudan grants the National Elections Commission the power to organize and supervise elections. The DPA expanded this authority by granting the National Elections Commission the power to organize and supervise the referendum on Darfur in coordination with international monitors.

CORE ELEMENTS

Legal Framework

A state’s constitution or legislation typically establishes the elections commission and lay out the roles and responsibilities of the commission. While some states provide detailed provisions related to a commission’s responsibilities

461 Darfur Peace Agreement, art. 6, para. 58.
and authorities, other states give the elections commission broad discretion in carrying out its activities. A small number of states allow their elections commissions to delegate responsibilities to a third party.

South Africa’s Electoral Commission derives its authority from the Constitution, while the Electoral Commission Act governs the Commission’s activities and functions. The majority of the provisions in the Act are non-specific, with no defined guidelines or limits on the Electoral Commission’s activities in maintaining and supervising elections. The general nature of these provisions thus grants the Electoral Commission considerable authority and discretion.

In contrast, the Philippines’ Constitution and the legislation establishing the Commission on Elections are explicit and detailed. The Omnibus Election Code includes specific provisions relating to the Commission’s staffing, authorities, and responsibilities before, during, and after elections. Despite these specific provisions, the Commission retains significant authority related to other government offices. The Omnibus Election Code authorizes the Philippine commission to manage and supervise the elections by exercising “direct and immediate supervision and control over national and local officials or employees, including members of any national or local law enforcement agency and instrumentality of the government required by law to perform duties relative to the conduct of elections.”

Malaysia’s Election Commission, similar to the commissions in South Africa and the Philippines, is also responsible for the management and supervision

\[466\] Omnibus Election Code of the Philippines (1985), art. VII, sec. 52(a).
of elections. Malaysia’s Election Act, however, permits the Election Commission to delegate its responsibilities, with the exception of the power to make regulations, to other private agencies or government entities. While this may reduce the workload of a commission, it may also undermine the commission’s independence if it delegates responsibility to an interested third party.

Functions

Elections commissions also function to safeguard and promote free and fair elections. A commission’s responsibilities may include managing and supervising elections; maintaining the voter rolls; regulating political parties and candidates; managing the polling; and announcing and certifying the election results. Additionally, elections commissions often play a role in adjudicating disputes related to the elections or the electoral process. It is important that the design of these functions ensures and protects the independence of an elections commission in carrying out its responsibilities.

Drafting Electoral Regulations

Many elections commissions serve as advisory bodies to their respective states’ legislatures, and in some states, commissions have the authority to enact regulations relating to the logistics and administration of the electoral process. Elections commissions do not typically have discretion to adopt regulations related


469 Election Act of 1958 (Malaysia), Act No. 19, pt. II, art. 5(2), available at http://www.spr.gov.my/index/act19.pdf, (last accessed Sept. 18, 2007). The Malay Elections Commission the authority to delegate its responsibilities provided that, “(a) nothing in this subsection shall apply to any power to make regulations under this Act; and (b) no such delegation shall affect the exercise of such powers or the performance of such duties by the Commission.”

470 OFFICE OF DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, GUIDELINES FOR REVIEWING THE LEGAL FRAMEWORK FOR ELECTIONS, sec. VI, pt. A, at 10, available at http://www.osce.org/publications/odihr/2001/01/13588_128_en.pdf (last accessed Sept. 22, 2007)."The administration of democratic elections requires that election commissions/bodies are independent and impartial. This is a critical area as the election administration machinery makes and implements important decisions that can influence the outcome of the elections."
to carrying out the intentions of the election law or elections commission legislation.

Malaysia’s Election Commission has the authority to enact regulations regarding the elections to the National Assembly and the legislative assemblies of Malaysia’s regions.\textsuperscript{471} The Election Commission also has the authority to draft regulations to govern most aspects of the elections including registration of political parties, vote-counting procedures, and the establishment of voting districts.\textsuperscript{472}

In contrast, Armenia authorizes and encourages its Central Election Commission (CEC) to submit recommendations on election-related legislation to the state’s parliament.\textsuperscript{473} The Central Election Commission’s role is more limited than Malaysia’s Election Commission as it cannot adopt regulations.\textsuperscript{474}

\textit{Managing Voter Lists}

Most states’ elections commissions establish, develop (generally through voter registration), certify, and maintain voter lists. A voter list – or electoral roll – is a comprehensive list of all the eligible voters in a particular national, provincial, or local geographic area. Voter lists typically contain the voter’s name, mailing address, date of birth, date of registration, and political party (if there is party registration).

State practice illustrates that most legislation relating to elections commissions include detailed provisions with respect to voter lists. Malaysia’s Election Act and the corresponding elections regulations include comprehensive provisions regarding the form of the voter lists. These regulations specifically govern the districts included in each of the voter lists, the order of the names in the particular lists, and the maintenance of the principal and supplementary voter lists.\textsuperscript{475} Likewise, Armenia’s Electoral Code includes detailed provisions related to

\textsuperscript{471} Election Act of 1958 (Malaysia), Act No. 19, part VI, art. 16(1).
\textsuperscript{472} Election Act of 1958 (Malaysia), Act No. 19, part VI, art. 16(2).
\textsuperscript{474} Comparing the Election Act of 1958 (Malaysia), Act No. 19, part VI, art. 16(2) with Electoral Code of the Republic of Armenia (1999), ch. 9, art. 41(4).
\textsuperscript{475} Elections (Registration of Electors) Regulation of 2002 (Malaysia), art. 3-22.
issues including maintenance of voter lists, coordination of lists for multiple elections, access to voter lists, and review of errors in voter lists.\textsuperscript{476}

\textit{Registration of Political Parties}

Elections commissions usually oversee the registration of political parties and candidates. Registration and the timeframe within which parties and candidates must register are important to provide sufficient time for the names of candidates and/or political parties to appear on ballots. Registration of parties by an elections commission, rather than by a branch of the government, can help to promote organized and fair elections by ensuring objective and impartial processes for registering parties and candidates. Requirements for registration of a political party that are overly restrictive, discriminatory, or in any way obstruct legitimate parties or candidates from registering can taint an election outcome and affect the free and fair nature of the elections.\textsuperscript{477}

South Africa provides an instance of state practice where the elections commission is responsible for the registration of political parties. In order to register, a political party must provide the commission with a name, an insignia, an abbreviation for the party name, and the party’s constitution.\textsuperscript{478} If the party is not already registered and represented in Parliament, a provincial legislature, or a local legislature, additional registration requirements exist. These include providing the deed of foundation (charter), the number of voters in the party, and proof of publication in the Gazette of the pending application for registration.\textsuperscript{479}

The New Elections Law in Liberia and the corresponding regulations also contain provisions relating to registration and accreditation of political parties. To register a political party the Elections Commission has two initial requirements. First, the applying party must submit a certified copy of their articles of

\textsuperscript{476} Electoral Code of the Republic of Armenia (1999), ch. 2, art. 9 (14).
\textsuperscript{477} OFFICE OF DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, GUIDELINES FOR REVIEWING THE LEGAL FRAMEWORK FOR ELECTIONS, sec. VIII, part A and B, at 15-16. The OSCE Guidelines for Reviewing the Legal Framework for Elections note that the election law should guarantee equal treatment for all parties and candidates and that the “legal framework [for elections] should provide for uniformity in the registration process so that the same process applies to all candidates at all levels.”
\textsuperscript{478} Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 15(2).
\textsuperscript{479} Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 15(3).
incorporation. Second, the party must submit a notarized membership list that includes at least 500 “eligible voters in each of at least twelve (12) counties of the republic.” In addition to the threshold criteria, the applying party must also comply with further requirements. These requirements stipulate that membership in the party must be open to every citizen of Liberia irrespective of sex, religion, or ethnicity. Further, the requirements mandate that the party operates in a democratic manner, with free elections of its officers, and that the emblem, motto, and name do not have negative ethnic, provincial, or religious connotations.

Rejection of Party Registration and Appeals Process

As part of the registration process for political parties and candidates, many regulations include the reasons that the elections commission can refuse registration, as well as a process for appealing an application if the commission denies registration to a political party or individual candidate.

The South African Electoral Commission Act provides several reasons the Chief Electoral Officer (the main administrative officer of the commission) may refuse to register a political party. First, if the applying party’s insignia, name, or abbreviated name closely resembles that of another party already registered. Second, if the insignia, name, or abbreviated name seeks to incite any sort of violence or hatred aimed at any person or group. If the Chief Electoral Officer denies any party’s registration, they may appeal to the full Electoral Commission within 30 days.

Guidelines Relating to the Registration of Political Parties and Independent Candidates (Liberia, 2005), ch. 1 sec. 8.1 (b).
Guidelines Relating to the Registration of Political Parties and Independent Candidates (Liberia, 2005), ch. 1, sec. 8.3.
Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 16(1). This provision seeks to prevent deception on the part of the applying party or any effort to confuse voters by masquerading as another political party.
Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 16(1).
Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 16(2).
Liberia’s electoral regulations also include provisions that allow citizens to challenge the registration and accreditation of political parties. Any citizen who has legal standing can bring a claim against an applying political party to challenge the membership list. Among the grounds for challenging the membership list are: (1) that the names were fraudulently obtained and included on the list; (2) that people whose names are on the list are already members of another party; (3) that the names of people on the list are deceased persons; and (4) that the names on the list are of people who are not Liberian citizens or do not exist. The Commission has fourteen days to adjudicate the dispute and notify the parties of its ruling.

Registration and Certification of Candidates for Office

State practice illustrates that the process for nominating political candidates, as well as political parties, is usually under the authority of a state’s elections commission. A candidate may be a member of a political party registered with elections commission, or may be an independent candidate running for office without an official party designation. It may be important to ensure that regulation requirements do not discriminate against independent candidates. An elections commission, through the drafting of regulations and administration of registration requirements, can play a key role in ensuring equal access and treatment for independent candidates.

The Philippines requires that all candidates for national and local elections file a certificate of candidacy with the state’s elections commission. This filing acts as a safeguard to prevent candidates from running for more than one elected position and provides a record of all candidates for organizational purposes. The certificate of candidacy typically includes the name, contact information, political

486 Guidelines Relating to the Registration of Political Parties and Independent Candidates (Liberia, 2005), ch. 1 sec. 10.3.
487 Guidelines Relating to the Registration of Political Parties and Independent Candidates (Liberia, 2005), ch. 1 sec. 10.3.
488 Guidelines Relating to the Registration of Political Parties and Independent Candidates (Liberia, 2005), ch. 1 sec. 10.5.
affiliation of the candidate, and proof that the candidate is eligible to run for the particular office (proof of citizenship or naturalization).\textsuperscript{491}

Some states operate a party list system of election, where the percentage of the total votes that a particular political party receives determines the delegation of seats in the legislature.\textsuperscript{492} In such states, including the Philippines, elections commissions sometimes have separate candidacy requirements for party list elections. The registration requirements for party-affiliated candidates in the Philippines are generally the same as those for independent candidates, except that if a candidate that is affiliated with a party, that candidate’s political party files registration for that party’s candidates.\textsuperscript{493}

Managing Ballot Tabulation Activities

Most electoral commissions are responsible for tabulating the results of elections, and legislation and/or regulations relating to the state’s elections commission typically govern the tabulation.

Many states, including Armenia, have different tabulation processes for local, regional, and national contests. The Central Election Commission in Armenia is responsible for tabulating the results of the presidential election and national assembly elections.\textsuperscript{494} The Central Election Commission does not receive any assistance from other branches of government and acts independently in tabulating votes, which can help to reduce the possibility of election fraud.

Armenia’s Central Election Commission also has two local branches, the Territorial Election Commission and the Precinct Election Commission. In local

\textsuperscript{491} COMELEC Resolution No. 3253, sec. 2 (Philippines, 2001).
\textsuperscript{492} Under a list system, a state’s political parties prepare a list of nominees before the election. After the tabulation and certification of votes, the parties then delegate the seats won from the top of their list.
\textsuperscript{493} COMELEC and COMOLEC Resolution No. 3253 (Philippines, 2001).
\textsuperscript{494} Electoral Code of the Republic of Armenia (1999), ch. 9, art. 60-63. According to the Electoral Code, the Commission must calculate the preliminary results of the elections within 28 hours of the polls closing based on information received from the Territorial Election Commission. The Central Election Commission must verify the results by protocol and broadcast the results on public television and radio. The decision of the Commission does not need to be unanimous and any abstaining members will attach a note to the results explaining the abstention.
elections, these two regional elections commissions follow a protocol in the Electoral Code to tabulate election results and report to the Central Election Commission.495

Adjudicating Electoral Disputes

Most states delegate some degree of authority to their election commission to resolve election disputes. This authority can range from complete jurisdiction over all election-related disputes to a limited advisory role. Many states also allow the state’s highest court to review the decisions of the elections commission.

The Commission on Elections in the Philippines is responsible for adjudicating a significant number of election disputes. The Commission exercises exclusive jurisdiction over all disputes arising out of “elections, returns, qualifications of all elective provincial, provincial, and city officials, and appellate jurisdiction over all contests involving elected municipal officials decided by trial courts of general jurisdiction.”496 All decisions, orders and rulings of the Commission are final and are not open to appeal.497

Alternately, the South African Electoral Commission has only a limited role in resolving election disputes. South Africa has a separate Electoral Court; the executive branch appoints the Court's judges who have the authority to resolve election disputes. The Electoral Commission has a limited adjudicative role that mainly involves hearing challenges regarding the registration of political parties.498

Civic Education Activities

Most constitutions and electoral laws also include general language that establishes the state’s elections commission as the oversight mechanism to help ensure free and fair elections. In addition, many states’ electoral commissions are responsible for civic education programs related to elections and democratic norms.

495 Electoral Code of the Republic of Armenia (1999), ch. 9, art. 60 and 61. The Armenian elections law establishes and lists the protocols for precinct and territory elections as well as the protocol for tabulating inaccuracies in the voting process.
498 Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 4, sec. 16.
Australia’s Commonwealth Electoral Act provides a mandate that focuses primarily on electoral processes and elected officials. The Australian elections commission is responsible for promoting free and fair elections and educating the public about the Electoral Commission. The Act also directs the Commission “to promote public awareness of electoral and Parliamentary matters by means of the conduct of education and information programs and by other means.”

Other commissions, including South African’s Electoral Commission, have broader mandates that include educating citizens on issues regarding human rights and democratic governance. South Africa authorizes the Electoral Commission to promote conditions conducive to free and fair elections through educating the voting public on democratic processes.

Structure

While elections commissions differ in their authority and composition, state practice illustrates that most states’ commissions share some similar structural elements. Commissions usually have a decision-making body, often called the board of commissioners, as well as a separate administrative staff to implement the policies of the commission and election regulations. Depending on the structure of the state and the elections, some states establish elections commissions at the provincial and/or local levels to assist with national, provincial, and local elections.

Board of Commission

Most electoral commissions have a decision-making body, often known as the board of commissioners. This board usually has a chairperson, vice-chairperson, and a number of other commissioners. The chairperson and vice-chairperson have differing responsibilities from state to state, although the vice-chairperson has limited authority in most states.

500 Commonwealth Electoral Act (Australia, 1918), No. 27, sec. 7(1).
501 Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 5(1)(b), (c), and (d).
South Africa’s Electoral Commission consists of five commissioners, including a chairperson and a vice-chairperson. The only explicit responsibility of the chairperson is, at his discretion, to call meetings of the Commission. In contrast, the chairperson of the Philippines Commission on Elections has significantly more authority than the commission’s other five members. The chairperson’s responsibilities include: (1) calling sessions of the Commission; (2) presiding over sessions of the Commission; (3) enforcing any order or ruling of the Commission; and (4) taking any other action he deems necessary after consultation with other commissioners. The chairperson thus has considerable discretionary authority, as he is responsible for enforcing orders of the Commission.

**Administrative Staff**

Many elections commissions have an administrative staff that implements the policies of the commission and carries out election regulations. The administrative staff can be important to ensure the effective administration and management of the electoral process.

Most elections commissions nominate a chief electoral officer. The chief electoral officer usually oversees the administration of the elections commission’s activities, although he may also have other additional responsibilities.

Zambia’s Electoral Commission appoints a director who is the chief executive officer of the Commission. The director is responsible for the day-to-day administration of the Commission and for implementing any decisions of the Commission. Similarly, the South African Electoral Commission appoints a chief electoral officer immediately after the President appoints the Commission. The chief electoral officer is the administrative head of the Commission and is

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503 Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 11.
responsible for financial and auditing issues related to the Commission.\textsuperscript{508} The Commission may also delegate additional responsibilities to the chief electoral officer if it deems necessary.\textsuperscript{509}

\textit{Local Electoral Commissions}

Some states provide for the creation of provincial and local elections commissions. These local entities are subordinate to the national elections commission and provide primarily administrative and logistical support. This support can take the form of administering national regulations at the local level or overseeing provincial and/or local elections.

Armenia’s provincial and local elections commissions, the Territorial Election Commissions and the Precinct Election Commissions, provide assistance during statewide elections and administer elections at the provincial (territorial) and local (precinct) levels.\textsuperscript{510} In general, territorial commissions oversee, and receive reports from, the precinct commissions. The territorial commissions are then directly responsible to the national elections commission. However, both the territorial and precinct commissions operate in accordance with the Central Election Commission bylaws.\textsuperscript{511}

The responsibilities of the Territorial and Precinct Election Committees include conveying information about local elections to the Central Election Committee; tabulating and summarizing the results of local elections; and referring violations of the election law to appropriate state authorities.\textsuperscript{512} While the Territorial Election Commissions are permanent entities, the Precinct Election Commissions are established only for specific elections.

\textbf{Membership}

\begin{itemize}
\item \textsuperscript{508} Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 3, sec. 12.
\item \textsuperscript{509} Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 3, sec. 12.
\item \textsuperscript{510} Electoral Code of the Republic of Armenia (1999), ch. 9, art. 42 and 43. The Armenian electoral law establishes and lists the functions of Territorial and Precinct Election Commissions.
\item \textsuperscript{511} Electoral Code of the Republic of Armenia (1999), ch. 9, art. 42 and 43.
\item \textsuperscript{512} Electoral Code of the Republic of Armenia (1999), ch. 9, art. 42, & 43.
\end{itemize}
The composition of elections commissions and the method of selecting a commission’s members vary from state to state. While many states delegate the appointment of commission members to the executive branch, most also require involvement of the state’s legislature in the nomination process. In a small number of states, both governmental and political actors are involved in selecting members of elections commissions.

The qualification requirements for the commissioners vary from state to state as well; although commissioners typically must be citizens of the state and not affiliated with a political party.

Selection of Commissioners

Most states that delegate appointment authority to the executive branch also require approval or nomination by the state’s legislative branch. In South Africa, while the President appoints the members of the elections commission, two committees outside the executive branch have extensive involvement in the selection of qualified candidates. An “independent committee” prepares a list of at least eight qualified candidates and submits it to a committee in the National Assembly. The National Assembly committee then proposes a candidate from the list to the President who can choose to appoint him to the Electoral Commission. Zambia’s executive branch and legislature are also both involved in selecting and nominating commissioners. The President appoints the commissioners but the national assembly must ratify the appointees.

In a smaller number of states, including Armenia, both governmental and political actors are involved in the selection of commission members. The selection of members of Armenia’s Electoral Commission occurs in the following manner: (1) one by each party or alliance that is represented in the national assembly; (2) one by the President of the Republic; (3) one by the Board of

514 Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 6. The independent committee is composed of the President of the Constitutional Court, a representative of the Human Rights Commission, a representative of the Gender Equality Commission, and the Public Protector.
515 Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 6. It is important to note that committee within the National Assembly is representative of all political parties.
Chairmen of the Republic of Armenia Courts, from among judges of the Armenian courts; and (4) one by the Court of Cassation, from among the judges of the Court of Cassation.  

Qualifications of Commissioners

States have various eligibility requirements to become an electoral commissioner, and many have additional requirements that a commissioner must adhere to during his tenure on the commission. These requirements can help promote the independence and legitimacy of the commission by eliminating real and perceived political influence and bias.

Almost all states require that commission members are citizens with no political party affiliation. Additional requirements potentially are complex and lengthy. Liberia’s New Elections Law, for instance, requires that all appointees must: (1) be Liberian citizens; (2) be at least thirty-five years of age; (3) be of good moral character; (4) be the only commissioner from their county; (5) not be a member of any political party or organization; and (6) not be running for any elected public office.

After the appointment of a commissioner, many states limit the types of political activities in which a commissioner may participate during his tenure. South Africa’s Electoral Commission has several requirements that the commissioners must adhere to while serving on the commission. The commissioners must: (1) remain impartial and independent; (2) not campaign for another political office; (3) not support or show bias to any candidate in any election; (4) not profit from any information gained through appointment to the Commission; and (5) not divulge any information obtained in his capacity as a commissioner to a third-party. The president may dismiss any commissioner who is in breach of a requirement.

Financing

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517 Electoral Code of the Republic of Armenia (1999), ch. 8, art. 35(1).
519 Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 9(1),) and (2).
520 Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 7(3).
Most states’ budgets provide financing for the elections commission and the organization and administration of elections. In many states, the funding varies depending on the number and type of elections scheduled in the particular budget cycle. In general, elections for parliament and president are more expensive than provincial or local elections.

This funding may include provisions for national elections commissions, as well as for provincial or local commissions. In Armenia, the national budget funds provincial and local electoral commissions. Funds include allocations for maintaining voter rolls, conducting elections, and covering any expenses associated with the operations of the elections commissions.\(^\text{521}\)

Some states’ elections commissions may also procure additional funds, either from the government or from an outside source. The Armenian Electoral Code allows the Central Election Committee to procure additional funds, in addition to the standard budget allocation, from the state’s central bank reserve fund, if necessary.\(^\text{522}\)

Zambia’s Electoral Commission Act specifies that the parliament will fund the Commission, but also allows the Commission to seek funds through grants and donations.\(^\text{523}\) The state authorized the Commission in Zambia to invest any funds that it does not spend.\(^\text{524}\) Similar to Zambia, the South African Electoral Commission has authorization to seek funds from sources outside of the government.\(^\text{525}\)

**DARFUR PEACE AGREEMENT**

The Darfur Peace Agreement (DPA) provides for “a peaceful devolution of power through democratic means is a guarantor of stability and unity in the country.”\(^\text{526}\) Under the DPA, free and fair elections are the basis for the transfer of

\(^{522}\) Electoral Code of the Republic of Armenia art. 24(3).
\(^{526}\) Darfur Peace Agreement, art. 1, para. 4.,
power,\textsuperscript{527} and the National Elections Commission is responsible for the supervision of the elections.\textsuperscript{528}

The DPA references the National Elections Commission, an independent national commission provided for in the Interim National Constitution of the Republic of Sudan.\textsuperscript{529} The DPA provides that the National Elections Commission shall include adequate representation of “Darfurians, including members of the SLM/A and JEM,” while providing that members must meet competence and qualification requirements.\textsuperscript{530} The President, in consultation with the first Vice-President, is to select nine “independent, competent, non-partisan, impartial, and representative personalities” as commissioners.\textsuperscript{531}

The Interim Constitution gives the National Elections Commission the sole power to prepare election roles; organize and supervise the elections of “the President of the Republic, the President of Government of Southern Sudan, Governors, the National Legislature, Southern Sudan Assembly and state legislatures;” organize and supervise a referendum; and perform other relevant functions.\textsuperscript{532} The DPA expands the scope of the National Elections Commission, giving it the power to organize and supervise a referendum on the permanent status of Darfur.\textsuperscript{533} The DPA also provides that international monitors will assist the National Elections Commission in this role.\textsuperscript{534}

**SAMPLE LANGUAGE**

**ARTICLE XXX**

Functions

(1) The functions of the National Elections Commission shall be to:
    (a) Manage any election;
    (b) Ensure that any election is free and fair;

\textsuperscript{527} Darfur Peace Agreement, art. 1, para. 8.
\textsuperscript{528} Darfur Peace Agreement, art. 1, para. 21.
\textsuperscript{529} SUDANESE INTERIM NATIONAL CONST. part 8, para. 141 (2005).
\textsuperscript{530} Darfur Peace Agreement, art. 13, para. 84.
\textsuperscript{531} SUDANESE INTERIM NATIONAL CONST. part 8, para. 141 (1) (2005).
\textsuperscript{532} SUDANESE INTERIM NATIONAL CONST. part 8, para. 141 (2) (2005).
\textsuperscript{533} Darfur Peace Agreement, art. 6, para. 58.
\textsuperscript{534} Darfur Peace Agreement, art. 6, para. 58.
(c) Promote conditions conducive to free and fair elections;
(d) Promote knowledge of sound and democratic electoral processes;
(e) Compile and maintain voters' rolls by means of a system of registering of eligible voters by utilizing data available from government sources and information furnished by voters;
(f) Compile and maintain a register of parties;
(g) Establish and maintain liaison and co-operation with parties;
(h) Undertake and promote research into electoral matters;
(i) Develop and promote the development of electoral expertise and technology in all spheres of government;
(j) Continuously review electoral legislation and proposed electoral legislation, and to make recommendations in connection therewith;
(k) Promote voter education;
(l) Promote co-operation with and between persons, institutions, governments and administrations for the achievement of its objects;
(m) Demarcate wards in the local sphere of government or to cause them to be demarcated;
(n) Declare the results of elections for national, provincial, and municipal legislative bodies within seven days after such elections;
(o) Adjudicate disputes which may arise from the organization, administration or conducting of elections and which are of an administrative nature; and
(p) Appoint appropriate public administrations in any sphere of government to conduct elections when necessary.

(2) The Commission shall, for the purposes of the achievement of its objects and the performance of its functions:
(a) Acquire the necessary staff, whether by employment, assignment from another agency, appointment on contract or otherwise;
(b) Establish and maintain the necessary facilities for collecting and disseminating information regarding electoral matters;
(c) Cooperate with educational or other institutions with to provide instruction to or the training of persons in electoral and related matters; and

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(d) Generally, perform any act necessary for or conducive to enact the above provisions.536

ARTICLE XXX

Structure

(1) The Commission shall consist of nine members, one of whom shall be a judge, appointed by the President in accordance with the provisions of this section. The commissioners shall be representative of the People of Sudan, consisting of [X] number of commissioners from Region 1, [X] number of commissioners from Region 2, and [X] number of commissioners from Region 3.

(2) No person shall be appointed as a member of the Commission unless he or she:
   (a) Is a citizen;
   (b) Does not at that stage have a high party-political profile;
   (c) Has been recommended by the National Assembly by a resolution adopted by a majority of the members of that Assembly; and
   (d) Has been nominated by a committee of the National Assembly, proportionally composed of members of all parties represented in that Assembly, from a list of recommended candidates submitted to the committee by the panel referred to in subsection (3).

(3) The independent panel shall submit a list of no fewer than eight recommended candidates to the committee of the National Assembly referred to in subsection (2)(d).

(4) The panel shall act in accordance with the principles of transparency and openness and make its recommendations with due regard to a person's suitability, qualifications, and experience.537

OR

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537 This language is drawn from Electoral Commission Act (South Africa, 1996), Act No. 51, ch. 2, sec. 6.
(1) The Commission as established by Article 141 of the Interim National Constitution shall have the functions specified in that Article.

(2) The Commission shall consist of the following full-time members:
   (a) A Chairperson; and
   (b) Not more than eight other members.
   (c) [X number of commissioners] from Region 1, [X number of commissioners] from Region 2, and [X number of commissioners] from Region 3.

(3) The members shall be appointed by the President, subject to ratification by the National Assembly.

(4) The Chairperson shall be a person who has held, or is qualified to hold, high judicial office or, any other suitably qualified person.\(^{538}\)

OR

(1) There shall be a National Elections Commission composed of a Chairman and six Commissioners who shall be natural-born citizens of the State and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective position in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be Members of the State Bar who have been engaged in the practice of law for at least ten years.

(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the [legislature or authorized independent commission] for a term of [seven years] without reappointment. Of those first appointed, three Members shall hold office for [seven years], two Members for [five years], and the last Members for [three years], without reappointment. Appointment to a vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.\(^{539}\)

\(^{538}\) This language is drawn from Electoral Commission Act (Zambia, 1996), pt. II, sec. 4.

ARTICLE XXX
Financing

(1) Expenses for organization and conduct of elections, including for compilation of voter lists, as well as expenses that are required for the activities of electoral commissions, shall be covered from the state budget. Such expenses shall be reflected in a separate line in the state budget.

(2) Financial means allocated for elections shall be provided within five days of setting the date for the elections.

(3) In the case of extraordinary elections, such elections shall be financed from the state budget’s reserve fund; if this is impossible, then they shall be financed from the Central Bank’s reserve fund on the condition of future reimbursement from the state budget. If the state budget financing is not provided on time, or there are no funds available in the Central Bank’s reserve fund, or the allocated means are insufficient for financing the extraordinary elections or the second round of elections, then the Central Electoral Commission shall have the right to seek a loan from private banks on competitive basis, on the condition that the government will repay the loan within a three-month period.

(4) Finances earmarked for elections, including funds for running electoral commissions, shall be allocated to the [National Elections Commission staff or other national administrative institution] in accordance with procedures defined by the Government of the Republic of Sudan. [National Elections Commission staff or other national administrative institution] shall manage the financial means in accordance with procedures set out by legislation of the Republic of the Sudan and shall be responsible for using the funds in accordance with the estimates approved by the National Elections Commission.\footnote{This language is drawn from Electoral Code of the Republic of Armenia (1999), ch. 5, art. 24; PHILIPPINES CONST. art. IX, pt. A, sec. 5 (1987); Electoral Commission Act (Zambia, 1996), pt. IV.}
(5) The Commission may, subject to the approval of the President, accept moneys by way of grants or donations from any source and subject to the approval of the President, and may raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.\textsuperscript{541}

\textsuperscript{541} Electoral Commission Act (Zambia, 1996), pt. IV, sec. 13(2).
EXECUTIVE STRUCTURES

INTRODUCTION

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

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

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

CORE ELEMENTS

Presidential System

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

543 Darfur Peace Agreement, art. 8, para. 67.
it is difficult to remove presidents before their term ends. In some states, this may raise concerns of authoritarianism or create tension between the legislative and executive branches of government.

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

**Presidential Council System**

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

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

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Particularly in post-conflict states, presidential council systems may ensure broad representation of the population. Due to the potential for integration of diverse parties in the governing structure, the efficiency and long-term viability of this model rely on the ability of parties to coexist by creating collaborative or complementary policy. If the rotation in a presidential council results in drastically different policies during the tenure of different chairs, there is a danger that this could destabilize institutions or policies that require cohesion or long-term investment.

Parliamentary System

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

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

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

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

549 SOUTH AFRICA CONST. ch. 5, sec. 102 (1996).
Semi-Presidential System

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

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

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

The semi-presidential system provides a significant amount of flexibility in sub-head of state or sub-head of government executive structures. Most

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

commonly, the president is either ceremonial or administers foreign relations, whereas the prime minister is the head of a ministerial council that requires parliamentary approval.

**DARFUR PEACE AGREEMENT**

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

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

**SAMPLE LANGUAGE**

**Article XXX**

**Presidential System**

(1) The President of Sudan shall hold the power of government in accordance with the Constitution. In exercising his duties, the President shall be assisted by a Vice-President.

(2) In agreement with the legislature, the President declares war, makes peace, and concludes treaties with other states.

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552 Darfur Peace Agreement, art. 1, para. 5,9.
553 Darfur Peace Agreement, art. 1, para. 9-10.
554 Darfur Peace Agreement, art. 8, para. 68.
555 Darfur Peace Agreement, art. 8, para. 65-66.
556 Darfur Peace Agreement, art. 8, para. 67.
557 This language is drawn from the INDONESIA CONST. ch. III, art. 4 (1945).
(3) The President declares the state of emergency. The conditions for such a declaration and the measures to deal with the emergency shall be governed by law.

(4) The President appoints ambassadors and consuls.

(5) The President receives the credentials of foreign ambassadors.

(6) The President grants mercy, amnesty, pardon, and restoration of rights.

(7) The President grants titles, decorations and other distinctions of honor.\textsuperscript{558}

OR

\textbf{Article XXX}\n
\textbf{Presidential Council System}

(1) The Presidency of Sudan shall consist of three Members: one directly elected from Sudan, one directly elected from the territory of Darf尿, and one directly elected from the territory of Southern Sudan.\textsuperscript{559}

(2) The Presidency shall have responsibility for:
   (a) Conducting the foreign policy of Sudan;
   (b) Appointing ambassadors and other international representatives of Sudan;
   (c) Executing decisions of the legislature;
   (d) Proposing an annual budget to the legislature;
   (e) Reporting as requested, but not less than annually, to the legislature on expenditures by the Presidency; and
   (f) Performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the legislature.\textsuperscript{560}

OR

\textsuperscript{558} This language is drawn from the INDONESIA CONST. ch. III, art. 12 (1945).
\textsuperscript{559} This language is drawn from the BOSNIA AND HERZEGOVINA CONST. art. V (1995).
\textsuperscript{560} This language is drawn from the BOSNIA AND HERZEGOVINA CONST. art. V, sec. 3 (1995).
Article XXX
Parliamentary System

The President

The President is the Head of State and head of the national executive. 561

Election of President

At its first sitting after its election, and whenever necessary to fill a vacancy, the legislature must elect a woman or a man from among its members to be the President. 562

Removal of President

1) The legislature may, by a resolution receiving the votes of two thirds of its members, remove the President from office only in the following circumstances:
   (a) A serious violation of the Constitution or the law;
   (b) Serious misconduct; or
   (c) Inability to perform the functions of the office. 563

Powers and Functions of President

1) The President has the powers entrusted by the Interim Constitution and legislature, including those necessary to perform the functions of Head of State and head of the national executive.

2) The President is responsible for:
   (a) Assenting to and signing Bills;
   (b) Referring a Bill back to the legislature for reconsideration of the Bill’s constitutionality;
   (c) Summoning the legislature to an extraordinary sitting to conduct special business;

561 This language is drawn from the SOUTH AFRICA CONST. ch. 5, sec. 83 (1996).
562 This language is drawn from the SOUTH AFRICA CONST. ch. 5, sec. 86 (1996).
563 This language is drawn from the SOUTH AFRICA CONST. ch. 5, sec. 89 (1996).
(d) Making any appointments that the Interim Constitution or legislature requires the President to make, other than as head of the national executive;
(e) Appointing commissions of inquiry;
(f) Calling a national referendum in terms of an act of the parliament;
(g) Receiving and recognizing foreign diplomatic and consular representatives;
(h) Appointing ambassadors and diplomatic and consular representatives;
(i) Pardoning or reprieveing offenders and remitting any fines, penalties or forfeitures; and
(j) Conferring honors. 564

Article XXX
Semi-Presidential System

Election of the President and the Government

(1) The President of Sudan is elected by a direct vote for a term of [X] years. 565

(2) The Government consists of the Prime Minister and the necessary number of Ministers. 566

(3) The legislature elects the Prime Minister, who is thereafter appointed to the office by the President of Sudan. The President appoints the other Ministers in accordance with a proposal made by the Prime Minister. 567

Duties of the President

(1) The President of Sudan carries out the duties stated in the Sudanese Interim Constitution [or specifically stated in another Act].

(2) The President of Sudan makes decisions in Government based on proposals for decisions put forward by the Government.

564 This language is drawn from the SOUTH AFRICA CONST. ch. 5, sec. 84 (1996).
565 This language is drawn from the FINLAND CONST. ch. 5, sec. 54 (2000).
566 This language is drawn from the FINLAND CONST. ch. 5, sec. 60 (2000).
567 This language is drawn from the FINLAND CONST. ch. 5, sec. 61 (2000).
(3) If the President does not make the decision in accordance with the proposal for a decision put forward by the Government, the matter is returned to the Government for preparation. Thereafter, the decision to submit or to withdraw a government proposal shall be made in accordance with the Government’s new proposal for a decision.

(4) The President makes decisions on matters relating to military orders in conjunction with a Minister, as provided for in more detail by legislative act.

(5) Notwithstanding section (1), the President makes decision on the following matters without a proposal for a decision from the Government:
   (a) The appointment of the Government or a Minister and the acceptance of the resignation of the Government or a Minister;
   (b) The issuance of an order concerning extraordinary legislative elections; and
   (c) Presidential pardons and other matters concerning private individuals.  

Duties of the Prime Minister

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

568 This language is drawn from the FINLAND CONST. ch. 5, sec. 58 (2000).
569 This language is drawn from the FINLAND CONST. ch. 5, sec. 66 (2000).
FISCAL DEVOLUTION

INTRODUCTION

This chapter presents an overview of the mechanisms states use to allocate revenues and expenditure authority between their central and provincial governments. This chapter also outlines the Darfur Peace Agreement provisions relating to fiscal devolution and provides sample language parties may wish to consider when drafting fiscal devolution provisions in a peace agreement. State practice illustrates a range of mechanisms for devolving fiscal authority to provincial governments and mitigating fiscal imbalances. Core elements that states may consider when devolving fiscal authority may include the structure of the fiscal authority, mechanisms to prevent and mitigate imbalances, and methods to adjust current fiscal policy.

The degree of fiscal authority allocated to provincial governments is usually a balance of two factors: (1) the degree of expenditure authority allocated to provincial governments to provide public services and (2) the types and degree of revenue raising (also known as self-financing) conducted by provincial governments. Fluctuations in revenue-raising capacity and need often create imbalances between the fiscal resources available to various provinces. To prevent or mitigate imbalances, states often establish one or more systems to transfer revenues from the central government to the provincial governments. States that devolve fiscal authority to provincial governments must also develop mechanisms to adjust fiscal policy when necessary. Common mechanisms used to adjust fiscal policies include expert commissions, intergovernmental councils, central government decision including provincial representation, and central government decision without provincial representation.

The 2006 Darfur Peace Agreement (DPA) provides both the central and the provincial governments with expenditure and revenue raising authority. In addition to its revenue raising authority, the DPA grants the authority to borrow funds from external sources as long as it reported all the funds it received to the central government. To address imbalances, the DPA establishes the Fiscal and Financial Allocation and Monitoring Commission to develop formulas for the allocation of resources between the central and the provincial governments and for the allocation of resources among the provincial governments.
CORE ELEMENTS

Structure of Fiscal Devolution

The structure of devolved fiscal authority comprises three core authorities including expenditure authority, revenue collection authority, and stabilization policy. One of the central issues in structuring fiscal devolution is creating an effective balance among these authorities. Many states allocate to different provinces differing levels of authority in each of these areas. This is particularly true in states where different provinces have different capacities to exercise fiscal authority.

Expenditure Authority

Expenditure authority is authority over specific policy areas or services allocated to central and provincial governments. Generally, expenditure authority follows the devolution of political authority between state and provincial governments. Many states establish the division of political and fiscal authority in the national constitution, in national legislation, or in negotiated agreements between central government and provincial government executives. The central government usually holds expenditure authority in areas of national security and defense, public debt, immigration, regulation of trade and commerce, foreign affairs, and some social programs. Provincial governments usually hold expenditure authority in areas of education, provincial law enforcement, transportation, communication, housing, and healthcare services. In some states, the central and provincial governments share expenditure authority over certain policy areas.

In addition to expenditure authority, some state constitutions grant the central government a separate “spending power.” In many states, the degree of

\[570\]
\[Paul Boothe,\ FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 6, 25. The process of determining allocations of authority by negotiation between provincial and national executives is “executive federalism.” Although executive federalism can increase institutional flexibility, its success is dependent on the relationship between the executives and is therefore uncertain.\]

\[571\]
\[OECD REPORT, FISCAL DECENTRALISATION IN EU APPLICANT STATES AND SELECTED EU MEMBER STATES (2002), ch. 1, Table 1.4.1, available at http://www.im.dk/publikationer/decentralisation/kap01.htm (last accessed Sept. 14, 2007).\]
authority provided by spending power varies widely, depending on the prevailing constitutional interpretation.

Centralized Expenditure Authority

In states with centralized expenditure authority, the central government usually holds more expenditure authority, or holds expenditure authority over more policy areas, than do provincial governments. Venezuela, for example, had a highly centralized expenditure system from 1978 to 1996. During that period, provincial spending constituted only 12 percent of national spending.\textsuperscript{572} Central government grants financed 94 percent of provincial spending.\textsuperscript{573} Similarly, provincial spending in Spain and Austria were 14 and 17 percent of national spending, respectively.\textsuperscript{574}

Vesting the central government with more authority may enable greater national coordination of fiscal policy. However, centralizing expenditure authority can become complicated when central and provincial governments have conflicting policy priorities. During the 1990s, Mexican provincial governments relied heavily on the central government for funding.\textsuperscript{575} Provincial governments began to borrow heavily against future income from the central government. This complicated relations between the central and provincial governments, in part because the central government would be forced to assume the provincial governments’ debt if they defaulted.\textsuperscript{576}

\textsuperscript{574} Jonathan Rodden and Erik Wibbels, \textit{Beyond the Fiction of Federalism: Macroeconomic Management in Multi-tiered Systems}, \textit{World Politics}, July 2002, Table 1, at 504.
Decentralized Expenditure Authority

In states with decentralized expenditure authority, provincial governments often control spending in a greater number of policy areas than does the central government. Argentina, for example, has a highly decentralized expenditure system, with provincial spending making up approximately half of total government spending.\textsuperscript{577}

In some states with decentralized expenditure systems, provincial governments still rely on the central government for revenue. From 1985 to 1995, Argentinean provincial governments depended on the central government for 65 percent of their budgets.\textsuperscript{578} Two-thirds of the transfers from the central government to the provincial governments were legislatively pre-determined, preventing provincial financial dependence from affecting the relationship between the provincial and central governments.\textsuperscript{579}

Decentralized expenditure authority allows provincial governments to have greater flexibility in the amount and nature of their spending. However, when central and provincial policy objectives are in conflict, decentralized expenditure authority may complicate national policy coordination or strain relations between the central and provincial governments. For example, in Canada, consensus on economic policy objectives can be difficult to achieve, in part because of significant inter-provincial wealth disparities and policy priorities.\textsuperscript{580}

Revenue Collection Authority

\textsuperscript{578} SEBASTIÁN SAIEGH AND MARIANO TOMMASI, WHY IS ARGENTINA’S FISCAL FEDERALISM SO INEFFICIENT? ENTERING THE LABYRINTH (1999).
\textsuperscript{579} Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 44. These transfers are “co-participation transfers” and are automatic, non-discretionary transfers that come from income taxes, excise taxes, and value-added taxes. This system is in place because provinces abdicated tax revenue collection authority in exchange for a pre-determined transfer system.
\textsuperscript{580} PAUL BOOTHE, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 37-38.
Devolution of revenue collection authority enables provincial governments to collect revenues independent of, or in cooperation with, the central government. States may establish revenue collection authority in the national constitution, in national legislation, or in negotiated agreements between central government and provincial government executives. State practice varies considerably in the implementation of devolved revenue collection systems; the primary distinction is generally over which level of government collects the majority of the tax revenue. Tax revenue constitutes the majority of revenues collected by the government. Even in states with highly devolved revenue collection systems, neither central nor provincial governments are completely self-financing.581

Centralized Revenue Collection System

In centralized revenue collection systems, the central government holds the majority of revenue collection authority. Many states initially granted revenue collection authority to the provincial governments. In some states, however, the provincial governments have abdicated their revenue collection authority to the central government. For example, although the Mexican Constitution grants revenue collection authority to the provinces, the central government exercises a great deal of revenue collection authority.582 This is because Mexican provincial legislatures gave up this authority in exchange for the implementation of an automatic transfer system.583

581 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 11.
583 INTERNATIONAL MONETARY FUND, MEXICO: REPORT ON THE OBSERVANCE OF STANDARDS AND CODES – FISCAL TRANSPARENCY MODULE; Jonathan Rodden and Erik Wibbels, Beyond the Fiction of Federalism: Macroeconomic Management in Multi-tiered Systems, WORLD POLITICS, July 2002, Table 1, at 504. The Mexican Fiscal Coordination Law (2000) establishes that the government must transfer funds to the states through the General-Revenue Sharing Fund, which is distributed between provinces (1) according to population (45.17 percent); (2) in proportion to their share in collection of central taxes earmarked for states (45.17 percent); and (3) in inverse proportion to the amounts established under the previous two calculations (9.66 percent). The General-Revenue Sharing Fund is composed of 20 percent of “shareable” national revenues,
A benefit of centralized revenue collection systems is the coordination of tax revenue allocation. However, centralization without mechanisms for effective redistribution of funds to the provinces can lead to fiscal imbalances between the central and provincial governments. For example, Australia has a highly centralized revenue collection system that results in large fiscal imbalances between the central and provincial governments. The central government mitigates these imbalances with conditional and unconditional grant programs.

Decentralized Revenue Collection System

In decentralized revenue collection systems, provincial governments hold the majority of revenue collection authority. Decentralized revenue collection systems provide provincial governments with greater flexibility in collection and budgetary spending implementation at the provincial level. In the Philippines, provincial governments have the authority to set their own tax rates, enact their own budgets, and determine their own borrowing policy. The provincial governments have significant control over the amount and type of public services they are able to offer because they determine their own tax rates and thus, create revenue.

Decentralized revenue collection systems can also result in an unequal distribution of funds among provinces, particularly in states where different provinces have disparate economic capacities. In Canada, provincial governments collect more than half of all tax revenue. Because Canada’s provinces have

such as revenues from taxes and royalties on petroleum and mining operations. Provincial spending in Mexico between 1978 and 1996 was only 16 percent of government spending.

584 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 12.
585 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 12. Since the tax reform of 2000, the unconditional grant program has turned into funds transfers totaling a percentage of the centrally administered goods and services tax.
586 Robertson Work, UNITED NATIONS DEVELOPMENT PROGRAM, OVERVIEW OF DECENTRALISATION WORLDWIDE: A STEPPING STONE TO IMPROVED GOVERNANCE AN HUMAN DEVELOPMENT (2002).
587 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 10. Provincial and local governments in Canada collect 53 percent of all tax revenue collected.
significantly different revenue-raising capacity, however, relative wealth varies
significantly among the provinces. Canada addresses this disparity by using a
gross equalization mechanism in which the central government evaluates the needs
of the provinces and transfers funds between provinces to meet those needs.

Stabilization Policy

Establishing a stabilization policy is another important element of
structuring a devolved fiscal system. Stabilization policies are measures that states
adopt to stabilize the economy, particularly during economic recessions or
depressions. Effective stabilization policies allow states to balance long-term
fiscal stability, achieved through the maintenance of a balanced budget, and
address short-term economic fluctuations. Like expenditure and revenue collection
authority, control over stabilization policy may be centralized or decentralized. In
many states, both the central and provincial governments share control of
stabilization policy due to the economic interdependence of the two authorities.

Preventing Imbalances

Fluctuations in provincial financial needs and revenue-raising capacity often
create imbalances between and among central and provincial governments. These
imbalances between central and provincial governments are vertical imbalances.
Imbalances among provincial governments are horizontal imbalances. State
governments usually mitigate vertical and horizontal imbalances through a system
of grants and fund transfers.

State governments use various processes to determine how much funding
will go to which provinces. Some states provide guidelines for transfers in the
national constitution. In other states, representatives of central and provincial
executives conduct informal negotiations to determine transfer amounts and
recipients. When attempting to prevent or mitigate imbalances, many states
implement more than one transfer system.

588 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL
RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 38.
589 For more information on gross equalization mechanisms, see the section on Gross
Equalization of this chapter.
590 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL
RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 49.
Vertical Imbalances

Vertical imbalances occur when the central government collects and retains more revenue than it needs to meet expenditures while, at the same time, provincial governments are not able to collect the revenue necessary to meet their needs. State governments usually offset vertical imbalances by transferring a portion of state tax revenue to one or more provincial governments. These transfers generally take one of two forms, which are conditional transfers and unconditional transfers.

Conditional Transfers

In conditional transfer systems, provincial governments must usually meet pre-determined conditions to receive funding from the state government. Some states use a system of “conditional eligibility,” in which provincial governments must meet certain standards before the central government will transfer funds. Other states use a system of “conditional spending,” in which provincial governments are required to spend the transferred revenue in a pre-determined way.

Central governments often use conditional grant programs to enable or assist provincial governments to provide social services. Conditional grant programs also enable central governments to exert influence in specific policy areas where they may not have the authority to act directly. In South Africa, the central government has institutionalized conditional grants that finance public service programs in the provinces, primarily in the areas of health, finance, housing, and transportation.  

Unconditional Transfers

When a central government makes an unconditional transfer of revenue to a provincial government, the provincial government may spend the funds at its own


In addition to unconditional transfers, many central governments make use of revenue-sharing programs, which govern the division of common revenue sources between the central and provincial government. Germany divides revenues from its value-added tax between the central and provincial governments.\footnote{The Commission on Fiscal Imbalance, *Intergovernmental Fiscal Arrangements* (2001), at 7, available at http://www.desequilirefiscal.gouv.qc.ca/en/pdf/internationnal_ang.pdf (last accessed Sept. 14, 2007). In Germany, the government distributes 49.75 percent of the value added tax by demographic weight among the Länder, with 50.25 percent going to the national government. The remaining funds go to the administration of the pension plan and the Communes.}

**Horizontal Imbalances**

Horizontal imbalances occur when provinces have disparate revenue-raising capacity, particularly in relation to each province’s expenditure needs. As with vertical imbalances, the central government can mitigate horizontal imbalances by transferring central government funds to one or more provincial governments. However, the fund-transfer mechanisms to address horizontal imbalances are often more complicated than those to address vertical imbalances.

**Net Equalization Systems**

In net equalization systems, transfers come from a single, fixed source of revenue. States divide these funds according to a pre-established system for determining need. By using a pre-allocated pool of funds, central governments are able to limit the risk of economically over-extending themselves to mitigate inter-provincial economic disparity. The size of fund transfers in net equalization...
systems are generally determined by either automatic transfers or discretionary transfers.

**Automatic Transfers**

An automatic transfer is one mechanism for distributing central government tax revenue to provincial governments. States make automatic transfers according to pre-determined guidelines, without a case-by-case review. When the central government collects revenues, it automatically distributes them to provincial governments according to the pre-determined guidelines. During its 1994 fiscal reforms, China created an automatic transfer system that divided revenue sources into three categories: central, local and shared.\(^{594}\) The central government then determined the percentages of distribution between provinces, and imposed the division on provincial governments to reduce negotiation costs.\(^{595}\) These percentages determined the annual revenue allocations from the central government to provincial governments.\(^{596}\)

Some states prefer automatic transfers because the system can eliminate the time and cost of negotiating the amounts of funds to be transferred. If the automatic transfer is the only net equalization mechanism used, however, the central government may lack flexibility to address provincial needs.

**Discretionary Transfers**

A discretionary transfer is another mechanism for distributing central government tax revenue to provincial governments. The central government allocates discretionary transfers to provincial governments as needed. State practice varies considerably on the mechanisms used for determining provincial


\(^{595}\) Shaoguang Wang, *China’s 1994 Fiscal Reform: An Initial Assessment*, ASIAN SURVEY (Sept. 1997). China also used two parallel tax revenue collection authorities: a national system to collect central and shared taxes, and the pre-existing local authority to collect local taxes.

need. Some states include provisions for these mechanisms in their constitution or national legislation. Australia uses a complex system that measures forty-one expenditure and eighteen revenue categories to determine the need of each province relative to the others. The central government bases the amount of these transfers on the provinces’ fiscal capacity and expected expenditures. A non-partisan group, the Commonwealth Grants Commission, oversees this system. The Commission monitors the fairness of the process and reviews the methodology every five years.

Other states use a combination of mechanisms that are more informal. One method that Argentina uses to prevent horizontal imbalances is purely discretionary transfers, which the state distributes “as necessary.” Argentina also provides transfers from the central government through “co-participation transfers that provide automatic, non-discretionary transfers” from income taxes, excise taxes, and the Value-Added Tax. The central government also provides automatic transfers that divide revenues from fuel taxes, energy taxes, and wage taxes between the central and provincial governments.

Gross Equalization Systems

Unlike net transfer systems, which use a pre-established system for determining need, in gross equalization systems, the central government assesses

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597 Paul Boothe, Forum of Federations and Institute for Public Economics, Fiscal Relations in Federal Countries: Four Essays (2003), at 32-33. The Commonwealth Grants Commission, a non-partisan, politically appointed body that continuously reviews provincial economics, performs this analysis every five years. Although this body has no any policy-making authority outside of this review, the government often consults it for policy advice.

598 Paul Boothe, Taxing, Spending and Sharing in Federations: Evidence from Australia and Canada, in Fiscal Relations in Federal Countries: Four Essays (2003), at 5.


600 Sebastián Saiegh and Mariano Tommasi, Why is Argentina’s Fiscal Federalism so Inefficient? Entering the Labyrinth (1999), at 14-15. The central government and the treasury jointly decide which provincial government requests qualify as needs. Argentina also has other imbalance mitigation mechanisms, such as automatic transfers of funds allocated for specific purposes.

provincial needs and transfers funds it considers necessary to meet those needs. One criterion the central government uses in determining provincial need is the province’s relative ability to raise its own revenues. The central government compares the revenue available in each province. From these comparisons, the central government establishes a median “standard of capacity.” The provinces that fall below this standard are awarded unconditional cash transfers from the central government. The provinces that are above the standard retain their respective tax revenues but do not receive transfers from the central government. This standard is subject to review every five years.\textsuperscript{602} This scheme helps to equalize available finances among provinces.\textsuperscript{603}

Generally, gross equalization systems do not limit the funds that the central government can transfer to provincial governments. This can lead to provincial dependence on national transfers. To prevent or resolve this potential problem, states may enact measures to limit the year-to-year variation of gross equalization payments or develop ad hoc measures to limit the financial liability of the central government.

\textit{Shared System of Horizontal and Vertical Equalization}

The German Constitution designed the fiscal system in Germany to balance and equalize resources between the central and provincial governments\textsuperscript{604} as well as among the provinces themselves.\textsuperscript{605} The German Constitution specifically

\begin{itemize}
  \item \textsuperscript{602} Paul Bothe, \textit{Taxing, Spending and Sharing in Federations: Evidence from Australia and Canada}, in \textit{Fiscal Relations in Federal Countries: Four Essays} (2003), at 5.
  \item \textsuperscript{603} Paul Bothe, \textit{Taxing, Spending and Sharing in Federations: Evidence from Australia and Canada}, in \textit{Fiscal Relations in Federal Countries: Four Essays} (2003), at 5. In addition, there are major transfers of revenue from the central government to provincial governments through “shared-cost programs.” The government designed these programs to help the provinces provide these services with funding from the federal government. The largest of them relate to education and healthcare. Because the central government can link certain policy requirements to the funding, these programs have allowed the central authorities to affect policy in areas traditionally under the jurisdiction of the provinces. Cost-sharing programs are at the center of current debate in Canada.
  \item \textsuperscript{604} The “vertical” equalization between Germany’s federal government and provincial governments appears in Articles 91 and 106 of the German Constitution.
  \item \textsuperscript{605} The “horizontal” equalization between Germany’s provinces appears in Article 107 of the German Constitution.
\end{itemize}
divides income and corporate taxes between the central and provincial governments. In addition, the central government redistributes the value-added tax to the federal and provincial governments based on need. If a province’s tax revenue is greater than its budgetary needs, it must transfer some of this revenue directly to less fiscally stable provinces.\footnote{606}  The central government calculates the amount of funds to transfer from province to province based on a complex evaluation of economic capacity and political negotiations between the central government and the provinces.

Taxation in Germany is generally centralized. Only the central government has the authority to institute additional taxes or change the rates of existing taxes. The provincial governments have no independent tax authority and can only collect taxes at rates set by the central government.\footnote{607}  In addition, the provincial governments are constitutionally responsible for implementing federal legislation. The provinces are therefore obligated to fulfill fiscal responsibilities over which they have little direct control.

**Policy Adjustment Mechanisms**

Policy adjustment mechanisms are another integral element of sustainable fiscal devolution. There are four key types of formal policy adjustment mechanisms, including expert commissions, intergovernmental councils, central government decision with provincial representation, and central government decision without provincial representation. Some states also use a variety of informal mechanisms to adjust existing fiscal policy.

*Expert Commissions*

Many states that have devolved fiscal systems establish independent commissions of experts to review existing policy and make recommendations for adjustments. These commissions may be standing or ad hoc. The recommendations of expert commissions usually require the approval of an element of the central government.\footnote{608}  Australia, for example, developed the

\footnote{606} Germany Const. art. 107 (1949).
\footnote{607} Germany Const. art. 105 (1949).
\footnote{608} Paul Boothe, Forum of Federations and Institute for Public Economics, Fiscal Relations in Federal Countries: Four Essays (2003), at 21. Usually, the national parliament approves these recommendations.
Commonwealth Grants Commission, an independent, standing panel of experts to advise the government on fiscal policy adjustment.\textsuperscript{609} The Commonwealth Grants Commission determines the proportions by which the central government can distribute shared-revenue among states.\textsuperscript{610}

Advocates for independent commissions argue that because such commissions are independent from the political process, they are more likely to produce economically focused policy recommendations. Others claim that a commissions’ political independence may lead to the disenfranchisement of individual provinces or economic needs.

\textit{Intergovernmental Councils}

States also may adjust fiscal policy through a council composed of both central and provincial government representatives. Intergovernmental councils meet at pre-determined intervals to negotiate modifications to existing fiscal policy. The presence of central and provincial representatives on intergovernmental councils might help to increase the legitimacy of any policy decisions reached. Before Malaysia’s central government may adjust its fiscal policy, it is constitutionally required to consult with the National Finance Council, which is composed of members of provincial governments.\textsuperscript{611} Similarly, in Spain, fiscal arrangements are determined based on negotiations between representatives of the central government and the Autonomous Communities, with the central government making final decisions.\textsuperscript{612}

\textit{Legislative Decision with Provincial Representation}

\textsuperscript{609} RONALD L. WATTS, COMPARING FEDERAL SYSTEMS, 2\textsuperscript{nd} Edition (1999), at 54-55; Paul Boothe, \textsc{Forum of Federations and Institute for Public Economics, Fiscal Relations in Federal Countries: Four Essays} (2003), at 32-33. In 1973, the role of the Commonwealth Grants Commission changed from recommending supplemental equalization grants to creating and administering the quantitative review process for determining per capita relativities, and thus the percentages of revenue distribution.

\textsuperscript{610} RONALD L. WATTS, COMPARING FEDERAL SYSTEMS, 2\textsuperscript{ND} EDITION (1999), at 54-55; Paul Boothe, \textsc{Forum of Federations and Institute for Public Economics, Fiscal Relations in Federal Countries: Four Essays} (2003), at 32-33.

\textsuperscript{611} RONALD L. WATTS, COMPARING FEDERAL SYSTEMS, 2\textsuperscript{ND} EDITION (1999), at 53-54.

\textsuperscript{612} Paul Boothe, \textsc{Forum of Federations and Institute for Public Economics, Fiscal Relations in Federal Countries: Four Essays} (2003), at 53-54.
Some states adjust fiscal policy by vesting the adjustment authority in the national legislature, which then coordinates with provincial executives to determine necessary changes. The representative nature of this mechanism, in addition to its formalized rules governing process, may help to foster the legitimacy of decisions reached. However, under such systems, the need to consider other priorities and interests can compromise provincial economic objectives. In Germany, fiscal arrangements annually require the approval of the Bundesrat, the upper house of the legislature. Similarly, Switzerland determines its fiscal arrangements through negotiations between the Federal Council and the Parliament, at times with the assistance of commissions.

Executive Decision

Another mechanism for the adjustment of fiscal policy grants sole authority to the central executive without the involvement of provincial governments. This system can create or exacerbate vertical imbalances or intergovernmental tensions. Canada vests exclusive authority over fiscal policy in the executive. However, informal intergovernmental negotiations influence the decision-making process. Provinces in Canada may opt-out of central-provincial intergovernmental agreements without penalty.

COMPARATIVE STATE PRACTICE

Argentina

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615 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 21-22. Canada implemented this system, and it has been the source of significant controversy.
617 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 27.
Argentina is a federal republic comprised of twenty-four provinces and one autonomous district. It is also the most fiscally decentralized economy in Latin America, with approximately 50 percent of total public spending coming from the provincial level. The Argentine Constitution established the state's fiscal system. Argentina has made significant complicating adjustments to the system since its inception, causing inconsistencies in long-term fiscal policy. These inconsistencies have affected Argentinean economic stability.

Revenue Collection Authority

Argentina’s fiscal devolution structure, initially established in the 1934 constitution, adopts a tax-revenue sharing model. The constitution granted the central government the authority to collect tariffs from foreign trade and provincial governments the authority to collect taxes on the consumption and production of specific goods. However, in practice, provincial governments have returned a significant percentage of their revenue collection authority to the central government.

The current law, passed in 1988, divides federally collected taxes between levels of government, with forty-two percent of collected revenue allocated to the central government and fifty-seven percent of collected revenue distributed among the provinces.

621 SEBASTIÁN SAIEGH AND MARIANO TOMMASI, WHY IS ARGENTINA’S FISCAL FEDERALISM SO INEFFICIENT? ENTERING THE LABYRINTH (1999), at 9. The most recent law is the “Ley de Coparticipación Federal de Impuestos,” and allocates the remaining 1 percent of federally collected tax revenue to be set aside for “unforeseen circumstances.”
Expenditure Authority

The Argentine Constitution required provincial governments to provide a majority of public services and therefore, requires the provinces to have a high degree of expenditure authority. Provinces have exclusive responsibility over primary and secondary education, health, poverty programs, and housing. The central and provincial governments share responsibility for other public programs, although the tendency in the past two decades has been for the central government to delegate this authority to the provinces.

Fiscal Imbalance Mitigation Mechanisms

The high degree of revenue collection authority vested in the central government combined with the decentralized expenditure authority vested in provincial governments has created sharp intergovernmental fiscal imbalances in Argentina. From 1985 to 1995, provincial governments relied on the central government to finance sixty-five percent of expenses. Within the same period, ten provinces self-financed less than fifteen percent of their expenses and sixteen provinces self-financed less than twenty percent of their expenses.

To mitigate these imbalances, Argentina has adopted three types of intergovernmental revenue transfers, including co-participation transfers that provide automatic non-discretionary transfers as part of the tax-sharing system, automatic transfers derived from fuel, energy, and wage taxes, and discretionary transfers. Using one or more of these systems, the central government may

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626 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 44.
reallocate revenues to the provincial governments, thus enabling them to exercise the powers devolved to them under the constitution.

Argentina has significantly complicated its devolution system with additional legislation. One of the most significant laws in this area enables the central government to divert shared revenues toward other purposes. However, the central government also created minimum transfer guarantees and transfers that match the cost of decentralized service responsibilities to provincial governments in an effort to provide more stability.

Canada

Canada is a federation of ten provinces and three territories of varying size and revenue-raising capacity. Canada’s decentralized fiscal devolution structure originates from its 1867 Constitution Act, although the 1982 Constitution Act substantially modified it. One of these modifications established the principle of inter-provincial equality in public services and taxation.

Revenue Collection Authority

In Canada, both central and provincial governments have broad taxation powers, which often overlap. The central government is dominant in areas of personal and corporate income taxes, whereas provincial governments collect the majority of payroll and property taxes.


628 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 7.

629 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 8.

630 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 10.
This division of revenue collection means that provincial governments have collected more revenue than the central government in recent decades.\footnote{ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 40, available at http://www.fiscalreform.net/library/pdfs/fiscal_federalism_in_canada.pdf (last accessed Sept. 14, 2007).} For example, in 1999, provincial governments collected 52.7 percent of national tax revenue, compared to the central government’s 47.3 percent.\footnote{ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 40.}

**Expenditure Authority**

The Canadian Constitution Acts establish exclusive expenditure authority for either the central or the provincial government, with the exception of four issue areas.\footnote{ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 7.} Canada’s Constitution Acts allocate exclusive authority over economic development, currency, postal service, and national defense to the central government.\footnote{ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 7.} Canadian courts have also interpreted the Constitution Acts to grant the central government a more broadly defined “spending power,” which it uses to mitigate fiscal imbalances and pursue specific policy objectives.\footnote{Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 8; ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 16.}

The Constitution Acts provide provincial governments with exclusive control over the administration of justice, local institutions, health, education, welfare, and other matters of a “local nature.”\footnote{ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 7.} Provincial government responsibilities, largely due to the growth of the welfare system, have become predominant in terms of importance and spending.\footnote{ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 8.} As a result, sub-national spending makes up the majority of national spending in Canada; in 2001 sub-national spending was sixty-three percent of total national spending.\footnote{Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 8.}

**Imbalance Mitigation Mechanisms**

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632 ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 40.
633 ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 7. Those four areas of concurrent jurisdiction are the exportation of non-renewable natural resources, pensions, agriculture, and immigration.
634 ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 7.
635 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 8; ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 16.
636 ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 7.
637 ROBIN BROADWAY AND RONALD WATTS, FISCAL FEDERALISM IN CANADA (2000), at 8.
638 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 8.
In light of a 1982 court decision establishing the priority of inter-provincial equality, Canada has several mechanisms in place to mitigate fiscal imbalances between the central and provincial governments as well as among provinces. One of these mechanisms is the gross equalization system, which is a system of objective evaluation of inter-provincial revenue raising capacity. Under this system, the state evaluates the revenue-raising capacity of each province according to 33 criteria to establish a mean. Provinces whose revenue raising capacity is below that mean receive equalization transfers from the central government to compensate for the disparity. Provinces whose revenue-raising capacity is above that mean do not receive equalization transfers.

Canada’s central government also uses a loosely regulated program called the Canadian Health and Social Transfer, several smaller cost-share programs, and its constitutional “spending power” to mitigate fiscal imbalances or pursue specific policy objectives.

South Africa

The South African Constitution of 1996 and subsequent legislation contained several provisions to devolve fiscal authority to its provincial and municipal governments. The Constitution uniquely establishes the principle of cooperative governance, requiring the various orders of government—central, provincial, and municipal—to work together.

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639 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 14. Under this system, the government evaluates provincial revenue raising capacity by thirty-three criteria among all ten provinces, to establish a mean. Provinces whose revenue raising capacity is below that mean receive transfers that compensate for the disparity and provinces above that mean do not receive equalization transfers.

640 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 14.

641 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 14.

642 Paul Boothe, FORUM OF FEDERATIONS AND INSTITUTE FOR PUBLIC ECONOMICS, FISCAL RELATIONS IN FEDERAL COUNTRIES: FOUR ESSAYS (2003), at 14. Canada has adopted ad hoc measures to limit its compensatory equalization responsibility.

provincial, and local—to collaboratively derive solutions to political and budgeting issues.\footnote{Ismail Momoniat, \textit{WORLD BANK, FISCAL DECENTRALISATION IN SOUTH AFRICA: A PRACTITIONER’S PERSPECTIVE}, at 3-4, \textit{available at} http://www1.worldbank.org/wbiep/decentralization/afrlib/Momoniat.pdf (last accessed Sept. 14, 2007). This cooperation often takes place in the Budget Council and the Budget Forum—two bodies made up of central, provincial, and local government officials that facilitate the budgetary negotiation process.}

\textit{Revenue Collection Authority}

South Africa based its revenue collection system primarily on a revenue-sharing model. Although all three levels of government (central government, provincial governments, and municipal governments) technically retain some taxation authority, provincial taxation authority is subject to central government approval.\footnote{Ismail Momoniat, \textit{WORLD BANK, FISCAL DECENTRALISATION IN SOUTH AFRICA: A PRACTITIONER’S PERSPECTIVE}, at 7. The central government has not approved of provincial taxation to date.} The Constitution entitles the provincial governments to an “equitable share” of national revenue.\footnote{\textit{SOUTH AFRICA CONST.} ch. 13, sec. 214 (1996), \textit{available at} http://www.info.gov.za/documents/constitution/index.htm (last accessed Sept. 14, 2007).} These two provisions have made provincial governments highly dependent on the central government to finance their budgets.\footnote{Paul Smoke, \textit{INTERNATIONAL MONETARY FUND, DECENTRALIZATION IN EAST AND SOUTHERN AFRICA: A SELECTIVE REVIEW OF EXPERIENCE AND THOUGHTS ON MOVING FORWARD} (2000), at 13.} For example, in 1999-2000, provincial governments on average raised only four percent of their own budgets.\footnote{Paul Smoke, \textit{INTERNATIONAL MONETARY FUND, DECENTRALIZATION IN EAST AND SOUTHERN AFRICA: A SELECTIVE REVIEW OF EXPERIENCE AND THOUGHTS ON MOVING FORWARD} (2000), at 12.}

In contrast, municipal governments have the authority to tax the provision of public goods and user services, such as water, electricity, and municipal maintenance.\footnote{Ismail Momoniat, \textit{WORLD BANK, FISCAL DECENTRALISATION IN SOUTH AFRICA: A PRACTITIONER’S PERSPECTIVE}, at 5.} This has made municipalities largely fiscally independent from...
the central government. For example, in 1999-2000 municipalities raised ninety-two percent of their total revenues.\footnote{Paul Smoke, \textit{International Monetary Fund, Decentralization in East and Southern Africa: A Selective Review of Experience and Thoughts on Moving Forward} (2000), at 13.}

\textit{Expenditure Authority}

South Africa has a highly decentralized expenditure authority, with subnational governmental spending accounting for seventy-one percent of national spending in 2000-2001.\footnote{Paul Smoke, \textit{International Monetary Fund, Decentralization in East and Southern Africa: A Selective Review of Experience and Thoughts on Moving Forward} (2000), at 12.} Provincial governments spend the largest share of the national budget, followed by the central government and then municipal governments.\footnote{Ismail Momoniat, \textit{World Bank, Fiscal Decentralisation in South Africa: A Practitioner’s Perspective}, at 5.} The central government allocates most of its funding to the administration of justice and national defense, with smaller budgets for social services and infrastructural improvements.\footnote{Ismail Momoniat, \textit{World Bank, Fiscal Decentralisation in South Africa: A Practitioner’s Perspective}, at 3.}

The central and provincial governments share responsibility for social services such as education, health, welfare, and housing. In practice, however, this means that the central government determines policy, which the provincial governments implement.\footnote{Ismail Momoniat, \textit{World Bank, Fiscal Decentralisation in South Africa: A Practitioner’s Perspective}, at 5.} Provincial governments’ budgets and expenditure authority vary, but they are primarily responsible for health, education, housing, and welfare.\footnote{Paul Smoke, \textit{International Monetary Fund, Decentralization in East and Southern Africa: A Selective Review of Experience and Thoughts on Moving Forward} (2000), at 12.} Municipal governments are responsible for water and sanitation, electricity, local infrastructure, roadways, and garbage collection.\footnote{Ismail Momoniat, \textit{World Bank, Fiscal Decentralisation in South Africa: A Practitioner’s Perspective}, at 3.}
Fiscal Imbalance Mitigation Mechanisms

South Africa’s fiscal devolution structure incorporates three primary processes for addressing imbalances: (1) a tri-annual budgetary consulting process that establishes baseline revenue allocations and annually modifies those allocations by variations in need; (2) an equitable share of an unconditional grant determined by an objective, formulaic evaluation of relative wealth and administrative capacity; and (3) a conditional grant program focusing on the provision of public services.\(^{657}\)

The tri-annual budgetary consulting process analyzes provincial and local governments according to ten criteria, incorporating fiscal capacity, expenditure efficiency, development needs, and emergency funding.\(^{658}\) The national Cabinet of Ministers then consults with provinces through the intergovernmental Budget Council and Budget Forum before submitting the final transfer proposal to national Parliament.\(^ {659}\)

Equitable share allocations are determined at the provincial level by seven criteria, focusing on education, health, and welfare needs.\(^ {660}\) This system favors poorer provinces, intending to foster inter-provincial equality.\(^ {661}\)

The conditional grant program permits the South African central government to allocate funding toward the pursuit of specific policy objectives.\(^ {662}\)

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\(^{657}\) Ismail Momoniat, *WORLD BANK, FISCAL DECENTRALISATION IN SOUTH AFRICA: A PRACTITIONER’S PERSPECTIVE*, at 20.

\(^{658}\) Ismail Momoniat, *WORLD BANK, FISCAL DECENTRALISATION IN SOUTH AFRICA: A PRACTITIONER’S PERSPECTIVE*, at 9. Baseline allocations are determined every three years and include the revenue-sharing percentages, meaning that annual consultations determine additional allocations of resources based on shifting policy priorities.

\(^{659}\) Ismail Momoniat, *WORLD BANK, FISCAL DECENTRALISATION IN SOUTH AFRICA: A PRACTITIONER’S PERSPECTIVE*, at 9.

\(^{660}\) Ismail Momoniat, *WORLD BANK, FISCAL DECENTRALISATION IN SOUTH AFRICA: A PRACTITIONER’S PERSPECTIVE*, at 11. This approach also includes the consideration of previous equitable share allocations as determinative information, in order to incorporate historical disparities into the decision-making process.

\(^{661}\) Ismail Momoniat, *WORLD BANK, FISCAL DECENTRALISATION IN SOUTH AFRICA: A PRACTITIONER’S PERSPECTIVE*, at 11.
program is the primary source of central government funding for municipal governments, constituting sixty percent of intergovernmental transfers to local governments.\textsuperscript{663} The program’s lack of clearly defined objectives and transparent administration has led to some criticism.\textsuperscript{664}

Intergovernmental transfers constituted 96 percent of provincial revenue in 1999-2000, with 83 percent of that funding coming from the unconditional revenue-sharing system and 13 percent coming from the conditional grant programs.\textsuperscript{665}

**China**

In 1994, China adopted sweeping fiscal reforms that centralized revenue collection authority and decentralized a regulated form of expenditure authority to provincial governments. Prior to these reforms, provincial governments had retained significant revenue collection authority, including the power to set tax rates and create tax exemptions.\textsuperscript{666} However, China’s financial reforms did not address extra-budgetary expenditures, which have increased since 1994, enabling provincial governments to operate outside the budgetary system.\textsuperscript{667}

\begin{footnotes}
\item[662] Ismail Momoniat, \textit{World Bank, Fiscal Decentralisation in South Africa: A Practitioner’s Perspective}, at 11.
\item[664] Ismail Momoniat, \textit{World Bank, Fiscal Decentralisation in South Africa: A Practitioner’s Perspective}, at 11. Momoniat notes that conditional grants “may lead to budget game-playing and create confusion about accountability.” Further, the central government may abuse the use of conditional grants and use them as a way of forcing its policies on provincial governments.
\end{footnotes}
Revenue Collection Authority

The 1994 fiscal reform standardized China’s tax rates at 33 percent. China’s revenue collection system divides revenue into three categories: central, provincial, and shared. The central government collects taxes designated for centralized and shared expenditures, according to predetermined percentages. Provincial governments collect taxes allocated to provincial expenditures. Following the 1994 fiscal reform, China has increasingly centralized its revenue collection. Provincial governments collected 51.2 percent of revenue in 1997, compared with seventy-eight percent in 1993.

The central government derives a majority of its tax revenue from a consumption tax; an income tax on centrally owned enterprises; turnover taxes on railways, banks, and insurance companies; income taxes from financial institutions; and customs duties. The provincial governments derive a majority of their tax revenue from business tax, income tax on locally owned state enterprises, and personal income tax. The primary shared taxes are the value added tax, the securities trading tax, and the natural resources tax.

Expenditure Authority

China has gradually decentralized its expenditure authority over the past few decades, with 72.6 percent of expenditures occurring at the provincial level in

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673 Jun Ma and John Norregaard, *INTERNATIONAL MONETARY FUND, CHINA’S FISCAL DECENTRALIZATION* (1998), at 5. Approximately 75 percent of the value added tax goes to the central government with 25 percent going to provincial governments. The government divides the securities tax revenue equally, and the natural resources tax revenue largely goes to provincial governments.
1997, compared to 48.9 percent in 1979. However, China’s central government annually establishes acceptable spending limits for provincial governments from a “base figure”—the expenditure of the province in a “base” year—and modifies it according to policy priority, price reform, and inflation.

The central government is primarily responsible for spending on national defense; foreign relations; capital construction on state-owned enterprises; agriculture, forestry, and water conservation; industrial, transportation, and commercial operations; and some education, health, and social services. The provincial governments are responsible for locally owned enterprises; rural production assistance; agricultural development; water conservation; urban maintenance and construction; education, health, culture, and social services; and administrative expenditures. China does not have a law that clearly delegates expenditure authorities and this has been a source of significant controversy.

Fiscal Imbalance Mitigation Mechanisms

The centralization of revenue collection authority combined with the decentralization of expenditure authority has created a fiscal imbalance between central and provincial governments. In addition to the revenue-sharing mentioned above, China has adopted three types of intergovernmental transfers including: (1) transfers based on the system in 1993, accounting for two-thirds of intergovernmental transfers; (2) specific purpose grants, accounting for nearly one-third of intergovernmental transfers; and (3) grants-in-aid, accounting for a small portion of intergovernmental transfers.

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675 Jun Ma and John Norregaard, INTERNATIONAL MONETARY FUND, CHINA’S FISCAL DECENTRALIZATION (1998), at 3; Shaoguang Wang, China’s 1994 Fiscal Reforms: An Initial Assessment, ASIAN SURVEY, September 1997, at 4. The variations of spending limits primarily account for changes in the cost of living and the central government’s interest in developing the region. In order to pass the 1994 reforms, the central government guaranteed that provincial revenues would not fall below their level in 1993.
third of transfers, and (3) transfers to mitigate regional disparities, which as of 1996, accounted for 0.5 percent of transfers.\textsuperscript{679}

Guaranteed transfers made based on the intergovernmental transfer levels in 1993 preserved the continuity of the revenue streams and contractual obligations made prior to the 1994 fiscal reforms.\textsuperscript{680} The central government distributes specific purpose grants for individual projects according to its policy priorities.\textsuperscript{681} Though these intergovernmental transfers mitigate some imbalance, inter-provincial wealth disparities are a growing concern.\textsuperscript{682}

\textbf{DARFUR PEACE AGREEMENT}

\textbf{Fiscal Devolution Structure}

The 2006 Darfur Peace Agreement (DPA) provides both the central and the provincial governments with expenditure authority and revenue collection authority.\textsuperscript{683} The DPA allocates expenditure authority to the central government for those elements that affect the national economy and to the provincial governments for those elements that affect the provincial economies.\textsuperscript{684} The DPA grants each level of government the authority to raise revenues to pay for the programs under its expenditure authority.\textsuperscript{685}

The DPA outlines the competencies over which the central and provincial governments have authority. The central government has competence over income tax, corporate taxes, import taxes, sales tax, and other taxes for which the national authority

\begin{footnotesize}
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\item \textsuperscript{679} Jun Ma and John Norregaard, \textit{INTERNATIONAL MONETARY FUND, CHINA’S FISCAL DECENTRALIZATION} (1998), at 7.
\item \textsuperscript{680} Jun Ma and John Norregaard, \textit{INTERNATIONAL MONETARY FUND, CHINA’S FISCAL DECENTRALIZATION} (1998), at 7.
\item \textsuperscript{681} Jun Ma and John Norregaard, \textit{INTERNATIONAL MONETARY FUND, CHINA’S FISCAL DECENTRALIZATION} (1998), at 7.
\item \textsuperscript{684} Darfur Peace Agreement, art. 18, para. 113, sec. a.
\item \textsuperscript{685} Darfur Peace Agreement, art. 18, para. 113, sec. b.
\end{itemize}
\end{footnotesize}
The provincial governments have competence over property tax, stamp tax, agricultural taxes, excise taxes, and other taxes as their provincial legislatures may provide.\textsuperscript{687}

In addition to the competencies of all provincial governments to raise revenues, the DPA provides Darfur with the authority to borrow funds from external sources.\textsuperscript{688} The Darfur provincial governments must report any external loans or grants to the central government.\textsuperscript{689}

**Fiscal Equalization**

To address vertical and horizontal resource imbalances, the DPA establishes the Fiscal and Financial Allocation and Monitoring Commission.\textsuperscript{690} The Fiscal and Financial Allocation and Monitoring Commission consists of an independent panel of experts appointed by the President and approved by the national legislature.\textsuperscript{691} The Fiscal and Financial Allocation and Monitoring Commission develops formulas for the allocation of resources between the central and provincial governments and for allocation of resources among provincial governments.\textsuperscript{692} The Fiscal and Financial Allocation and Monitoring Commission submits its recommendations to the President, who must obtain the approval of the national legislature.\textsuperscript{693} Upon approval of the national legislature, the Fiscal and Financial Allocation and Monitoring Commission becomes responsible for the implementation of its formulas for resource allocation.\textsuperscript{694} The DPA provides that Darfur must have appropriate representation on the Fiscal and Financial Allocation and Monitoring Commission.\textsuperscript{695}

\textsuperscript{686} This is a non-exhaustive list of the central government’s competencies. For the full list of competencies, see the Darfur Peace Agreement, art. 18, para. 117.

\textsuperscript{687} This is a non-exhaustive list of the regional governments’ competencies. For the full list of competencies, see the Darfur Peace Agreement, art. 18, para. 118.

\textsuperscript{688} Darfur Peace Agreement, art. 18, para. 130.

\textsuperscript{689} Darfur Peace Agreement, art. 18, para. 131.

\textsuperscript{690} Darfur Peace Agreement, art. 18, para. 120.

\textsuperscript{691} Darfur Peace Agreement, art. 18, para. 121.

\textsuperscript{692} Darfur Peace Agreement, art. 18, para. 121.

\textsuperscript{693} Darfur Peace Agreement, art. 18, para. 122.

\textsuperscript{694} Darfur Peace Agreement, art. 18, para. 122.

\textsuperscript{695} Darfur Peace Agreement, art. 18, para. 129.
The DPA also provides that the central government may not withhold the transfer of funds to the provinces of Darfur or any other provinces in Sudan.\textsuperscript{696} If the central government withholds funds from Darfur, then the affected provinces may seek redress in the Constitutional Court.\textsuperscript{697}

**Policy Adjustment Authority**

The DPA grants the Fiscal and Financial Allocation and Monitoring Commission with ultimate responsibility to determine the allocation of funds between the central and provincial governments and among the provincial governments, although the decisions of the Fiscal and Financial Allocation and Monitoring Commission are subject to approval of the national legislature.\textsuperscript{698} The DPA requires Darfur to report to the central government periodically on all of its expenditures and revenues.\textsuperscript{699} The parties require this reporting as a mechanism to help determine allocations by the central government each year.\textsuperscript{700}

**SAMPLE LANGUAGE**

**Article XXX**

**Revenue Collection**

1. Revenue from the following taxes shall accrue to the central government: [taxes are specified, such as income tax, corporate taxes, customs duties, and freight taxes].

2. Revenue from the following taxes shall accrue to the provincial governments: [taxes are specified, such as inheritance tax, property tax, and the motor vehicle tax].

\textsuperscript{696} Darfur Peace Agreement, art. 18, para. 126.

\textsuperscript{697} Darfur Peace Agreement, art. 18, para. 127.

\textsuperscript{698} Darfur Peace Agreement, art. 18, para. 121.

\textsuperscript{699} Darfur Peace Agreement, art. 18, para. 133.

\textsuperscript{700} Darfur Peace Agreement, art. 18, para. 133.
(3) Revenue from certain taxes [specified here] shall accrue jointly to the central and provincial governments based on the extent of their expenditures and a desire to maintain a balance among all levels of government.  

OR

All revenues or moneys raised or received by the Republic of Sudan shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Republic in the manner and subject to the charges and liabilities imposed by the Constitution.

Article XXX
Vertical Imbalance Mitigation Mechanisms

(1) An Act of the legislature must provide for:
   (a) The equitable division of revenue raised nationally among the central, provincial, and local spheres of government;
   (b) The determination of each province's equitable share of the provincial share of that revenue; and

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701 This language is drawn from the GERMANY CONST. art. 106 of the German Constitution.(1949). The Philippine Constitution also provides for a decentralized system of revenue collection, providing, “Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.” PHILIPPINES CONST. art. 10, secs. 5, 6 (1987), available at http://www.gov.ph/aboutphil/constitution.asp (last accessed Sept. 15, 2007).

702 This language is drawn from the AUSTRALIA CONST. art. 81 (1900). Venezuela also has a centralized revenue collection system. The Venezuelan Constitution provides that regional governments’ revenues come from “their property and the management of their assets,” “[c]harges for the use of their goods and services, fines and penalties, and any charges allocated to them,” “[p]roceeds from the sale of State-owned commodities,” and “[t]he resources to which they are entitled by virtue of constitutional revenue share.” VENEZUELA CONST. art. 167 (1999), available at http://www.analitica.com/bitblioteca/venezuela/constitucion_ingles.pdf (last accessed Sept. 15, 2007).
(c) Any other allocations to provincial or local governments from the central government's share of that revenue, and any conditions on which those allocations may be made.\textsuperscript{703}

OR

The respective shares of the central and provincial governments in the tax revenue shall be apportioned anew whenever the ratio of revenues to expenditures of the central government becomes substantially different from that of the provincial governments. If a federal law imposes additional expenditures on or withdraws revenue from the provinces, the additional burden may be compensated for by federal grants pursuant to a federal law requiring the consent of the Legislature, provided the additional burden is limited to a short period of time. This law shall establish the principles for calculating such grants and distributing them among the provinces.\textsuperscript{704}

Article XXX
Horizontal Imbalance Mitigation Mechanisms

A federal law requiring the consent of the legislature may provide for the grant of supplementary shares of revenue not exceeding one quarter of a province’s share to provinces whose per capita revenue from regional taxes and from its share of federal taxes is below the average of all the provinces combined.\textsuperscript{705}

\textsuperscript{703} This language is drawn from the SOUTH AFRICA CONST. art. 214 (1996). Venezuela also has a conditional system in that it requires that the regions invest 50% of their tax revenue shares each fiscal year. VENEZUELA CONST. art. 167 (1999).

\textsuperscript{704} This language is drawn from the GERMANY CONST. art. 106 (1949). The Philippine Constitution also provides for an unconditional transfer of tax revenue from the central to the regional governments. It provides, “Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.” PHILIPPINES CONST. art. 10, sec. 6 (1987).

\textsuperscript{705} This language is drawn from the GERMANY CONST. art. 107 (1949). Venezuela also uses a net equalization system for allocating funds among the regions. VENEZUELA CONS. art. 167 (1999) (providing, “The [regional] revenue share is equivalent to up to 20% of total ordinary revenues as estimated annually by the National Treasure, which is to be distributed among the [regions] and the Capital District as follows: 30% of the aforementioned percentage in equal shares, and the remaining 70% in proportion to the population of each of such entities.”).
The legislature may enact legislation to provide for the equitable division of revenue raised nationally among the central, provincial, and local spheres of government. Such Act must take into account:

(a) The national interest;
(b) Any provision that must be made in respect of the national debt and other national obligations;
(c) The needs and interests of the central government, determined by objective criteria;
(d) The need to ensure that the provincial and local governments are able to provide basic services and perform the functions allocated to them;
(e) The fiscal capacity and efficiency of the provincial and local governments;
(f) Developmental and other needs of provincial and local governments;
(g) Economic disparities within and among the provinces;
(h) Obligations of the provincial and local governments in terms of federal legislation;
(i) The desirability of stable and predictable allocations of revenue shares; and
(j) The need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.

Article XXX
Fiscal Policy Adjustment Mechanisms

(1) There shall be a National Finance Council consisting of the President, such other officials as the President may designate, and one representative from each of the provinces.

(2) The National Finance Council shall be summoned to meet at least once in every twelve months.

This language is drawn from the SOUTH AFRICA CONST. art. 214 (1996). The Swiss Constitution also uses a gross equalization system in that it provides for the distribution of subsidies to the regions based on their financial capacity and need, rather than on a fixed distribution formula. SWITZERLAND CONST. art. 135 (1999), available at http://www.admin.ch/ch/e/rs/1999/2556.pdf (last accessed Sept. 15, 2007).
(3) It shall be the duty of the central government to consult the National Finance Council in respect of:

(a) The making of grants by the central government to the provincial and local governments;

(b) The assignment to the provincial and local governments of the whole or any portion of the proceeds of any federal tax or fee;

(c) The annual loan requirements of the central government and the provincial governments and the exercise by the central government and the provincial governments of their borrowing powers;

(d) The making of loans to any of the provinces; and

(e) The making of development plans.\textsuperscript{707}

OR

A federal law requiring approval of the legislature may alter a province’s share of tax revenue from the central government.\textsuperscript{708}

\textsuperscript{707} This language is drawn from the MALAYSIA CONST. art. 108. Similarly, South Africa also has a Fiscal and Financial Commission that makes recommendations to the legislature and the regional governments in the allocation and use of tax revenue in the central and regional governments. SOUTH AFRICA CONST. arts. 220-222 (1996).

\textsuperscript{708} This language is drawn from GERMANY CONST. art. 107 (1949). The German Constitution requires that the Legislature approve adjustments to a region’s share of tax revenue. Similarly, in Canada, the legislature has the power to levy taxes and apportion revenues, and all tax bills must originate in the House of Commons, or the lower house of the legislature. Canada’s Constitution Act of 1867, art. 53, available at http://laws.justice.gc.ca/en/const/c1867_e.html (last accessed Sept. 15, 2007). The Philippines also use this procedure. PHILIPPINES CONST. art. 6, sec. 24 (1987).
FOREIGN DIRECT INVESTMENT

INTRODUCTION

This chapter presents an overview of the different mechanisms and incentives states and international organizations use to encourage and monitor foreign direct investment (FDI). This chapter also outlines the broad provisions in the Darfur Peace Agreement (DPA) that recognize the importance of FDI and provides sample language parties may consider in drafting provisions for FDI in any peace agreement.

Foreign direct investment is generally a long-term investment by a company in one state (the “parent company”) to acquire ownership and control of assets located in another state’s economy. The parent company and the foreign affiliate together form a transnational corporation or, if the business is unincorporated, a multinational enterprise.

CORE ELEMENTS

Introduction to Foreign Direct Investment

Foreign direct investment (FDI) is a long-term investment by a company in one state (the “parent company”) to acquire assets located in another state’s economy. The parent company and the foreign affiliate together form a transnational corporation or, if the business is unincorporated, a multinational enterprise. To qualify as FDI, the parent company must retain control over its foreign affiliate for the purposes of the investment. The United Nations defines control as owning 10% or more of the ordinary shares or voting power of an incorporated firm, or its equivalent for an unincorporated firm. Thus, FDI differs from portfolio investments, such as stocks and bonds, because foreign investors have control over their investments.

Foreign ownership occurs in four general categories according to the terms of money transfer, and the type of integration levels involved. These categories

are: (1) Greenfield investments; (2) mergers and acquisitions; (3) horizontal FDI; and (4) vertical FDI.

Greenfield investments are direct investments in new facilities or in the expansion of existing facilities. Greenfield investments are typically the primary target of a host state’s promotional efforts as they create new production capacity and jobs, while also increasing technological and intellectual advancement. This can lead to better jobs and deeper connections to the global marketplace. However, one risk is that the new businesses directly compete with local industry. Foreign companies are sometimes able to produce goods more cheaply by using advanced technology and more efficient production processes. Despite the fact that consumers might benefit from cheaper products, strong competition from foreign companies could harm local industry. Another risk of Greenfield investment is that production profits often return to the multinational’s home, not the local economy. This is in contrast to local industries, whose profits distribute among the domestic economy.

Brownfield investment takes the form of mergers and acquisitions. Brownfield investment is the most common type of FDI and occurs with the transfer of existing assets from local firms to foreign firms. Transnational mergers occur when the assets and operation of firms from different countries combine to establish a new legal entity. Transnational acquisitions occur when the control of assets and operations transfer from a local to a foreign company, with the local company becoming an affiliate of the foreign company.

Horizontal FDI is a parent company investing in the same industry abroad in which the parent company operates at home. Vertical FDI, in contrast, generally takes one of two forms: (1) backward vertical FDI, where a parent company provides inputs for a local firm's domestic production process; or (2) forward vertical FDI, in which a parent company sells the outputs of a local firm's domestic production.\(^\text{710}\)

Ensuring predictable treatment of foreign investors may encourage FDI. Bilateral Investment Treaties (BITs) aid in this predictable treatment and attract foreign investment. BITs are agreements establishing the terms and conditions for

private investment by nationals and companies of one state in the state of the other. BITs provide for compensation in instances of state expropriation of a foreign investor’s assets. An investor will obtain this compensation through a claim before an independent arbitral tribunal.

Tax treaties are another way to encourage FDI. A tax treaty is an agreement between the governments of two states that specifically addresses tax issues as a means to promote trade and investment between the two state entities. The main goal of tax treaties is to avoid double taxation of citizens who earn foreign income.

Many organizations exist that promote foreign direct investment. The three main types of organizations that promote FDI are: (1) multilateral FDI organizations; (2) bilateral foreign direct organizations; and (3) governmental FDI organizations. Typically, an FDI organization will focus its efforts on specific regions.

Advantages of Foreign Direct Investment

The benefits of foreign direct investment for the host state are significant, including knowledge and technology transfer to domestic firms and the labor force, productivity and economic benefits for the local economy, enhanced competition, and improved access for exports abroad. Moreover, since FDI does not create debt, it is a preferred method of financing external current account deficits. This is especially true in developing countries, where these deficits may be large and sustained. Export led foreign trade and licensing of intellectual property may act as substitutes to FDI. They do not, however, offer the knowledge and technology benefits that FDI does.

FDI is a package of tangible and intangible resources, all of which can make FDI an engine for long term growth. FDI, by its very definition, involves the establishment of lasting relationships that engage the factors of production of the states involved. At the same time, the corporate networks established in the

\[ \text{Advantages of Foreign Direct Investment} \]

\[ \text{FDI is a package of tangible and intangible resources, all of which can make FDI an engine for long term growth. FDI, by its very definition, involves the establishment of lasting relationships that engage the factors of production of the states involved. At the same time, the corporate networks established in the } \]

\[ ^{711} \text{Current account is the measure of money that flows between any individual state and all other states. It is calculated by adding three economic indicators: Balance of Payments (exports less imports of goods and services), Net Factor Income (such as interest and dividends on foreign assets like stocks or bonds) and Net Transfer Payments (such as FDI and foreign aid). If the amount is positive, then there is a current account surplus; if it negative, then there is a current account deficit.} \]
process can serve as economic diplomatic liaisons between states. FDI encourages integration between trading partners - not only through capital exchanges, but also through exchanges of technology, know-how and skills, as well as imports and exports. Thus, FDI may deepen the economic interdependence between trading partners.

Disadvantages of Foreign Direct Investment

States wishing to encourage FDI must also consider some of its disadvantages. Local governments may provide large investors with generous concessions in return for their investments. These investors often use an accounting tactic known as transfer pricing to minimize their tax obligations. FDI may also give rise to a potentially volatile balance of payment flows, resulting in currency fluctuations. Despite these disadvantages, many states actively work to attract foreign direct investment.

Policy makers face some difficulties when trying to attract FDI. These potential disadvantages are: ineffectiveness, inefficiency, opportunity costs, and deadweight loss.

713 Transfer pricing is a term used to describe all aspects of intercompany pricing arrangements between related businesses. Transfer pricing can be used by multinationals to maximize their profits by avoiding taxes and by obtaining tax rebates. For example, goods from the production division may be sold to the marketing division, or goods from a parent company may be sold to a foreign subsidiary, with the choice of the transfer price affecting the division of the total profit among the parts of the company, thus affecting the taxes paid.
Ineffectiveness occurs when FDI incentives fail to produce benefits to the host economy. In other words, the budgetary costs of attracting FDI exceed the benefits. This situation may arise when authorities apply faulty cost-benefit analysis (or no cost-benefit analysis at all) to their incentive programs, such as when the predicted benefits are overly optimistic, or the predicted costs are overly high.

Inefficiency occurs when incentives produce benefits that outweigh the costs, but authorities fail to properly maximize the benefits and minimize the costs. This includes instances where lower costs might have obtained similar results; the difference between the actual and the potential cost is waste.

Opportunity costs, costs of not investing in the second best alternative, can occur when resources available to attract FDI are scarce. Budgetary constraints usually force policy makers to consider alternative usage of funds. Policy makers want to make sure they receive the most benefit from their investment. Thus, incentive schemes that are both effective and efficient may nevertheless be wasteful if financing funds are misused.

Deadweight loss occurs in one of four situations. First, when authorities subsidize investment projects that do not need incentives to occur. Second, when authorities fail to draft policies that adequately specify the intended recipients. This could result in benefits going to non-target groups, leading to increased costs or diminished impact. For example, a tax benefit for small businesses which ends up allowing larger businesses to take advantage of it even when they do not need the assistance. Third, when authorities feel political pressure to match FDI incentives in one sector by offering subsidies to businesses in another sector. Lastly, when authorities offer particularly generous FDI incentives to some projects, they create a benchmark that future investors use to demand comparable generosity.

**Domestic Laws Regulating FDI**

One of the essential elements of attracting foreign direct investment is ensuring the predictable treatment of foreign investors. States often develop clear, open, and transparent domestic laws to encourage FDI.\(^{716}\) Domestic laws

regulating FDI may address the following areas: (1) freedom to invest; (2) transfers; (3) treatment; (4) dispute settlement; (5) incentives; and (6) ownership requirements.

**Freedom to Invest**

In May 1995, the Organization for Economic Co-operation and Development (OECD) member governments launched negotiations on a Multilateral Agreement on Investment (MAI) at the Annual Meeting of the OECD Council at Ministerial level. The proposed objective of the MAI was to provide a broad multilateral framework for international investment with high standards for the freedom to invest. Negotiations were discontinued in April 1998 and have not resumed.\(^\text{717}\) In the absence of international rules, some states adopt differing approaches.

In some states, foreign investors may participate in most economic activities. These states are attractive for FDI as they provide foreign investors with the greatest amount of investment opportunities. However, other states restrict the investment opportunities open to foreign investors. When they exist, these restrictions on foreign investment typically focus on certain sectors or sub-sectors of an economy.

Many states include a provision in their domestic laws giving foreign investors a right to invest in the state. In Bulgaria, the law on FDI allows for a “foreign person” to invest “under the terms set out for Bulgarian persons” and grants foreign investors equal rights with [Bulgarian persons], unless otherwise provided by law.”\(^\text{718}\) In Vietnam, “[f]oreign investors may establish in Vietnam an enterprise with one hundred (100) per cent foreign owned capital.”\(^\text{719}\) In Mongolia,

\(^\text{717}\) OECD, MULTILATERAL AGREEMENT ON INVESTMENT (Draft), available at http://www1.oecd.org/daf/mai/pdf/ng/ng987r1e.pdf (last accessed Sept. 18, 2007)


foreigners may invest “in all areas of production and services which are not prohibited by the laws of Mongolia.”\textsuperscript{720} The Ukraine has a similar provision in its FDI law.\textsuperscript{721}

Some states, however, limit the foreign investors’ rights to certain industries or sectors. The Ghana Investment Promotion Centre Act of 1994 provides that “[t]he enterprises specified in the Schedule to this Act are reserved for Ghanaians and may not be undertaken by a non-Ghanaian.”\textsuperscript{722} In Bosnia and Herzegovina, foreigners cannot own more than 49% of a company that produces military equipment.\textsuperscript{723}

Transfers

The right to transfer freely assets out of the state is an important protection in domestic FDI laws. Foreigners are more likely to invest in a state if they can access their profits by freely transferring their assets out of the state. The freedom to transfer assets adds predictability and security to a foreign investment.

In Syria, foreign investors may repatriate all of their assets.\textsuperscript{724} In Bosnia and Herzegovina, domestic law provides foreign investors with the freedom to

repatriate their earnings, including profits, dividends, and interest.\textsuperscript{725} Egyptian law allows foreign investors to repatriate profits upon their proper registration with the government agency responsible for investment.\textsuperscript{726}

\textit{Treatment}

Treatment provisions in domestic FDI laws may provide certainty and predictability to a foreign investor. Domestic FDI laws can address the treatment of foreign investors by the domestic government in three main ways: (1) national treatment; (2) most-favored nation treatment; and (3) expropriation.

\textbf{National Treatment}

Many states provide foreign investors protection equal to that of domestic investors. Bosnia and Herzegovina guarantees, “foreign investors shall have the same rights and obligations as the residents of Bosnia and Herzegovina.”\textsuperscript{727} In Jordan, “the non-Jordanian Investor investing in any project . . . shall be afforded the same treatment as the Jordanian investor.”\textsuperscript{728} Saudi Arabian law provides that foreign investors “shall enjoy all the benefits, incentives, and guarantees enjoyed by a national project according to regulations and directives.”\textsuperscript{729}

A foreign investor would likely prefer to invest in a state that offers national treatment and, thus, treats foreign investors on par with domestic investors. A project, together with the profits and revenues, in the same currencies brought in, or in any other transferable currency.”\textsuperscript{725} Law on Direct Foreign Investment Policy in Bosnia and Herzegovina, art. 11, sec. c (1998), available at http://www.vladars.net/pdf/law_direct_foreign_investment_BiH.pdf (last accessed Sept. 25, 2007).
\textsuperscript{727} Law on Direct Foreign Investment Policy in Bosnia and Herzegovina, art. 8, sec. a (1998).
A foreigner’s investment is likely more secure and able to profit in a state without nationality-based discrimination.\textsuperscript{730}

**Most-Favored Nation Treatment**

Similar to national treatment, which treats all foreign investors the same as domestic investors, most-favored nation (MFN) treatment is when a state treats all foreign investors alike. A state will not treat a foreign investor from state #1 differently than a foreign investor from state #2 simply because the foreign investors are from different states.\textsuperscript{731} MFN treatment ensures a foreign investor equal terms of business with other foreign investors.\textsuperscript{732}

**Expropriation**

Protecting the property rights of foreign investors makes FDI feasible and attractive to investors. Many domestic FDI laws contain provisions protecting FDI from expropriation, thus allowing the domestic government to expropriate the foreign investment only in limited and justified situations.

Some states provide that domestic governments may only expropriate foreign investments if the government taking is in the public interest and accompanied by just compensation. Bosnia and Herzegovina provide that FDI “shall not be subject to any act of nationalization, expropriation, requisition, or measures which have similar effects, except in the public interest in accordance with applicable laws and regulations, without any type of discrimination and against the payment of appropriate compensation.”\textsuperscript{733}

Iranian law stipulates that the government “guarantees fair compensation where the promulgation of a special legislation deprives the owner of capital from


\textsuperscript{731} Law on Direct Foreign Investment Policy in Bosnia and Herzegovina, art. 8, sec. b.

\textsuperscript{732} For more information on MFN treatment with regards to bilateral, regional, and multilateral agreements see UNITED NATIONS, UNCTAD SERIES ON INTERNATIONAL INVESTMENT POLICIES FOR DEVELOPMENT (2004), available at http://www.unctad.org/Templates/webflyer.asp?docid=5736&intItemID=2310&lang=1&mode=downloads (last accessed Sept. 18, 2007).

\textsuperscript{733} Law on Direct Foreign Investment Policy in Bosnia and Herzegovina, art. 16 (1998).
Ukrainian law provides that the government “may not seize foreign investments, with the exception of emergency measures in the event of natural disaster, accidents, epidemics, or epizootic.” When a government does expropriate assets owned by foreign investors, the investor may seek compensation through a dispute resolution mechanism.

Dispute Settlement

Effective dispute settlement procedures may provide investor security in foreign investments. Most domestic laws encouraging FDI provide the foreign investor with the option of selecting the forum for the settlement of disputes. Bosnia and Herzegovina provides that FDI “disputes shall be resolved by the relevant courts in Bosnia and Herzegovina, unless the parties concerned agree on another procedure for the resolution of disputes, including but not limited to local or international conciliation or arbitration.”

Jordanian law provides that if a dispute between a foreign investor and the Jordanian government is not settled within six months, the parties may “resort to litigation or may refer the dispute to ‘The International Center for the Settlement of Investment Disputes’ (ICSID) for settlement by conciliation or arbitration.” The ICSID is an autonomous international organization that provides for arbitration of disputes between member countries and investors who are nationals of member countries.

However, some states restrict the available dispute resolution devices. Iranian law restricts dispute resolution to the domestic court system. Iranian law provides that “[i]n case of disputes, investigation of claims for fair compensation

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735 The Law of Ukraine on the Regime of Foreign Investment, art. 9, (1996).
737 Law on Direct Foreign Investment Policy in Bosnia and Herzegovina, art. 16 (1998).
guaranteed by the Government shall be undertaken by competent Iranian courts.”\footnote{Law Concerning the Attraction and Protection of Foreign Investments in Iran, art. 3 (1994).} Similarly, in Saudi Arabia, disputes not settled amicably “shall be settled according to regulations.”\footnote{Saudi Arabia Foreign Investment Act, art. 13 (2000).} In these states, the issue of national treatment becomes important for the foreign investor, who will not want to be provided less legal rights than a domestic investor.

\textit{Incentives}

Some domestic laws include financial incentives to foreign investors to encourage FDI. In Korea, domestic laws provide for cash grants and reduced or eliminated rental fees of government land, for specific categories of foreign investors.\footnote{Jongseok An, \textsc{FDI and Corporate Taxation in Korea}, KOREAN INSTITUTE OF PUBLIC FINANCE, \textit{available at} http://www.econ.hit-u.ac.jp/~ap3/appfdi6/paper/KOREA.pdf (last accessed Sept. 25, 2007).} Additionally, taxes on foreign investments in Korea “may be reduced or exempted in accordance with” domestic law.\footnote{South Korea Foreign Investment Promotion Act, art. 9 (1998) \textit{available at} http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN011487.pdf (last accessed Sept. 24, 2007).} In Jordan, domestic law provides for complementary facilities and tax exemptions for several sectors, including agriculture, hotels, hospitals, and the development of maritime and rail transport systems.\footnote{Jordan Investment Promotion Law of 1995, art. 3 (amended in 2000).} Syrian law exempts taxes on the import of vehicles, equipment, and machines necessary to set up, expand, and develop a project. These imports must be used exclusively for that project’s goals.\footnote{Syria Investment Law No. 10 of April 25, 1991, arts. 11, sec. .a; art., 12, sec. .a.} Tax incentives are very common and discussed in detail later in this chapter.

\textit{Ownership Requirements}

States may impose restrictions on foreign ownership of property. Three broad types of ownership restrictions exist: (1) asset ownership restrictions in general; (2) real estate acquisition restrictions; and (3) equity ownership restrictions. States also have a fourth option of placing no restrictions on foreign ownership. Allowing a greater percentage of foreign ownership provides for enhanced investment opportunities and makes the state more attractive to FDI.

Asset ownership restrictions occur when some states expressly prohibit foreign investors from owning particular types of domestic assets. In Ghana, the Ghana Investment Promotion Centre Act of 1994 prohibits foreigners from entering certain industries, including: beauty salons, barbershops, taxi services (if the taxi fleet is less than ten vehicles), and selling goods or services from a kiosk. Further, Vietnam “will not license any foreign investment project in sectors or regions which may have adverse effects on national defense, national security, cultural and historical heritage, fine custom, and tradition, or the ecological environment.” States may use this type of absolute ownership restriction to safeguard protected domestic industries.

Equity ownership restrictions generally occur when a state does not prohibit foreign investors from entering into a domestic industry but require a certain percentage of a domestic firm’s ownership remain in domestic hands. In Algeria, foreign companies may own up to 71% of a hydrocarbons firm, while foreign purchasing banks may only own 51% of a firm. In Iran, foreign investors may only own 49% of an Iranian company, though this percentage also depends on the merits of each project.

Some states have real estate acquisition restrictions, which prohibit foreign investors from owning domestic land. Although less of these laws exist today, many examples of state practice still exist. In China, the land belongs to the people. Foreign investors cannot own land, but they may obtain long-term land leases. In the United Arab Emirates, only domestic citizens can own land.

746 Ghana Investment Promotion Centre Act, sec. 18 (1994).
749 Law Concerning the Attraction and Protection of Foreign Investments in Iran, General Note (1994).
Some states place no limitations on foreign ownership or control of corporations. In Vietnam, foreign investors can own 100% of domestic companies, provided these companies are not involved in protected industries. These states are attractive for FDI because they provide the greatest amount of investment opportunities to foreign investors.

**Bilateral Investment Treaties**

Bilateral Investment Treaties (BITs) can encourage foreign direct investment. BITs protect business investments in foreign jurisdictions enabling investors to seek damages from the foreign government through a claim before an independent arbitral tribunal. At the end of 2003, approximately 2,200 BITs were in force worldwide.

Most BITs are between developed capital exporting states and developing capital importing states. Capital exporting states typically negotiate BITs to protect their investors and provide them with stability in foreign jurisdictions. Capital importing states typically sign BITs with the expectation of attracting much needed foreign investment.

Typically, BITs contain provisions guaranteeing the investor national and most-favored nation treatment, and offering the investor protection against expropriation. Investors have the opportunity to seek recourse via a predetermined dispute resolution mechanism. The International Center for the Settlement of Investment Disputes offers both substantive provisions for the resolution of

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755 A capital exporting state invests more money in foreign assets than foreign states invest money in the capital exporting state’s domestic assets while a capital importing state has more foreign money invested in its domestic assets than the capital importing state invests money in the assets’ of foreign states.
disputes, as well as institutional support.\footnote{\textsc{The World Bank}, \textsc{About ICSID}, \textit{available at} http://www.worldbank.org/icsid/about/about.htm (last accessed Sept. 29, 2007).} Other mechanisms, such as the United Nations Commission on International Trade Law Model Law, may also prove effective at resolving disputes.\footnote{\textsc{United Nations Commission on International Trade Law}, \textsc{FAQ - Origin, Mandate and Composition}, \textit{available at} http://www.uncitral.org/uncitral/en/about/origin_faq.html (last accessed Sept. 26, 2007).} Essential to all BITs is the New York Convention on the Enforceability of Arbitral Awards, which requires its signatories to uphold and enforce any valid decision of an arbitral panel.\footnote{\textsc{United Nations Conference on International Commercial Arbitration}, \textsc{Convention on the Recognition and Enforcement of Foreign Arbitral Awards}, July 6, 1988, \textit{available at} http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII_1_e.pdf (last accessed Sept. 26, 2007).} In addition, with the great proliferation of BITS over the past decade, many states, including Canada, the United States, and the United Kingdom, developed Model BITs. These serve as templates for the vast majority of BITs currently in force or under negotiation.

\textit{Elements}

Although the substantive investment obligations imposed on host governments may differ from one BIT to another, they typically include the following:\footnote{John W. Boscariol and Orlando E. Silva, \textit{Protecting Foreign Investors BIT by BIT}, \textsc{The Investor’s Weekly}, Jul. 7, 2004.}

- The foreign investor must be treated no less favorable than a domestic investor (national treatment) or investors from any other state (most-favored-nation treatment);

- The foreign investor must be treated fairly in accordance with international law, and be entitled to the full protection and security given to domestic investors;

- Expropriation, or measures equivalent to expropriation, must be for a public purpose, non-discriminatory, under due process of law, and accompanied by payment of prompt, adequate, and effective compensation.
A BIT may also include obligations relating to transfers of funds out of the host territory, performance requirements, and measures concerning the nationality of senior management and boards of directors. Some BITs contain “umbrella clauses” that require a host government observe all of its contractual obligations with respect to investments in its territory. In addition, many BITs have specific provisions for certain types of measures or sectors, including taxation, subsidies, national security, financial services, and cultural activities.

**Dispute Resolution Mechanisms**

The main advantage of a BIT is its dispute resolution mechanism. In addition to government-to-government procedures, BITs often contain a private investor-state dispute mechanism enabling private foreign entities to sue host governments for damages arising out of their failure to comply with their investment obligations.

The most common dispute resolution method for BITs is the International Center for the Settlement of Investment Disputes (ICSID). The ICSID provides both a framework and institutional support for the settlement of disputes between a foreign investor and a host government. In addition to the ICSID, several other organizations provide ad hoc mechanisms for the settlement of disputes.

**The International Center for the Settlement of Investment Disputes**

ICSID is the most popular choice of forum for the settlement of international investment disputes between a foreign investor and a host state. Pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, ICSID provides facilities for the conciliation and arbitration of disputes between member states and investors who qualify as nationals of other member countries.

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762 This mechanism is available regardless of whether the investor already has a contractual or arbitration arrangement with the host state or one of its governmental entities.
763 THE WORLD BANK, ABOUT ICSID.
Resorting to the ICSID to resolve a dispute is a voluntary decision. Therefore, at its own discretion, each party may or may not wish to pursue ICSID arbitration. Once the parties consent to resolving their dispute through ICSID arbitration neither party can unilaterally withdraw its consent. Moreover, the ICSID Convention requires all Contracting States, whether parties to the dispute or not, to recognize and enforce ICSID arbitral awards.\textsuperscript{765}

United Nations Commission on International Trade Law

The United Nations General Assembly established the United Nations Commission on International Trade Law (UNCITRAL) in 1966.\textsuperscript{766} In establishing the Commission, the General Assembly recognized that differences in state laws governing international trade created obstacles to the flow of trade. The General Assembly regarded the Commission as the vehicle by which the United Nations could play a more active role in reducing or removing these obstacles.\textsuperscript{767} To this end, in 1985 the UNCITRAL developed the Model Law on International Commercial Arbitration (Model Law).\textsuperscript{768}

The Model Law provides a more liberal framework than the ICSID because it offers disputing parties a broad scope for agreeing on the rules of procedure. Where such agreement is lacking, the Model Law gives wide discretion to the arbitrators regarding the conduct of the proceeding.

The Model Law has few mandatory rules, intended to ensure fairness and equal treatment of the disputing parties, and provide freedom and discretion for arbitration. It contains supplementary provisions to assist in arbitration where parties concerned do not agree on procedural rules, and has provisions on recognition and enforcement of arbitral awards that apply irrespective of the arbitral state. Whereas the 1958 New York Convention dealt only with foreign

\footnotesize\begin{itemize}
\item \textsuperscript{765} THE WORLD BANK, ABOUT ICSID, available at http://www.worldbank.org/icsid/about/about.htm (last accessed Sept. 29, 2007).
\item \textsuperscript{766} UN G.A. Res. 2205(XXI) (Dec. 17 1966).
\end{itemize}
awards, the UNCITRAL Model Law no longer makes such a territorial distinction. Instead, UNCITRAL draws a new line on the more substantive ground of whether the arbitration proceeding is international.\textsuperscript{769}

\textit{Enforcement of Awards}

Most bilateral investment treaties provide that the governments consent to the submission of a claim to arbitration under the BIT in accordance with the requirements of international conventions for the recognition and enforcement of arbitral awards, primarily the 1958 New York Convention.\textsuperscript{770} The New York Convention is widely recognized as a foundation instrument of international arbitration requiring courts of contracting states to give effect to an agreement to arbitrate when seized of an action in a matter subject to an arbitration agreement. States must also recognize and enforce awards made in other states, subject to specific limited exceptions.\textsuperscript{771}

\textit{Model Laws}

The BITs’ popularity among developed states prompted several to design model BITs that serve as a template or benchmark for future treaties. While variations exist, two basic model BITs emerged: (1) the “European model” based on a model endorsed by OECD Ministers in 1962; and (2) the “North American model” developed in the early 1980s.\textsuperscript{772}

The two models contain more or less the same concepts for protecting established investments: national treatment and most-favored nation treatment; free

transfers of funds; prompt, adequate, and effective compensation in the case of expropriation; fair and equitable treatment; and full protection and security. The only major distinctions are that the North American model disciplines the imposition of a number of performance requirements on investors or their investments and provides detail on some matters (for example, the right of entry and sojourn of aliens) than the European BITs.

Recently, some states, including Canada, Chile, Japan, Mexico, and the United States, reviewed their model BIT. Revisions primarily addressed the definitions of investment and investor aiming at limiting the scope of the treaty; fair and equitable treatment in order to clarify the standard; protection at the pre- and post-establishment levels; non-discrimination principles (national treatment and most-favored nation treatment) taking into account recent jurisprudence; expropriation using criteria to better define indirect expropriation; public interest exceptions, such as protection of health, safety and environment; and more detailed investor-state dispute settlement provisions.

**Tax Treaties and Tax Incentive Zones**

Both tax treaties and tax incentives encourage foreign direct investment. Tax treaties are treaties that states enter into to address tax issues. These treaties help promote trade and investment between the two state entities party to agreement. Tax incentive zones are economic tax incentives aimed at creating a business and investment friendly environment.

*Bilateral Tax Treaty Agreements*

Tax treaties are agreements between states that deal specifically with tax issues and provide a means to promote trade and investment between the two states. The fundamental goal of most tax treaties is to avoid double taxation on

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773 OECD DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS, WORKING PAPERS ON INTERNATIONAL INVESTMENT, Number 2004/1.
774 OECD DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS, WORKING PAPERS ON INTERNATIONAL INVESTMENT, Number 2004/1.
citizens who earn foreign income. Under these treaties, businesses located in one state receive a reduction in taxes or an exemption from the income they receive from sources within the foreign state in which they are operating. Treaty provisions generally are reciprocal, and the provisions apply to both treaty signatories.  

Tax treaties may increase FDI in several ways. First, they reduce or eliminate the economic disincentive of double taxation of foreign-earned profits. Treaties articulate clear rules for dealing with tax conflicts. In addition, the international codification of a state’s tax policy reduces the likelihood a unilateral change in its tax policy. In these ways, tax treaties reduce the uncertainty of an investor’s tax liability in the foreign state, thereby encouraging FDI.

**Tax Incentives Zones**

Tax incentive zones are economic tax incentives offered to attract business and investment. The direct incentive for a business to invest in a foreign economy under a tax incentive is the opportunity for the business to operate exempt from income tax or receive a greatly reduced tax rate. These incentives may either continue indefinitely or terminate after a period. Incentive zones may also permit certain types of businesses or operations that otherwise may not be permitted inside the state, or which otherwise may require some sort of special licensing to operate.

In general, the premise behind a free zone is usually that the investing business will be manufacturing and or marketing a product or service abroad. The benefit for the home state is that they can use tax incentive zones not only to

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increase investment but also to manage it by selecting geographical locations with the greatest need for investment.

Resource rich states often do not face difficulties in attracting FDI to their resources. Therefore, FDI in that sector might not be responsive to taxation, which means that in that sector tax revenues can rise without sacrificing any economic benefits FDI produces. In other industries, the volume of FDI responds negatively to taxation. In these industries, the host county has to make decisions between revenue gains of increased taxation against the economic costs of discouraging FDI. Moreover, taxation in the resource sector might provide an effective revenue source to offset tax incentive zones.

Although different states have different competitive advantages, these geographically defined areas usually provide businesses access to vacant land, existing industrial and commercial infrastructure, a skilled workforce and abundant resources such as power and water supplies. However, if the reduction in revenue due to a tax incentive zone is less than the economic gains of FDI and the job creation that follows the incentive’s implementation then the host economy might wish to consider targeted tax incentive zones.

In the Dominican Republic, foreign investors can enjoy 100% tax-free business income or a reduced rate of taxation when operating inside a free zone. This applies to all free zones that the investor uses. The business license does indicate a particular length of time based on the geographic location of the free zone. For example, if a business chooses to invest in a free zone location close to Santo Domingo or Santiago, it will obtain a twenty-year income tax exemption. If, however, the business chooses a location in a more rural area or an area where the government wants to encourage a company to invest, the businesses may receive a 25-year or longer exemption period.

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Ghana calls its free zone the BF Tema Export Processing Zone. Tema is an industrial center as well as the largest major port in Ghana. The main economic incentive provided in Ghana’s law is a 100% exemption granted to investors from payment of income tax on profits for ten years. After the ten-year period, the income tax rate cannot exceed 8%. The law also provides for a total exemption from payment of withholding taxes from dividends arising out of free zone investments. Further, the government provides relief from double taxation for foreign investors and their employees.

The Jebel Ali Free Zone (JAFZ), located in the Jebel Ali area of Dubai, United Arab Emirates, is a complex economic zone servicing the Dubai Port. The government does not tax the income or profits of foreign investors within the zone and does not place restrictions on foreign exchange or transfer of capital. The government also allows foreign investors to own 100% of the equity in a local enterprise and provides operational support and business continuity facilities. Within the free zones, investors may enter into multi-year leases. They also have easy access to sea and airports, buildings for lease, energy connections (often at subsidized prices), and assistance in labor recruitment.

Foreign Direct Investment Organizations

Many organizations promote and/or finance foreign direct investment. These organizations include: (1) multilateral FDI organizations; (2) bilateral foreign direct organizations; and (3) governmental FDI organizations.

783 JAFZA, EMPOWERING BUSINESS, available at, http://www.jafza.co.ae/jafza/content/section2.aspx (last accessed Sept. 25, 2007). The Dubai Port ranks thirteenth in the world in terms of container traffic.
Multilateral Foreign Direct Investment Organizations

Multilateral FDI organizations are institutions with a membership base consisting of multiple states. Each of these organizations operates as an independent entity.\footnote{The World Bank, Home, About Us, Multilateral and Bilateral Development Agencies, available at http://web.worldbank.org/WEBSITE/EXTERNAL/EXABOUTUS/0,,contentMDK:20040612~menuPK:41694~pagePK:43912~piPK:44037~theSitePK:29708,00.html (last accessed Sept. 4, 2007).} The main purpose of multilateral FDI organizations is to provide sound economic advice and capital for FDI in developing states.\footnote{The World Bank, Home, About Us, Multilateral and Bilateral Development Agencies.} The World Bank, International Monetary Fund, Islamic Development Bank, United Nations Development Program, and the Nordic Investment Bank are examples of multilateral FDI organizations.

The World Bank Group

The World Bank Group is a multilateral FDI organization that provides financial and technical assistance to developing states.\footnote{The World Bank, Home, About Us, Organization, available at http://web.worldbank.org/WEBSITE/EXTERNAL/EXABOUTUS/0,,pagePK:50004410~piPK:36602~theSitePK:29708,00.html (last accessed Sept. 4, 2007).} The organization’s goal is to alleviate poverty and improve the standard of living in developing states and regions. The World Bank Group includes five different institutions and affiliates: (1) the International Development Association; (2) the International Bank for Reconstruction and Development; (3) the International Finance Corporation; (4) the Multilateral Investment Guarantee Agency; and (5) the International Centre for the Settlement of Investment Disputes.\footnote{The World Bank, Home, About Us, Organization.}

The International Development Association (IDA) is the World Bank Group division that provides FDI to the poorest states in the world.\footnote{The World Bank, International Development Association, About Us, IDA, What is IDA?, available at http://web.worldbank.org/WEBSITE/EXTERNAL/EXABOUTUS/IDA/0,,contentMDK:212067,00.html (last accessed Sept. 4, 2007).} The IDA provides
interest free loans and grants to those states with the greatest need. The IDA is the single largest donor of funds to the poorest countries in the world.  

The International Finance Corporation (IFC) is the member of the World Bank Group that supports private FDI in developing states. The IFC attempts to ensure that the investment projects it promotes are not only financially beneficial but also positively influence the environment and the social well being of the host state. The belief of this institution is that such an investment strategy will ultimately lead to poverty reduction and an improvement in people’s lives.  

The International Bank for Reconstruction & Development (IBRD) is the division of the World Bank Group that provides loans, financing, and technical assistance to middle-income and creditworthy developing states. The IBRD typically aims to promote stability in the market place and social reform through its financing activities.  

The World Bank’s Multilateral Investment Guarantee Agency (MIGA) is responsible for encouraging investment and insurance activities in states considered to have an unfriendly business environment. To accomplish this task the MIGA provides the following services to investors and insurers in developing states: (1) political risk insurance; (2) technical assistance with investment opportunities; and (3) dispute mediate services. Specifically, the MIGA focuses its operations: (1) on states and regions where there is a need for development in

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791 THE WORLD BANK, INTERNATIONAL DEVELOPMENT ASSOCIATION, ABOUT US, IDA, WHAT IS IDA?  
793 INTERNATIONAL FINANCE CORPORATION, ABOUT IFC, IFC’S MISSION.  
795 THE WORLD BANK, INTERNATIONAL BANK FOR RECONSTRUCTION & DEVELOPMENT, HOME, ABOUT US, IBRD, BACKGROUND.  
infrastructure; (2) in conflict-affected areas; and (3) in developing states and their financial markets.\textsuperscript{797}

As discussed above, the International Centre for the Settlement of Investment Disputes (ICSID) is an organization that settles investment disputes between member states and foreign investors who are nationals of member states. The ICSID is a division of the World Bank Group, established in 1966 under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The ICSID promotes FDI through facilitating expedient resolution of disputes.\textsuperscript{798}

\textbf{International Monetary Fund}

The International Monetary Fund (IMF) is a multilateral FDI organization. The main goals of the IMF include: (1) facilitation of international monetary cooperation; (2) assistance in the growth and balance of international trade; (3) provision of aid in assuring exchange stability; (4) organization of a multilateral system of payments; and (5) provision of financing for member states with inadequate resources to meet their balance of payment requirements.\textsuperscript{799} The IMF attempts to accomplish these goals through the constant surveillance of each member state’s economy. The IMF also offers financial and technical advice to any member state that requires such assistance.\textsuperscript{800}

\textbf{Islamic Development Bank}

The Islamic Development Bank is an organization of 56 Islamic member states. The Bank’s purpose is to provide economic aid and facilitate social development in Islamic states.\textsuperscript{801} Membership in the Islamic Development Bank is contingent upon whether a state: (1) is a member of the Organization of the Islamic

\textsuperscript{797} \textsc{Multilateral Investment Guarantee Agency, About MIGA}.
\textsuperscript{798} \textsc{The World Bank, About ICSID, available at}
\textsuperscript{799} \textsc{International Monetary Fund, The IMF at a Glance, available at}
\textsuperscript{800} \textsc{International Monetary Fund, Technical Assistance, available at}
\textsuperscript{801} \textsc{Islamic Development Bank, IDB in Brief, available at}
Conference; (2) contributes capital to the Bank’s fund; and (3) agrees to abide by the terms set forth by the Bank. The Bank operates by making equity investments and providing grants to member states. The Bank also establishes special funds for providing support to non-member Muslim states.\footnote{Islamic Development Bank, IDB in Brief, available at http://www.isdb.org/english_docs/idb_home/backgrnd.htm (last accessed Mar 4, 2007).}

**United Nations Development Programme**

The United Nations Development Programme is the United Nations institution that aims to promote all aspects of development worldwide. The Programme provides developing states with a connection to the knowledge, experience, and resources necessary to build strong local economies. The Programme’s mission is to aid emerging economies with the challenges of: (1) improving democratic governance; (2) reducing poverty; (3) the prevention of and recovery from crisis; (4) providing the poor with clean and efficient sources of energy; and (5) the prevention of the spread of HIV/AIDS.\footnote{United National Development Programme, About UNDP, available at http://www.undp.org/about/ (last accessed Sept. 4, 2007).}

**Nordic Investment Bank**

The Nordic Investment Bank\footnote{Eight Nordic and European member states established the bank.} is a multilateral FDI organization promotes investment in member countries by supplying long-term financing solutions with a focus on projects that improve infrastructure and the environment, and that promote small and medium size businesses.\footnote{Nordic Investment Bank, Mission and Strategy, available at http://www.nib.int/about/mission.html (last accessed Sept. 4, 2007).} The Nordic Investment Bank also provides long-term loans for projects in non-member states in the Middle East.\footnote{Nordic Investment Bank, Lending in Non-Member Countries, available at http://www.nib.int/lending/int_lending.html (last accessed Sept. 27, 2007).}

**Bilateral Foreign Direct Investment Organizations**

Bilateral foreign direct investment organizations are FDI institutions sponsored by individual states. Bilateral FDI organizations promote a state’s international development policy by providing capital for FDI. The Agence
Francaise de Development, Finnish Fund for Industrial Cooperation, Industrialization Fund for Developing Countries, and the Japan Bank for International Cooperation are examples of bilateral FDI organizations.  

**Agence Francaise de Development**

The Agence Francaise de Development is a bilateral investment organization managed by government of France. The Agence implements French foreign development investments. The stated mission of the Agence Francaise de Development includes the alleviation of poverty, the enhancement of economic growth through financing, and the protection of public goods.

**Finnish Fund for Industrial Cooperation**

The Finnish Fund for Industrial Cooperation is an organization that provides capital for Finnish projects in developing states. The Finnish Fund finances projects that use Finnish technology or that include Finnish partners. The Finnish government, along with other Finnish organizations, owns the Finnish Fund.

**Industrialization Fund for Developing Countries**

The Industrialization Fund for Developing Countries is an organization that provides FDI in developing states in partnership with Danish companies and businesses. The Fund provides several services including advising developing states on economic issues, financing projects, and guaranteeing commercial loans. The Fund operates to promote the interests of the Danish government in regards to international development and investment policy.

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Japan Bank for International Cooperation

The Japan Bank for International Cooperation is a legislatively created entity that aims to promote the interests of Japan through international investment.\textsuperscript{811} In addition to its promotion of Japan’s overseas interests, the Bank participates in FDI opportunities that provide for economic stability and social development in developing states. The Bank provides low-cost, long-term capital for projects in developing states that encourage self-help and local sustainability.\textsuperscript{812}

Governmental Foreign Direct Investment Organizations

In addition to multilateral and bilateral investment organizations, states also establish governmental agencies to promote FDI. Some of these agencies promote both international investment in the domestic economy\textsuperscript{813} and outward investment from domestic companies into foreign economies.\textsuperscript{814}

Government Agencies Promoting Foreign Direct Investment

The task of promoting FDI in a state’s economy benefits the state as a whole. The rewards associated with increased FDI are not accessible in an economic forum that would result in any single private firm generating profits from promotion activities.\textsuperscript{815} Therefore, the task of promoting FDI falls to the government because no single domestic firm will profit substantially from promoting FDI.

Usually, governments establish agencies whose sole responsibility is to encourage foreign investment. Jordan, Egypt, and Montenegro are states that use governmental agencies to promote FDI.

The government of Jordan created the Jordan Investment Board in 2003 to promote FDI. The Jordanian Investment Board works with private sector investors in expediting registration and licensing requirements for investment projects and simplifying the overall investment process. The agency’s goal is to use FDI in Jordan as a tool that will benefit the local job market, increase national exports, and advance the international transfer of technology.

The Egyptian General Authority for Investment and Free Zones is the government agency in Egypt concerned with both the oversight and promotion of FDI. The Egyptian General Authority provides numerous services to investors looking to invest in the Egyptian economy. Some of these services include business partner identification, expediting licensing and registration requirements, and project site assistance. The agency’s goal is to expand the economic opportunities of Egypt to international investors by promoting foreign investment, provide investor services, and support investor friendly government regulations.

The Montenegrin Investment Promotion Agency works with both foreign and domestic investors to promote and increase investment within Montenegro. The goals of the Agency include increased investment in Montenegro and increased economic development in the Montenegrin economy. The Agency promotes investment by providing services such as information regarding the investment climate, assistance in obtaining business permits, and aiding in the location and identification of project sites.

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817 JORDAN INVESTMENT BOARD, ABOUT JIB.
The Darfur Peace Agreement (DPA) broadly addresses FDI. The DPA recognizes that the private sector plays an important role in the development and recovery of Darfur. The most explicit DPA reference to FDI is the statement that an “economic and social” objective should be to develop an environment conducive to foreign investment.

**SAMPLE LANGUAGE**

**Article XXX**

**Freedom to Invest**

Foreign persons [Persons are generally defined as an individual or organization] shall be subject to the same investment laws domestic persons are subject to [Subsequent provisions can set a percentage for the amount of foreign owned capital that can be used to establish of an enterprise.].

**AND/OR**

Foreign Direct Investment shall be prohibited in [specified economic sectors].

**AND/OR**

A foreign person may own [A specified percentage, generally less than 50%] of a company [in specified economic sectors].

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822 Darfur Peace Agreement, art. 17, para.107, sec. i.
823 This language is drawn from Bulgaria’s Law on Foreign Investment, art. 2, and from Vietnam’s Law on Foreign Investment, art. 15.
824 This language is drawn from Ghana’s Investment Promotion Centre Act of 1994, sec. 18.
825 This language is drawn from Bosnia and Herzegovina’s Law on Direct Foreign Investment, art. 4(a).
**Article XXX**  
**Transfers**

The Government shall allow the transfer abroad of the external funds invested in a project, together with the profits and revenues, in the same currencies brought in, or in any other transferable currency. [Registration with the [Domestic Registering Agency] of these assets is required before they may be transferred.].

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**Article XXX**  
**Treatment**

**National Treatment**

Foreign investors shall have the same rights and obligations as domestic investors.

**Most-favored Nation Treatment**

The Government will not treat a foreign investor from [state #1] differently than a foreign investor from [state #2] simply because the foreign investors are from different states.

**Expropriation**

Foreign investments shall not be subject to any act of nationalization, expropriation, requisition, or measures that have similar effects, except in the public interest in accordance with applicable laws and regulations, without any type of discrimination and against the payment of appropriate compensation.

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OR

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826 This language is from Syria’s Investment Law No. 10, art. 25. Language is also drawn from Egyptian procedures required for the repatriation of monies earned in Egypt.

827 This language is from Bosnia and Herzegovina’s Law on Direct Foreign Investment, art. 8(a).

828 This language is drawn from Bosnia and Herzegovina’s Law on Direct Foreign Investment, art. 8(b).

829 This language is from Bosnia and Herzegovina’s Law on Direct Foreign Investment, art. 16.
Foreign investments shall not be subject to expropriation except where there is special legislation and fair compensation.  

OR

Foreign Direct Investment shall not be expropriated except in cases of emergency, natural disaster, accidents, epidemics or epizootic where accompanied by fair compensation.

**Article XXX**

**Dispute Settlement**

Disputes arising because of foreign investment shall be resolved in [A certain forum. Generally, these disputes are resolved in the relevant courts or in international arbitration. The parties to a contract may also agree on other procedures, i.e. local courts or international arbitration. The State may also restrict what forums resolve these disputes.].

**Article XXX**

**Incentives**

The Government may provide tax incentives [Generally the reduction of taxes on FDI, the reduction or eliminate of rental fees for Government lands, etc.].

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830 This language is drawn from Iran’s Law Concerning the Attraction and Protection of Foreign Investments, art. 3.
831 This language is drawn from Ukraine’s Regime of Foreign Investment, art. 9.
832 This language is drawn from Bosnia and Herzegovina’s Law on Direct Foreign Investment, art. 17, and from Jordan’s Investment Promotion Law of 1995, art. 33. Some countries, like Saudi Arabia and Iran limit the available forums a foreign national may use.
833 This language is drawn from Jordan’s Investment Promotion Law of 1995, arts. 6-10.
Article XXX
Ownership Requirements

Foreign Direct Investment shall be prohibited in [certain economic sectors, i.e. defense, cultural and historical heritage].\textsuperscript{834}

OR

Foreign investors shall be restricted from owning domestic lands [Some countries allow for long-term leases on land.\textsuperscript{835}].

OR

A foreign person may own [A certain percentage. This is generally less than [50%.] of a company [certain economic sectors].}\textsuperscript{836}

Article XXX
Bilateral Investment Treaties

The Government of Sudan hereby agrees to establish an initiative designed to encourage the development and implementation of Bilateral Investment Treaties with foreign states.

AND

The Government of Sudan hereby agrees that all investment related agreements signed by the Government of Sudan will favor all provinces equally, to the best extent possible, while taking into account unique capacities of specific provinces and their respective comparative advantages.

AND

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\end{flushright}

\textsuperscript{834} This language is drawn from Ghana’s Investment Promotion Centre Act, sec. 18.
\textsuperscript{835} This language is drawn from Joyce Palomar’s \textit{Land Tenure Security as a Market Stimulator in China}, which outlines what Chinese policy regarding land ownership.
\textsuperscript{836} This language is drawn from Bosnia and Herzegovina’s Law on Direct Foreign Investment, art. 4(a).
The government of Sudan hereby agrees to work towards [ratification and/or implementation] of the [either the International Centre for the Settlement of Investment Disputes, the UN Commission on International Trade Model Law, or both].

AND

The Government of Sudan hereby agrees to work towards [ratification and/or implementation] of the New York Convention for the Enforcement of International Arbitral Awards.
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.837

The 2006 Darfur Peace Agreement (DPA) includes a larger number of human rights provisions. The DPA provides a hybrid approach by enumerating

837 For more information on human rights commissions, see Human Rights Commission chapter.
international treaties and agreements that the Government of the Republic of the 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." Notably, this

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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.” 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. 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


[840 The Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia (1991), art. 3.2.](http://www.usip.org/library/pa/cambodia/agree_sovereign_10231991.html)
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:

. . . 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.841

These particular rights are specifically recognized “[a]gainst the background of the recent history of communal conflict.”842

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. 843

The same article also enumerates twenty-seven human rights and fundamental freedoms recognized under the peace agreement. The rights and freedoms defined include: the equality of men and women; 844 the prohibition against discrimination; 845 the right to physical and mental integrity, and to freedom of movement; 846 the prohibition on torture and other forms of cruel, inhuman, or degrading treatment or punishment; 847 the prohibition against all forms of slavery and the slave trade; 848 freedom of expression and of the media; 849 the right to move and settle freely anywhere in the national territory, as well as to leave it and return to it; 850 and the prohibition of the direct use of children in armed conflict. 851

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

844 Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, art. 3.4.
845 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.”
850 Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, art. 3.15.
851 Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, art. 3.27.
Protection of Human Rights and Fundamental Freedoms and its Protocols.\textsuperscript{852} The same article in the Dayton Accords enumerates fourteen specific rights. These include, among others, the right to life;\textsuperscript{853} the prohibition of torture or inhuman or degrading treatment or punishment;\textsuperscript{854} the prohibition of slavery or servitude;\textsuperscript{855} freedom of thought, conscience, and religion;\textsuperscript{856} and the enjoyment of these rights and freedoms without “discrimination on any ground.”\textsuperscript{857}

**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.”\textsuperscript{858} 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.”\textsuperscript{859} 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.


\textsuperscript{853} The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 1, art. I(.1).


\textsuperscript{855} The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 1, art. I (2).

\textsuperscript{856} The Dayton Accords, Dec. 14, 1995, Annex 6, ch. 1, art. I (7).

\textsuperscript{857} 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.”

\textsuperscript{858} Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, (1999), ch. 1, art. VI, sec. 1.

\textsuperscript{859} Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, (1999), ch. 1, art. VI, sec. 3.
Human Rights Charters

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.860 A charter typically defines the rights and freedoms protected and provides for the scope of and mechanisms for their protection.861

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.862 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.863

The European Union Charter of Fundamental Rights provides for a range of political, social, and cultural rights at the provincial level.864 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.865 The European Charter covers rights related to

863 DEPARTMENT OF JUSTICE OF CANADA, FACT SHEET: THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS, DEPARTMENT OF JUSTICE OF CANADA.
dignity, freedoms, equality, solidarity, citizen’s rights, and justice. The Charter also provides for the scope and protection of the recognized rights.

Recognizing the need to promote the protection of individual rights in the face of rapid provincial market development, 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.” The Asian Charter then enumerates an extensive list of human rights, the responsibility of the governments to protect those rights, provides for enforcement mechanisms, and emphasizes the need for a legal framework to protect human rights and fundamental freedoms.

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

870 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.
873 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. 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. 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.

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.” Although the Good Friday Agreement does not detail the

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874 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.
875 The Good Friday Agreement, Apr. 10, 1998, sec. 6, Provision 5.
876 The Good Friday Agreement, Apr. 10, 1998, sec. 6, Provision 5.
structure and function of these human rights commissions, it does provide for a joint committee composed of representatives from both human rights commissions.878

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.879 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.”880

**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.881 The Commission, whose mandate is “to assist [the parties] in honoring their obligations under this Agreement,”882 consists of the Office of the Human Rights Ombudsman883 and the Human Rights Chamber.884

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.885 The Ombudsman then

investigates the complaint, issues findings, and writes a report. Based on this report, the Ombudsman may decide to initiate proceedings in the Human Rights Chamber.

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

**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. The Government of Sudan has ratified numerous international human rights treaties including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. 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.

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890 The Darfur Peace Agreement, art. 3, para. 24.
The DPA also calls on the parties to guarantee several specifically enumerated rights. The enumerated rights include the right to marry, the rights of children, the prohibition of slavery, freedom of movement, and the equal right to safe drinking water. The DPA also specifically enumerates specific rights for traditional tribes and for internally displaced peoples.

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.

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

894 The Darfur Peace Agreement, art. 3, para. 28(b).
895 The Darfur Peace Agreement, art. 3, para. 28(e).
896 The Darfur Peace Agreement, art. 3, para. 30.
897 The Darfur Peace Agreement, art. 3, para. 34.
898 The Darfur Peace Agreement, art. 17, para. 97(c).
899 The Darfur Peace Agreement, art. 20, para. 158.
900 The Darfur Peace Agreement, art. 21.
901 This language is drawn from the Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch.1, art. VI.
ensure that the policies and practices of the past shall never be allowed to return; to adhere to relevant international human rights instruments.  

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].  

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  

902 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.  
justifiable circumstances acceptable in international law and set forth in the Interim Constitution.\textsuperscript{904}

OR

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].\textsuperscript{905}

\textsuperscript{904} This language is drawn from the Arusha Peace and Reconciliation Agreement for Burundi, Aug. 28, 2000, Protocol II, ch. 1, art. 3.1.
\textsuperscript{905} This language is drawn from The Dayton Accords, Dec. 15, 1995, Annex 6, ch. 1, art. I.
AND

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.

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]

AND

Incorporating Rights and Freedoms into Domestic Legal Frameworks

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907 This language is drawn from EUROPEAN COMMISSION, THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (2000).
**Article XXX**

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

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.

OR

**Article XXX**

The Parties shall establish a Commission on Human Rights. The Commission shall have the mandate to assist the parties in honoring their obligations under this Agreement.

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908 Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 1, art. VI.
909 This language is drawn from the Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 1, art. VI.
910 This language is drawn from the Good Friday Agreement, Apr. 10, 1998, sec. 6, Provision 5.
HUMAN RIGHTS COMMISSIONS

INTRODUCTION

This chapter identifies the core elements of human rights commissions through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement related to the establishment and activities of a human rights commission and provides sample language parties may wish to consider when drafting human rights commission provisions in a future agreement.

According to the 1948 Universal Declaration of Human Rights, the promotion and protection of human rights is a key responsibility of governments. Many states establish human rights commissions in recognition of this responsibility to promote and protect human rights. The United Nations defines a national human rights institution as a government institution established under the constitution or by law designed to promote and protect human rights. In practice, national human rights institutions adopt a variety of forms and functions depending on the national context in which they operate. Human rights commissions often complement the efforts of a state’s judiciary to protect and promote human rights.

The 2006 Darfur Peace Agreement (DPA) does not itself establish a human rights commission, but mandates that the Human Rights Commission established in the Sudan Interim Constitution, shall enjoy full independence, and “shall monitor the application of the rights and freedoms provided herein.” The Human Rights Commission established in the Interim National Constitution is responsible for ensuring the protection of human rights established in the

Constitution's Bill of rights and receiving complaints of violations of those rights.

**CORE ELEMENTS**

**International Guidelines**

International institutions provide principles that guide states in developing national human rights commissions. These principles promote the independent and effective functioning of national human rights commissions.

*Paris Principles*

In 1992, the UN Commission on Human Rights endorsed a set of internationally recognized principles concerning the status, power, and function of national human rights commissions. These UN-endorsed principles, now known as the Paris Principles, provided the basic guidelines for the establishment of a state’s human rights commission. The Paris Principles also provided states with model mandates that can be used to define the status and functioning of human rights institutions. The UN General Assembly adopted the Paris Principles in 1993, and they now represent the primary source of normative standards for establishing national human rights institutions in states worldwide.


Amnesty International Recommendations

The international non-governmental organization, Amnesty International, developed its own set of recommendations based on its observations of the work of national human rights institutions.\(^{922}\) Amnesty International formulated its recommendations as a supplement to other guidelines such as the Paris Principles.\(^{923}\) Amnesty International’s recommendations address ten broad subjects: (1) Independence of the institution; (2) Membership; (3) Mandate and Powers of the institution; (4) Investigations and inquiries; (5) Recommendations and judicial remedies; (6) Human rights education; (7) Modalities of visits to places of detention; (8) Publicity; (9) Accessibility; and (10) Budget.\(^{924}\)

Independence of the Human Rights Commission

Many states consider the independence and impartiality of a state’s human rights commission essential to its successful operation.\(^{925}\) To ensure independence for a commission and its members, the Paris Principles provide that “an official act” should codify the appointment of commissioners.\(^{926}\) Amnesty International’s recommendations likewise suggest that a founding charter reflect a commission’s


\(^{923}\) AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL’S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.

\(^{924}\) AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL’S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.


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independence. Amnesty International further recommends independence from the executive functions of government.

States often establish national human rights commissions through national legislation. In most such states, this legislation mandates the institution’s independence and may reference international standards or norms. Other states establish a human rights commission in their constitution. These constitutional provisions typically also provide a strong guarantee for the independence of the commission. Most legislation and constitutional mandates provide for both executive and legislative involvement in the nomination and appointment of commission members to ensure political influences do not co-opt the commission.

India established its National Human Rights Commission in the Protection of Human Rights Act 1993. In New Zealand, the Human Rights Commission Act 1977 established the Human Rights Commission. The legislation empowers the commission to protect human rights in general accordance with United Nations Covenants and Conventions. Similarly, in Malaysia the founding legislation of the human rights commission states that the Paris Principles shall guide the commissions’ work, while in Fiji the commission’s work is consistent with the Universal Declaration of Human Rights.

Establishing a human rights commission in a state’s constitution adds legitimacy to the commission’s work and a mandate to protect the human rights of all of a state’s citizens. In addition, providing for a commission’s independence in

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927 AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL’S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.
928 AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL’S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS. National human rights institutions “must be independent from the executive functions of government and its founding charter should reflect this.”
a constitution means that in most states, only constitutional amendment may alter the existence and independence of the human rights commission.

In Ghana, the Constitution established the Commission on Human Rights and Administrative Justice as an independent body, not “subject to the direction or control of any person or authority.” The establishment of the commission under the Constitution significantly contributes to the independence and strength of the body. Likewise, the South African Human Rights Commission derives its powers from the state’s constitution. The Fiji constitution also establishes the powers and functions of the Human Rights Commission.

State practice also illustrates that the independence of a human rights commission is largely a function of its separation from the state’s executive branch of government. Although a state’s executive usually has ultimate authority to appoint members to a state’s commission, most states also require some form of legislative involvement – through consultation or nomination – in the appointment of a commission’s members.

According to the Fiji Human Rights Commission Act 1999, the president appoints commissioners in consultation with the prime minister. In South Africa, the president appoints members of the Commission on the recommendation of the National Assembly. Thus, although the commission members in these states are officially nominally executive appointments, the legislative branch plays a major role in choosing appointees. Likewise, the founding legislation of India’s commission requires that a special committee recommend all members of the commission for presidential appointment. This committee includes the Prime Minister, the Speaker of the House, and the leaders of opposition parties in the legislature.

936 Protection of Human Rights Act, art. 4 (India, 1993).
Functions and Powers of the Human Rights Commission

The United Nations defines a national human rights institution as a government body established under the constitution or by law that promotes and protects human rights. In practice, national human rights institutions adopt a variety of forms and functions depending on the national context in which they operate. State practice demonstrates that human rights commissions often complement the efforts of a state’s judiciary to protect and promote human rights.

Mandate of a Human Rights Commission

State practice illustrates that a human rights commission with an extensive and specific mandate has more tools and greater authority to ensure the protection of rights, effectively redress violations, and complement similar judicial efforts. International recommendations and norms support this linkage between commissions’ mandates and effectiveness.

The Paris Principles recommend that a national human rights institution have “as broad a mandate as possible.” The principles suggest that human rights institutions undertake various activities related to human rights monitoring, advice, education, and awareness raising. In addition to these “minimum tasks,” the Paris Principles propose that human rights institutions also investigate and settle human rights complaints.

Amnesty International also recommends that national human rights commissions receive a broad mandate. Amnesty International proposes that a state not define a mandate solely in terms of the human rights specifically provided for in a state’s constitution. Rather, according to Amnesty International, a human rights commission should base its definitions of human rights on international

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human rights instruments and standards, even if the state has not ratified the relevant treaties.  

Many states grant broad mandates to their human rights commissions and specify mechanisms to fulfill these mandates. Such mechanisms include actively investigating and redressing human rights violations; disseminating information to government and private entities, as well as individual citizens; and advisory powers related to legislation; and authority to examine practices within detention centers or prisons.

South Africa’s human rights commission, one of the most respected, has wide-ranging powers, including the power to investigate and report on the observance of human rights, to secure appropriate redress in the event of a human rights violation, to carry out research, and to educate the population. Each year, the South African commission requires relevant state agencies to provide information on measures taken to protect and promote the rights under the state’s Bill of Rights. These rights include provisions related to housing, health care, food, water, social security, education, and the environment. Additionally, the South African commission maintains jurisdiction over human rights matters in both the public and private sectors.

Malaysia and Ghana are two of many states that empower their human rights commissions with a number of complementary powers to enhance the ability to identify and address violations. Ghana accomplishes this through a broad grant of authority. The commission’s broad mandate includes the ability to investigate a wide range of complaints including alleged human rights violations, other forms of

941 AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL’S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.
943 SOUTH AFRICAN HUMAN RIGHTS COMMISSION, ABOUT THE SAHRC: FUNCTIONS.
944 SOUTH AFRICAN HUMAN RIGHTS COMMISSION, ABOUT THE SAHRC: FUNCTIONS.
injustice, corruption, abuse of power, and unfair treatment of any person by a
government official.946

While a broad mandate such as in Ghana is helpful, it is also important to
define the specific issues over which a commission has powers, as is done in
Malaysia. The Human Rights Commission of Malaysia Act 1999 provides the
national commission with powers to advise the Government and the relevant
authorities of complaints against these entities, and to recommend appropriate
remedial measures.947 The commission may also undertake research by conducting
programs and workshops, and disseminate and distribute results of such.948
Furthermore, the commission may visit detention centers, make recommendations
concerning these centers, and issue public statements on general issues of human
rights when necessary.949

Powers of Investigation

International standards focus on the breadth and specificity of a
commission’s investigative authority. The Paris Principles suggest that a human
rights commission have a wide range of investigative powers to promote
effectiveness.950 Amnesty International recommends precisely defined powers for
national human rights institutions to investigate situations and follow up on alleged
human rights violations on its own initiative.951 States generally endow their
human rights commissions with investigative powers. While some human rights
commissions have broad investigatory powers, these powers are often somewhat
limited with regard to ongoing judicial procedures.

946 HUMAN RIGHTS WATCH, PROTECTORS OR PRETENDERS? GOVERNMENT HUMAN RIGHTS
951 AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY
INTERNATIONAL’S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN
RIGHTS.
Many states allow their human rights commissions to begin an investigation on both the commission’s own initiative and because of a complaint. According to its founding legislation, the Malaysian Commission may, on its own initiative or on a complaint made to it by an aggrieved person or group of persons, inquire into allegation of human rights violations. 952 Similarly, the Zambian human rights commission has a mandate to investigate alleged violations and can investigate any allegation of rights abuses on its own initiative or on receipt of a complaint. 953

In addition to investigating allegations of human rights abuses, some commissions have the authority to investigate alleged violations of related but separate rights. Fiji’s human rights commission investigates claims of unfair discrimination as well as allegations of human rights abuses. Similar to its Malaysian and Zambian counterparts, the Fiji commission may investigate such allegations of its own initiative or on complaint by individuals, groups, or institutions. 954

Some states’ human rights commissions may also utilize the resources of other governmental agencies or access government documents to assist in the commissions’ investigations. In India, for instance, the human rights commission may utilize the services of any officer or investigation agency of the central government or a provincial government for the purposes of its investigation. 955 Mongolia’s commission has relatively broad investigatory powers and may access the confidential information of the state, an organization, or individual in accordance with procedure established by the relevant law. 956

Some states, including Uganda and Fiji, limit the investigatory powers of their commissions on certain matters. Uganda’s human rights commission cannot investigate a matter pending before a court or judicial tribunal, or a matter involving relations between the Government of Uganda and another state or

international organization. Fiji’s commission may not investigate any decision pending before a court of law.

Powers to Compel Attendance of Witnesses and Production of Evidence

Amnesty International recommends that states legally oblige their officials to cooperate with a human rights commission investigation, and suggests that a commission have full powers to compel the attendance of witnesses. Some states impose sanctions on those who obstruct or interfere with the work of the national human rights commission through government agencies. A review of state practice reveals, however, that many states endow their commissions with powers to compel parties to produce evidence.

Some commissions may issue subpoenas and initiate judicial proceedings for non-cooperation. The Ghana commission has strong enforcement powers, including the power to issue subpoenas for witnesses and other relevant information or evidence. The Ghana commission also has the ability to prosecute a person in contempt of a subpoena in court.

Similarly, in states such as Ireland and South Africa, human rights commissions have powers to compel the production of evidence, including the power to procure and receive all evidence, and to summon any person to the

959 AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL’S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.
960 AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL’S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.
commission. In Ireland, the commission may petition the state’s circuit court if an individual fails to produce the required evidence. The Malaysian Human Rights Commission may procure and receive all evidence, written or oral, and examine all such persons as witnesses, as the commission thinks necessary. The Mongolia commission may obtain, without specific authorization or permission from a separate government entity, any necessary evidence, official documents, or information from any organization or governmental official.

Powers of Mediation, Conciliation, or Negotiation

International standards endorse the use of mediation and conciliation by human rights commissions, although within specific limits. The Paris Principles state that the functions of a commission may include mediation and conciliation to resolve human rights-related disputes as long as they do not prejudice other powers of the commission. Likewise, Amnesty International cautions against extra-judicial resolution of a complaint by the human rights institution hampering prosecutions for crimes under international law, such as torture, war crimes, or crimes against humanity.

Although most national human rights commissions can encourage parties to resolve a matter, many also have the authority to use other means to try to reach an

967 AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL’S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.
amicable settlement. These methods include mediation and conciliation processes and public hearings. As a last recourse, most states’ commissions have the right to refer the case to the judiciary, and some have the right to bring a court action.

Legislation often includes a provision that specifically addresses the use of mediation and conciliation. The legislation establishing the South African commission includes a specific provision on mediation and conciliation. The legislation provides for resolution of complaints through negotiation, mediation, or conciliation. Similarly, the Fiji Human Rights Commission Act 1999 and the National Human Rights Commission of Mongolia Act provide that the respective states’ commissions can resolve complaints through conciliation.

State practice illustrates that a number of states also allow human rights commissions to resort to litigation to address a violation of rights. The South African commission may bring a court action in its own name or on behalf of a victimized person, group, or class of persons. Likewise, the commission in Fiji may resolve complaints by conciliation or refer unresolved complaints to the courts for decision.

**Structure of the Commission**

The structure of states’ human rights commissions vary based on the specific powers of the respective commission and the unique political, historical, cultural, and economic environment of each state.

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Number of Members

International standards regarding the membership of human rights commissions focus on the breadth and diversity of members, especially for states whose citizenry includes members from a variety of religious, ethnic, cultural, or political groups. For instance, in his 2004 report, the UN High Commissioner for Human Rights recommended that a Commission operating in a large and diverse state have between seven and eleven members.\footnote{\textsc{The High Commissioner for Human Rights}, \textit{Report of the United Nations High Commissioner for Human Rights and Follow-Up to the World Conference on Human Rights, The Present Situation of Human Rights in Iraq}, U.N. Doc. E/CN.4/2005/4 (Jun. 9, June 2004), \textit{available at} http://www.unhchr.ch/html/hchr/docs/iraq1.doc (last accessed Oct. 2, 2007). This reference, made with regards to the importance of establishing a human rights commission in Iraq, noted that a commission operating in a large and diverse country like Iraq would ideally have between seven and eleven members.”}

State practice illustrates human rights commissions vary in size from state to state. Some states have larger commissions or may include options to increase the number of commission members. For instance, the Irish Human Rights Commission has 15 members.\footnote{\textsc{Irish Human Rights Commission Website, Commissioners}, \textit{available at} http://www.ihrc.ie/about_us/commissioners.asp (last accessed Oct. 2, 2007).} In Malaysia, the Human Rights Commission of Malaysia Act 1999 allows for the appointment of up to 20 members.\footnote{Human Rights Commission of Malaysia Act (1999), Act 597, pt. II, art. 5 (1999).} The Malaysian Human Rights Commission initially had thirteen commissioners and now has seventeen commissioners.\footnote{Human Rights Commission of Malaysia Website, Commission Members, \textit{available at} http://www.suhakam.org.my/en/about_com_member.asp (last accessed Oct. 2, 2007).}

In other states, such as India, the number of members is more limited. According to the India Human Rights Act 1993, the human rights commission consists of four members, one Chairperson, and a Secretary-General.\footnote{The Protection of Human Rights Act (India, 1993)), sec. 3, art. 2.} The National Human Rights Commission of Nepal is also relatively small. The Nepalese and Ugandan commissions consist of four members and one chairperson.\footnote{National Human Rights Commission, Nepal Website, NHRC: About Us, \textit{available at} http://www.nhrnceping.org/about_us.php (last accessed Mar. 2, 2007); Uganda Human Rights Commission Act (1997) art. 3(2), \textit{available at}}
Appointment of Members

Amnesty International suggests that the commission’s founding legislation clearly articulate the selection and appointment process for commission members and staff. Both the Paris Principles and Amnesty International recommend that the executive branch of government not have exclusive authority over the appointment procedures, and Amnesty International suggests that the appointment process involve representatives of civil society.

State practice reveals most commissions’ founding legislation provides procedures for appointing the members of a human rights commission. Many states’ legislation requires that the legislative branch advise the executive on the appointment of membership. For instance, the founding legislation of India’s commission requires that the President appoint all members of the commission on the recommendation of a legislative committee.\(^\text{980}\)

Alternately, a state’s President and Prime Minister may coordinate on the nomination and appointment of members. According to the Human Rights Commission of Malaysia Act, the Malay king appoints members of the Human Rights Commission on the recommendation of the Prime Minister.\(^\text{981}\) The king also designates one of the members as Chairman of the commission and the members of the commission elect the Vice-Chairman.\(^\text{982}\) Likewise, the President of Fiji appoints commissioners to the state’s commission in consultation with the prime minister.\(^\text{983}\)

Qualification of Members

International recommendations about the qualifications of members focus on diversity and practical expertise in the fields of human rights protection and prevention. The Paris Principles provide that a procedure ensuring the representation of a wide cross-section of civil society should establish the

\[\text{http://www.uhrc.org/legal\%20instruments/\%5B1014103146\%5DUHRC\%20ACT\%201997.pdf (last accessed Oct. 2, 2007).}\]

\(^{980}\) Protection of Human Rights Act (India, 1993) ch. II, art. 4.1. (India, 1993).


appointment of commission members, whether by election or otherwise.\textsuperscript{984}
Amnesty International recommends that states choose commission members based on proven expertise, knowledge, and experience in the promotion and protection of human rights.\textsuperscript{985}

The founding legislation of many human rights commissions stipulate qualifications for the appointment of members. For instance, according to the Irish Human Rights Commission Act 2000, the government cannot appoint a person to the human rights commission unless that person possesses relevant experience, qualifications, training, or expertise, to fulfill the functions of the Commission.\textsuperscript{986}
The National Human Rights Commission of Mongolia Act requires that a commissioner be a Mongolian citizen of high legal and political qualification, have appropriate knowledge and experience in human rights, have no criminal record, and be at least 35 years old.\textsuperscript{987}

Other states, such as Fiji, place conditions on the appointment of commissioners. According to Fiji’s Human Rights Commission Act, individuals who at the time of their appointment actively engage in politics or in the management of a private for-profit enterprise are not qualified to become commissioners.\textsuperscript{988}

\textit{Diversity of Members}

International standards also support broad diversity among commission members and representation of minority groups. The Paris Principles encourage the selection of commission members with high status and integrity, appropriate human rights expertise, and be representative of the diversity of the society. The Principles provide that human rights commissions reflect in its composition a wide

\textsuperscript{985} AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL’S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.
\textsuperscript{986} Irish Human Rights Commission Act (2000) art. 5.
cross-section of the state, drawing all elements of the population into the decision-making process. 989

Amnesty International recommends that members and staff should include representation of all sections of society, including women, ethnic minorities, and people with disabilities, and who “would have particular relevant experience of the needs of those sectors of society.” 990

State practice reveals that states with mixed ethnic, religious, or racial compositions require their respective human rights commissions to represent all sectors of society. For instance, Malaysia requires that “members of the Commission shall be appointed from amongst prominent personalities including those from various religious and racial backgrounds.” 991 Other states require adequate representation of women on their commissions. The Irish Human Rights Commission Act requires that not less than four of the Commission members be female and not less than four shall be male. 992

Term of Office

The Paris Principles recommend that an official act establish the specific duration of the members’ mandate, and permit its renewal upon assuring the maintenance of the institution's pluralism. A review of state practice reveals that states typically grant commissioners renewable appointments. These cases, however, are generally limited to a single reappointment.


990 AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL’S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS. “The [National Human Rights Institution () NHRI] members and staff should as far as possible include representation of all sections of society, including women, ethnic minorities, and people with disabilities, who may be under-represented in other official bodies and would have particular relevant experience of the needs of those sectors of society. Non-nationals should not be deterred or specifically prohibited from taking up a post at the NHRI.”


The Irish Human Rights Commission Act provides that members of the commission are eligible for reappointment for a second term not to exceed five years. Commissioners in Mongolia are eligible for a single reappointment following their six-year term. While India permits a single five-year reappointment, a commissioner is ineligible for a second term if he has turned 70 years old while in office. Other states, such as Mongolia, allow unlimited reappointment of members. Members of Malaysia’s commission hold office for a period of two years and are eligible for reappointment.

Commission Vacancies

States often prescribe the situations that can lead to a vacancy on the commission and resulting procedures for filling the vacancy. Malaysia’s Human Rights Commission Act, for instance, stipulates that the office of a member becomes vacant upon (1) the death of the member; (2) the resignation of the member; (3) the expiration of his term of office; or (4) the member’s removal from office on any of the grounds that the enabling legislation specifies. South Africa’s Human Rights Commission Act provides that a “vacancy in the Commission shall not affect the validity of the proceedings or decisions of the Commission; and [shall] be filled as soon as practicable.”

The legislation may also provide specific procedures for the vacancy of a commission’s Chairman. This may ensure continuity in the administration and functioning of a commission. India’s National Human Rights Act provides that in the event of a vacancy in the office of the Chairperson of the commission, the President may authorize one of the members to act as the Chairperson until the appointment of a new Chairperson.

Removal Procedures

States may define procedures for the removal of members of a human rights commission, and procedures to ensure the reasons for removal are legitimate.

994 Protection of Human Rights Act (India, 1993) ch. III, art. 6.2.:
998 Protection of Human Rights Act (India, 1993) ch. III, art. 7.1.
Establishing specific removal procedures can help protect the independence and transparency of the commission. This codification ensures that commission members cannot be removed from office without due cause.

Some states limit the government entity or office that has the authority to remove a member of the human rights commission. In South Africa, the national legislature must approve the removal of commissioners from the human rights commission by a large majority.999

Other states specify the reasons for which they can remove a member from the commission. For instance, the removal of a member of the Irish human rights commission may only occur if he is unfit to hold office because of offensive or criminal behavior or if found unfit to perform his duties.1000 The Human Rights Commission of Malaysia Act also outlines a specific removal process.1001 A majority vote of the Council of Representative must confirm a commissioner’s proposed removal.1002

Some states have implemented procedures to protect members of their respective human rights commission from unfounded removal. Mongolia requires legislative review for a period of fourteen days of any proposed removal of a commissioner based on ineligibility to continue his term.1003 Following this time, the legislature must either restore the commissioner’s powers or dismiss him from office.1004

999 South Africa Human Rights Commission Act (1994) art. 3(1)(b).
1001 Human Rights Commission of Malaysia Act (1999) part II, art. 10. The Malaysian President may remove a commissioner if the commissioner (1) is determined to be insolvent by a court; (2) is diagnosed to be mentally or physically incapable of fulfilling the duties of his office; (3) has missed three consecutive meetings of the Commission without obtaining leave from the Commission. The president, on the recommendation of the prime minister, may also remove a commissioner if the president believes that the commissioner “(1) has engaged in any paid office or employment which conflicts with his duties as a member of the Commission; (2) has misbehaved or has conducted himself in such a manner as to bring disrepute to the Commission; or (3) has acted in contravention of the Human Rights Commission of Malaysia Act and in conflict with his duties as a member of the Commission.”
Funding and Reporting of Commission

Funding

International recommendations regarding funding national human rights commissions focus on providing adequate financial resources and ensuring a commission’s independence. According to the Paris Principles, a Human Rights Commission shall be funded so as “to enable it to have its own staff and premises, in order to be independent of government and not be subject to financial control which might affect its independence.” It can also be important to establish a commission’s funding in national legislation so that only legislative action may remove or reduce funding.

In some states, such as Malaysia and Fiji, the commissions can receive funding from both the government and other parties. The Fiji Human Rights Commission receives monetary support from Parliamentary-appropriated funds. In addition, the Fiji commission may also receive support from “all other moneys lawfully received by the commission for its purposes.”

The Malaysian commission’s ability to receive funds is subject to limitations to protect the commission’s independence. Malaysia requires that the commission receive adequate funding to function effectively. The Government is to provide the commission with the necessary funding, and the commission cannot receive funds from foreign sources. Nevertheless, the commission may receive funds unconditionally from any individual or organization that is solely for promoting human rights awareness and education.

Review of a commission’s funding sources can be important for increasing transparency and reducing potential allegations of bias. While financial support for the Fiji Human Rights Commission may potentially come from any source, legislation also requires the Auditor General to review the accounts of the

Similarly, according to the National Human Rights Commission of Mongolia Act, the state budget finances the Mongolia commission’s expenses. Accordingly, the legislature approves and monitors the budget of the commission.

**Reporting Requirements**

Many states require human rights commissions to report to the state’s legislature. These reports take various forms including annual reports, research findings, and recommendations. This accountability can help to ensure the independence of the commission by reducing the ability of a commission to serve the interests of only one group or political party.

The Irish Human Rights Commission is required to prepare and submit an annual report on its activities to the Minister for Justice, Equality, and Law Reform, and to the legislature. The Malaysian commission is likewise required to submit an annual report to the Malay Parliament concerning all its activities. The commission may also prepare and submit other special reports concerning human rights matters it deems pertinent. South Africa requires its commission to submit quarterly reports to the President and Parliament. The purpose of these reports is to submit the findings, conclusions, activities, and recommendations of the Commission. India also requires its commission to submit an annual report to the central government and to any relevant state government implicated in the report. The Indian commission may also submit a report at any time to the central government on important matters.

**DARFUR PEACE AGREEMENT**

The Darfur Peace Agreement (DPA) mandates that the Human Rights Commission established in the Sudan Interim Constitution, shall enjoy full

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1016 Protection of Human Rights Act (India, 1993) ch. IV, art. 20.1.
1017 Protection of Human Rights Act (India, 1993) ch. IV, art. 20.1.
independence, and “shall monitor the application of the rights and freedoms provided herein.”  

The Interim National Constitution provides that the President, in consultation with the Presidency, shall establish “an independent Human Rights Commission consisting of fifteen independent, competent, non-partisan and impartial members. Their appointment shall be representative. It shall be independent in decision-making.” The Commission shall “monitor the application of the rights and freedoms provided for in the Bill of Rights and shall receive complaints on violations thereof.”

SAMPLE LANGUAGE

Article XXX
Guarantees of Independence and Pluralism

(1) The composition of the Human Rights Commission and the appointment of its members shall be established in accordance with a procedure which affords all necessary guarantees to ensure pluralist representation, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations;
(b) Trends in philosophical or religious thought;
(c) Universities and qualified experts;
(d) The national legislature;
(e) Government departments [if these are included, their representatives may be granted an advisory capacity].

(2) To ensure a stable mandate for the members of the Human Rights Commission, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, if the pluralism of the Commission’s membership is ensured.

1018 Darfur Peace Agreement, art. 3, para. 41.
1019 SUDANESE INTERIM NATIONAL CONST. part 8, art. 142.
Article XXX
Governing Principles on Independence

(1) The Human Rights Commission is independent and subject only to the Constitution and the law, and it must be impartial and it must exercise its powers and perform its functions without fear, favor, or prejudice.

(2) Other organs of state, through legislative and other measures, must assist and protect the Human Rights Commission to ensure its independence, impartiality, dignity, and effectiveness.

(3) No person or organ of state may interfere with the functioning of the Human Rights Commission.

(4) The Human Rights Commission is accountable to the national legislature, and must report on its activities and the performance of its functions to the national legislature at least once a year. ¹⁰²¹

Article XXX
Competence and Responsibilities

(1) The Human Rights Commission shall be vested with competence to promote and protect human rights. ¹⁰²²

(2) The Human Rights Commission shall have a broad mandate to:
   (a) Promote respect for human rights and a culture of human rights;
   (b) Promote the protection, development and attainment of human rights; and
   (c) Monitor and assess the observance of human rights in Sudan. ¹⁰²³

¹⁰²¹ This language is drawn from the SOUTH AFRICA CONST. sec. 181 (1996).
¹⁰²² This language is from the United Nations Principles Relating to the Status of National Institutions. See also; Human Rights Commission Act, (Nepal, 1997), Preamble.
¹⁰²³ This language is from the SOUTH AFRICA CONST. sec. 184 (1) (1996).
The Human Rights Commission shall have the following responsibilities:

(a) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which Sudan is a party, and their effective implementation;

(b) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(c) To contribute to the reports that States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to treaty obligations;

(d) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions, and the national institutions of other countries that is competent in the areas of the protection and promotion of human rights;

(e) To assist in the formulation of programs for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(f) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.\textsuperscript{1024}

The Human Rights Commission has the additional powers and functions prescribed by national legislation.\textsuperscript{1025}

OR

The Human Rights Commission may also carry out such activities, as it may deem necessary and appropriate for the enforcement, promotion, and protection of human rights.\textsuperscript{1026}

\textbf{Article XXX}

\textsuperscript{1024} This language is from the United Nations Principles Relating to the Status of National Institutions; Human Rights Commission Act (Nepal, 1997), ch. 3, art. 9, para. 2(i)

\textsuperscript{1025} This language is from the SOUTH AFRICA CONST. sec. 184 (4) (1996).

\textsuperscript{1026} This language is drawn from the Human Rights Commission Act (Nepal, 1997), ch. 3, art. 9, para. 2(m).
Powers of Investigation, Powers to Compel Attendance of Witnesses and Production of Evidence

The Human Rights Commission may require relevant state authorities to provide the Commission with information on the measures that they have taken towards the realization of the rights concerning housing, health care, food, water, social security, education, and the environment.\textsuperscript{1027}

OR

The Human Rights Commission shall, while inquiring into complaints or reports within its jurisdiction have the same powers as a court may have under the prevailing laws of Sudan in respect of the following matters:
(a) Requiring any person to appear before the Commission;
(b) Summoning witnesses and examining them;
(c) Ordering the production of any document;
(d) Requesting any document or copy thereof from any government or public office or the court;
(e) Examining evidence;
(f) Carrying on or causing to be done an on-the-spot inspection, ordering the production of any physical evidence;\textsuperscript{1028}
(g) Any other matter that may be prescribed.\textsuperscript{1029}

Article XXX
Powers of Mediation, Conciliation, or Negotiation

The Human Rights Commission may, by mediation, conciliation, or negotiation endeavor:
(a) To resolve any dispute; or
(b) To rectify any act or omission, emanating from or constituting a violation of or threat to any fundamental right.

OR

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\textsuperscript{1027} This language is from the SOUTH AFRICA CONST. sec. 184 (3) (1996).
\textsuperscript{1028} This language is drawn from the Human Rights Commission Act (Nepal, 1997), ch. 3, art. 11, para. 1.
\textsuperscript{1029} This language is from the National Human Rights Commission Act (India, 1993), ch. 3, art. 13, para. 1.
Commissioners shall exercise the following with respect to making a decision on complaints:
(a) [A list of the powers and responsibilities enumerated in the Human Rights Commission mandate above]; and
(b) To decide the issues by way of conciliation of the parties.\textsuperscript{1030}

\textbf{Article XXX}

\textbf{Members of the Human Rights Commission}

(1) The Human Rights Commission shall consist of not less than [four]\textsuperscript{1031} members and not more than [twenty]\textsuperscript{1032} members.

(2) Members of the Commission shall be appointed by the [President or national legislature] of Sudan.\textsuperscript{1033}

(3) Members of the Commission shall be Sudanese citizens of legal and political qualification, with appropriate knowledge and experience in human rights including those from various religious and racial backgrounds.\textsuperscript{1034}

\textsuperscript{1030} This language is from The National Human Rights Commission of Mongolia Act (2000), art. 17.1.4.

\textsuperscript{1031} The Protection of Human Rights Act (India, 1993) sec 3, art. 2; Human Rights Commission Act (Nepal, 1997) ch. 2, art. 3. This number is drawn from the smallest Human Rights Commissions, in India and Nepal. The Protection of Human Rights Act (India 1993), sec 3, art. 2; Human Rights Commission Act (Nepal 1997), ch. 2, art. 3.

\textsuperscript{1032} Human Rights Commission of Malaysia Act (1999) sec. 5.1. This number is drawn from the largest Human Rights Commission, in Malaysia. Human Rights Commission of Malaysia Act 1999, Sec. 5.1.

\textsuperscript{1033} The National Human Rights Commission of Mongolia Act (2000) art 5.1. This language is drawn from various Human Rights Commission Acts in which the President, Prime Minister, or National Legislature appoint the members of the Commission. In most cases, the members are appointed after being recommended by a different government entity. For instance, in Mongolia, the National Legislature appoints candidates based on proposals from the President, the Parliamentary Standing Committee on Legal Affairs and the Supreme Court. South Africa Human Rights Commission Act of 1994, sec 2.1, 3.1; Human Rights Commission of Malaysia Act 1999, sec. 5.2.

\textsuperscript{1034} This language is drawn from the National Human Rights Commission of Mongolia Act (2000), art 4.1 and the Human Rights Commission of Malaysia Act (1999), sec 5.3.
(4) The members of the Commission may be appointed as full-time or part-time members and shall hold office for such fixed term as the [President or national legislature] may determine at the time of such appointment, but not exceeding [seven] years.\textsuperscript{1035}

**OR**

(4) A single term of office for members of the Commission shall be [between two and six years] and members are eligible for reappointment [only once or indefinitely].\textsuperscript{1036}

**Article XXX**

**Vacancy of Office and Removal from Office**

(1) A vacancy in the Human Rights Commission shall occur:

(a) When a member’s term of office expires;
(b) When a member dies;
(c) When a member’s resignation takes effect;
(d) When a member is removed from office on any of the mandated grounds.\textsuperscript{1037}

(2) A removal from the Human Rights Commission shall occur if:

(a) A member is appointed or elected to another official position;
(b) A member is judged insolvent by a court of competent jurisdiction;
(c) After consulting a registered medical practitioner, the [President or national legislature] is of the opinion that the member is physically or mentally incapable of continuing his office;
(d) The member absents himself from three consecutive meetings without obtaining leave of the Commission;
(e) The [President or national legislature] on the recommendation of the [President or national legislature], is of the opinion that the member:

\textsuperscript{1035} This language is drawn from the South Africa Human Rights Commission Act of 1994, sec. 3.1.

\textsuperscript{1036} This language is drawn from the National Human Rights Commission of Mongolia Act (2000), sec. 6.1, 6.3, and the Human Rights Commission of Malaysia Act (1999), sec. 5.4.

\textsuperscript{1037} This language is drawn from the South Africa Human Rights Commission Act of 1994, sec. 11. See also; Human Rights Commission of Malaysia Act (1999), sec. 9.
(i) Has engaged in any paid office or employment which conflicts with his duties as a member of the Commission;
(ii) Has misbehaved or has conducted himself in such a manner as to bring disrepute to the Commission; or
(iii) Has acted in contravention of this Act and in conflict with his duties as a member of the Commission.\textsuperscript{1038}

**Article XXX**

**Funding**

The Human Rights Commission shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of the funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.\textsuperscript{1039}

**Article XXX**

**Reporting Requirements**

(1) The Human Rights Commission shall submit to the Government of Sudan and the national legislature, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the opinions, recommendations, proposals and reports of the Human Rights Commission shall relate to the following areas:
(a) any legislative or administrative provisions intended to preserve and extend the protection of human rights; the Human Rights Commission shall examine these provisions and if necessary make recommendations on the adoption of new legislation, the amendment of legislation in force, and the adoption or amendment of administrative measures, to ensure that these provisions conform to fundamental principles of human rights;

\textsuperscript{1038} This language is drawn from the National Human Rights Commission of Mongolia Act (2000), sec. 8.1.2; Human Rights Commission of Malaysia Act (1999), sec. 10.
\textsuperscript{1039} This language is from the United Nations Principles Relating to the Status of National Institutions.
(b) Any situation of violation of human rights, which it decides to take up;
(c) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
(d) Drawing the attention of the Government of Sudan to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government.\textsuperscript{1040}

OR

The Human Rights Commission shall submit an annual report to the Government of Sudan and to the regional government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred until submission of the annual report.\textsuperscript{1041}

\textsuperscript{1040} This language is from the United Nations Principles Relating to the Status of National Institutions.
\textsuperscript{1041} This language is from the National Human Rights Commission Act (India, 1993), ch. 4, art. 20, para.1.
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)\textsuperscript{1042} 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,\textsuperscript{1043} South Africa,\textsuperscript{1044} and Ukraine\textsuperscript{1045} clearly state the supremacy of constitution in law.

\textsuperscript{1044}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\(^{1046}\) 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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\(^{1046}\) **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.” The agreement said that the parties would “take all measures to assure adoption of these amendments within 45 days” 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. 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. The DAEC also must assess, evaluate, and resolve difficulties that arise during the implementation process. 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,” and (2) three representatives from the SLM/A and the JEM.

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1048 The Ohrid Agreement, art. 8, sec. 1.
1050 Darfur Peace Agreement, art. 33, para. 511.
1051 Darfur Peace Agreement, art. 33, para. 515, sec. a.
1052 Darfur Peace Agreement, art. 33, para. 512, sec. a.
1053 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.\footnote{Darfur Peace Agreement, art. 33, para. 515, secs. e-f.} 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.”\footnote{Darfur Peace Agreement, art. 33, para. 515, sec. d.}

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.\footnote{Darfur Peace Agreement, art. 18, para. 120.} The FFAMC is in charge of allocating of resources as agreed upon in the DPA.\footnote{Darfur Peace Agreement, art. 18, para. 120.} In order to ensure its independence, the President shall appoint an independent panel of experts recommended by the FFAMC, to monitor its activities.\footnote{Darfur Peace Agreement, art. 18, para. 121.} The Commission must submit a report outlining policy recommendations to the President, which the President shall then submit to the national legislature for approval.\footnote{Darfur Peace Agreement, art. 18, para. 122.}

**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.\footnote{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.}

**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.\footnote{Darfur Peace Agreement, art. 33, para. 515, secs. e-f.}
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].

1061 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 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).

1062 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.
JOINT NATURAL RESOURCE AUTHORITIES

INTRODUCTION

This chapter identifies the core elements of joint natural resource authorities. This chapter also outlines the provisions of the Darfur Peace Agreement (DPA) related to the position or activities of a joint natural resource authority and provides sample language parties may wish to consider when drafting provisions establishing joint natural resource authority.

The allocation of natural resources, including the right to water, is a significant element in ensuring fair access to natural resources by all parties. Joint natural resource authorities promote provincial participation in the control of certain natural resources within a state. The authorities can promote power sharing between the central and provincial governments in respect to disputed natural resources. Further, joint natural resource authorities may encourage and monitor equitable natural resource revenue allocation to central, provincial, and sub-provincial governments.

This chapter begins by examining the core elements of a natural resource authority. Most joint natural resource authorities address petroleum and mineral rights, with the state addressing water rights in a separate agreement or mechanism. Accordingly, this section focuses on authorities that regulate petroleum and mineral extraction. States use various methods to manage natural resources, including using institutions that share power among different levels of government. A joint natural resource authority is composed of representatives of the federal and provincial governments that possess authority to manage natural resources. Although the joint natural resource authority may not have complete control over natural resources, it allows for provincial participation and encourages equitable and responsible regulation.

The DPA addresses natural resource issues in Darfur. The DPA mandates the creation of a Land Commission and calls on all parties to recognize the importance of traditional rights.

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1063 For more information on water rights, see the Water Rights chapter of this guide.
Composition of the Authority

Composition of the joint natural resources authority varies by state depending on the particular circumstances of the state and the represented interests. Some states, like Sudan, use authorities that represent all provinces and the federal government. Other states, like Australia and Canada, use multiple authorities, each composed of the federal government and one province. In both structures, the function of this authority is to represent and protect both federal and provincial interests. This diversity in representation promotes equitable control over natural resources and power sharing.

Australia’s joint authorities are limited to two parties, the central government, and the individual provincial governments. The joint authorities are power-sharing arrangements between the central and provincial governments. Each joint authority is composed of two members, the Australian Government Minister for Resources and the individual province’s Minister for Mines. Each of the two members have the authority to delegate a proxy or agent to act on his behalf in the joint authority.

Like the Australian joint natural resource authorities, the Canada-Nova Scotia Offshore Petroleum Board (the Board) is a joint authority limited to two parties. The Canada-Nova Scotia Offshore Petroleum Board is composed of representatives from the Canadian federal government and the Nova Scotia government. Of the five members on the Board, the Canadian and Nova Scotia

\[\text{footnote text}\]
governments each appoint two members, and the final member is a chairperson jointly appointed by both governments.

**Functions of the Authority**

States allocate a wide variety of authority to joint natural resource authorities. In some states, the authority has near complete control over maintenance, regulation, and licensing of petroleum resources; while other states create a more limited role for the authority. States will tailor the power allocated to the authority depending on the particular government structure of the state, the location of resources, and the capabilities of the parties involved.

**Competencies of Joint Authorities**

Some joint authorities exercise control over the daily operations of petroleum resources. The Canada-Nova Scotia Board of Petroleum Resources has control over most daily administrative decisions and is the primary point of contact for third parties involved in petroleum exploration and extraction. In this respect, the Board operates in the offshore area as the Nova Scotia Department of Energy operates within provincial boundaries. Other joint authorities have more limited responsibilities. In Greenland, the Joint Committee on Mineral Resources has limited power and does not possess binding authority. It functions as an advisory body to the governments of both Greenland and Denmark.

Other joint authorities are involved in policy-making and strategic planning in regards to natural resources and petroleum. The Joint Committee on Mineral Resources in Greenland limited advisory authority. Although the Joint Committee has no binding authority, it is the only official forum for discussion of resource issues between the two governments, and therefore, serves an important function.

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1068 CANADA-NOVA SCOTIA OFFSHORE PETROLEUM BOARD, OFFICIAL WEBSITE.
The majority of joint authorities are responsible for licensing and contracting of petroleum or natural resource exploration and extraction rights. In Australia, the joint authority issues grants, revokes licenses, and regulates existing license agreements to explore, drill, and extract petroleum.\footnote{MINERAL AND PETROLEUM EXPLORATION & DEVELOPMENT IN AUSTRALIA: A GUIDE FOR INVESTORS, 1, \textit{available at} http://www.investaustralia.gov.au/media/IR_MIN_Exploration_and_Mining_Legislation_Offshore.pdf (last accessed Sept. 21, 2007).} The Canada-Nova Scotia Board of Petroleum Resources also issues some discovery and production licenses, approves development plans, and makes decisions regarding operating licenses and authorizations for work.\footnote{Canada-Nova Scotia Offshore Petroleum Resources Accord (1986), art. 12, \textit{available at}, http://www.cnsopb.ns.ca/regulatory/pdf/Accord.pdf (last accessed Sept. 3, 2007).} In Greenland, the Joint Committee on Mineral Resources is encouraged to comment on the granting of prospecting, exploration, or production licenses.\footnote{GREENLAND BUREAU OF MINERALS AND PETROLEUM, \textit{available at} http://www.bmp.gl/administration/legal_foundations.html (last accessed Sept. 3, 2007).} In Jordan, the Natural Resource Authority (NRA) regulates minerals and petroleum reserves by issuing permits and licenses for extraction. The NRA also may recommend policies regarding resource extraction to the national government.\footnote{JORDAN NATURAL RESOURCE AUTHORITY, \textit{ABOUT Us, available at} http://www.nra.gov.jo/side.htm (last accessed Sept. 21, 2007).}

\textit{Limits on Authority Decisions}

Some states limit the authority of joint natural resource authorities by providing for appeal of decisions or requiring approval of certain actions. In Nova Scotia, while the Board of Petroleum Resources has considerable power over certain exclusive responsibilities, its decisions over other matters are subject to challenge and review by representatives of the central government or government of Nova Scotia.\footnote{Canada-Nova Scotia Offshore Petroleum Resources Accord (1986), art. 12.} The federal and provincial ministers or, in some instances, solely the provincial minister, may veto particular decisions of the board.\footnote{Canada-Nova Scotia Offshore Petroleum Resources Accord (1986), art. 34.}

\textbf{Devolution of Natural Resource Authority in Peace Agreements}

Agreements on natural resource allocation may play significant roles in resolving disputes. During the negotiations between Indonesia and the Free Aceh
Movement fighters, the Indonesian central government granted Aceh 70 percent of all revenue from oil and natural resources within Aceh territory. In exchange for this condition, the Free Aceh Movement gave up its decades-long fight for independence. Indonesia then allocated Aceh a significant amount of political authority and self-governance. The willingness of Indonesia’s central government to relinquish this control over natural resources in Aceh played a large role in the Free Aceh Movement’s decision to sign the peace agreement.\footnote{Special Autonomy for the Province of Ache Special Region as the Province of Nanggro Ache Darrusalam, Law No. 18/2001, \textit{available at} http://gtzsfdm.or.id/documents/laws_n_regs/laws/2001/Law18_2001.pdf (last accessed Sept. 24, 2007).} 

Natural resources played a pivotal role in ending the conflict between Bougainville and Papua New Guinea. A copper mine in Bougainville generated approximately one-sixth of Papua New Guinea’s tax revenue. Under an agreement between Bougainville and Papua New Guinea’s central government, Bougainville received surface, but not subsurface, title to the lands in the Bougainville territory. In return, the Bougainville government must approve all major development projects on the land. In addition, mine development that affects the surface rights of Bougainville citizens must include adequate compensation for these citizens.

**DARFUR PEACE AGREEMENT**

While the 2006 Darfur Peace Agreement (DPA) does not explicitly create a Natural Resource Authority, it contains several provisions regarding the allocation of natural resources.\footnote{Darfur Peace Agreement.} For example, the DPA declares that the parties “agree to establish a mechanism to introduce processes for ensuring the sustainable use and control of land and other natural resources.”\footnote{Darfur Peace Agreement, art. 17, para. 111.} Further, the agreement provides that provinces with natural resources have the “right to negotiate and to be granted the negotiated share of revenue generated there from.”\footnote{Darfur Peace Agreement, art. 20, para. 161.}

The DPA creates a Land Commission that addresses the issue of traditional rights to land, land management, and natural resource extraction.\footnote{Darfur Peace Agreement, art. 20, paras. 163-169.} Additionally,
the DPA addresses natural resources issues in Darfur.\textsuperscript{1081} The DPA calls for the establishment of a “system for regulating land use planning and the development of natural resources that shall apply to land in Darfur, including land owned by the [Government of Sudan], for development and other national projects.”\textsuperscript{1082} The DPA also mandates that the local government in Darfur enact legislation to create an authority to address land use issues.\textsuperscript{1083}

**SAMPLE LANGUAGE**

**Article XXX**

*Establishment of Joint Authority*

For the purposes of this agreement, there is established a Joint Authority consisting of the [National Government Minister] and the [Provincial Minister].\textsuperscript{1084}

**Article XXX**

*Composition of the Authority*

*Natural Resources Commission*

(1) The Parties agree that an independent National Resources Commission (NRC) shall be established [the parties may wish to declare exactly when and how the commission will be created] and its decisions shall be by consensus.

**OR**

**Article XXX**

(1) **Constitution of the Board**

(a) The Parties agree to establish, by legislation, a Sudan—Darfur Natural Resources Board (“the Board”) and to empower the Board to act in all

\textsuperscript{1081} Darfur Peace Agreement, art. 20, para. 170-1.

\textsuperscript{1082} Darfur Peace Agreement, art. 20, para. 170.

\textsuperscript{1083} Darfur Peace Agreement, art. 20, para. 173.

\textsuperscript{1084} This language is drawn from the Petroleum (Submerged Lands) Act 1967 (Australia) sec. 8(a).
such matters relating to Resources as are in accordance with this Accord.

(b) Subject to the terms of this Accord, the Board shall be an independent board.

(c) The Board shall consist of five members, including the Chairman, none of whom shall act as representatives of either Party.

(2) **Appointment of Members**

(a) The Chairman of the Board shall be appointed jointly by the Parties for a term of six years.

(b) The other members of the Board may be appointed jointly, or in the alternative, each Party may appoint two members.

(c) At any given time, no more than two members of the Board may be public servants, and no more than one member appointed by each Party shall be a public servant.

(d) Where the Parties fail to agree on the appointment of the Chairman either Party may, by notice to the other, require the submission of the candidates’ names to a panel of three arbitrators appointed, who shall appoint the Chairman from among the candidates nominated by each Party.

(e) Each member of the Board shall be appointed for a term of six years.

(f) Of the members first appointed, other than the Chairman, one shall be appointed by each Party for a term of four years and one shall be appointed by each Party for a term of five years.

(g) The members appointed for terms of four or five years may be among those members appointed jointly.

(h) An alternate member may be appointed to serve in the absence or incapacity of a member by the Party or Parties that appointed the member.

(i) Each member of the Board who is not a public servant holds office during good behavior but may be removed for cause by the Party or Parties that appointed the member.\(^{1085}\)

OR

\(^{1085}\) This language is drawn from Canada-Nova Scotia Offshore Petroleum Resources Accord (1986).
Article XXX

(1) The Authority Board of Directors shall be Composed of the Minister as Chairman and the membership of [list desired ministry representatives and others].

(2) The Board selects a Vice-Chairman from its members. At least five of the members must be present at a meeting to establish a quorum, and decisions shall be taken by a majority of votes of not less than five of the members present.

(3) The Board shall meet under the chairmanship of the President and in case of his absence his Vice President presides over and if both are absent, the Board elects a temporary chairman for the session.

(4) The Board may, if it deems appropriate, request experts, consultants, officials or supervisors to attend its meetings for seeking their advice without having the right to vote.1086

Article XXX
Functions of the Authority

(1) The Natural Resource Board shall have the following functions:
   (a) Formulate public policies and guidelines in relation to the development and management of the petroleum or natural resources sector;
   (b) Monitor and access the implementation of these policies to ensure that the work in the best interests of the people of Sudan;
   (c) Develop strategies and programs for the petroleum or natural resources sector;
   (d) Negotiate and approve all oil contracts for the exploration and development for natural resources in the Sudan, and ensure they are consistence with the principals, policies and guidelines of this act;

(e) Develop its internal regulations and procedures.\textsuperscript{1087}

OR

\textbf{Article XXX}

(1) A Joint Authority has such functions as are conferred on it by [the implementing legislation] in relation to the operation of this [legislation] in respect to all areas in respect of which the Joint Authority is established.\textsuperscript{1088}

(2) An Authority called the “Natural Resources Authority” shall be established in accordance with this Law and shall be entrusted with the responsibility of prospecting, geological and economic studies needed for the natural resources, supervising technically the methods of mining [or other natural resource extraction], and exploiting such in accordance with the provisions of this Law.\textsuperscript{1089}

\textsuperscript{1087} This language is drawn from The Protocol on Wealth-Sharing (Sudan, 2004), art. 3.4.

\textsuperscript{1088} This language is drawn from Petroleum (Submerged Lands) Act 1967 (Australia) sec. 8(c), \textit{available at} http://bar.austlii.edu.au/au/legis/cth/consol_act/pla1967267/s8c.html (last accessed Sept. 24, 2007). The Australian Petroleum (Submerged Lands) Act 1967 tasks the Joint Authority with numerous responsibilities including the issuing: Division 2: Exploration Permits for Petroleum; Division 2A: Retention of Leases for Petroleum; Division 3: Production Licenses for Petroleum; Division 3A: Infrastructure Licenses; Division 4: Pipeline Licenses; Division 5: Registration of Instruments; Division 6-7: Safety and Health Provisions. \textit{Petroleum (Submerged Lands) Act 1967} (Australia), \textit{available at} http://bar.austlii.edu.au/au/legis/cth/consol_act/pla1967267/index.html#s8c (last accessed Sept. 24, 2007).

\textsuperscript{1089} This language is drawn from Law No. 12 for the Year 1968 The Organization of Natural Resources Affairs Law (Jordan, 1968) art. 3-7.
MINORITY PROTECTIONS

INTRODUCTION

This chapter identifies the core elements of the various mechanisms states use to protect minorities through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement related to minority protections and provides sample language parties may wish to consider when drafting provisions establishing minority protections.

A state may choose to indicate which groups have minority status. A state may also choose to indicate that other unnamed minorities who meet certain qualifications can claim minority protections or rights. States may also include a provision that mandates adherence to international treaties and conventions that protect minority rights.

A state may provide for mechanisms to encourage the inclusion of minorities in the executive or legislative branch of the central government. In the executive, this inclusion may take the form of a designated ministry of minority affairs or a committee responsible for policies related to minority rights. A state can ensure inclusion of minorities in the legislature through various mechanisms including: (1) setting aside seats in the legislature for minority representatives; (2) providing representation in the legislature for minority populations that gain a minimal threshold in an election; (3) establishing committees to review minority-related legislation; or (4) requiring specific voting procedures for passage of such legislation.

The 2006 Darfur Peace Agreement (DPA) includes several protection and representation mechanisms and provides general provisions that protect religious practices, language, and cultural customs. The DPA established protections for minority education systems and requires the government to ensure equality in educational standards.\(^\text{1090}\) The DPA also provides for minority representation in the executive, legislative, and judicial branches of government.\(^\text{1091}\) Minorities are

\(^{1091}\) Darfur Peace Agreement, art. 1, para. 11; art. 2, para. 18.
also to have positions in the police, armed forces and in economic and monetary institutions. \footnote{Darfur Peace Agreement, art. 17, para. 106(c).}

**CORE ELEMENTS**

**General Provisions for the Inclusion of Cultural, Ethnic, and Religious Minorities**

Many constitutions and peace agreements specifically provide for the inclusion of minority groups in the central government, as well as the preservation of religious practices, language, and cultural heritage. A state may choose to name specific groups that can claim minority status and benefit from these provisions. For example, Turkish law identifies minorities by religion as “non-Muslims,” specifically naming Greeks, Armenian Christians, and Jews as the minority populations. \footnote{The Convention Relating to the Regime of the Straits, July 24, 1923, available at http://www.lib.byu.edu/~rdh/wwi/1918p/straits.html#gt2 (last accessed, Sept. 20, 2007); Convention Concerning the Exchange of Greek and Turkish Populations, Jan. 30, 1923, available at http://www.lib.byu.edu/~rdh/wwi/1918p/straits.html#gt2 (last accessed, Sept. 20, 2007). Minority protections in Turkey are governed by The Convention Relating to the Regime of the Straits and the Convention Concerning the Exchange of Greek and Turkish Populations.}

The Slovene Constitution permits the adoption of Italian and Hungarian as national languages in “ethnic areas” (which are determined by statute) and guarantees the rights of Italians and Hungarians to develop their own educational curricula. \footnote{SLOVENIA CONST. arts. 5, 11, 64 (1991), available at http://www.dz-rs.si/index.php?id=351&docid=25&showdoc=1 (last accessed, Sept. 20, 2007).}

Peace agreements and constitutions that make provisions for specific minority or ethnic groups may prevent members of other minority groups from utilizing the same protections. For this reason, some states name specific groups and provide a catchall phrase that will apply to all minorities not specifically mentioned by the provision. The Iraqi Constitution, for instance, names certain minority groups, including the Armenian, Assyrians, Chaldeans, and Turkomen, as having specific political, cultural, and educational rights, but also indicates these rights extend to the state’s “various nationalities.”\footnote{IRAQ CONST. art. 125 (2005). Article 125 of the Iraq Constitution guarantees “(guaranteeing, “administrative, political, cultural, and educational rights of the various}
Other states ensure the protection of minority groups without naming a particular group. Instead, these states list what criteria a minority group must possess in order to trigger specific protections. In Macedonia, the agreement that ended the conflict between ethnic Albanians and ethnic Macedonians did not expressly recognize Albanian as a second official language. Instead, it declared any language spoken by at least 20 percent of Macedonia’s population an official language. Approximately 25 percent of Macedonia’s population is ethnically Albanian.

A state may also codify specific criteria for determining a group’s status as minority. Although no universal definition of minority exists, a state may adopt language similar to the United Nations. It is also common state practice for a state’s constitution to include provisions mandating adherence to obligations under international agreements, among which may be the International Covenant on Economic, Social, and Cultural Rights, and the International Convention on the

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1097 The Ohrid Agreement, Aug. 13, 2001, art. 6, sec. 5; art. 9, Annex A, art. 7 (providing that “Any other language spoken by at least 20 percent of the population is also an official language, as set forth herein.” The only language to satisfy this requirement is Albanian; Annex A, proposed Amendment to Article 7 of the Macedonian Constitution, which contains changes to reflect recognition of the Albanian language as an official language of Macedonia.).


1099 For more information on the United Nations’ designation of cultural, ethnic, and religious minorities see The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly Resolution 47/135 (Dec. 18, 1992). OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, MINORITY RIGHTS, UNITED NATIONS FACT SHEET NO.18 (REV.1). The UN defines a minority group as “a non-dominant group of individuals who share certain national, ethnic, religious or linguistic characteristics which are different from those of the majority population.”

Elimination of All Forms of Racial Discrimination. Both Conventions include references to non-discrimination policies.

**Executive Branch Mechanisms**

A state may also provide specific mechanisms within its executive branch to encourage the inclusion of minorities. These mechanisms may take the form of a ministry to oversee the protection of minority populations. For example, Pakistan has a Ministry of Minorities tasked with working for the protection of the country’s religious minorities.

Some states create an executive council or committee dedicated to minority affairs. This committee may be an official institution of the government, such as the Council for National Minorities of the Government of the Czech Republic. This consultative committee, headed by a member of the Czech government, reviews, prepares reports, and proposes distribution ratios of government resources to minority populations.

A number of states have established commissions made up of non-governmental actors but overseen by their respective central governments. This is the case in Romania, where a governmental decree established the Department for the Protection of National Minorities to oversee a Council for National Minorities. The Council is comprised of non-government organizations and is responsible for distributing government funds to different organizations that promote the interests of ethnic minority communities. State practice illustrates that such

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1102 Ministry of Minorities of Pakistan, available at http://www.pakistan.gov.pk/ministries/index.jsp?MinID=33&cPath=519 (last accessed, Sept. 12, 2007). The Pakistan Ministry of Minorities is responsible for safeguarding the rights of minorities; promotion of welfare of minorities; protection of minorities against discrimination; representation of Pakistan in international bodies and conferences relating to minorities, including the UN Sub-Commission on Prevention of Discrimination to Minorities, International Agreements and commitments in respect of minorities and their implementation; all other matters relating to minorities; Evacuee Trust Property Board; and Policy and legislation with regard to evacuee trust property.

commissions are better able to advocate for the rights of minority groups if they maintain some level of fiscal and organizational independence from the executive branch.

**Legislative Mechanisms**

A state may also use various methods through which to address the interests of ethnic and cultural minorities within its legislature. These include setting aside seats in the legislature for minority representatives; providing for representation for minority populations that gain a minimal threshold of votes in an election; and establishing committees to review minority-related legislation or requiring specific voting procedures for passage of such legislation.

**Legislative Set-Asides**

Setting aside a specific number or percentage of seats for representatives elected from minority groups may increase minority representation. Such set asides may ensure a minimal level of representation for cultural, ethnic, or religious minorities in a state’s legislative body. For example, the Rambouillet Interim Agreement in Kosovo reserved 30 of 120 seats in the national legislature for members of minority communities.  

Likewise, the Croatian constitution reserves five of 153 seats in the unicameral assembly. Parties and alliances contesting the 14-multimember Group Representation Constituencies in Singapore must include an ethnic minority candidate on the ticket; ensuring that at least nine of the 93-member national legislature’s seats go to Malays and five to Indians or


1104 Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, ch. 1, art. 2, sec. 1, para b(i), (ii), available at http://www.usip.org/library/pa/kosovo/kosovo_rambouillet.html#frame2 (last accessed, Sept. 21, 2007). Pursuant to the Rambouillet Interim Agreement for Peace in Kosovo, communities whose members constitute more than 5 percent of the population shall divide thirty of the 160 seats in the General Assembly equally, and presumes that the Serb and Albanian populations shall meet the 5 percent threshold.

other minorities. Lastly, the Slovenian constitution allots the both the Italian and Hungarian populations one deputy each in the state’s 90-member National Assembly.

A state may also divide seats in its national legislature among representatives of specific groups. The Bosnia-Herzegovina Constitution allots one-third of the seats in the House of Peoples to Serbians, and two-third of the seats in the House of Representatives to the Croatian and Bosnian (five Croatian seats and five Bosnian seats) communities. This system assures the Croatian community, with about 14 percent of the state’s population, one-third community representation in the House of Peoples. Bosnians, however, who make up the majority of the population, only have one-third of the delegates to the House of Peoples, and hold less than a majority of the seats in the House of Representatives.

**Minimum Threshold for Minority Representation**

A state may also provide for guaranteed representation of a minority or political party based on the percentage of votes received in a national legislature election. This can provide a mechanism through which a politically unified cultural, ethnic, or religious minority can gain representation in a state’s legislature. In Romania, for instance, if a political party based on ethnic identity of a “national minority” does not win a seat in the national legislature, it has the right to one seat.

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1109 BOSNIA AND HERZEGOVINA CONST. art. 4, para. 1 (1995).
1111 THE CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK, BOSNIA AND HERZEGOVINA.
1112 BOSNIA AND HERZEGOVINA CONST. art. 4, para. 2 (1995); THE CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK, BOSNIA AND HERZEGOVINA.
**Legislative Committees**

A state may also create a committee within its legislature to address minority rights and interests. Macedonia’s 2001 Ohrid Agreement calls for the unicameral National Assembly to establish a Committee for Inter-Community Relations composed of members of the Assembly who belong to several ethnic groups. This committee considers issues of inter-community relations and makes proposals for the resolution of disputes.\(^{1114}\)

**Specific Voting Provisions for Legislation Affecting Minorities**

To prevent the hasty passage of legislation detrimental to members of particular minority groups, a state may require a specific procedure for the adoption of such laws. A state may permit a hold on bills under review, which is the case in Belgium. If three-quarters of the national legislature’s members from one of the linguistic communities believes a provision of a draft bill or a motion is “of a nature to gravely damage relations between the [linguistic] communities,” they can require the national legislature to suspend standard processes for 30 days to allow a review of the bill by the legislature’s Council of Ministers.\(^{1115}\)

A state may also enact specific provisions for the passage of legislation that affects a minority. The Macedonia Ohrid Agreement, for example, requires minimum thresholds of community support within the National Assembly for certain issues, particularly local self-government, the rights of member

\(^{1114}\) The Ohrid Agreement, Aug. 13, 2001, art. 9, Annex A, arts. 69, 78. The Ohrid Agreement calls for a committee composed of members of the Assembly who belong to several ethnic groups, in the following proportions: seven Macedonians, seven Albanians, and five members from among the Turks, Vlachs, Romanies, and two other communities. The Assembly elects the members of the Committee. The Committee considers issues of inter-community relations and makes proposals for their resolution votes of those Representatives claiming to belong to minority communities.

\(^{1115}\) BELGIUM CONST. art. 54 (1993), available at http://www.fed-parl.be/gwuk0004.htm#E12E4 (last accessed, Sept. 21, 2007). To prevent abuse, protective motions cannot be invoked against budgets or laws requiring a special majority. Additionally, each linguistic group is limited to using the protective motion once on each bill or motion. Belgium also provides an additional protection for its linguistic minorities in the election of the Public Attorney, for which there must be a majority of the votes of those Representatives claiming to belong to minority communities.
communities, and the selection of Supreme Court justices.\textsuperscript{1116} Alternatively, a state may mandate the participation of national legislature members from certain groups to pass legislation. In Bosnia and Herzegovina, for example, nine members of the 15-member House of Peoples constitute a quorum, if at least three Bosnian, three Croatian, and three Serbian delegates are present.\textsuperscript{1117}

**Supplementary Mechanisms**

In addition to provisions for effective inclusion of ethnic and cultural minorities in a state’s executive, legislative, or judicial branch, a state may choose to implement supplementary mechanisms to ensure these members of minority groups have access to government services. Such mechanisms can provide avenues through which these members of minority groups can advocate for their interests and report allegations of discrimination.

It is common state practice to provide for a human rights commission.\textsuperscript{1118} A commission may be legally mandated but remain independent from the government. A state may also elect or appoint an official to investigate complaints of discrimination. Hungary, for example, has an Ombudsman for the Protection of National and Minority Rights. Elected by a two-thirds national legislature vote, the Ombudsman is responsible for investigating allegations of abuse and initiating legal redress for violations.\textsuperscript{1119}

**Targeted Programs for Cultural, Ethnic and Religious Minorities**

If a minority population is exceptionally underprivileged or was subject to discrimination, a state may choose to implement targeted programs to address these inequalities. For example, the United States requires businesses that receive government funds over a certain amount to take affirmative action to ensure

\textsuperscript{1116} The Ohrid Agreement, Aug. 13, 2001, art. 5. For laws that directly affect culture, use of language, education, personal documentation, and use of symbols, to be adopted, they must receive both a majority of total Representative votes, as well as “a majority of the votes of the Representatives claiming to belong to the communities not in the majority in the population of Macedonia.”

\textsuperscript{1117} BOSNIA AND HERZEGOVINA CONST. art 4, para. 1(b) (1995).

\textsuperscript{1118} For more information on human rights commissions, see Human Rights Commissions chapter of this guide.

equality in their hiring of employees, especially with regard to members of ethnic minority groups, women, war veterans, and disabled persons. This ensures that companies and universities that obtain federal funds cannot discriminate against minorities.\(^\text{1120}\)

**DARFUR PEACE AGREEMENT**

**General Provisions for the Inclusion of Cultural, Ethnic and Religious Minorities**

The Darfur Peace Agreement (DPA) provides for the right of ethnic and cultural communities “to practice their beliefs, use their languages, and develop their cultures within their customs.”\(^\text{1121}\) Furthermore, the DPA requires the Government of Sudan to formulate macroeconomic policies that promote the quality of life and living conditions of all its citizens without discriminating because of “geographical location, race, ethnicity, religion, language, political affiliation or gender.”\(^\text{1122}\)

**Educational Institutions**

The DPA extends minority protections to the state’s educational system by requiring the Government of Sudan to improve the educational system in Darfur to meet national education standards.\(^\text{1123}\) The DPA also requires that the Government of Sudan to “promote the educational interests of the disadvantaged Darfurians”\(^\text{1124}\) by providing flexible eligibility requirements,\(^\text{1125}\) and exempting tuition fees for Darfuri students for five years.\(^\text{1126}\) The DPA also requires that Darfurians be

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\(^{1121}\) Darfur Peace Agreement, art. 3, sec. 39.

\(^{1122}\) Darfur Peace Agreement, art. 137.

\(^{1123}\) Darfur Peace Agreement, art. 14, para. 87.

\(^{1124}\) Darfur Peace Agreement, art. 14, para. 86. The DPA requires the government to take these actions at the primary, intermediate, secondary, and university levels.

\(^{1125}\) Darfur Peace Agreement, art. 14, para. 86(a).

\(^{1126}\) Darfur Peace Agreement, art. 14, para. 86(a).
“fairly represented” in leadership positions at the public universities both in Darfur and in the capital.\textsuperscript{1127}

**Government Inclusion**

The DPA also provides for minority representation in government institutions including the executive branch, legislative branch, judicial branch, national civil service, national armed forces, police, and intelligence services.\textsuperscript{1128} Where appropriate, precedents and population size should determine Darfurian representation at all levels of the federal government.\textsuperscript{1129}

*Executive Branch*

The DPA requires that the President of Sudan consider the importance of including Darfurians, when making official appointments.\textsuperscript{1130} Additionally, the DPA reserves three executive positions for Darfurians, including the Senior Assistant,\textsuperscript{1131} the Chairperson of the Transitional Darfur Regional Authority,\textsuperscript{1132} and a Presidential Advisor.\textsuperscript{1133}

*Legislative Branch*

The DPA reserves a minimum of twelve seats in the National Assembly for nominees of the Sudanese Liberation Movement/Army (SLM/A) and the Justice

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\textsuperscript{1127} Darfur Peace Agreement, art. 14, para. 85.  
\textsuperscript{1128} Darfur Peace Agreement, art. 1, para. 11; art. 2, para.18. Representation “shall reflect at all level a fair and equitable representation of all citizens, including those from Darfur.” Requirements concerning qualifications and competence must be taken into account when making available positions to Darfurians.  
\textsuperscript{1129} Darfur Peace Agreement, art. 2, para. 17.  
\textsuperscript{1130} Darfur Peace Agreement, art. 8, para. 64.  
\textsuperscript{1131} Darfur Peace Agreement, art. 8, paras. 65-66. The Senior Assistant will be a member of the National Council of Ministers, the National Security Council and the National Planning Council and will have influence over national policies. The Senior Assistant shall be the fourth ranking member in the Presidency.  
\textsuperscript{1132} Darfur Peace Agreement, art. 8, para. 65.  
\textsuperscript{1133} Darfur Peace Agreement, art. 8, para. 67. The Presidential Advisor must be chosen from “among Darfurians.”
and Equality Movement (JEM). The DPA also requires that representatives have no direct affiliation to a political party. Finally, the DPA delegates authority over issues concerning Darfur regional representation in the Council of States to the Darfur-Darfur Dialogue and Consultation conference.

**Judicial Branch**

The DPA mandates the adequate representation of Darfurians in the “Constitutional Court, the National Supreme Court and other National Courts, as well as in the National Judicial Service Commission by competent and qualified lawyers.”

**National Civil Service**

Pursuant to article 11 of the DPA, the National Civil Service should be representative of the Sudanese people. The DPA also establishes a National Civil Service Commission to ensure adequate Darfurian representation in the National Civil Service, and a Panel of Experts to address the long-term goals of increasing Darfurian representation in all levels of the National Civil Service.

**Armed Forces, Law Enforcement Agencies and National Security**

The DPA requires the fair and equitable representative of all citizens, including Darfurians, at all levels of the Sudanese Armed Forces and other security

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1134 Darfur Peace Agreement, art. 9, para. 71. The agreement “highly” recommends that some women be nominated. Darfur Peace Agreement, art. 9, para. 71. For more information on women’s rights see the Women’s Rights chapter of this guide.

1135 Darfur Peace Agreement, art. 9, para. 72.

1136 Darfur Peace Agreement, art. 9, para. 72.

1137 Darfur Peace Agreement, art. 10, para. 73.

1138 Darfur Peace Agreement, art. 11, para. 74. The DPA emphasizes the importance of having minority representatives at the middle and senior levels of the National Civil Service.

1139 Darfur Peace Agreement, art. 11, para. 75.

1140 Darfur Peace Agreement, art. 11, para. 76, 77. To implement these initiatives, the DPA requires the Government of Sudan to: (1) establish objectives in middle and upper level positions. (2) reserve certain posts for “qualified women;” (3) create policies and take affirmative action on training and recruiting qualified Darfurians; and (4) review the policies and programs after three years and make changes where appropriate.
organizations. The DPA provides for the reintegration of all former combatants into the Sudanese Armed Forces, law enforcement agencies, and security services. In addition to the integration of former combatants, the Government of Sudan must take action to remedy imbalances at the senior level of the military and any imbalances in the admission of students to the military academies. The DPA also provides employment opportunities in law enforcement to all Sudanese citizens, and mandates that the law enforcement agencies of the national capital be representative of the Sudanese population.

Other National Institutions, Commissions and the National Capital

The DPA includes a catchall phrase allowing Darfurians, including members of the SLM/A and JEM, to participate in national institutions and Constitutional Commissions not elsewhere specified in the DPA.

Pre-Election Power Sharing with Darfur

Prior to provincial elections, which are to be held in accordance with the provisions of the Interim National Constitution, the DPA establishes a system of shared powers in the three Darfurian provinces. One of the Governors and two Deputy Governors from the other two states will be SLM/A and JEM nominees. The DPA increases, the number of seats in provincial legislatures to seventy-three representatives from the Darfur provinces. The DPA allots twenty-one seats in

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1141 Darfur Peace Agreement, art. 1, para. 11; art. 12, para. 79.
1142 Darfur Peace Agreement, art. 12, para. 80. Integration must be done pursuant to guidelines set out in Chapter 3 of the Darfur Peace Agreement.
1143 Darfur Peace Agreement, art. 12, para. 81.
1144 Darfur Peace Agreement, art. 12, para. 82.
1145 Darfur Peace Agreement, art. 15, para. 90.
1146 Darfur Peace Agreement, art. 13, para. 84. In particular, this includes, the National Constitutional Review Commission, the National Elections Commission, the Population Census Council and the Technical ad hoc Border Committee that is charged with demarcating precisely the January 1, 1956 North/South borderline.
1147 Darfur Peace Agreement, art. 16, para. 91(a)-(b). The agreement also provides the SLM/A and JEM the nomination of “[t]wo ministerial positions and one senior Advisor in each of the three states of Darfur, and... at least one person at a senior level in each state ministry.”
1148 Darfur Peace Agreement, art. 16, para. 91(c).
Minority Rights in Wealth Sharing

The DPA provides mechanisms for the representation of minorities in the four institutions established by the DPA’s wealth sharing provisions: Financial Allocation and Monitoring Commission (FFAMC); the Darfur Reconstruction and Development Fund (DRDF); the Darfur Rehabilitation and Resettlement Commission (DRRC); and the Compensation Commission. The parties agree on the need to provide “fair representation” in government institutions that formulate and implement monetary policies.\(^{1150}\)

The FFAMC, which is responsible for implementing the DPA’s wealth sharing provisions, provides Darfuri representation in the central government's economic policies.\(^{1151}\) The DRDF is responsible for soliciting domestic and international funds and disbursing these funds for the resettlement, rehabilitation and reintegration of displaced persons. The DRDF is also required to use these funds to build Darfur's infrastructure.\(^{1152}\) The DRRC is responsible for assisting displaced persons who want to return to their places of origin.\(^{1153}\) To adjudicate property disputes that arise from resettlement, the DPA requires the DRRC to establish independent Property Claims Committees (PCC).\(^{1154}\)

The DPA also calls for the establishment by Presidential Decree of a Compensation Commission\(^{1155}\) to adjudicate victims compensation claims.\(^{1156}\) The

\(^{1149}\) Darfur Peace Agreement, art. 16, para. 91(c)-(d).
\(^{1150}\) Darfur Peace Agreement, art. 17, para. 106(c).
\(^{1151}\) Darfur Peace Agreement, art. 18, para. 120, 129.
\(^{1152}\) Darfur Peace Agreement, art. 19, para. 154(a).
\(^{1153}\) Darfur Peace Agreement, art. 21, para. 181.
\(^{1154}\) Darfur Peace Agreement, art. 21, para. 197. These PCCs will be representative of the geographic area in which the PPC exercises jurisdiction. Darfur Peace Agreement, art. 21, para. 197.
\(^{1155}\) Darfur Peace Agreement, art. 21, para. 201.
\(^{1156}\) Darfur Peace Agreement, art. 21, para. 200. This harm includes “physical or mental injury, emotional suffering or human and economic losses, in connection with the conflict.
parties will nominate the Compensation Commission’s membership along with “persons representative of affected communities.”

**SAMPLE LANGUAGE**

**Article XXX**  
**General Minority Rights Provisions**

The Government of Sudan recognizes the rights of minority groups [list protected minority groups] to practice their culture, speak their language, and practice their religion.\(^{1158}\)

**OR**

The Government recognizes the rights of all minorities to practice their culture, speak their language, and practice their religion.\(^{1159}\)

**OR**

The Government recognizes the rights of groups that make up [X percentage of the population] to practice their culture, speak their language, and practice their religion.\(^{1160}\)

**Article XXX**  
**Executive Branch Mechanisms**

*Ministry-oriented Approach*

The Ministry shall monitor the exercise of minority rights in the State.\(^{1161}\)

*Committee/Council Approach*

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1158 This language is drawn from the SLOVENIA CONST. art. 64 (1991).
1159 This language is drawn from the IRAQ CONST. art. 125 (2005).
1160 This language is drawn from the Ohrid Agreement, Aug. 13, 2001, art. 6, sec. 5..  
1161 This language is drawn from Pakistan’s Ministry of Minorities.
The committee/council shall be set up within the framework of the Government and shall be subordinate to the Executive.\textsuperscript{1162}

OR

The committee/council shall be set up within the framework of the Government and shall be subordinate to the Executive. The committee/council shall be made up of certain non-governmental groups and is responsible for making draft bill proposals, monitoring the application of legislation, and providing opinions on bills and legislature.\textsuperscript{1163}

\textbf{Article XXX}

\textbf{Legislative Branch Mechanisms}

\textit{Legislative Set-Asides}

The national legislature shall be composed of [a certain number] seats, [a certain number] will be allotted [either proportionally, constitutionally or by other means] to [minority community members of political parties representing the minority groups].\textsuperscript{1164}

\textit{Minimum Threshold for Minority Representation}

Members of an ethnic minority shall be afforded one seat in legislature.\textsuperscript{1165}

OR

\textsuperscript{1162} This language is drawn from the Czech Republic’s Council for National Minorities.

\textsuperscript{1163} This language is drawn from Romania’s government decree on the Creation and Functioning of the Department for the Protection of National Minorities.

\textsuperscript{1164} This language is drawn from the Rambouillet Interim Agreement for Peace in Kosovo, Feb. 23, 1999, ch. 1, art. 2. This language also draws upon \textit{Bosnia and Herzegovina Const.} art. 4, para. 1 (1995), which provides the Serbian portion of the country with one-third representation in the lower legislative house.

\textsuperscript{1165} This language is drawn from \textit{Slovenia Const.} art. 8 (1991), which constitutionally allots each Italian and Hungarian minorities one deputy each in its National Assembly.
Members of an ethnic minority shall be afforded representation in the national legislature if they receive a certain percentage of the national vote.\textsuperscript{1166}

\textit{Legislative Committees}

(1) The legislature shall establish a committee for Majority-Minority relations.

(2) The committee shall be composed of a certain number of the majority and a certain number of the minority.

(3) The committee is charged with considering issues of Majority-Minority relations in the State and shall make proposals to the national legislature.

(4) The national legislature will take these proposals into consideration.\textsuperscript{1167}

\textit{Voting Provisions for Legislation Affecting Minorities}

Laws involving the rights of minorities shall have to pass with majority of the legislature and a majority of the legislators claiming to belong to the communities not in the majority of the population.\textsuperscript{1168}

\textbf{OR}

A law involves minority rights if [certain percentage or number] of legislators formally petition the national legislature.\textsuperscript{1169}

\textbf{OR}

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\textsuperscript{1166} This language is drawn from the \textit{ROMANIA CONST.} art. 59 (1991).

\textsuperscript{1167} This language is drawn from the Ohrid Agreement, Aug. 13, 2001, art. 9; Annex A, proposed arts. 69, and 78.

\textsuperscript{1168} This language is from the Ohrid Agreement, Aug. 13, 2001, art. 5.

\textsuperscript{1169} This language is drawn from Belfast Agreement, Strand One, Safeguards, para. 5, sec. d, April 10, 1998, \textit{available at} http://www.nio.gov.uk/agreement.pdf (last accessed Sept. 17, 2007). The agreement provides a mechanism minorities can use in order to increase the number of votes needed to pass certain legislation.
In order for laws involving the rights of minorities to be voted on, there shall be a legislative quorum with [a certain number or certain percentage of minority legislators] present. ¹¹⁷⁰

¹¹⁷⁰ This language is drawn from the BOSNIA AND HERZEGOVINA CONST. art. 4 (1995).
POLITICAL DEVOLUTION

INTRODUCTION

This chapter identifies the core elements of mechanisms states use to distribute power between their central and regional governments through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement related to political devolution and provides sample language parties may wish to consider when drafting political devolution provisions in a peace agreement.

Elements that states may consider when devolving power include: (1) the structure and organization of the allocation of power; (2) the fiscal relationship between the central and provincial governments,\(^{1171}\) (3) judicial review and dispute resolution relating to the allocation of powers; (4) mechanisms for coordination between the central and provincial governments, among provincial governments themselves, and between provinces and other entities; and (5) methods for the modification of structures once they have been established.

State practice indicates that states have been able to devolve substantial power in unitary and federal states, as well as confederations and unions. States may devolve power through peace agreements, political arrangements, or amendments to a state’s constitution. This devolution may be symmetrical to all provinces, or it may be asymmetrical to one or more provinces. Powers devolved to provinces frequently include taxation, transportation, police powers, and matters related to education, family life, health, and social welfare.

In post-conflict states, in particular, a clear division of power may help prevent future disputes over political authority. The creation of specific mechanisms encourages and facilitates cooperation between the central and provincial governments. It is important that each level of government have sufficient resources and authority to carry out its respective responsibilities and obligations. The allocation of political authority between central and provincial governments can acknowledge the significance of provincial character and simultaneously recognize the importance of national identity.

\(^{1171}\) For information on fiscal devolution, see the Fiscal Devolution chapter in this guide.
The 2006 Darfur Peace Agreement (DPA) provided for a federal system of government in Sudan. The DPA also created the Transitional Darfur Regional Authority (TDRA) to implement the agreement and facilitate the implementation of security measures and programs for the return of displaced persons in the Darfur region. However, the TRDA did not replace the provincial governments in Darfur.

**CORE ELEMENTS**

**Initial Considerations**

*Legal Basis for the Assumption of Political Authority*

Many states allocate political authority between the central and provincial governments. The allocation of political authority can result from practical necessity. In other states, the allocation is the result of political or historical patterns. In some states, there are limits on provinces’ holding additional political authority. In other states, any province that meets specific criteria has the legal right to exercise a high degree of authority. State constitutions frequently include provisions for sharing political power between the central and provincial governing authorities. Many post-conflict states amend their constitutions to permit this allocation of political authority. In other states, domestic legislation, a peace agreement, or a public referendum provides the legal basis for allocation of power between the central and provincial governments.

Central and provincial governments usually agree on the process for the allocation of power. Many constitutions and peace agreements explicitly define the process for the allocation of political authority between the central and provincial governments. States often specify the timeframe within which the allocation of political authority is to take place. In some states, the provincial government begins administering its allocated powers immediately, while in other states, there is a gradual or phased allocation of authority. This can be especially helpful if the province does not have the capacity and infrastructure necessary to execute the additional authorities, such as the existence of a sufficient provincial budget, and an operating executive, legislature, or judiciary. To determine when a particular province may begin administering its additional authority, states employ a variety of criteria, depending on the characteristics and capacity of the particular province.

The following section reviews various approaches for allocating political authority between the central and provincial governments. It provides examples
from different states to illustrate the key factors related to establishing a legal basis for the assumption of political authority by provincial governments.

Constitutional Recognition: Italy, Philippines, Spain

**Italy:** The Italian Constitution names those provinces that have additional powers of self-governance. “[P]articular forms and conditions of autonomy are enjoyed by Friuli-Venezia Giulia, Sardinia, Sicily, Southern Trentino, and the Aosta Valley. The province Southern Trentino consists of the autonomous provinces Trento and Bolzano.”  

**Philippines:** The Constitution of the Philippines specifies which provinces can acquire a higher degree of political authority. The constitution limits this right to “regions in Muslim Mindanao and in the Cordilleras … sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics.”  

**Spain:** While acknowledging the “indissoluble unity of the Spanish nation” the Spanish constitution also “recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all.” The Constitution does not specify the provinces that may increase their powers of self-governance.

Legislative Basis: United Kingdom

In 1998, the British Parliament passed the Scotland Act. The act provided for the allocation of additional political authority to the province of Scotland.

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1175 **SPAIN CONST.** Title 8: Territorial Organization, art. 143 (1978).
through the creation of a Scottish Parliament.\textsuperscript{1176} The United Kingdom does not have a written constitution.

**Peace Agreements: Bosnia and Herzegovina and Cyprus**

**Bosnia and Herzegovina:** The Dayton Accords, which ended the conflict in Bosnia and Herzegovina, included a new constitution, which established a new state structure for Bosnia. The new constitution provided for the creation of two provinces, the Federation of Bosnia and Herzegovina and the Republka Srpska.\textsuperscript{1177} Each entity exercises identical powers and authorities. The constitution also established mechanisms for coordination between the central government and provincial authorities.\textsuperscript{1178}

**Cyprus:** The Annan plan for Cyprus allocated political authority to the constituent states (provinces) of the unified Cyprus. “Cyprus is an independent state in the form of an indissoluble partnership, with a [common state] government and two equal [component states].”\textsuperscript{1179} The plan also would have provided for mechanisms for coordination between the common state and the component states.

**Popular Referendum: Philippines, Spain, United Kingdom**

**Philippines:** The Constitution of the Philippines requires a referendum to approve an increase in political authority. The national parliament must pass a law providing for the referendum, which must call for the specific purpose of increasing the political authority of the province. Only the voters from the affected province may vote in the referendum. A majority of voting citizens in the province must approve the referendum.\textsuperscript{1180}


\textsuperscript{1178} The Dayton Accords, Dec. 14, 1995, Annex 4, art. 3.

\textsuperscript{1179} Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 2, sec. 1, para. a, available at http://www.unannanplan.agrino.org/1revised_un_plan.pdf (last accessed Sept. 13, 2007).

\textsuperscript{1180} PHILIPPINES CONST. art. 10, sec. 18 (1987).
Spain: The Spanish Constitution preserves the right of one province, or multiple provinces, to request recognition as an Autonomous Community. At least “two-thirds of the municipalities whose populations represent at least the majority of the electorate of each province or island” must approve the request.\(^{1181}\) This approval must take place within six months of the initial agreement to grant the provinces’ request for the status of an Autonomous Community.\(^{1182}\)

United Kingdom: Following the decision of the British Parliament to provide for a limited Scottish Parliament with political authority over provincial matters, residents of Scotland had to decide by referendum if they would accept the additional authority.

**Symmetrical and Asymmetrical Allocation of Political Authority**

In many states, each province possesses the same political rights and obligations. This approach is symmetrical allocation of political authority. Other states, and in particular post-conflict states, allocate power such that one or more provinces possess greater rights and obligations than the other provinces. This approach is asymmetrical allocation of power.

Different states use different criteria to decide between symmetrical and asymmetrical allocation of authority. These criteria include the historic nature of the provinces, the institutional capacities of provinces, and the resources available to the central and provincial governments.\(^{1183}\) Spain and Italy are examples of


\(^{1182}\) Spain Const. Part VIII, ch. 3, sec. 143 (1978). In addition, there are two “tracks” for attaining increased political authority. The “fast-track” is for primarily historic communities, and the allocation of significant political authority is effective immediately. The “slow track,” which has been widely used by Spanish provinces, allocates only specified powers for the first five years after the initial allocation of political authority. The state retains all remaining powers. After five years, a province with increased political authority may enlarge its powers on an incremental basis to include those powers not expressly assigned to the state. Each province must draft and negotiate its own request for increased power (or Autonomous Statute) with the central Spanish government.

\(^{1183}\) There are differing theories regarding the advantages and disadvantages of asymmetrical devolution as a way to promote provincial self-governance while also maintaining the integrity of the state. Some experts propose asymmetrical federalism as a way to allocate to minority groups separate authority within their own province while maintaining the advantages of being part of a larger state. This additional political authority fosters the desire of these minorities to remain a part of the state as a whole while allowing them control over internal policies. Other
states that recognize historical communities. Cultural or ethnic ties can also play a role in the decision. For example, the Dayton Accords in Bosnia and Herzegovina awarded the three major ethnic groups — Serbs, Croats, and Bosniaks — equal standing within the state.\footnote{The Dayton Accords, Nov. 21, 1995, Annex 4, art. 1, para. 3, Nov. 21, 1995.}

The following section reviews different models of symmetrical and asymmetrical allocations of political authority. It provides a variety of examples in order to illustrate some of the key considerations related to designing symmetrical and asymmetrical arrangements.

**Symmetrical Allocation of Authority: Bosnia and Herzegovina, U.S.**

**Bosnia and Herzegovina:** The state of Bosnia and Herzegovina comprises two separate “entities,” the Federation of Bosnia and Herzegovina and the Republka Srpska. These two entities, or provinces, have equal authority and responsibilities.\footnote{The Dayton Accords, Nov. 21, 1995, Annex 4, art. 1, para. 3, Nov. 21, 1995.}

**United States:** The United States has an institutionally symmetrical system.\footnote{This excludes U.S. territories, including American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands, and the federally administered seat of government, the District of Columbia.} Each province has equal powers and authorities regardless of size or population or fiscal capacity. Specifically, the United States Constitution mandates that each province must respect the public acts, records, and judicial proceedings of every other state.\footnote{UNITED STATES CONST. art. IV, sec. 1 (1787), available at http://www.archives.gov/national-archives-experience/charters/constitution_transcript.html (last accessed Sept. 13, 2007.).}

**Asymmetrical Allocation of Authority: Belgium, China, Spain**

**Belgium:** Belgium’s federal system consists of both territorially defined provinces and linguistically linked communities. Provinces have power over

experts assert that asymmetrical federalism results in greater differentiation between provinces. These theorists believe that these widening differences, in combination with the greater political authority for selected provinces, strengthen secessionist tendencies.

\footnote{The Dayton Accords, Nov. 21, 1995, Annex 4, art. 1, para. 3, Nov. 21, 1995.}
economic development and infrastructure maintenance, while communities have power over cultural issues and many direct social services. The provinces have local parliaments and executives, with reserved seats for community representatives. The northern Flemish region and community merged in 1980. Through this merger, the Flemish territory holds the combined authorities of both a region and a community. In addition, the governments of the French-speaking community, the Walloon region, and the Flemish region can adopt decisions, approved by at least two-thirds of their members, to amend their own internal electoral and institutional procedures. The other regions and communities do not have this additional power.

**China**: China developed the One-Country-Two-Systems model as part of its reunification strategy, to accommodate disparate economic, social, and political systems in the state’s provinces. The People’s Republic of China’s Constitution of 1982, provides that the National People’s Congress is the highest legislative authority in China and may establish special administrative provinces and allocate substantial political authority to Hong Kong and Macau. In addition, the National People’s Congress and the central Chinese executive have unlimited powers to change provincial status.

**Spain**: In Spain, each province desiring Autonomous Community status must request it from the central government. This request must specifically enumerate the authorities requested and the “… basic rules for the transfer of the

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1188 Ann L. Griffiths, FORUM OF FEDERATIONS, HANDBOOK OF FEDERAL COUNTRIES (2005), at 62-63. The powers of regions includes, among other things, economic development, urban planning, housing, public works, water, energy, transportation, and job training, and international treaties (with limitations).

1189 Ann L. Griffiths, FORUM OF FEDERATIONS, HANDBOOK OF FEDERAL COUNTRIES (2005), at 62. The powers of the communities include, among other things, language, culture, education and social services, which “involve direct contact between state-provider and citizen.”


1191 The One-Country-Two-Systems model is a device designed to manage an alternative type of economy that was in sharp contrast with the planned economy of China in place when the negotiations for the transfer of sovereignty occurred. China implemented this model in Hong Kong in 1997 and in Macau in 1999. China also offered the One-Country-Two-Systems model to Taiwan in 1981.

corresponding services.”\textsuperscript{1193} Each province negotiates separately with the Spanish state for the allocation of political authority. The specific powers eventually allocated to each Autonomous Community are contingent upon the historic status of the province, economic indicators, and the method through which the province requested the additional authority.\textsuperscript{1194} Three historically recognized Communities – the Basque Country, Catalonia, and Galicia – have significantly more political authority than the other Communities.\textsuperscript{1195} The remaining Communities have varying levels of political authority based on individual negotiations with the Spanish state.

\textit{The Distribution of Political Authority}

\textbf{Division of Powers}

States that divide power between the central and provincial governments specify which level of government maintains jurisdiction over certain political rights and obligations. While there is no specific formula for the division of powers, there are commonalities among states as to which powers each level of government holds. Central governments generally retain authority over matters relating to foreign policy, the preservation and defense of the state, and administrative matters necessary for the functioning of a state.\textsuperscript{1196} Provinces typically control matters related to education, family life, health, social welfare, police powers, local taxes, and regional transportation.

Concurrently held powers are those shared by the central and provincial governments. In many states, central and provincial authorities exercise concurrent powers for policies that the central government standardizes but the provincial governments implement. The provinces and central government

\begin{itemize}
  \item \textsuperscript{1193} \textit{Spain Const.} Part VIII, ch. 3, sec. 147, para. 2(d) (1978).
  \item \textsuperscript{1194} Luis Moreno, \textit{Federalization and Ethnoterritorial Concurrence in Spain}, PUBLIUS, Autumn 1997, at 66.
  \item \textsuperscript{1195} Montserrat Guibernau, \textit{Nations without States: Political Communities in the Global Age}, 25 \textit{Michigan Journal of International Law}, 1251 (2003). In addition, competences differ among these three communities. Catalonia and the Basque Country, for example, have negotiated control of housing, local transport, and agriculture, and have even obtained control of their autonomous police forces.
  \item \textsuperscript{1196} Powers generally held by the central government include: international affairs and national security, foreign relations, defense and armed forces, immigration and naturalization, communications and transportation, and international commerce and trade.
\end{itemize}
frequently exercise concurrent jurisdiction over taxation, environmental policy, and in some instances over healthcare, social welfare, education, housing, police, and detention. Many state constitutions include provisions allowing for the devolution of additional authority by law.

**Structure for Devolving Power**

States organize the allocation of political authority between central and provincial governments in a number of ways. One approach is to allocate specific powers to the provincial governments and reserve the remaining unnamed powers for the central government. A second approach is to allocate specific powers to the central government and reserve the remaining unnamed powers for the provincial governments. A third approach is to define the specific powers of each level of government explicitly, and there are no reserved powers. States usually define concurrent powers explicitly.

** Allocating Specific Powers to the Provinces**

When states allocate specific powers to the provincial governments, they usually list the powers in the constitution, peace agreement, or related legislation. States can leave the powers reserved for the central government undefined or can specify them in the constitution. The section below provides a number of examples of different methods states have used to allocate specific powers to provincial governments.

The Macedonian Constitution provides a list of specific areas over which the provincial governments have jurisdiction. It does not explicitly reserve the remaining power for the central government. In addition, the Macedonian Constitution provides the central government the right and ability to devolve additional powers to the local community through the passage of new laws.  

The Constitution of the Philippines grants specific powers to the provinces of Mindanao and the Cordilleras. The Constitution also explicitly reserves “[a]ll powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions” to the central government.


Reserving Unnamed Powers for the Provinces: Cyprus, East Timor, Italy

The section below provides a number of examples of different methods states use to allocate specific powers to the central government and to reserve the unnamed powers for the provincial governments.

Cyprus: UN Secretary-General Annan’s plan to end the conflict in Cyprus allocated to the Greek and Turkish provinces all powers except those explicitly allocated to the central government. “Within the limits of the Constitution, [the Greek and Turkish provinces] sovereignly exercise all powers not vested by the Constitution in the [common state] government, organizing themselves freely under their own Constitutions.”\footnote{Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 2, sec. 1, para. c.}

East Timor: In East Timor, the proposed Constitutional Framework for a Special Autonomy for East Timor specified which powers the central Indonesian government would have had. The Special Autonomous Region of East Timor would have had authority over all the powers not explicitly held by the Indonesian government.\footnote{Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, May 5, 1999, Part 1, ch. 2, art. 12, May 5, 1999, available at http://www.usip.org/library/pa/et/east_timor_05051999_toc.html (last accessed Sept. 13, 2007).}

Italy: The Italian Constitution provides that “[t]he regions have exclusive legislative power with respect to any matters not expressly reserved to [the]
state.” The Constitution lists the specific areas that are under the jurisdiction of the central government.

**Legislative Harmonization**

Many constitutions require the central government and provincial governments to harmonize legislation on specific issues. Harmonization requires that legislation adopted by a provincial government be consistent, to a degree, with the legislation adopted by all other provincial governments. States usually undertake this harmonization to ensure a basic level of services for all citizens and to coordinate economic development.

States use a number of different methods to achieve harmonization, including constitutional and legislative provisions. In many states, harmonization takes place through the central government’s passage of framework legislation. Framework legislation identifies certain goals or guidelines within a specific policy area. Provincial governments must then enact implementing legislation within the guidelines stipulated in the framework. Framework legislation thereby establishes a cohesive national policy on specified areas and provides guidance for implementation of those policies by the provinces.

**Central Harmonization: Malaysia, South Africa, Spain**

**Malaysia:** Malaysia comprises thirteen provinces, nine Malay provinces, and four other provinces. Each province’s constitution is required to include the same “essential provisions.” The central legislature has the authority to remove inconsistencies in the provinces’ respective constitutions.

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1203 *Italy Const.* art. 117, sec. 4 (1947).
1205 Elizabeth Garrett, *The Purposes of Framework Legislation* (2004), WORKING PAPER NO. 30, CENTER FOR THE STUDY OF LAW AND POLITICS, USC LAW SCHOOL AND CALIFORNIA INSTITUTE OF TECHNOLOGY, at 2. Constitutions are frameworks, but they are more durable than framework legislation and they usually apply generally, rather than to a subset of issues.
South Africa: Devolving authority to the lowest possible level is the central principle of South Africa’s government structure. However, the South African Constitution also allows the central government to harmonize provincial laws. The Constitution provides the central government the right to pass superseding national legislation even in policy areas reserved for the provinces. Specifically, the central government may pass national legislation if “a matter...cannot be regulated effectively by legislation enacted by the respective provinces,” or if the matter “to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity.” This uniformity may take the form of norms and standards, frameworks, or national policies. The Constitution also permits national law to supersede provincial law in areas of national security, economic issues, equal opportunity, equal access to government services, or environmental protection.

Spain: Spain’s central government can pass “laws which establish the principles necessary to harmonize the normative, provisions of the Autonomous Communities even in the case of matters attributed to their competence when the general interest so demands.” The Spanish Constitution requires the approval for both houses of parliament to enact such legislation. Both the central and Autonomous Communities' governments can ask the Spanish Constitutional Court to rule on competency disputes. The Court has thus played a significant role in determining when the central government has the right to require harmonization of Autonomous Communities’ policies.

Framework Legislation: Austria, Germany

Austria: The Austrian Constitution requires harmonization of central and provincial law and regulations on specific issues, including social welfare, land reform, agricultural labor laws, and electricity, among others. In these areas,
after the central government establishes a policy, provinces are required to pass implementing legislation and execute these laws.\footnote{AUSTRIA CONST. art. 11, 12 (1929). In other policy areas, the Constitution requires provincial governments to execute the central government’s laws without passing additional implementing legislation.} \footnote{AUSTRIA CONST. art. 11 (1929).}

**Germany:** The German Constitution allows the central government to enact framework legislation in areas under the concurrent jurisdiction of central and provincial authorities. This framework legislation may not be too detailed, and the provinces must implement the framework through legislation. \footnote{GERMANY CONST. art. 75 (1949), available at http://www.iuscomp.org/gla/statutes/GG.htm (last accessed Sept. 13, 2007).}

Germany’s central government has used framework legislation extensively in the past. The Constitutional Court has additionally allowed the federal government wide latitude to use the Constitution’s “necessity clause” to harmonize provincial laws. The necessity clause gives the central government authority to legislate on matters under concurrent jurisdiction “to the extent that a need for a Federal rule exists because…the maintenance of legal or economic unity, especially the maintenance of uniformity of living conditions beyond the territory of a Land [province] necessitates it.”\footnote{GERMANY CONST. art. 72, sec. 3 (1949).}

**Dispute Resolution**

**Judicial Review**

In most states, the highest national judicial authority, generally the Constitutional Court or Supreme Court has jurisdiction in disputes between the central and provincial governments. In situations where the constitution or statute that establishes the allocation of political authority between the central or provincial governments is unclear, the judicial branch plays an important and ongoing role in clarifying the relationship between the central and provincial authorities.

The following section describes how judiciaries in different states exercise judicial review over the allocation of political authority between central and
provincial governments and how rulings have affected the relationships between different levels of government.

**Varying Roles Played by Courts: Canada, Germany, South Africa**

**Canada:** Canada’s judiciary has authority over disputes arising between different levels of government. It therefore plays a crucial role in the relationship between the state’s central and provincial governments, particularly when new powers are allocated to either. This has enabled the relationship between Canada’s central and provincial authorities to adapt to new and changing situations. The court has played a particularly important role in addressing the constitutionality of Quebec’s claims for autonomy.

**Germany:** In Germany, the Constitutional Court has the authority to resolve disputes between the central and provincial governments, both of which may bring claims before the court. The court has generally allowed the federal government wide latitude in harmonizing provincial government policies, which has enabled the central government to increase its role in areas traditionally under the jurisdiction of the provinces. The court has traditionally upheld the principle that the national and provincial governments must consider “the concerns of the other side” when formulating policies, despite the fact that there is no related constitutional provision.\(^{1216}\)

**South Africa:** The South African Constitutional Court has jurisdiction over disputes arising between the central and provincial governments. The constitution requires all levels of government to exhaust “every reasonable effort to resolve any disputes through intergovernmental negotiations” before involving the Constitutional Court. If the Court determines that the central and provincial government has not met this constitutional obligation, it can refer the case back to the appropriate government agencies and refuse to rule on the issue.\(^{1217}\)

**Alternative Mechanisms**

Some states have created separate mechanisms or formed special councils to resolve disputes between central and provincial governments before they reach the

\(^{1216}\) Ann L. Griffiths, *FORUM OF FEDERATIONS, HANDBOOK OF FEDERAL COUNTRIES* (2005), at 156.

\(^{1217}\) *SOUTH AFRICA CONST.* ch. 3, sec. 41, paras. 3, 4 (1996).
judiciary. Many states that have created such councils allow both the central and provincial governments to appoint members to the relevant entity. The section below describes a number of mechanisms used to resolve disputes between different levels of government outside of the formal judicial system.

Legislative Mediation Committee: South Africa

In South Africa, legislation that affects the provinces and on which the National Assembly (the directly elected lower house of the Parliament) and National Council of Provinces (the upper house of the Parliament that represents the provincial governments) disagree must go to a mediation committee. This committee is composed of nine members from the National Assembly and one delegate from each of the nine provincial delegations in the National Council of Provinces. At least five National Assembly delegates and five National Council of Provinces delegates on the mediation committee must agree before they can adopt a decision. If the mediation committee does not resolve the disagreement, then passage of the legislation in question requires a two-thirds majority in the National Assembly.

Coordination Committee: Belgium

Belgium has a coordination committee to resolve disputes between the central or provincial governments. The committee can hear disputes if either the central government or a provincial government believes the actions of the other have adversely affected the claiming authority. The members of the committee include the central government Prime Minister, five ministers from the central executive branch, and six members of the provincial governments. The committee can stop any action on the part of any level of government for sixty days while it tries to reach a compromise. This committee determines the practical

\[1218\] The Committee can either agree to: (1) the version of the legislation passed by the National Assembly, (2) the version of the bill passed by the National Council of Provinces, or (3) a new version of the legislation. If the committee agrees to a new version of the legislation, both the National Assembly and the National Council of Provinces must vote on and pass this new version.

\[1219\] SOUTH AFRICA CONST. ch. 4, sec. 76 (1996).

\[1220\] Ordinary Act of Institutional Reforms (Belgium, 1980), art. 31; Ann L. Griffiths, FORUM OF FEDERATIONS, HANDBOOK OF FEDERAL COUNTRIES (2005), at 65.
advisability of an executive or legislative act, but it cannot review the legality of a particular act.

**Ad-Hoc Boards to Resolve Disputes: Denmark**

The Greenland Home Rule Act establishes the relationship between Denmark and its autonomous province Greenland. This act provides for the creation of an ad hoc board to resolve conflicts between the central and provincial governments. When convened, a board consists of two delegates from Denmark, two from Greenland, and three judges from the Danish Supreme Court. The delegates from Denmark and Greenland try to resolve the dispute without the involvement of the Supreme Court judges. If the delegates from Denmark and Greenland cannot reach an agreement, then the judges from the Supreme Court decide the issue.

**Coordination Mechanisms**

*National Involvement at the Provincial Level*

Some central governments are involved in the day-to-day activities of the provincial government. In some instances, the representative of the central government is an official member of the provincial executive. In other states, the central governments maintain a role in the legislative process of the province. In some states, the central government maintains an office in the province to implement central government responsibilities. The central government’s representative is often a member of the local community who provides a link between the two levels of government. In almost all cases, the provincial government must approve the representative.

The following state practice illustrates different models of central government representation in provinces with increased political authority.

**Central Government Representative: Denmark, Finland**

*Denmark:* Greenland is an autonomous province in Denmark. The central Danish government appoints a representative to observe both the executive and legislative branches of Greenland's provincial government. Although the central government representative may actively participate in debates and lobby on behalf of the Danish government, the representative has no voting or veto rights within either branch of the provincial government. By acting as a liaison, the central
government representative expresses concerns of the central government and resolves potential conflicts before they reach the level of official disputes.

Finland: The Governor of the Åland Islands, an autonomous province of Finland, represents the central government. The Finnish President appoints the Governor but must receive the official approval of the Lagting, the Åland provincial parliament. The Governor oversees the responsibilities and obligations of the central Finnish government.  

Finland's central government can veto legislation passed by the Lagting if the central government believes the Lagting has exceeded its legislative authority, or if the law affects the internal or external security of Finland. Before exercising the veto, however, the Finnish President must seek the advice of the Åland Delegation and an opinion from the Finnish Supreme Court. The Finnish government and the Lagting appoint the Åland Delegation.

Maintaining Provincial Obligations: Spain

In Spain, if one of the Autonomous Communities fails to satisfy its legal obligations or acts in a manner threatening to the central government, the central government can issue a formal complaint to the president of the defaulting Autonomous Community. If the Autonomous Community does not rectify the situation, Spain’s central government may intervene by “means necessary in order to obliged the [Autonomous Community] forcibly to meet said obligations” or remove the threat to the central government’s interests.

National and Provincial Government Cooperation

Many states provide mechanisms for coordination between the national and provincial governments. Some states constitutionally or legally mandate this coordination. In other states, the coordination is a result of informal political arrangements. States often provide provinces with a formal role in the decision-making process in the executive, legislature, or (less frequently) judiciary of the

central government. States also have created joint councils to facilitate coordination between national and provincial governments.

The following section describes the mechanisms for provincial representation in the central government and joint councils for coordination. State practice illustrates how different states have implemented these mechanisms to ensure cooperation between the national and provincial governments.

Provincial Representation in the National Government

Provincial governments often have a formal role in the executive or legislature of the central government. In the executive, this often takes the form of a representative from the provincial executive serving in the national executive. In the legislature, this often takes the form of representatives elected by the provincial citizens or appointed by legislative authorities to sit in the national legislature.

In some states, provincial governments have official representation in the central government. This is a “cooperative” system because the two governments have developed an official mechanism for working directly with one another. In “separate” systems, central governments do not involve provincial governments in the central decision making process. States may represent provincial interests in the central government through mechanisms such as giving provincial constituents the right to elect representatives to the national legislature directly.

Coordination through Joint Councils

Some states have created joint councils that include representatives from both the central and provincial governments. These councils are usually responsible for ensuring adequate coordination between the two levels of government. Such mechanisms can provide a forum for discussions on overlapping policies, joint initiatives, and informal resolution of potential disagreements between the central and provincial governments.

Limited Representation in the Central Government: Spain

The Spanish Constitution establishes a process through which regions can assert their right to additional political authority, but it does not provide mechanisms for cooperation between the Autonomous Communities and the
central government. The central government drafts and passes legislation without any input from the Communities; similarly, the Communities operate without significant federal oversight in implementing these policies. The Spanish central government appoints a delegate in each Autonomous Community to implement policies for which it holds exclusive political authority.

The second chamber of the Spanish parliament, the Senate, represents the different regional and Autonomous Communities’ interests in the central government. Senate deputies are either directly elected from the provinces or from the parliaments in the Autonomous Communities. While this chamber had the potential to be a strong advocate for the interests of the Autonomous Communities, only a minority of Senate members come from the Autonomous Communities.

Central Legislative Power for Political Parties: South Africa

Provinces have a significant role in South Africa’s legislature. The upper house, the National Council of Provinces, represents the interests of the provincial governments. Each of South Africa’s nine provinces sends ten members to the National Council of Provinces. The South African Constitution dictates the formula by which each province selects the members of its delegation.

Political parties, not individually elected representatives, hold the seats in the National Council of Provinces. If a delegate must leave his position, the

1226 Karen Adelberger, INSTITUTE OF GOVERNMENT STUDIES, Working Paper 99-16, FEDERALISM AND ITS DISCONTENTS: FISCAL AND LEGISLATIVE POWERSHARING IN GERMANY 1948-1999, available at http://www.igs.berkeley.edu/publications/workingpapers/99-16.pdf (last accessed Sept. 13, 2007). While the constitution delineates the powers of the central Spanish state and the Autonomous Communities, Article 149 establishes a process through which these powers can shift between the two levels of government. Of note is Article 149.3, which indicates that the norms of the State will supplement those of the Communities. In 1997, the Spanish Constitutional Court clarified the interpretation of this provision to ensure that the central government does not use it to reclaim authorities granted to the Autonomous Communities.
1228 Siobhan Harty, FORUM OF FEDERATIONS, COUNTRY PROFILE ON SPAIN, available at http://www.forumfed.org. Ann L. Griffiths, FORUM OF FEDERATIONS, HANDBOOK OF FEDERAL COUNTRIES (2005), at 328. An inter-party working group considered a constitutional amendment to transform the Senate into a truly representative chamber of regions, but this has not taken place, despite apparent widespread support.
political party that holds that seat chooses the replacement, which the entire provincial legislature must approve. For each province, the Constitution designates six of the delegates as permanent members and four as special representatives.\(^{1229}\)

**Provincial Representation and Joint Council Coordination: Finland**

The Åland Islands has a representative in the Finnish national parliament. This representative has the same rights, duties, and privileges as all other members of parliament. The Åland Parliament must approve any Finnish law that affects the ownership of property in the Åland Islands before it enters into force in the Åland territory. Furthermore, “an opinion shall be obtained from Åland before the enactment of an Act of special importance to Åland.”\(^{1230}\)

The Åland Delegation is a joint council that facilitates coordination between Finland's central government and the Åland Islands. The Åland Provincial Governor is the leader of the Delegation, and the Åland Parliament must approve his appointment. Other members of the delegation include a vice-chair (appointed by the President with the consent of the speaker of the Finnish Parliament); three members elected by the Council of States (upper house of Finland) and three members elected by the Åland Parliament. The Delegation’s responsibilities include fiscal coordination and resolution of disputes related to new fishing lanes and transfer of land between Finland's central government and Åland authorities.

**Provincial Representation in the Executive Branch: Denmark**

Denmark’s autonomous province of Greenland is represented in the state’s executive branch. The members of parliament from Greenland serve on the Danish executive branch.

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\(^{1229}\) The permanent members of each province’s delegation must come from the provincial legislatures and must relinquish their legislative positions when they become members of the National Council of Provinces. The government chooses the four “special” representatives in the following manner: one is the premier of the province, and the other three can be, but are not required to be, members of the provincial legislature. The National Council of Provinces delegates each have a vote on ordinary legislation that does not affect the provinces. For other bills, however, each provincial delegation casts a single vote. Most questions before the National Council of Provinces require five delegations to vote in favor; amendments to the Constitution require the approval of six delegations.

Foreign and Security Policy Committee together with representatives from the Faroe Islands.\textsuperscript{1231}

\textit{External Provincial Cooperation}

Many states make explicit provisions related to coordination between and among provinces. Agreements between a state’s provinces may or may not require approval from the central government. In some states, certain provinces also have the authority to conclude agreements with foreign states. Such agreements often concern the use and development of natural resources. In addition, some provinces have representatives in regional and international bodies, such as the European Union. Below are a number of examples of province-to-province cooperation as well as instances in which provinces have representation in international bodies.

\textbf{Province-to-Province Cooperation: Spain, Switzerland}

States may require the central legislative or executive branch to approve inter-province agreements or cooperation. For example, the Spanish national parliament must approve any cooperation between Autonomous Communities that the original Autonomy Statute, which spells out the powers devolved to each Autonomous Community, does not stipulate.\textsuperscript{1232} Switzerland’s Constitution requires the national parliament's approval of agreements between the provinces if the central government or a provincial government raises an objection.\textsuperscript{1233}

\textbf{International Status for Provincial Governments: Union of Serbia and Montenegro, Canada, Denmark}

Some provinces have the authority to enter into agreements with other states. For example, while the Union of Serbia and Montenegro was in effect, each of the constituent states could conclude its own international agreements. These

\textsuperscript{1231} The SECRETARIAT OF THE FOREIGN POLICY COMMITTEE, THE FOREIGN POLICY COMMITTEE, at 11, \textit{available at} http://www.folketinget.dk/pdf/foreign_policy_committee.pdf (last accessed Sept. 18, 2007). The Act on the Foreign Policy Committee provides that the Parliament must choose the seventeen members of the Foreign Policy Committee from among its members and according to proportional representation.

\textsuperscript{1232} SPAIN CONST. Part VIII, ch. 3, sec. 145 (1978).

agreements could not be contrary to the interests of the Union or of the other province in the Union.

Provincial governments can often establish diplomatic missions in foreign states, particularly with regard to cultural affairs. Canada’s provinces of Ontario and Alberta have official representatives in some Canadian embassies; Québec also has its own cultural attachés in other states.\(^{1234}\)

In other states, provinces can enter into agreements with foreign governments. These agreements often provide a mechanism for coordination between an individual province and a foreign government, but do not bind the entire state to norms of international law. For example, Canada’s provinces of Ontario and Québec have a number of educational and cultural arrangements with foreign governments. Similarly, Greenland is included in Denmark’s delegation to the Nordic Council. Greenland has its own delegation to the North Atlantic Fisheries organization, through which it has also negotiated a number of fishery agreements with both Russia and Canada.

**Provincial Involvement in Intergovernmental Organizations: Germany, Spain, Finland, Denmark, Union of Serbia and Montenegro**

Provinces within some states participate in supra-regional and intergovernmental organizations, such as the European Union. Germany’s provinces have the explicit right to represent the state in the Council of Ministers – the main decision-making body of the European Union – on discussions relating to issues under the provinces’ jurisdiction. Spain’s Autonomous Communities have a representative who speaks for the Communities in the European Union’s decision-making process.\(^{1235}\) In Finland, the autonomous province of the Åland Islands has its own representation on the Nordic Council, separate and distinct from that of Finland. Although the now-defunct Union of Serbia and Montenegro had a single international personality, an agreement allowed each province independently to become a member of intergovernmental organizations whose membership is not contingent on international personality. In missions representing Serbia and


Montenegro's missions to intergovernmental organizations, the two entities were represented on a parity basis and through rotation.

Changes to Existing Structures

_Provincial Boundaries_\(^{1236}\)

Many states have procedures for changing provincial boundaries. The process for changing provincial boundaries often requires the approval of all of the affected provinces, as well as the central government. This approval often requires a public referendum and/or a vote in the relevant legislative bodies. Many states require a higher threshold to approve changes to provincial boundaries than is required for other decisions. Other states explicitly deny the right of individual provinces to merge or secede from the state.

Shield from Territorial Divisions: Belgium

Belgium can subdivide its provinces, but a law can also “shield” a territory from division. A majority of the votes in each house of the Belgian national parliament must pass the shielding law. When shielding laws are not in effect, only legislation passed by a majority in parliament can change provincial boundaries.\(^{1237}\)

\(^{1236}\) For information on state borders, see the Borders chapter of this guide.  
\(^{1237}\) _BELGIUM CONST._ arts. 4-6 (1970), available at http://www.servat.unibe.ch/law/icl/be00000_.html (last accessed Sept. 13, 2007). The relevant provisions of the Constitution of Belgium are: Article 4(3): “The limits of the four linguistic regions can only be changed or modified by a law adopted by majority vote in each linguistic group in each House, on the condition that the majority of the members of each group are gathered together and from the moment that the total of affirmative votes given by the two linguistic groups is equal to at least two thirds of the votes expressed”; Article 5(2): “By law, the territory can be divided into a greater number of provinces, if necessary”; Article 5(3): “A law can shield certain territories whose limits it fixes, from division into provinces, make them depend directly on the federal executive power, and make them subject to a statute of their own. This law must be adopted by majority vote as provided for in…” Article 4(3); Article 6: “The provincial sub-divisions can only be established by law”; and Article 7: “The delimitation of the State, the provinces, and the communes can only be changed or modified by law.”
Joining of Provinces to form Autonomous Communities: Spain

The Spanish Constitution provides for a general right “to autonomy of the nationalities and regions.” Any province or group of provinces meeting the requisite criteria may apply to become an Autonomous Community. The right is restricted to bordering provinces with “common historic, cultural, and economic characteristics, insular provinces, and provinces with a historic provincial status.”

Central Government Authority: Canada

Canada’s Constitution Act of 1982 allows changes to the boundaries of the state’s provinces. Any such changes are subject to “highly qualified proceedings,” which require the approval of both houses of the Canadian Parliament and the provincial legislatures of any affected province.

Formation of New Provinces: Iraq

The Iraq Constitution of 2005 provides that existing governorates may combine to form provinces. The state consists of twenty regions; only one province, Kurdistan, currently exists. One or more provinces can organize into a region “based on a request to be voted on in a referendum,” submitted through one of two methods. These methods are: (1) a request by one-third of the council members in each of the governorates seeking provincial status, and (2) a request by one-tenth of the voters in each of the districts seeking provincial status.

Subsequent Allocation of Additional Political Authority

Central and provincial governments sometimes find it necessary to amend the allocation of political authority. Most states establish mechanisms for the orderly transfer of these powers. Many central governments retain ultimate

\[\text{\underline{1238}}\text{ SPAIN CONST. Preliminary Title, art. 2 (1978).} \\
\text{\underline{1239}}\text{ SPAIN CONST. Part VIII, ch. 3, art. 143 (1978).} \\
authority to approve such transfers, but most also include the provincial
governments in these decisions.

Many states allow the central legislature to allocate additional political
authority to provincial governments following the initial agreement on the division
of power. Such changes are generally the result of political grants, rather than
constitutional amendments, and states usually make them for practical reasons.
Many states decide that provincial governments are better able to implement
powers allocated to the central government. The following section presents
various mechanisms used to amend a state’s allocation of political authority.

Creation of New Self-Governing Provinces: Italy

Italy’s Constitution names those provinces that can gain autonomous status.
However, provinces not named can also seek additional political authority
“[A]fter consultation of local administrations, state law may assign further
particular forms and conditions of autonomy to other provinces.” These
autonomous powers are restricted to certain policy areas. “The law, based on an
agreement between the state and the region concerned,” requires approval by a
majority in the central legislature and the affected provincial legislatures.

Legislative Delegation: South Africa, Spain

South Africa: The South African legislature may “assign any of its
legislative powers, except the power to amend the Constitution, to any legislative
body in another sphere of government.” The constitution does not specify a
mechanism for the transfer.

Spain: The Spanish constitution also allows the central government to
delegate additional power to its Autonomous Communities by law. These powers
must “because of their own nature [be] susceptible to transference or

1242 Those regions are Friuli-Venezia Giulia, Sardinia, Sicily, Southern Trentino, and the Aosta
Valley (the region Southern Trentino consists of the autonomous provinces Trento and Bolzano).
ITALY CONST. art. 116 (1947).
1243 ITALY CONST. art. 116 (1947).
1244 ITALY CONST. art. 116 (1947).
1245 SOUTH AFRICA CONST. ch. 6, sec. 144 (1996).
delegation.”\textsuperscript{1246} Such laws must also take into account financial transfers that will be necessary to sustain the administrative and legislative transfer.\textsuperscript{1247}

**COMPARATIVE STATE PRACTICE**

**Aceh**

Indonesia is a unitary state with a number of regional levels of government. Each region is entitled to have its own “parliament,” but the national parliament determines the implementation and scope of regional government. The peace agreement between Indonesia and Aceh provides for the asymmetrical devolution of power to Aceh. These powers include all those related to public affairs; the Indonesian government retains authority over only foreign affairs, external defense, national security, monetary and fiscal matters, and freedom of religion.\textsuperscript{1248} Additional power-sharing mechanisms include: a requirement that the legislature of Aceh consent to international agreements entered into by the Government of Indonesia that relate to matters of special interest to Aceh; decisions of the legislature of Indonesia that relate to Aceh; and a requirement that the head of the Aceh administration consent to and coordinate implementation of administrative policies issued by the Government of Indonesia.\textsuperscript{1249}

**Afghanistan**

Afghanistan is a unitary state that devolves substantial power on a symmetrical basis to the provinces.\textsuperscript{1250} Powers exercised by the provinces include those related to the development of provincial economic, social, and cultural affairs, as well as the development of political participation.\textsuperscript{1251} An important additional power-sharing mechanism is the requirement that provincial councils

\textsuperscript{1246} SPAIN CONST. Part VIII, ch. 3, sec. 150 (1978).
\textsuperscript{1247} SPAIN CONST. Part VIII, ch. 3, sec. 150 (1978).
\textsuperscript{1249} Memorandum of Understanding Between the Government of Indonesia and the Free Aceh Movement, August 15, 2005, Part 1, Section 1.1.2, August 15, 2005.
\textsuperscript{1251} AFGHANISTAN CONST. art. 137 (2004).
coordinate with the central government on development and other “important issues” related to provincial administration.\textsuperscript{1252}

**Australia**

Australia is a federal state that devolves power on an asymmetrical basis to states and territories. Because laws define most powers held by the provinces, the constitution does not list exhaustively those powers held by the provinces.\textsuperscript{1253}

**Bosnia and Herzegovina**

Bosnia-Herzegovina is a federal-like state comprised of the two entities of the Federation of Bosnia-Herzegovina and the Repubilka Srpska. Each entity has its own constitution, president, and parliament. The central government retains powers over matters such as foreign policy, customs policy, immigration and macro economic policy. The central government devolves all other powers to the Federation and to Srpska. Additional power-sharing mechanisms include a rotating presidency comprised of the three primary ethnic groups, minority vetoes applicable to nearly all legislative matters, a second chamber of parliament designed to ensure parity among the three primary ethnic groups, and an ethnic based allocation of seats on the Constitutional Court, as well as provision for international participation on the Court.

**Cyprus**

The Annan Plan for resolution of the Cyprus conflict provided for the creation of a bizonal, bicomunal, federation comprised of the component states of Northern and Southern Cyprus.\textsuperscript{1254} Each component state would have exercised symmetrical powers,\textsuperscript{1255} including all powers not vested in the central

\textsuperscript{1252} AFGHANISTAN CONST. art. 139 (2004).
\textsuperscript{1254} Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 2, available at http://www.unannanplan.agrino.org/1revised_un_plan.pdf (last accessed Sept. 13, 2007)
\textsuperscript{1255} Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 2, para.a.
The powers retained by the central government include external affairs, including EU relations; monetary policy; common state finances, including economic and trade policy and indirect taxes; territorial waters; communications; and combating terrorism, drug trafficking, money laundering, and organized crime. Additional power-sharing mechanisms included a rotating presidency, a qualified majority for certain legislation, set-aside seats for the Northern component state on the Federal Council, and on the Constitutional Court, as well as provision for the participation of international judges.

Denmark - Greenland

Denmark, a unitary state, maintains an asymmetrical relationship with Greenland. Under the 1978 Greenland Home Rule Act, Greenland operates as an autonomous region within “the framework of the unity of the Realm.” Greenland maintains control over issues related to the home rule and government in Greenland, such as direct and indirect taxes, religious affairs, environmental affairs and conservation, education, social welfare and health services.

East Timor

The proposed Constitutional Framework for a Special Autonomy for East Timor provided for special autonomy for East Timor within the unitary state of Indonesia. The Framework provided that the central government would be responsible for powers such as foreign affairs, external defense, economic and fiscal policies, and national taxation. All other powers would be allocated to the Special Autonomous Region of East Timor.

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1256 Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 12.
1257 Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 12.
Germany

Germany is a federal state. Most provinces (Laender) have symmetrical powers, which include all powers not vested in the central government. The provinces of Baden, Bavaria, Wuerttemberg-Baden, and Wuerttemberg-Hohenzollern hold minor additional powers. The powers retained by the central government include: foreign affairs and defense; national citizenship; customs and trading; currency; and cooperation between the federal government and the provinces on certain issues. Concurrent powers include: criminal and civil law; the administration of courts and notaries; war damages, reparations, and benefits; economic matters, labor law; expropriation and the transfer of lands to the central government for the public good; land laws; disease control; and federation-wide transportation and shipping.

Italy

Italy is a unitary state that devolves power to specified autonomous regions on an asymmetrical basis. In certain cases, other regions may gain some additional political authority within certain policy areas. An agreement negotiated between the state and the province concerned can provide additional autonomy, and the central legislature and the provincial legislature must approve the agreement.

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1263 GERMANY CONST. art. 138 (1949).
1264 GERMANY CONST. art. 73 (1949).
1265 GERMANY CONST. art. 74 (1949).
1267 ITALY CONST. art. 116 (1947). “[P]articular forms and conditions of autonomy are enjoyed by Friuli-Venezia Giulia, Sardinia, Sicily, Southern Trentino, and the Aosta Valley. The province Southern Trentino consists of the autonomous provinces Trento and Bolzano.”
1268 ITALY CONST. art. 116 (1947). “[A]fter consultation of local administrations, state law may assign further particular forms and conditions of autonomy to other provinces.”
1269 ITALY CONST. art. 116 (1947).
The central Italian government holds specific powers, including: foreign policy and international relations; defense and armed forces; financial markets; currency system; state taxation system and accounting; social welfare standards; education policy; social security; electoral legislation, and local government and fundamental functions of municipalities, provinces, and metropolitan cities. The central government and provincial governments share authority over other issues, including: international and European Union relations with the regions; foreign trade; protection and safety of labor; education, with the exception of vocational training; scientific and technological research; health protection; food; sports regulations; and disaster relief service. The regions reserve all other powers.\textsuperscript{1270}

**Macedonia**

Macedonia is a unitary state with no provinces. The 2001 Ohrid Agreement provided for the amendment of the constitution in order to devolve significant authority to the local governments, thus creating a highly decentralized unitary state. Specifically, the agreement substantially enlarging the competences of municipal councils, particularly in the areas of public services, urban and rural planning, environmental protection, local economic development, culture, local finances, education, social welfare, and healthcare. The Agreement also established a mechanism for the municipal councils to raise substantial revenue.\textsuperscript{1271} Additional power-sharing mechanisms included setting aside the position of Vice President for the Albanian minority, and for requiring qualified majority (a majority of the parliamentarians representing the minority population) to adopt legislation in the areas of culture, language, local government.

**Malaysia**

Malaysia is a federal state that devolves power on an asymmetrical basis to its nine “Malay” states and four “other” states, Malacca, Penang, Sabah, and Sarawak. The Constitution sets out those powers exercised exclusively by the federal government, those powers held exclusively by the provincial governments, and those powers exercised concurrently by both the federal and provincial.

\begin{footnotes}
\item[1270] Italy Const. art. 117 (1947).
\end{footnotes}
The powers exercised exclusively by the provinces include matters relating religion, land usage and tenure, permits and licensing for natural resources, agricultural and forestry loans and administration, local government services, state penal codes, housing, internal transportation and infrastructure, and fishing rights. In addition, the states of Sabah and Sarawak (which joined with Malaysia in 1963) retain a number of other exclusive powers related to law, finance, access to ports not under federal control, and religion. These two states also have a wider spectrum of concurrently powers than the other Malay states. All four of the “other” states have special provisions for the appointment and election of their respective executive leaderships.

United Kingdom/Northern Ireland

Most consider the United Kingdom to be a unitary state, although it has recently devolved some power to Scotland and Wales, and substantial power to Northern Ireland. Under the 1995 Belfast Agreement, Northern Ireland was granted exclusive legislative and executive power over the areas within its competence, including agriculture and rural development; culture and the arts; education; employment; enterprise, trade, and investment; the environment; local financial matters; health, social services, and public safety; and local economic and social development. The UK government, represented by the Secretary of State for Northern Ireland, retained responsibility for powers not devolved to the Assembly, including policing, security policy, prisons, criminal, justice, international relations, taxation, national insurance, regulation of financial services and the regulation of telecommunications and broadcasting. The Secretary of State will represent Northern Ireland's interests in the United Kingdom Cabinet.

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1274 MALAYSIA CONST. art. 153 (1963). The populations of Sabah and Sarawak are part of the larger category of minorities in Malaysia termed Bumiputra. These groups are protected by Article 153 of the Malaysian Constitution, which allows the federal government to create civil service and educational quotas favoring these groups. This article is subject to significant controversy among the population.
1275 MALAYSIA CONST. art. 95, Schedule Nine (1963).
1277 MALAYSIA CONST. Schedule Eight (1963).
1278 These powers were suspended in October 2002.
Belfast Agreement left open the possibility for the allocation additional authority, but it also permitted the central government’s parliament at Westminster to pass legislation affecting Northern Ireland.

**Philippines**

The Philippines is a unitary state that provides for asymmetrical allocation of political authority among its provinces. The constitution provides a higher degree of political authority for the regions in Muslim Mindanao and in the Cordilleras. The constitution specifies the competences of autonomous provinces, including local administration and planning; ancestral domain and natural resources; personal, family, and property relations; economic, social, and tourism development; education; preservation of culture and heritage. The government may allocate other realms of political authority to the autonomous provinces.

**Serbia and Montenegro**

The State Union of Serbia and Montenegro was comprised of the member states of Montenegro and Serbia. The central government possessed only limited jurisdiction over the implementation of international conventions, defense, borders, immigration and asylum, the budget, and national symbols. The member states exercised control over all other matters. The member states were also entitled to see membership in international organizations, which did not require international recognition as a prerequisite. The member states could also conclude international agreements so long as they were not contrary to the interests of the Union or of the other member state. Additional measures included the requirement that the member state, which did not hold the presidency, was entitled to three of the five cabinet posts (Prime Minister, Finance, Defence, Foreign Affairs, and

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1280 Good Friday Agreement, Apr. 10, 1998, sec. 34.


South Africa

South Africa is a unitary state, with the symmetrical devolution of power to its provinces. South Africa operates based on subsidiarity, which allocates all political authority to the lowest possible level. The central government may only pass national legislation, however, if “a matter…cannot be regulated effectively by legislation enacted by the respective provinces,” or if the matter “to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity.” The constitution also permits national law to supersede provincial law in areas of national security, economic issues, equal opportunity, equal access to government services, or environmental protection.

Spain

Spain operates as a federal state, which devolves power on an asymmetrical basis. Although there is no specific reference to federalism in the Spanish constitution, Spain is a highly decentralized state, and constitutional experts categorize it as a federal system. The Spanish provinces (Autonomous Communities) possess varying degrees of political power. The specific powers devolved to each Autonomous Community are contingent upon the historic status of the province, economic indicators, and the method through which the province requested the additional authority.

1285 SOUTH AFRICA CONST. ch. 6, sec. 146 (1996).
1286 SOUTH AFRICA CONST. ch. 6, sec. 146 (1996).
1288 Luis Moreno, Federalization and Ethnoterritorial Concurrence in Spain, 27 PUBLIUS 65, 66 (Fall 1997).
authority than the other Communities. In addition, competences differ among these three communities. Catalonia and the Basque Country, for example, have negotiated control of housing, local transport, and agriculture, and have even obtained control of their autonomous police forces.

**Switzerland**

Switzerland is a confederation, with symmetrical devolution of powers among its thirteen provinces (cantons). The cantons retain all powers not constitutionally delegated to the central government. The central government exercises power over has competency over foreign relations, use of the army, legislation on the military, legislation of civil defense, professional education, the census, and the promotion of sport. The central government also has authority over “the tasks which require uniform regulation,” as well as “fundamental provisions” regarding political rights and their exercise, constitutional rights and their restrictions, individual rights and obligations, taxation, the role of the central government, the obligations of the cantons when undertaking to implement and execute federal law. The constitution permits that the central government may delegate its tasks to the cantons, when constitutional. The central government may also contribute to education, normally a cantonal sphere, so long as it does not interfere with the autonomy of the cantons.

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1291 SWITZERLAND CONST. art. 54 (1999).
1292 SWITZERLAND CONST. art. 58 (1999).
1293 SWITZERLAND CONST. art. 60 (1999).
1294 SWITZERLAND CONST. art. 61 (1999).
1295 SWITZERLAND CONST. art. 63 (1999).
1296 SWITZERLAND CONST. art. 65 (1999).
1297 SWITZERLAND CONST. art. 68 (1999).
1298 SWITZERLAND CONST. art. 42 (1999).
1299 SWITZERLAND CONST. art. 164 (1999).
1300 SWITZERLAND CONST. art. 67 (1999).
DARFUR PEACE AGREEMENT

Federal System of Government

The Darfur Peace Agreement provides that Sudan has a federal system of government in Sudan with legislative, executive, and judicial branches of government at the provincial level.\footnote{Darfur Peace Agreement, art. 4, para. 44, May 5, 2006, available at http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf (last accessed, Sept XX, 2007).} Additionally, the DPA establishes the Transitional Darfur Regional Authority (TDRA) that is responsible for implementing the provisions of the DPA and coordinating the actions and policies of the three provinces of Darfur.\footnote{Darfur Peace Agreement, art. 6, paras. 48-49.}

The TDRA also is responsible for implementing programs to facilitate the return of displaced persons, coordinating the implementation of security measures, and facilitating peace and reconciliation in Darfur.\footnote{Darfur Peace Agreement, art. 6, para. 53.} The TDRA does not replace or have the power to overrule the provincial governments in Darfur.\footnote{Darfur Peace Agreement, art. 6, para. 54.} However, if the Authority’s Chairperson believes that a province’s actions undermine the implementation of the DPA, the Chairperson must refer the matter to the Presidency for resolution.\footnote{Darfur Peace Agreement, art. 6, para. 54.}

The Darfur Peace Agreement does not provide for the competencies of the central or provincial governments. However, the DPA does provide for representation of Darfurians in each branch of the central government.\footnote{Darfur Peace Agreement, arts. 8-10.} The DPA provides the central and provincial governments with concurrent powers of taxation and revenue distribution.\footnote{Darfur Peace Agreement, art. 18, para. 113.} The DPA establishes a Fiscal and Financial Allocation and Monitoring Commission to facilitate the transfer of revenues between provinces and between the central government and the provinces to ensure that all provinces received equitable levels of revenue.\footnote{Darfur Peace Agreement, art. 18, para. 120.}
Darfurian Representation in the Central Government

The DPA provides that Darfur should have representatives in the national legislature by allocating at least twelve seats in the National Assembly to nominees of the SLM/A and the JEM.\textsuperscript{1309} Further, the Darfur provinces have representatives in the Council of States.\textsuperscript{1310} In the executive branch, the Senior Assistant to the President is also the Chairperson of the Transitional Darfur Regional Authority, and the President of Sudan chooses the Senior Assistant from a list of nominees that the SLM/A and the JEM provide.\textsuperscript{1311} The Senior Assistant is the fourth ranking member in the Presidency.\textsuperscript{1312} The DPA also requires the President to appoint a Darfurian to the position of Advisor to the President.\textsuperscript{1313} Additionally, the DPA provides that Darfurians should occupy four posts as Cabinet Minister and five posts as State Minister, and a nominee of the SLM/A and the JEM should be the chairperson of one Parliamentary committee in the National Assembly.\textsuperscript{1314}

\textbf{SAMPLE LANGUAGE}

\textbf{Article XXX}
\textbf{Allocation of Political Authority among Regions}

The Republic of Sudan shall consist of \textit{X} [number determined based on the status of Darfur as one or three separate entities] entities, each entity having equal authority to all other entities.\textsuperscript{1315}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{1309} Darfur Peace Agreement, art. 9, para. 71.
\item \textsuperscript{1310} Darfur Peace Agreement, art. 9, para. 72. The Interim National Constitution of Sudan provides that the Council of States shall consist of two representatives from each province in Sudan. See \textit{Sudanese Interim National Const.} part 4, ch. 1, sec. 85, para. 1 (2005), \textit{available at} http://www.mpil.de/shared/data/pdf/inc_official_electronic_version.pdf (last accessed Sept. 19, 2007). The Sudanese Interim National Constitution provides that the Council of States shall consist of two representatives from each province in Sudan.
\item \textsuperscript{1311} Darfur Peace Agreement, art. 8, para. 65.
\item \textsuperscript{1312} Darfur Peace Agreement, art. 8, para. 65.
\item \textsuperscript{1313} Darfur Peace Agreement, art. 8, para. 67.
\item \textsuperscript{1314} Darfur Peace Agreement, art. 8, para. 69.
\item \textsuperscript{1315} \textit{United States Const.} art. IV, para. 1 (1787). This language is drawn from Annex 4, article 1 of the General Framework Agreement for Peace in Bosnia and Herzegovina. The United States also provides for a symmetrical allocation of authority among regions. The United States Constitution provides, “Full Faith and Credit shall be given in each State to the public
OR

(1) The central government of the Republic of Sudan may, in the national interest, and by a legislative act:
   (a) Authorize the setting-up of a provincial government, where its territory does not exceed that of a region.
   (b) Authorize or grant, as the case may be, a Provincial Constitution to territories that are not integrated into the provincial organization.

(2) Provinces must submit their constitutions to the central government for approval. The Provincial Constitution must contain:
   (a) The name of the province that best corresponds to its historic identity.
   (b) Its territorial boundaries.
   (c) The name, organization and seat of its own autonomous institutions.
   (d) The powers assumed within the framework laid down by the Constitution of the Republic of Sudan and the basic rules for the transfer of the corresponding services.\textsuperscript{1316}

\textbf{Article XXX}
\textbf{Distribution of Political Authority between the Central and Provincial Governments}

(1) The provincial governments of Sudan shall have exclusive competence over the following matters:
   (a) Education;
   (b) Social Welfare;
   (c) Health;
   (d) Police powers;
   (e) Local taxes;
   (f) Regional transportation;
   (g) Cultural issues; and

\textsuperscript{1316} This language is drawn from SPAIN CONST. arts. 143, and 147 (1978). \textit{See also} CHINA CONST. ch. 3, sec. 1, art. 62 (1982). China also has an asymmetrical system for allocating authority among its provinces. The Chinese Constitution gives the National People’s Congress the power to create different types of entities, including provinces, autonomous regions, municipalities, and special administrative regions.

Acts, Records, and judicial Proceedings of every other State.” UNITED STATES CONST. art. IV, sec. 1 (1787).
(i) [Other competencies as determined by the parties].

(2) All matters not expressly given to the provincial governments are reserved to the central government.¹³¹⁷

OR

(1) The central government of the Republic of Sudan shall have exclusive competence over the following matters:
   (a) International affairs and national security;
   (b) Foreign relations;
   (c) Defense and armed forces;
   (d) Immigration and naturalization;
   (e) Communications and transportation;
   (f) International commerce and trade; and
   (g) [Other competencies as determined by the parties].

(2) All matters not expressly delegated to the central government are reserved to the provincial governments.¹³¹⁸

Article XXX
Legislative Harmonization

The central government of the Republic of Sudan may enact laws laying down the necessary principles for harmonizing the rule-making provisions of

¹³¹⁷ This language is drawn from SPAIN CONST. art. 149 (1978). PHILIPPINES CONST. art. 10, secs. 17, 20 (1987). of the Spanish Constitution. The Philippine Constitution also lists the specific competences of the governments of its autonomous regions, including administrative organization, educational policies, economic and social development, and preservation of cultural heritage. The Philippine Constitution reserves for the central government all competences not given to the autonomous regions.

¹³¹⁸ This language is drawn from ITALY CONST. art. 117 (1947). See also Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, May 5, 1999, part 1, ch. 2, art. 12. the Italian Constitution. The Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor also provided that the central government of Indonesia would have certain competences, such as control of foreign policy and the armed forces, and the regional governments would have the authority to legislate in all areas not reserved to the central government.
the provinces, even in the case of matters over which jurisdiction has been vested to the latter, where this is necessary in the general interest.\footnote{This language is drawn from the SPAIN CONST. art. 150 (1978). See also SOUTH AFRICA CONST. ch. 6, sec. 146, para. 2 (1996).of the Spanish Constitution. The South African Constitution provides that the national legislature may pass legislation overruling provincial legislation if “the national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually” or “the national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation.”}

OR

(1) The central government shall have power to enact provisions on certain subjects as a framework for provincial legislation. [Subjects should be enumerated here.]

(2) Only in exceptional circumstances may framework legislation contain detailed or directly applicable provisions.

(3) When the central government enacts framework legislation, the provincial governments shall be obliged to adopt the necessary provincial laws within a reasonable period prescribed by the law.\footnote{This language is drawn from the GERMANY CONST. art. 75 (1949). See also AUSTRIA CONST. arts. 11-14 (1929).of the German Constitution. Austria also uses a framework legislation system in which the central government adopts legislation, and the regional governments must implement it. The Austria Constitution provides, “In the following matters legislation as regards principles is the business of the Federation [central government], the issue of implementing laws and execution the business of the Laender [regional governments],” and then the Constitution lists areas over which the central government has primary legislative authority, such as sanitation, social welfare, and land reform.}

\underline{Article XXX}
\underline{Fiscal Relations}\footnote{For more information on fiscal devolution, see Fiscal Devolution the chapter of this guide.}

(1) Revenue from the following taxes shall accrue to the central government: [taxes are specified, such as income tax, corporate taxes, customs duties, and freight taxes].
(2) Revenue from the following taxes shall accrue to the regional governments: [taxes are specified, such as inheritance tax, property tax, and the motor vehicle tax].

(3) Revenue from certain taxes [specified here] shall accrue jointly to the central and provincial governments based on the extent of their expenditures and a desire to maintain a balance among all levels of government.

(4) A federal law requiring the consent of the legislature may provide for the grant of supplementary shares of revenue not exceeding one quarter of a region’s share to provinces whose per capita revenue from provincial taxes and from its share of federal taxes is below the average of all the regions combined.\(^{1322}\)

OR

All revenues or moneys raised or received by the Republic of Sudan shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Republic in the manner and subject to the charges and liabilities imposed by the Constitution.\(^{1323}\)

\(^{1322}\) This language is drawn from the GERMANY CONST. arts. 105, and 107 (1949). See also SPAIN CONST. art. 156 (1978). The Spanish Constitution also gives the Autonomous Communities the power to levy taxes. Article 156 provides, “The Autonomous Communities shall enjoy financial autonomy for the development and exercise of their powers, in conformity with the principles of coordination with the State Treasury and solidarity among all Spaniards.”

\(^{1323}\) This language is drawn from the AUSTRALIA CONST art. 81 (1900). See also VENEZUELA CONST. art. 167 (1999), available at http://www.analitica.com/bitblioteca/venezuela/constitucion_ingles.pdf (last accessed Sept. 15, 2007). Venezuela also has a centralized revenue collection system. The Venezuelan Constitution provides that regional governments’ revenues come from “their property and the management of their assets,” “[c]harges for the use of their goods and services, fines and penalties, and any charges allocated to them,” “[p]roceeds from the sale of State-owned commodities,” and “[t]he resources to which they are entitled by virtue of constitutional revenue share.”
Article XXX
Dispute Resolution

A branch of government involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute. The highest court shall have jurisdiction to hear disputes between branches of the government.¹³²⁴

Article XXX
Central and Provincial Government Cooperation

(1) The federal legislature shall consist of the upper house and the lower house.

(2) The [lower/upper house] is elected to represent the people and to ensure government by the people.

(3) The [lower/upper house] represents the regions to ensure that provincial interests are taken into account in the central government. It does this mainly by participating in the federal legislative process and by providing a central forum for public consideration of issues affecting the regions.¹³²⁵

OR

¹³²⁴ This language is drawn from SOUTH AFRICA CONST. art. 41 (1996). See also GERMANY CONST. art. 93, paras. 3, 4 (1949). The German Constitution gives the Federal Constitutional Court the jurisdiction to rule “in the event of disagreements respecting the rights and duties of the Federation [central government] and the Länder [regional governments], especially in the execution of federal law by the Länder [regional governments] and in the exercise of federal oversight” and “on other disputes involving public law between the Federation [central government] and the Länder [regional governments], between different Länder [regional governments], or within a Land [region], unless there is recourse to another court.”

¹³²⁵ This language is drawn from SOUTH AFRICA CONST. art. 42 (1996). See also Finland CONST. ch. 3, secs. 24, 25 (2000), available at http://www.servat.unibe.ch/law/icl/fi00000_.html (last accessed Sept. 19, 2007). Finland has a unicameral legislature, and the Finnish Constitution divides Finland into constituencies, in which the Finnish people directly elect their representatives to the legislature. The region of Åland has its own constituency and elects one representative to the legislature.
A delegate appointed by the central government shall be responsible for the federal administration in the territory of each region and shall coordinate it, when necessary, with the province's own administration.  

**Article XXX**  
**External Provincial Cooperation**

Provincial constitutions may provide for the circumstances, requirements and terms under which provinces may reach agreements among themselves for the management and rendering of services in matters pertaining to them, as well as for the nature and effects of the corresponding notification to be sent to the federal legislature. In all other cases, cooperation agreements among provinces shall require authorization by the federal legislature.

**OR**

The federal legislature shall decide whether to approve inter-regional treaties and treaties between regions and foreign states, should the central government or a provincial government raise an objection.

**Article XXX**  
**Provincial Boundaries**

Any alteration to boundaries between regions may be made by resolutions of the federal legislature and of the provincial legislature of each region to which the alteration applies.

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1326 This language is drawn from the SPAIN CONST. art. 154 (1978). PHILIPPINES CONST. art. 10, sec. 16 (1987). The Philippines Constitution also provides, “The President shall exercise general supervision over autonomous regions to ensure that the laws are faithfully executed.”

1327 This language is drawn from the SPAIN CONST. art. 145 (1978).

1328 This language is drawn from the SWITZERLAND CONST. art. 172 (1998). See also GERMANY CONST. art. 32 (1949). The German Constitution also provides that the regional governments may enter into treaties with foreign states subject to the approval of the central government.

1329 This language is drawn from article 43 of Canada’s Constitutional Act of 1982, art. 43. See also GERMANY CONST. art. 29 (1949). The German Constitution also provides that a federal law can change the division of the regions. However, the regions affected must approve the change in a referendum. See also BELGIUM CONST. art. 5 (197029 (1949). In Belgium, the central government can alter the boundaries of its regions by law, but the legislature can also enact a law.
Article XXX
Subsequent Allocation of Additional Political Authority

The federal legislative authority confers on the federal legislature the power to assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government.¹³³⁰

¹³³⁰ This language is drawn from SOUTH AFRICA CONST. art. 44 (1996). See also SPAIN CONST. art. 150 (1978). The Spanish Constitution also provides, “The State may transfer or delegate to the Autonomous Communities, through an organic act, some of its powers which by their very nature can be transferred or delegated. The law shall, in each case, provide for the appropriate transfer of financial means, as well as specify the forms of control to be retained by the State.”
PROPERTY RESTITUTION

INTRODUCTION

This chapter identifies the core elements of property restitution mechanisms. This chapter also outlines the provisions of the Darfur Peace Agreement related to property restitution and provides sample language parties may wish to consider when drafting provisions establishing a property restitution authority.

States generally recognize a right to own and possess property, but displaced persons who return home usually find that secondary occupants have occupied or destroyed their property. States often establish a land commission to adjudicate property claims. States also usually implement programs to communicate with displaced persons to inform them of the process for filing claims for property restitution. A land commission may have exclusive jurisdiction to adjudicate property disputes, or it may have an investigatory function and refer evidence of claims to a civil domestic court for adjudication. A land commission may include members from international organizations or it may consist only of members of the parties to the peace agreement.

States may provide two forms of property restitution including the physical return of property or financial compensation in situations where physical return is not a viable option. Peace agreements may include provisions that make the decisions of a land commission final and binding on all interested parties. Parties to peace agreements may consider creating a property rights ombudsman to ensure that domestic institutions do not violate the property rights of displaced persons and implement the enacted property restitution system.

The 2006 Darfur Peace Agreement (DPA) guarantees the right of displaced persons to recover their property or to receive compensation if return of property is not possible. The DPA also establishes the Darfur Relief and Rehabilitation Commission, which oversees the local Property Claims Committees that mediate property disputes in particular geographic areas. The Property Claims Committees must refer unresolved disputes to local authorities for adjudication, and the Property Claims Committees must rely on local authorities to implement its decisions. The DPA provides that the Human Rights Commission created by the Interim National Constitution shall ensure the protection of human rights, including property rights.
**CORE ELEMENTS**

**Governing Principles**

The United Nations formally endorsed the Principles on Housing and Property Restitution for Refugees and Displaced Persons, also known as the Pinheiro Principles, in August of 2005.\(^{1331}\) These principles enumerated several core elements of property restitution mechanisms consistent with state practice. The Pinheiro Principles, provide that property restitution mechanisms and institutions must be “equitable, timely, independent, transparent, and non-discriminatory.”\(^{1332}\) States must set aside adequate resources to support property restitution mechanisms.\(^{1333}\)

To ensure that potential claimants are aware of the availability of the procedures, the Pinheiro Principles require procedures for filing property restitution claims to be clear and easy to understand.\(^{1334}\) The Pinheiro Principles further require that all displaced persons, regardless of their location, have access to property restitution procedure, that the procedures permit claimants to obtain legal assistance in the submission and prosecution of their claims, and that claimants have adequate time to file claims.\(^{1335}\) In addition to enumerating international standards for property restitution mechanisms, the Pinheiro Principles outline the rights of refugees and internally displaced persons to property restitution.\(^{1336}\)

**Establishing Property Rights**

The rights of refugees and internally displaced persons to property restitution commonly include: (1) property rights for all men, women and

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\(^{1332}\) Pinheiro Principles, para. 12.1.

\(^{1333}\) Pinheiro Principles, para. 12.5.

\(^{1334}\) Pinheiro Principles, para. 13.7.

\(^{1335}\) Pinheiro Principles, paras. 13.4, 13.11, and 13.9.

\(^{1336}\) Pinheiro Principles, sec. III.
children;\textsuperscript{1337} (2) fair compensation for expropriated property;\textsuperscript{1338} (3) the right to collective forms of ownership;\textsuperscript{1339} (4) the rights of tenants to participate in the property restitution process;\textsuperscript{1340} and (5) the rights of secondary occupants or occupants of the property during the course of conflict other than the original owners.\textsuperscript{1341}

\textit{Right to Restitution or Compensation}

Many states provide a general right of voluntary return for displaced persons including a right to property restitution. States may include general property restitution provisions in a peace agreement, which do not detail eligibility provisions or rules of procedure. A peace agreement that does not provide mechanisms to enforce property restitution rights may give the parties more time to establish an agreeable and enforceable system for adjudicating and enforcing property restitution claims.

In June 1998, the Croatian parliament enacted the Programme of Return and Accommodation of Expellees, Displaced Persons and Refugees (Return Programme).\textsuperscript{1342} This legislation promoted the return of property to persons displaced during the conflicts in the 1990s by acknowledging the unconditional right of return of those who were former residents of Croatia, regardless of citizenship. The legislation also created procedures through which returnees could repossess property. Additionally, the Return Programme established local Housing Commissions to oversee the return of occupied private properties to their pre-war owners.\textsuperscript{1343}

\textsuperscript{1337} Pinheiro Principles, para. 4.1.
\textsuperscript{1338} Pinheiro Principles, paras. 21.1 and 21.2.
\textsuperscript{1339} Pinheiro Principles, paras. 13.6 and 15.3.
\textsuperscript{1340} Pinheiro Principles, paras. 13.6 and 16.1.
\textsuperscript{1341} Pinheiro Principles, paras. 17.1.
\textsuperscript{1342} The United Nations High Commissioner for Refugees and the Organization for Security and Cooperation in Europe assisted the Croatian parliament in the drafting of the Programme of Return and Accommodation of Expellees, Displaced Persons and Refugees.
The Interim South African Constitution included a guarantee of property restitution for dispossessed persons.\textsuperscript{1344} The Constitution granted the South African parliament the authority to enact legislation to implement the property restitution system laid out in the Constitution.\textsuperscript{1345} The Constitution established a Commission on Restitution of Land Rights with authority to mediate and settle property disputes and to refer any unsettled disputes to a civil court.\textsuperscript{1346}

Mozambique’s General Peace Agreement provides that “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.”\textsuperscript{1347} Additionally, a 1993 agreement between Mozambique, Zimbabwe, and the UN granted returnees access to land for resettlement and use, but the agreement subjected this use to established Mozambican laws.\textsuperscript{1348}

The Republic of Tajikistan, with the assistance of United Nations High Commissioner for Refugees and Organization for Security and Co-operation in Europe, adopted specific legislative measures to address the large-scale secondary occupation of returnee homes. The legislation required relevant authorities to take measures to return property to displaced persons that they had inhabited prior to their forced migration. If it was not possible to return the property to displaced persons the Council of Misters of the Republic of Tajikistan would determine the manner and amount of compensation to be provided to those displaced persons.\textsuperscript{1349} The law also guaranteed displaced persons the freedom of movement, the right to choose one’s residence, the right to rent-free accommodation in places of

\textsuperscript{1345} SOUTH AFRICA INTERIM CONST. ch. 8, art. 121, para. 1 (1993).
\textsuperscript{1346} SOUTH AFRICA INTERIM CONST. ch. 8, art. 122 (1993).
temporary residence, protection against forced return to the place of previous residence, and other such guarantees.\textsuperscript{1350}

\textit{Uniformity of Property Laws and Guarantees}

Property restitution provisions often include safeguards for private and communal property rights and a just compensation clause, which provide a framework for the protection of private and communal property and guarantee just and timely compensation.

Mozambique’s Land Act of 1997 recognized customary rights in rural and local communities, and granted the rights to use this land to individuals, communities, and companies. The Land Act also recognized the rights of women to hold land titles and prohibited discriminatory treatment of women exercising this right. The Land Act further provided for 100-year land use rights; the use of verbal evidence from community members regarding land occupancy; new occupancy rights to prevent overlapping title issues; and individualized title acquisition if a claimant affirmatively removes himself from communal jurisdiction.\textsuperscript{1351}

\textbf{Communicating with Claimants}

State practice illustrates that communicating with property restitution claimants is a significant challenge to the property restitution process. According to the Pinheiro Principles, claimants must be informed of either their right to make a property restitution claim or notified that a property in which they have an interest is the subject of such a claim.\textsuperscript{1352} Communication with claimants is often difficult, however, in part because interested parties are often refugees or displaced persons without a permanent address. Claimants also may be unwilling or unable to appear before a land commission or prepare the appropriate records to file a claim.

To improve communication with claimants, states may establish multiple land commission offices. Kosovo and Bosnia and Herzegovina established

\begin{footnotesize}
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\item[1352] Pinheiro Principles, para. 13.7.
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\end{footnotesize}
multiple land commission offices where many claimants owned property in rural areas and feared returning to their homes. Moreover, many claimants had fled to Serbia and feared returning to Kosovo or Bosnia and Herzegovina. To ensure that claimants felt safe submitting their claims and to more efficiently address displaced persons’ property restitution claims, the state established multiple land commission offices in areas where claimants temporarily resided.\textsuperscript{1353}

**Gathering Records**

Property restitution mechanisms often include methods displaced persons can use to recover property records. Conflicts and natural disasters often lead to the destruction or loss or property records. Even where governments are able to preserve official records, few displaced persons have access to their individual property records. Displaced persons often are unable to travel to the capital or other central location to retrieve property records from government institutions.

States may create commissions or seek assistance from the international community to determine property rights of displaced persons where property records are otherwise inaccessible. In Bosnia and Herzegovina, most displaced persons did not have access to property records after the war. The Bosnian Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) verified most claims at the municipal level. Pre-war legal problems, such as poorly maintained records and rampant illegal construction, complicated the verification process. To maximize efficiency, the CRPC established an administrative determination process, which involved checking claims against electronic survey records and census data wherever possible.\textsuperscript{1354}

In Aceh, Indonesia, the World Bank sponsored a project to identify land ownership and issue land titles as part of its efforts to assist in tsunami recovery. The World Bank worked with non-governmental organizations, mobilized by the tsunami, to create a community land inventory, recover land records, and establish a land database. The World Bank checked their compiled property records against

\textsuperscript{1353} MARCUS COX & MADELINE GARLICK, MUSICAL CHAIRS: PROPERTY REPOSSESSION AND RETURN STRATEGIES IN BOSNIA AND HERZEGOVINA, IN RETURNING HOME: HOUSING AND PROPERTY RESTITUTION RIGHTS OF REFUGEES AND DISPLACED PERSONS (2003), at 73.

\textsuperscript{1354} MARCUS COX & MADELINE GARLICK, MUSICAL CHAIRS: PROPERTY REPOSSESSION AND RETURN STRATEGIES IN BOSNIA AND HERZEGOVINA, IN RETURNING HOME: HOUSING AND PROPERTY RESTITUTION RIGHTS OF REFUGEES AND DISPLACED PERSONS (2003), at 72-73.
pre-tsunami satellite pictures, official government records and recovered land title documents. As of December 2006, the Aceh Land Administration Agency, through the support of the World Bank, had surveyed over 138,000 parcels of land and registered over 27,000 titles in the land records, securing property rights for the owners of those parcels.\textsuperscript{1355}

**Land Commissions and Adjudication Authorities**

Property restitution commissions are a common element of any property restitution agreement.\textsuperscript{1356} Traditional judicial institutions are often incapable of adjudicating the quantity of property claims arising from the return of displaced persons.\textsuperscript{1357} Property restitution commissions provide a speedy mechanism for resolving disputes. Speedy resolution of property disputes may also reduce tension over land.

States have established commissions to hear and mediate the claims of individuals who have lost possession, ownership, or occupancy of land in the course of conflict. These commissions may address claims of those displaced during conflict or formalize informal property transactions that took place during conflict.

*Jurisdiction and Authority*

States usually establish land commissions to resolve property disputes created by the return of displaced persons. Land commissions usually have the authority to assign title, mortgage, lease, and dispose of disputed or abandoned property.\textsuperscript{1358} Land commissions typically also have the ability to make legally

\begin{flushleft}
\textsuperscript{1356} Kosovo, Burundi, South Africa, Aceh, Georgia, and Bosnia and Herzegovina have established land commissions.
\textsuperscript{1357} State judicial institutions frequently do not have the resources to adjudicate tens of thousands of claims by displaced persons.
\end{flushleft}
binding decisions.\textsuperscript{1359} A land commission may function as an independent, quasi-judicial institution when parties to a property restitution agreement believe that the existing courts or administrative institutions are incapable of adjudicating property restitution disputes. The conflict in Kosovo significantly reduced the capacity of judicial and administrative institutions. Kosovo established a Housing and Property Claims Commission with exclusive jurisdiction to hear and adjudicate property disputes.\textsuperscript{1360}

In Bosnia and Herzegovina, the land commission resolved disputes and relied on judicial and administrative institutions to enforce the land commission's decisions. The parties to the General Framework Agreement for Peace in Bosnia and Herzegovina designed the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) to investigate and mediate potentially hundreds of thousands of property disputes. To maximize efficiency, the CRPC established an administrative determination process, which involved checking claims against electronic survey records and census data wherever possible. The commission did not hold oral hearings or attempt to contact the current occupant of a disputed property. However, it established a flexible internal appeals process, which was open to any interested party who was able to present new evidence to challenge a decision. The CRPC settled 217,000 disputes by 2002, but did not have any enforcement mechanism. The CRPC relied on the courts and administrative agencies to uphold and enforce its decisions.\textsuperscript{1361}

\textit{Composition}

The appointment of international experts to a land commission is a common mechanism used to alleviate concerns about the impartiality of such a commission. Land commissions in Bosnia and Herzegovina, Georgia, and Kosovo have all had international experts serve on the commissions. While these international experts may increase the perceived impartiality of the commission, the appointment of

\begin{itemize}
  \item \textsuperscript{1359} For more information about the binding decisions of land commissions, see the section on Enforcement later in this chapter.
  \item \textsuperscript{1360} ALAN DODSON & VEIJO HEISKANEN, HOUSING AND PROPERTY RESTITUTION IN KOSOVO, IN RETURNING HOME: HOUSING AND PROPERTY RESTITUTION RIGHTS OF REFUGEES AND DISPLACED PERSONS (2003), at 230-231.
  \item \textsuperscript{1361} MARCUS COX & MADELINE GARLICK, MUSICAL CHAIRS: PROPERTY REPOSESSION AND RETURN STRATEGIES IN BOSNIA AND HERZEGOVINA, IN RETURNING HOME: HOUSING AND PROPERTY RESTITUTION RIGHTS OF REFUGEES AND DISPLACED PERSONS (2003), at 72-75.
\end{itemize}
international representatives typically requires that the state translate all claims and supporting documents.

The Bosnian Commission for Real Property Claims of Displaced Persons and Refugees was composed of nine members. Four members were appointed by the Federation of Bosnia-Herzegovina, two members were appointed by Republika Srpska, and three members were appointed by the President of the European Court of Human Rights. The President of the European Court of Human Rights was also responsible for designating the chairman of the commission from among one of the three members appointed the President. Similarly, the Draft Law of Georgia on the Restitution of Housing and Property to the Victims of the Georgian-Ossetian Conflict established a commission made up of twelve seats split equally among representatives of the Georgian government, representatives from the Ossetian party, and representatives from international organizations.

Alternatively, the parties to a property restitution agreement may wish to negotiate the membership of the land commission as part of an overall peace agreement and forgo the use of international experts. In this way, the Arusha Peace and Reconciliation Agreement for Burundi established a land commission. The parties to the Arusha Agreement and the Government of Burundi selected members to represent them in the land commission.

Procedural Standards

Creating clear procedural standards that define the responsibilities of each administrative and adjudicative agency may prevent inconsistent implementation of property restitution mechanisms. Parties may choose to include provisions that set deadlines for filing claims, define claimants’ eligibility, and establish fixed evidentiary burdens.

1362 General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, art. IX.  
Initial Call for Property Claims

The claims adjudication process generally begins with a public call for claims using widespread media to inform claimants. The call typically requires claimants to file available documentation of ownership, affidavits detailing removal from or seizure of property, past and current citizenship or residency of claimant, and claimant’s private, commercial, civic, or public status.

The Law on Abandoned Apartments in Bosnia required Bosnian authorities to draft claim forms and accompanying procedure manuals to inform municipal housing offices on how to implement the property claims legislation. The international community assumed these responsibilities due to inaction by Bosnian authorities and a fear that the Bosnian authorities may misinform or not inform Bosnians about the claims process. The international community launched a widespread campaign to inform potential claimants of the procedure for filing claims using billboards, roundtables, newspaper and radio advertisements, televisions spots, call-in shows, and websites. This campaign distributed information throughout Bosnia-Herzegovina, Western Europe, and North America. 1365

In South Africa, while the property restitution system settled some claims in the years after the implementation of the restitution program, the adjudication process was slow. Some commentators noted problems in South Africa’s property restitution system, including the centralized and bureaucratic nature of the property restitution system, the lack of harmony among the property restitution institutions, and the limited resources and powers of the Commission on Restitution of Land Claims. 1366

Dates of Eligibility and Filing Deadlines

To establish a clear timetable for property restitution claims, parties generally consider the start and end dates for which claims are eligible and the deadline for filing claims.

South Africa’s property restitution system establishes elements that potential claimants must satisfy to be eligible to apply for property restitution. These elements include requiring applicants to show that they have been (1) dispossessed (2) of a right of land (3) after June 19, 1913 (4) because of past racially discriminatory laws or practices. South Africa chose the 1913 date because the former government enacted the discriminatory Land Act in that year. The Government of South Africa created redistribution and tenure reform programs to assist people who lost their land prior to 1913. Establishing an end date for property restitution claims may ease management of an overwhelming load of claims in an administrative effort with limited resources.

The second crucial date is the deadline for filing claims. Bosnia set multiple deadlines, with commercial claims filed by a set date and residential claims by a later date. Claimants were required to file supporting documentation after filing their claim with the Bosnian Commission for Real Property Claims of Displaced Persons. The Office of High Representative in Bosnia and Herzegovina extended the deadline for filing claims after it concluded that Bosnian authorities had obstructed the filing process. Parties to any property restitution agreement also may wish to consider extending the filing deadline, depending on the success of the initial call for claims.

Eligibility and Claimant Classification

Setting standards for eligibility and creating classes of claimants may increase the manageability of property restitution claims. Property restitution systems routinely divide claimants into different categories. Different categories of claimants may have different rights. States may also divide property into different categories such as private property, communal, and commercial property. If states divide property into different categories, each category of property may have a different procedure for the adjudication of claims.

The South African Interim Constitution of 1994 granted the land commission the authority to resolve disputes over property claimed individually or collectively by the tribe or village who previously held the land. Eligibility for

property restitution claims was contingent upon the claimants’ status as victims of a racially discriminatory law. The South African Constitution of 1996 widened the eligibility requirements by allowing victims of racially discriminatory practice as well as racially discriminatory laws to file property restitution claims.  

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Evidentiary Burdens

A successful property restitution system requires parties to establish evidentiary burdens that claimants must satisfy to receive property restitution. The lack of property records may present obstacles to claimants seeking to prove ownership of a property. If documentation and property records are accessible, the land commissions may require claimants to present the necessary documentation to substantiate their claims. In states where claimants do not have access to property records and other documentation, the land commissions may relax the requirements for evidence of ownership.

Property restitution procedures may require oral and/or written testimony of claimants and witnesses to meet the established evidentiary burden. Displaced persons who allege that they were forced to sign sale or rental contracts under duress or coercion at the time of flight may benefit from the testimony of neighbors or other witnesses where documentation of ownership is unavailable. States may require claimants to provide other evidence, including testimony, to corroborate their claims of property ownership.  

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The amount of evidence required likely will affect the speed of the resolution of property restitution claims. In South Africa, prior to the adjudication of property restitution claims, the land commission required investigations and substantial evidentiary documentation. These requirements inhibited speedy resolution of property restitution claims and consumed much of the commission’s available resources.  

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\[\text{Scott Leckie, New Directions in Housing and Property Restitution, in Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons (2003), at 52.}\]

\[\text{The Restitution of Land Rights Act of 1994 establishes the authority of the Commission on Restitution of Land Rights to demand documentation from individuals as well as from communities making claims to property. The Restitution of Land Rights Act of 1994, sec. 12.}\]

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Remedies

States often provide two remedies for property claims. Claimants may receive restitution or, where restitution of the property is not a viable option, claimants may receive compensation. Claimants may obtain two types of restitution: (1) natural restitution whereby the property claimed by the displaced person is returned, also known as repatriation; and (2) substitutional restitution whereby claimants receive a replacement property of equivalent value to their claimed property. Compensation usually results in cash payments or government securities equivalent in value to the disputed property.

Restitution

States that provide for restitution may either return property to its original owners or provide claimants with other property to replace the property they lost. Prior to settlement of a property restitution claim, displaced persons usually require temporary housing. In Tajikistan, the government was required to provide displaced persons with free temporary housing pending the settlement of property restitution claims. The Tajikistan government also allowed displaced persons who were in the process of selecting a new permanent residence to receive government administered accommodations.1372

Secondary occupants who inhabit property subject to a restitution claim may be displaced when the original owners of the occupied property return and successfully obtain restitution. States may provide restitution to these secondary occupants. During the conflict in Bosnia and Herzegovina, the government enacted laws allowing reallocation of properties that displaced persons abandoned when they fled their homes because of the violence. When the conflict ended, secondary occupants were not required to leave the occupied properties until they were able to return to their prewar homes. The law also provided an appeals process to delay implementation of an order for eviction of secondary occupants.1373

1373 Rhodri C. Williams, The Significance of Property Restitution to Sustainable Return in Bosnia and Herzegovina, INTERNATIONAL MIGRATION, August 2006, at 44.
Compensation Mechanisms

States often provide compensation for displaced persons who successfully claim ownership of occupied properties. The provision of compensation raises valuation questions such as whether the value of property should reflect the value at the time of the taking or account for the subsequent depreciation/appreciation in value of property and lost profits. The UN Charter of Economic Rights and Duties of States provides that compensation shall be “appropriate” as determined by the laws of the taking state.

States may wish to provide cash compensation to property restitution claimants in the value of the property they lost or for the cost of acquiring another home. States frequently do not have the monetary resources to provide cash compensation to large numbers of returnees and may seek contributions from the international community. Burundi sought funding from the World Bank, the United Nations Development Program, the Office of the United Nations High Commissioner for Refugees, and the European Commission to fund its repatriation program.1374

An alternative to cash compensation may be in-kind compensation in the form of construction of adequate, affordable, and accessible housing, for use by displaced secondary occupants. Governments may directly fund or subsidize in-kind compensation. Alternatively, states may provide vouchers or individual subsidies that displaced persons may redeem for the construction of residences. States may also establish a housing fund that issues government-housing bonds. Other compensation mechanisms include allocating state land plots to those forcibly displaced or providing government assistance to returnees looking for new housing.1375

Enforcement

Land commissions may have independent enforcement mechanisms; however, they often rely on courts and administrative agencies to ensure implementation of commission decisions. The founding documents of land

1374 Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, ch. 3, art. 17.

1375 SIMON BAGSHAW, PROPERTY RESTITUTION FOR INTERNALLY DISPLACED PERSONS: DEVELOPMENTS IN THE NORMATIVE FRAMEWORK, IN RETURNING HOME: HOUSING AND PROPERTY RESTITUTION RIGHTS OF REFUGEES AND DISPLACED PERSONS (2003), at 381.
commissions may ensure that the commission’s decisions are final and enforceable as law.

**Final and Binding Judgments**

An effective property restitution mechanism requires that the adjudicating commission have authority make its decision final and binding upon all interested parties to that claim. The General Framework Agreement for Bosnia and Herzegovina provided that decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) would be “final, and any title deed, mortgage or other legal instrument created or awarded by the Commission shall be recognized as lawful throughout Bosnia-Herzegovina.” The General Framework Agreement, did not provide a means for the CRPC to enforce its decisions or require that other government institutions enforce the CRPC’s decisions. In practice, the lack of an enforcement mechanism inhibited successful implementation of the property restitution system established by the General Framework Agreement.

To ensure the effective implementation of a property restitution system, states may wish to include provisions for enforcement mechanisms in any property restitution agreement. These provisions may help ensure that other government authorities comply with and enforce the decisions of the land commission. The parties also may consider allowing international organizations to monitor the implementation of the property restitution system to ensure compliance by domestic government authorities.

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1376 General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, art. XII, para. 7.
1379 The United Nations Office of the High Representative for Refugees (UNHCR) frequently monitors state repatriation and restitution programs for IDPs and refugees. For more information, see the UNHCR website at http://www.unhcr.org (last accessed Sept. 24, 2007).
States may create a property rights ombudsman to prevent the adoption of legislation that infringes upon these rights and to report progress on property claims. In Bosnia and Herzegovina, the General Framework Agreement established a Human Rights Commission, which consisted of a Human Rights Ombudsman and a Human Rights Chamber. The Human Rights Ombudsman determined the admissibility of claims of violations of human rights, including property rights, and tried to settle the dispute between the parties. The Ombudsman usually issued non-binding recommendations to which the parties to the dispute were required to respond. If a party failed to respond, the Ombudsperson could refer the claim to the Human Rights Chamber. The Human Rights Chamber would then adjudicate the claims and issue a final and binding decision.\footnote{Walpurga Englbrecht, Property Rights in Bosnia and Herzegovina: The Contributions of the Human Rights Ombudsperson and the Human Rights Chamber Towards Their Protection, in Returning Home: Housing and Restitution Rights of Refugees and Displaced Persons (2003), at 83-142. The most common claims that these institutions received were claims of displaced persons who had been unable to recover their lost property through the property restitution system.}

**DARFUR PEACE AGREEMENT**

The 2006 Darfur Peace Agreement (DPA) provides that “[e]very person shall have the right to acquire or own property as regulated by law.” Further, the DPA provides that displaced persons have the right to restitution of their property or to compensation if return of their property is not possible.\footnote{Darfur Peace Agreement of, May 5, 2006, art. 3, para. 33, available at http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf (last accessed Sept. 17 18, 2007).} The DPA establishes a land commission, the Darfur Rehabilitation and Resettlement Commission. The Commission has the authority to determine restitution and appeals procedures and must ensure the full participation of women in making property claims.\footnote{Darfur Peace Agreement, art. 21, para. 194. Paragraph 196 provides that a Property Claims Committee may only award compensation where it has factually established that restitution is impossible.}
The Darfur Peace Agreement establishes local Property Claims Committees under the Darfur Rehabilitation and Resettlement Commission to mediate property disputes. The DPA required that Property Claims Committees be present in both rural and urban areas, and provided each committee with jurisdiction over property claims within its delineated geographic area. The Property Claims Committees shall consist of “members representative of the geographical area in respect of which the commission exercises jurisdiction” and shall have access to all land records needed to reach its decisions. The Darfur Peace Agreement does not outline the composition or specific procedures for appointment of members but rather provides, “Membership, appointment, terms and conditions of service of the Property Claims Committees (PCCs) shall be regulated by law.”

The Property Claims Committees shall “make recommendations to the relevant authorities for the implementation of its decisions.” If the Property Claims Committee cannot resolve a dispute through mediation or traditional dispute resolution mechanisms, the committee must refer the dispute to the relevant domestic authorities. The Parties to the DPA call on the international community to assist in funding and creating the Darfur Relief and Rehabilitation Commission (DRRC). The DPA does not provide for the creation of a property rights Ombudsperson to ensure the protection of displaced persons’ property rights, but the Human Rights Commission, which the Interim National Constitution established, is responsible for ensuring the protection of human rights, including property rights.

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1384 Darfur Peace Agreement, art. 21, para. 197.
1385 Darfur Peace Agreement, art. 21, para. 197.
1386 Darfur Peace Agreement, art. 21, para. 197, secs. c, e.
1387 Darfur Peace Agreement, art. 21, para. 198.
1388 Darfur Peace Agreement, art. 21, para. 197, sec. l.
1389 Darfur Peace Agreement, art. 21, para. 197, sec. a.
1390 Darfur Peace Agreement, art. 32, para. 505.
1391 Darfur Peace Agreement, art. 3, para. 41.
Sample Language

Article XXX
Right to Restitution

Refugees and displaced persons shall be guaranteed restitution of property owned by them that is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it.1392

Article XXX
Commission for Displaced Persons and Refugees

(1) The Parties hereby establish an independent Commission for Displaced Persons and Refugees (the “Commission”).

(2) The Commission shall receive and decide any claims for real property, where the property has not voluntarily been sold or otherwise transferred, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.

(3) Upon receipt of a claim, the Commission shall determine the lawful owner of the property with respect to which the claim is made and the value of that property. The Commission, through its staff or a duly designated international or nongovernmental organization, shall be entitled to have access to any and all property records, and to any and all real property for purposes of inspection, evaluation and assessment related to consideration of a claim.1393

1392 This language is drawn from the General Peace Agreement for Mozambique, Protocol III, art. IV, sec. e. The General Framework Agreement for Peace in Bosnia and Herzegovina also provides displaced persons with the right to restitution or compensation, but the agreement explicitly defines the time period for which displaced persons may be eligible to bring claims. General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, art. 1, para. 1. The Arusha Peace and Reconciliation Agreement for Burundi also provides the right to restitution or compensation for property loss. Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, art. 8, paras. a, b.

1393 This language is drawn from the General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, arts. VII, XI, and XII. Article 8 of the Arusha Peace and Reconciliation Agreement for Burundi establishes a similar commission.
(3) The Commission shall investigate the merits of claims for the restitution of rights in land, mediate and settle disputes arising from such claims, and refer any unsettled disputes to the Land Claims Court for final decision. 1394

**Article XXX**

**Composition of the Commission**

The Commission shall be composed of [X] members. The Government of Sudan shall appoint [X] members, and the region of Darfur shall appoint [X] members. The United Nations [or other international organization] shall appoint the remaining members and shall designate one such member as the Chairman. The members of the Commission may be reappointed. 1395

**OR**

The members of the Commission shall be drawn from the participating parties and the Government of Sudan, and shall elect the Commission’s chairperson. 1396

**Article XXX**

**Remedies**

(1) Any person requesting the return of property who is found by the Commission to be the lawful owner of that property shall be awarded its return. Any person requesting compensation in lieu of return who is found

1394 This language is drawn from the South African Restitution of Land Rights Act, art. 6 (1994).
1395 This language is drawn from the General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, art. IX.
by the Commission to be the lawful owner of that property shall be awarded just compensation as determined by the Commission.

(2) In cases in which the claimant is awarded compensation in lieu of return of the property, the Commission may award a monetary grant or a compensation bond for the future purchase of real property. The Parties welcome the willingness of the international community assisting in the construction and financing of housing to accept compensation bonds awarded by the Commission as payment, and to award persons holding such compensation bonds priority in obtaining that housing.\textsuperscript{1397}

OR

(2) If recovery proves impossible, everyone with an entitlement must receive fair compensation and/or indemnification. Refugees who do not return may receive a just and equitable indemnification if their land had been expropriated without prior indemnification. The policy with respect to distribution of State-owned land shall be reviewed so that priority can be given to the resettlement of displaced persons.\textsuperscript{1398}

\textbf{Article XXX}

\textbf{Final and Binding Judgments}

Commission decisions shall be final, and any title, deed, mortgage, or other legal instrument created or awarded by the Commission shall be recognized as lawful throughout Sudan.\textsuperscript{1399}

\textsuperscript{1397} This language is drawn from the General Framework Agreement for Peace in Bosnia and Herzegovina. Protocol III, art. IV, sec. e. The General Peace Agreement for Mozambique, Protocol III, art. IV, sec. e, provides displaced persons with the right to sue to recover their lost property.

\textsuperscript{1398} This language is drawn from the Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, art. 8. Like the General Framework Agreement for Peace in Bosnia and Herzegovina, the Arusha Peace and Reconciliation Agreement for Burundi provides for restitution and compensation to settle property disputes. However, the Arusha Peace and Reconciliation Agreement for Burundi also provides for distribution of State-owned property to displaced persons in lieu of restitution or compensation for lost property.

\textsuperscript{1399} This language is drawn from the General Framework Agreement for Peace in Bosnia and Herzegovina. Protocol IV, article 8 of the, Annex 7, art. XII. The Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV, art. 8, also establishes a land commission to
adjudicate property disputes, but the Arusha agreement does not provide that the commission’s decisions are final and binding on all persons in Burundi.
REVENUE SHARING

INTRODUCTION

This chapter presents an overview of the core elements of revenue sharing mechanisms. This chapter also outlines provisions in the 2006 Darfur Peace Agreement relating to revenue sharing and provides sample language parties may wish to consider when drafting provisions for a revenue sharing structure.

States generally provide for revenue sharing in their constitutions. The provisions may list broad principles regarding revenue distribution, or they may list specific distribution schemes. In a centralized tax-collection state, the central government collects a high percentage of taxes. In a decentralized tax-collection state, the central government collects less of the total tax revenue. In both types of states however, the central government gives financial disbursements to provincial governments in need of aid.

The 2006 Darfur Peace Agreement (DPA) provides for equitable wealth sharing among the Sudanese people. The central government must place all revenue collected into the National Revenue Fund, and allocate Darfur a portion of the revenue pursuant to future agreements. The DPA established the Fiscal and Financial Allocation and Monitoring Commission (FFAMC) to recommend formulae for allocation of revenue between provinces and between the central

1400 States distinguish between revenue from taxes and revenue from the sale of natural resources. This chapter will not discuss distribution of revenue from the sale of natural resources.
1404 Darfur Peace Agreement, art. 17, para. 98; art. 18, para. 115.
government and Darfur. The DPA authorizes Darfur to collect provincial revenue to provide for provincial development initiatives.

**CORE ELEMENTS**

**Government Institutions Responsible for Coordinating Revenue Distribution**

To accommodate changing circumstances, states typically have formal and informal processes and institutions for adjusting financial arrangements between the federal and provincial governments. Interdependence between both levels of government is common due to the difficulty associated with balancing revenue allocation and expenditure responsibility in a single constitutional provision. Generally, states follow four schemes of procedures for adjusting federal-provincial financial arrangements. States often use schemes that allow both federal and provincial representation in decision-making.

The first scheme is the use of an independent expert commission. The federal governments in Australia, India, and South Africa establish different forms of standing or periodic commissions to analyze the distributive formula and recommend any changes in it to parliament. For instance, India has two boards that formulate policy concerning levy and collection of taxes: the Central Board of Excise and Customs and the Central Board of Direct Taxes.

The second scheme is the use of a constitutionally mandated council. Pakistan and Malaysia have constitutionally mandated councils composed of federal and regional representatives that reach agreement on modifications to

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1405 Darfur Peace Agreement, art. 18, para. 121.
1406 Darfur Peace Agreement, art. 18, paras. 113(b), 114.
financial arrangements. Pakistan’s constitution provides for its National Finance Commission, consisting of both federal and regional representatives.

The third scheme is the use of a federal parliamentary committee. Germany, Switzerland, Austria, and Belgium have parliamentary committees that determine financial transfers to the regions. Regional governments have some effective formal participation in determining the transfers.

The fourth and final scheme is federal government determination of financial transfers. In Canada, the federal government determines financial transfers to the provinces. Provincial governments have no effective participation in the determination. However, despite the absence of formal provincial participation, extra-parliamentary committees of federal and provincial ministers often discuss federal-provincial financial relations.

Methods for Calculating Revenue Distribution

Most states use some form of a calculation system to determine each province’s share of disbursements. In a centralized tax-collection state, the federal government collects most of the revenue and disburses large amounts of aid to the provinces. In a decentralized tax-collection state, the federal government collects only a fraction of the revenue, yet still provides financial disbursements to provinces in need.

In Australia, the federal government collects most of the tax revenue and disburses large transfers to the provinces. Australia uses two main methods of distribution: functional special purpose transfers and unconditional general-purpose transfers. The federal government provides special purpose transfers to


provinces to fund areas such as health, education, training, and roads. The government attaches conditions to these transfers, usually requiring a province to spend the transfer a certain way or to match the amount of the transfer. The Commonwealth Grants Commission recommends the amount of general-purpose transfers from the federal government to specific provinces using a horizontal fiscal equalization principle. This enables each provincial government to provide a similar standard of services. In its determination process, the Commonwealth Grants Commission considers the differing costs of providing services in each province.

In India, the President considers the recommendations of a Finance Commission each year before determining what percentage of the net proceeds of any tax each provincial government will receive. A consideration of which provincial governments paid the tax greatly influences this determination. For instance, the federal government levies and collects revenue on all taxes on the sale or purchase of goods and on taxes on the consignment of goods. The federal government then distributes this revenue to the provinces according to Parliamentary law regarding a formula for distribution. Additionally, the federal government also provides assistance grants to any provincial government that needs assistance based on the determinations of Parliament.

In Austria, regions have administrative and legislative autonomy, but the federal government manages revenue collection. The federal government distributes revenue to the regional governments based on tax revenue criteria, (regional or local revenue of a tax) and demographic criteria (the number of inhabitants of a province). Regional governments then receive special needs transfers for housing development, infrastructure, and environmental purposes, and

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1416 INDIA CONST. art. 269 (1949).
1417 INDIA CONST. arts. 270, 275 (1949).
to equalize their revenue with average revenue.\footnote{1419} In addition, the federal government maintains a Natural Disaster Fund, from which regional governments may receive transfers in the event of a natural disaster.\footnote{1420}

In Canada, a decentralized tax-collection state, the federal government collects less of the tax revenue but still disburses financial transfers to low-income provinces. The federal government uses two main methods of revenue distribution: conditional health and social transfers and unconditional equalization transfers to low-income provinces. The Canada Health Transfer and The Canada Social Transfer distribute equal per capita transfers to the provincial governments to finance health care, post-secondary education, and social assistance programs.\footnote{1421} The federal government attaches minimal conditions, such as requiring the provincial governments to inform the federal government about their health care services in order to receive these transfers.\footnote{1422}

The Equalization and Territorial Formula Financing Program considers a ten province standard to determine transfers. The calculation focuses only on tax capacity difference between provinces and not on expenditure capabilities or needs. The federal government measures five tax bases to determine provincial tax capacity: personal income tax, business income tax, consumption tax, property tax, and natural resources.\footnote{1423} The state then distributes transfers to provinces below the average tax capacity.\footnote{1424}

\textbf{DARFUR PEACE AGREEMENT}

The 2006 Darfur Peace Agreement (DPA) defines Sudan’s wealth broadly to include natural resources, human resources, historical and cultural assets, and financial assets.\footnote{1425} The DPA also establishes that Sudan will share its wealth

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\begin{itemize}
\item \footnote{1419} \textsc{Federal Ministry of Finance Austria, Fiscal Equalization System in Austria 3.}
\item \footnote{1420} \textsc{Federal Ministry of Finance Austria, Fiscal Equalization System in Austria 3.}
\item \footnote{1421} \textsc{Department of Finance Canada, Major Federal Transfers, \textit{available at} http://www.fin.gc.ca/access/fedprove.html#Major (last accessed Aug. 28, 2007).}
\item \footnote{1422} \textsc{Department of Finance Canada, Major Federal Transfers.}
\item \footnote{1423} \textsc{Department of Finance Canada, Equalization Program, \textit{available at} http://www.fin.gc.ca/FEDPROV/eqpe.html (last accessed Sept. 23, 2007).}
\item \footnote{1424} \textsc{Department of Finance Canada, Equalization Program.}
\item \footnote{1425} Darfur Peace Agreement, art. 17, para. 94.
\end{itemize}
equitably on the premise that “all parts of the Sudan are entitled to equitable development.”  

The DPA establishes that the Sudanese government will place all state-collected revenue in a National Revenue Fund administered by the National Treasury.  

The DPA mandates that the Sudanese government make financial transfers to the appropriate level of government in Darfur as the parties agree.  

Darfur is also to receive grants designed to help the region meet specified goals related to Millennium Development, poverty eradication, and gender development.  

Provincial governments “shall endeavor” to pay for their expenditures with revenues raised in their province.  

The DPA permits each provincial government to determine, without federal interference, “the structure of the revenue base and the level of the charge or tax rate applied to that base.”  

The DPA also provides that a Fiscal and Financial Allocation and Monitoring Commission (FFAMC) will ensure Darfur’s representation in fiscal equalization on a basis equal with other regions.  

The FFAMC will recommend an independent Panel of Experts whom the President will appoint with the national legislature’s approval. The Panel will recommend formulae for vertical allocation between Sudan and the provinces and criteria for horizontal allocation between provinces.  

If the national legislature approves the Panel report, the FFAMC shall implement it.  


1426 Darfur Peace Agreement, art. 17, para. 100.  
1427 Darfur Peace Agreement, art. 18, para. 115.  
1428 Darfur Peace Agreement, art. 17, para. 98.  
1429 Darfur Peace Agreement, art. 17, para. 104, and art 18, para. 128.  
1430 Darfur Peace Agreement, art. 18, para. 113(b).  
1431 Darfur Peace Agreement, art. 18, para. 114.  
1432 Darfur Peace Agreement, art. 17, para. 94.  
1433 Darfur Peace Agreement, art. 18, para. 121.  
1434 Darfur Peace Agreement, art. 18, para. 122.
SAMPLE LANGUAGE

**Article XXX**
Equalization and Regional Disparities

(1) The Government of Sudan shall:
   (a) Promote equal opportunities for the well-being of all Sudanese;
   (b) Further economic development to reduce disparity in opportunities;
   and
   (c) Provide essential public services of reasonable quality to all Sudanese.

(2) The Government of Sudan shall make equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public service at reasonably comparable levels of taxation. 1435

OR

**Article XXX**

The National Legislature of Sudan may grant financial assistance to any province on such terms and conditions as the legislature determines. 1436

OR

**Article XXX**

(1) Taxes collected by the Government of Sudan, with some exceptions, shall be distributed between the government and the provinces. 1437

(2) The President of Sudan shall determine revenue distribution based on the recommendations of [Independent Finance Commission].

(3) The National Legislature may determine whether any provinces of Sudan require additional assistance and respond accordingly. 1438

1435 This language is drawn from the CONSTITUTIONAL ACT OF CANADA art. 36(2).
1436 This language is drawn from the AUSTRALIAN CONST. art. 96.
1437 This language is drawn from the INDIAN CONST. art. 268-270.
Article XXX
National Finance Commission

(1) Within six months of the commencing day and thereafter at intervals not exceeding [five] years, the President of Sudan shall constitute a National Finance Commission consisting of the Minister of Finance of Sudan, the Ministers of Finance of the provincial governments, and any other persons as may be appointed by the President after consultation with the governors of the provinces.

(2) It shall be the duty of the National Finance Commission to make recommendations to the President as to:
   (a) The distribution between the federal government and the provinces of the net proceeds of taxes;
   (b) The making of grants-in-aid by the federal government to the provincial governments;
   (c) The exercise by the federal government and provincial governments of the borrowing powers conferred by the Constitution; and
   (d) Any other matter relating to finance referred to the Commission by the President.\textsuperscript{1439}

OR

Article XXX
Central Boards of Revenue Act

(1) The Government of Sudan shall constitute two separate Boards of Revenue to be called the Central Board of Direct Taxes and the Central Board of Excise and Customs and each Board shall, subject to the control of the Government of Sudan, exercise such powers and perform such duties as may be entrusted to that Board by the Government of Sudan or by or under any law.

(2) Each Board shall consist of such number of persons [not exceeding X] as the Government of Sudan may think fit to appoint.

\textsuperscript{1438} This language is drawn from the INDIAN CONST. art. 270, 275.
\textsuperscript{1439} This language is drawn from the PAKISTAN CONST.
(3) Functions relating to matters connected with direct taxes shall be discharged by the Central Board of Direct Taxes.

(4) Functions relating to any other matter shall be discharged by the Central Board of Excise and Customs.\textsuperscript{1440}

**Article XXX**

**Duties Levied by the Government of Sudan but Collected and Appropriated by the Regions**

(1) Stamp duties and duties of excise shall be levied by the Government of Sudan, but shall be collected:

(a) In the case where such duties are leviable within any state territory, by the Government of Sudan

(b) In other cases, by the provinces within which such duties are respectively leviable.\textsuperscript{1441}

**Article XXX**

**Taxes Levied and Collected by the Government of Sudan but Assigned to the Regions**

(1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of Sudan but shall be assigned to the Regions in the manner provided in clause (2).

(2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to territories of the Government of Sudan, shall be assigned to the Regions within which that tax is leviable in that year, and shall be distributed among those Regions in accordance with such principles of distribution as may be formulated by the national legislature by law.\textsuperscript{1442}

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\textsuperscript{1440} This language is drawn from the Central Boards of Revenue Act (India 1963), art. 2 and 5, available at http://www.commonlilii.org/in/legis/num_act/cbora1963242/ (last accessed Sept. 23, 2007).

\textsuperscript{1441} This language is drawn from the INDIA CONST. art. 268.

\textsuperscript{1442} This language is drawn from the INDIA CONST. art. 269.
Article XXX
Taxes Levied and Distributed Between the Government of Sudan and the Regions

(1) All taxes and duties, except those referred to in the first two of the three preceding Articles, shall be levied and collected by the Government of Sudan and shall be distributed between the Government of Sudan and the Regions in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall be assigned to the Regions within which that tax or duty is leviable in that year, and shall be distributed among those Regions in such manner and from such times as may be prescribed in the manner provided in clause (3).

(3) In this article, “prescribed,” means:
(a) Until a Finance Commission has been constituted, prescribed by the President by order, and
(b) After a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.\(^{1443}\)

OR

Article XXX
Fiscal Equalization System Act

(1) The Government of Sudan shall determine the distribution of revenue using two main criteria:
(a) Tax revenue – allocation based on provincial or local revenue of a tax; and
(b) Demographics – allocation based on the number of inhabitants of a province.

(2) The Government of Sudan shall then allocate funds to cover special needs or purposes, including:
(a) Equalizing the average revenue of the provinces of Sudan;

\(^{1443}\) This language is drawn from the INDIA CONST. art. 270.
(b) Housing development, environmental purposes, and infrastructure; and
(c) Transfers in accordance with section (3)

(3) The Government of Sudan shall finance preventive measures against natural disasters and cover losses incurred by natural disasters through the National Disaster Fund. The Fund shall be financed by [X] percent of the Following taxes:
(a) Income tax;
(b) Wage tax;
(c) Tax on capital yields; and
(d) Corporation tax.\textsuperscript{1444}

OR

\textbf{Article XXX
General and Specific Purpose Transfers Act}

(1) The Government of Sudan shall disburse two types of financial transfers to the provinces of Sudan:
(a) General purpose transfers; and
(b) Specific purpose transfers.

(2) The general-purpose transfers shall equalize provincial revenue and enable each province to provide the same standard of services.

(3) The specific purpose transfers shall be disbursed on the condition that [the provinces spend the money in the manner specified and/or match the amount of the transfer]. The specific purpose transfers shall provide funding for:
(a) Health;
(b) Education;
(c) Roads;
(d) Social welfare programs; and
(e) Any other area that the [Government of Sudan, National Legislature, or Independent Finance Commission] deems appropriate.\textsuperscript{1445}

\textsuperscript{1444}This language is drawn from the Fiscal Equalization System of Austria, at 2-3, available at http://english.bmf.gv.at/Budget/IntergovernmentalFi_252/Fiscal_Equalisation_System.pdf (last accessed Sept. 23, 2007).
This language is drawn from the Western Australia Department of Treasury and Finance; and the Department of Finance Canada.

1445
TARGETED ECONOMIC RECONSTRUCTION MECHANISMS

INTRODUCTION

This chapter presents an overview of the mechanisms states use to target specifically vulnerable groups in an economic reconstruction plan in post-conflict states. This chapter also outlines the provisions of the Darfur Peace Agreement related to economic reconstruction and provides sample language parties may wish to consider when drafting provisions for economic reconstruction.

Economic reconstruction is critical to sustain peace and stability after a prolonged conflict. Many experts agree that ensuring the inclusion of all sectors of society is essential to that success. For this reason, many post-conflict economic reconstruction plans target specific vulnerable segments of the population to ensure their integration into the economic reconstruction process. Groups frequently selected for targeted economic reconstruction efforts are: former combatants, internally displaced persons, women, minority populations, and other traditionally disenfranchised groups. The unique circumstances of each group may require targeted strategies to facilitate the groups’ integration into the overall economic reconstruction framework.

The 2006 Darfur Peace Agreement (DPA) includes broad provisions calling for progressive economic policy, a provision of a fund for economic reconstruction, and an elaborate former combatant reintegration plan. The DPA provides for a general reconstruction fund with initial funds of $300 million from the National Revenue Fund, $200 million in 2007 and 2008 to be provided by the Government of Sudan, and funds from international donors. The DPA provides targeted reconstruction funds for the reintegration of former combatants.

\[\text{References}\]


1447 Darfur Peace Agreement, art. 29.
CORE ELEMENTS

Former Combatants

Former combatants often face difficulties integrating into the formal economy due to a lack of both marketable skills and community acceptance. Economic reconstruction programs targeting former combatants use various mechanisms including reintegration funds, job training programs, and incorporation of former combatants into defense and police forces.

Reintegration Funds and Job Training Programs

Reintegration funds aim to provide financial support to former combatants. Funds for such programs may come from either the government or the international community. In Aceh, Indonesia, a peace agreement between the Indonesian government and the Free Aceh Movement established the reintegration fund. The Aceh reintegration fund earmarks money and farming land for former combatants who can demonstrate loss due to the conflict.

Reintegration funds may also support job training. For example, one of the primary purposes of Papua New Guinea’s Bougainville Ex-Combatants Trust Account (BETA) was to support job training and business development programs and to provide seed capital for agricultural and other businesses. BETA also permitted widows of former combatants to apply for benefits. While the fund was generally successful in providing former combatants with job skills and employment, it also faced complications in defining which persons qualified as former combatants.

Whether made possible by reintegration funds or alternative sources, well-crafted job training programs are often instrumental in providing sustainable employment for former combatants. In Liberia, programs offered diverse skills training to former combatants. The training offered did not match market needs, however and many believe that this gap led to the decision of some former combatants to rearm.\textsuperscript{1452}

In contrast, Bosnia and Herzegovina’s Emergency Demobilization and Reintegration Project (EDRP) developed a labor market information database to match skills of unemployed displaced workers with specific needs of emerging, restarting, or expanding businesses.\textsuperscript{1453} This information, in conjunction with job counseling and the granting of contracts to businesses that conducted retraining services, resulted in 17,000 former combatants receiving job training. Seventy-four percent of those trained obtained employment.\textsuperscript{1454} However, many of those worked in labor-intensive jobs relating to reconstruction of Bosnia. Those jobs were not sustainable as reconstruction contracts eventually ended. As a result, the more sustainable jobs in Bosnia are those associated with small private companies, even though they trained a smaller number of former combatants than the large reconstruction companies.\textsuperscript{1455}

In Sierra Leone, the government and the Revolutionary United Front (RUF) jointly established reintegration programs for former combatants. One program included a six-month skills training program, basic education, and a stipend of US $28 per month for the duration of the training program.\textsuperscript{1456} However, after the

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\textsuperscript{1453} TOBIAS PIETZ, DEMOBILIZATION AND REINTEGRATION OF FORMER SOLDIERS IN POST-WAR BOSNIA AND HERZEGOVINA: AN ASSESSMENT OF EXTERNAL ASSISTANCE, UNIVERSITY OF HAMBURG (2004), at 37.
\textsuperscript{1454} TOBIAS PIETZ, DEMOBILIZATION AND REINTEGRATION OF FORMER SOLDIERS IN POST-WAR BOSNIA AND HERZEGOVINA: AN ASSESSMENT OF EXTERNAL ASSISTANCE, UNIVERSITY OF HAMBURG (2004), at 41.
\textsuperscript{1455} TOBIAS PIETZ, DEMOBILIZATION AND REINTEGRATION OF FORMER SOLDIERS IN POST-WAR BOSNIA AND HERZEGOVINA: AN ASSESSMENT OF EXTERNAL ASSISTANCE, UNIVERSITY OF HAMBURG (2004), at 43.
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initial post-conflict period some participants could not find employment due to economic stagnation in Sierra Leone.

Using an alternative method, employment programs in Aceh, Indonesia, respond to the interests of former combatants. One program solicits, approves, and funds proposals from former armed Free Aceh Movement members.\textsuperscript{1457} Because the capacity and skill base of many former combatants is low, additional training is necessary for successful implementation of their proposals.\textsuperscript{1458} A similar project in Bosnia and Herzegovina, the Pilot Emergency Labor Redeployment Project (PELRP), responded to the interests of former combatants. Participants attended a course on small-scale business development and then had seven weeks to develop and submit a business plan.\textsuperscript{1459} To receive funding, the plan must be sustainable and have the potential to create new jobs. Of the fifty proposals approved, only one was a failed program.\textsuperscript{1460}

\textit{Incorporating Former Combatants into Defense Forces}

When accompanied by training, programs to integrate former combatants into defense forces increase the productivity of the forces and better the prospects of former combatants in finding sustainable employment. In Aceh, Indonesia, former combatants may serve in police and military forces after they receive police and security training and human rights education. Former combatants joining security forces in Angola did not receive training, but they had to meet strict

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\textsuperscript{1457} WORLD BANK CONFLICT AND COMMUNITY DEVELOPMENT PROGRAM, ACEH CONFLICT MONITORING UPDATE, Jun.-Jul. 2006, at 3. \\
\textsuperscript{1458} WORLD BANK CONFLICT AND COMMUNITY DEVELOPMENT PROGRAM, ACEH CONFLICT MONITORING UPDATE, Jun.-Jul. 2006, at 3. \\
\textsuperscript{1459} TOBIAS PIETZ, DEMOBILIZATION AND REINTEGRATION OF FORMER SOLDIERS IN POST-WAR BOSNIA AND HERZEGOVINA: AN ASSESSMENT OF EXTERNAL ASSISTANCE, UNIVERSITY OF HAMBURG (2004), at 47, 51-52. \\
\textsuperscript{1460} TOBIAS PIETZ, DEMOBILIZATION AND REINTEGRATION OF FORMER SOLDIERS IN POST-WAR BOSNIA AND HERZEGOVINA: AN ASSESSMENT OF EXTERNAL ASSISTANCE, UNIVERSITY OF HAMBURG (2004), at 52.
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physical fitness and literacy standards.\textsuperscript{1461} In contrast, the government of the Philippines waived traditional requirements for admission into the police and armed forces to promote the integration of former combatants.

In efforts to employ former combatants quickly, the government of Sierra Leone and the Revolutionary United Front agreed that former combatants could enter national armed forces if they met established criteria. This resulted in a military force beyond the country’s needs. In Angola, the government and UNITA (National Union for the Total Independence of Angola) limited the total number of soldiers that could integrate into the Angolan Armed Forces.\textsuperscript{1462} However, former UNITA combatants filled less than half of the military spots available.

Concerns about disloyalty may arise in forces that integrate former combatants who previously fought on opposing sides. In Aceh, Indonesia, only native Acehnese may serve in the military, which reduces the risk of having armed forces with conflicting loyalties.\textsuperscript{1463} In the Philippines, the former rebel combatants initially organized into separate units and fully integrated once trust developed. More than 11,000 former combatants successfully integrated into Philippine security and police forces in this manner.\textsuperscript{1464}

Kosovo initiated a unique job placement program for former Kosovo Liberation Army (KLA) combatants. Because NATO held military control of Kosovo, former KLA combatants could not incorporate into a national military. Instead, Kosovo formed the Kosovo Protection Corps (KPC), a civilian agency mandated to help with reconstruction efforts and provide emergency help under


\textsuperscript{1462} JOÃO GOMES AND IMOGEN PARSONS, SUSTAINING THE PEACE IN ANGOLA: AN OVERVIEW OF CURRENT DEMOBILISATION, DISARMAMENT AND REINTEGRATION, MONOGRAPH NO. 83 (April 2003), \textit{available at} http://www.iss.co.za/Pubs/Monographs/No83/Chap3.html (last accessed Sept. 21, 2007).

\textsuperscript{1463} Memorandum of Understanding, Section 1.4.4.

natural or human-made disasters.\textsuperscript{1465} Former combatants who entered the KPC performed such duties as rebuilding hospitals and clearing obstructed roads.

**Internally Displaced Persons**

Internally Displaced Persons (IDPs) often require targeted economic reconstruction. Efforts to reintegrate IDPs socially by assuring access to land have proven insufficient measures to integrate them into the economy. Skills training and assistance with job placement often help reintegrate IDPs.

*Land and Home Ownership*

Many IDPs return to partially or completely destroyed homes. Experts argue that stable employment—and thereby integration into long-term economic reconstruction programs—is unlikely for those groups who do not have a home. In the 1990s, the Lebanese government created a Central Fund for the Displaced (CFD). The CFD distributed up to US $20,000 for reconstruction of completely destroyed IDPs’ homes of IDPs and up to US $12,000 for homes that were only partially damaged.\textsuperscript{1466}

Access to land is particularly critical in Burundi, where more than 90 percent of the citizens depend on agriculture for their livelihood. Protocol IV of the Arusha Peace and Reconciliation Agreement for Burundi provides for the creation of reception committees to give support for the socio-economic reintegration of IDPs and refugees.\textsuperscript{1467} The Protocol specifically provides that displaced persons must be able to recover their land or, if recovery is impossible, receive fair compensation.\textsuperscript{1468} However, vague land ownership laws and absence of private


\textsuperscript{1468} The Arusha Peace and Reconciliation Agreement for Burundi.
property rights in Burundi has exacerbated tensions over “rightful ownership” of land.\textsuperscript{1469}

\textit{Job Training and Employment Opportunities}

In recent years, several states have initiated job training programs and employment opportunities for IDPs. With the support of the United Nations Development Programme, Lebanon’s Ministry for the Displaced created an integrated plan for villages where IDPs would return.\textsuperscript{1470} The plan focused economic opportunities in agricultural development, handicrafts, and micro-credit income generation projects, in conjunction with social services and development of local infrastructure.\textsuperscript{1471}

In Colombia, programs implemented by local and international NGOs and aid organizations successfully trained more than 93,000 individuals and created more than 60,000 jobs for displaced persons.\textsuperscript{1472} Job skills trainings and job placement programs in Colombia responded to identified demands within the private sector. In one program, the IDPs received a modest wage subsidy in the form of a transportation allowance during their on-the-job training. In addition, IDPs were included in the national Social Security program.\textsuperscript{1473}

Community Based Production Centers in the Forest Region of Guinea assist IDPs and refugees in creating small-scale village industries. The Centers offer apprenticeship programs, intensive skills upgrading, and workshops on village


\textsuperscript{1470} \textit{The Migration Network, The UN and IDPs, available at} http://www.lnf.org.lb/migrationnetwork/unnidp.html (last accessed Sept. 21, 2007).

\textsuperscript{1471} \textit{The Migration Network, The UN and IDPs}.


\textsuperscript{1473} \textit{CHF International, Linking Displaced Populations to Private Sector Opportunities in Colombia: The Case of DELYMP in Altos de Cazucá, Municipality of Soacha, Cundinamarca, available at} www.chfhq.org/content/general/detail/3012 (last accessed Sept. 21, 2007).
industry. Many in the host communities rely on agriculture for their livelihoods. To prevent conflict with the host communities, the IDP programs targeted non-agricultural industries. Instead, village industries use locally available resources and aim to produce goods for the local markets. Programs include metalworking, soap making, woodworking, weaving, tailoring, hairdressing, and handicrafts. The village industries both provide sustainable income for displaced persons and boost the village economy.

Women

Within many societies, traditionally defined gender roles often lead to inequalities between men and women, particularly with regard to economic capacity. As a practical outcome, women are less likely to enjoy access to education and advanced skills training. Women also often lack property rights and legal protections in the workplace. Women enjoy significantly lower levels of economic productivity and economic security as compared to men. Thus, women living in post-conflict societies face unique obstacles and as a result have become recipients of targeted economic reconstruction.

*Gender Perspectives in Economic Development Policies*

Official policies and priorities set forth in post-conflict economic development plans define the basic form and function of the economic reconstruction process. One model focuses on defining women as a priority group to receive special attention in post-conflict economic development legislative and policy schemes. The Arusha Peace and Reconciliation Agreement for Burundi took this approach. Protocol IV of the Arusha Agreement names women as a priority group with special needs to address during the process of reconstruction and development.1476

1475 UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION, UNIDO COMMUNITY BASED PRODUCTION CENTRES IN FOREST GUINEA SUPPORTED BY JAPAN’S UN TRUST FUND FOR HUMAN SECURITY (2005).
1476 The Arusha Peace and Reconciliation Agreement for Burundi.
Some governments created special ministries or cabinets within the government structure to advance women’s economic development initiatives. For example, the Cambodian Ministry of Women’s and Veteran’s Affairs initiated the Cambodian National Council for Women, which among other things sought to increase women’s educational, economic and productive capacity.

Micro-Credit Programs

Another popular program used to support women during post-conflict economic reconstruction is micro-credit loans. Micro-credit loan initiatives seek to give women access to the capital necessary to fund small business endeavors, ideally without the burden of overwhelming debt repayments. However, many factors influence the success of micro-credit initiatives.\(^{1477}\)

One major hindrance to the success of micro-credit initiatives is the lack of education and business management skills among women. Without basic business skills (and in some cases, literacy) many women cannot successfully manage their enterprises and end up defaulting on their loans. The most successful micro-credit models for women therefore incorporate an education aspect into their loan programs. In Rwanda, women who received micro-credit loans under the successful “Credit with Education” program also benefited from a broad educational program, covering everything from business administration and management skills, to literacy and family planning.\(^{1478}\)

Another key to a successful micro-credit program is its adaptability to the prevailing reality. In Eritrea, for instance, a successful micro-credit program designed to meet the needs of female former combatants found that far fewer

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\(^{1477}\) 122 CHAPTER 10: RECONSTRUCTION, at 127, available at http://oldwww.parliament.gov.za/pls/portal30/docs/FOLDER/PARLIAMENTARY_INFORMATION/PUBLICATIONS/UNIFEM/chapter10.pdf (last accessed Sept. 21, 2007). Micro-credit projects targeted at increasing women’s economic potential are not without criticism. Some critics argue that focusing on the small-scale loans without consideration of broader financial opportunities falls short of addressing the issue of women’s poverty. Some proposals include access to financial markets and institutions, as well as better networking and information sharing techniques. This criticism, as well as the successful models mentioned above, may be worth consideration in deciding whether a micro-credit initiative is appropriate as part of a post-conflict economic reconstruction initiative targeted at women’s economic development.

\(^{1478}\) 122 CHAPTER 10: RECONSTRUCTION, at 126-27.
women participated in the program than originally expected. After identifying a “lack of information and unfamiliarity with money matters,” a female former combatant went door, educating other women about the micro-credit initiative. Those women who then participated in the micro-credit program also received business management and administration training. The program encouraged the women to organize and collectively address the gender-based challenges they faced in running their businesses, and even allowed group-liability schemes for women who had little or no access to initial collateral for their loans.

*Capacity Building: Education and Non-Traditional Vocational and Business Skills*

The gap in education between men and women often inhibits women’s ability to participate fully in post-conflict economic reconstruction schemes. Education is therefore another element often included in strategies targeting women’s economic development. The “Food for Training” program in Eritrea offers adult literacy and vocational skills training to women, and compensates them for their time with basic food staples. In Bosnia and Herzegovina, an innovative program incorporates rehabilitative counseling along with educational and vocational training at an education center for young women traumatized during the conflict.

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1481 Nathalie de Waterville, *WORLD BANK, AFRICA WORKING PAPER SERIES, ADDRESSING GENDER ISSUES IN DEMOBILIZATION AND REINTEGRATION PROGRAMS* (2002), at 12. For instance, the provision of day care services for the women with children.


1483 122 CHAPTER 10: RECONSTRUCTION, at 12 (reporting a joint program initiated by the World Food Program and the National Union of Eritrean Women (NEUW)). The program recognizes the fact that the women must take time off from their productive activities in order to attend class, and as such, offers the equivalent compensation in foodstuffs.

1484 122 CHAPTER 10: RECONSTRUCTION, at 133.
Other programs focus on training women in non-traditional vocational and business management skills. Such programs not only diversify the women’s skills sets, but also challenge the traditional gender roles, which many see as limiting women’s full integration into the economy.\textsuperscript{1485} For instance, Liberian refugee women living in Cote d’Ivoire and Ghana trained in brick making and construction, built many of the houses, schools, and women’s centers in the refugee camp.\textsuperscript{1486} Women artisan weavers in East Timor organized for collective production and planned to export their textiles.\textsuperscript{1487}

\textit{Women's Rights: Property and Labor}

Another barrier to women’s full integration into economic reconstruction arises from a lack of legal protections related to property and fair labor conditions. Particularly in agricultural-based societies, a woman’s inability to own or inherit property often results in her inability to participate in immediate post-conflict subsistence and income-generating farming activities. Without legal guarantees to property ownership, the economic future of many women remains uncertain. In response, many post-conflict governments adopt specific legislation protecting women’s right to property. Eritrea adopted specific prohibitions against gender-based discrimination in land ownership.\textsuperscript{1488} The Rwandan parliament’s gender desk won the adoption of laws allowing women to inherit property from their deceased husbands and parents.\textsuperscript{1489}

Women’s labor rights are also limited in many post-conflict situations.\textsuperscript{1490} Women working in either the formal or the informal economy often incur various forms of sex-based discrimination and other abusive labor practices. Many post-conflict legislative reforms, therefore, incorporate specific protections against sex-

\textsuperscript{1485} Some women have identified a need for training in highly non-traditional sectors. In Somalia and the Democratic Republic of Congo, women interviewed specifically requested training in computer and other high-technology skills. Chapter 10.
\textsuperscript{1486} 122 \textit{CHAPTER 10: RECONSTRUCTION}, at 132. This project was done in conjunction with UNIFEM.
\textsuperscript{1487} 122 \textit{CHAPTER 10: RECONSTRUCTION}, at 132. This project was done in conjunction with UNIFEM.
\textsuperscript{1488} Nathalie de Waterville, \textsc{World Bank, Africa Working Paper Series, Addressing Gender Issues in Demobilization and Reintegration Programs} (2002), at 13.
\textsuperscript{1489} 122 \textit{CHAPTER 10: RECONSTRUCTION}, at 130. These laws also allowed women to recover property from the male relatives of their deceased husbands.
\textsuperscript{1490} For more information on women's rights see the Women's Rights chapter of this guide.
based discrimination. In Bosnia and Herzegovina, for example, the frequency of employer labor abuses against women workers inspired a program providing free labor-related legal advice and political bargaining training to women factory workers.  

**Minorities and Disenfranchised Groups**

Minorities and disenfranchised segments of the population are also subject to economic discrimination under traditional social structures. In a post-conflict context, these groups may easily fall outside an economic reconstruction plan without special measures to ensure their fullest participation. Targeted strategies recognizing the underlying issues faced by minority groups may help these segments of the population to benefit from post-conflict economic reconstruction.

*Commitment to Removing Economic Disparities*

One government strategy to alleviate socio-economic pressures during post-conflict reconstruction is to first officially acknowledge the disadvantages facing the minority group in question, and then commit to undertake initiatives to eliminate those disadvantages. As part of a 2003 reaffirmation of the Good Friday interim peace agreement, the British government openly acknowledged economic “discrepancies” affecting the people of Northern Ireland. The British government then committed to adopting measures aimed at combating unemployment and progressively eliminating the discrepancies in unemployment rates between the two communities. In doing so, the British government not only demonstrated a high level of commitment to the peace and reconstruction processes, but also committed to reducing the disparate socio-economic conditions underlying the conflict.

*Allocation of Natural Resources and Economic Powers*

One principle strategy for encouraging the fullest inclusion of minorities and disenfranchised groups into the post-conflict reconstruction process lies in the allocation of natural resources and economic powers. By allowing minorities and other traditionally disenfranchised groups a degree of control over the economic

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1491 The Arusha Peace and Reconciliation Agreement for Burundi.
1492 122 CHAPTER 10: RECONSTRUCTION, at 131.
1493 For more information on Minority rights see Minority Rights chapter in this guide.
resources, governments may improve these groups’ engagement in the reconstruction process as well as in the broader post-conflict peace process.

In the 2005 Peace Agreement between the Indonesian government and the Aceh Province, Aceh received limited control over the proceeds from the area’s natural resources, as well as the related economic controls. For instance, the agreement gave Aceh the right to impose and collect taxes, as well as to pursue direct foreign investment in the province. Aceh also received 70 percent of revenues generated from the natural resources in the province, including those generated from the surrounding sea.

In Kosovo, the Interim Agreement for Peace and Self-Government in Kosovo accounted for minority interests in relations to economic powers. The agreement incorporated the terms “equality,” “non-discrimination,” and “vulnerable social groups” into the provisions relating to the allocation of funds during the interim peace period. The agreement also acknowledged the vulnerability of certain socio-economic groups and afforded ethnic minorities a certain stake in their own economic concerns.

**DARFUR PEACE AGREEMENT**

The 2006 Darfur Peace Agreement (DPA) includes broad language committing the government to pursue “full employment through sound policies that focus on the stability of price and employment levels and promote sustainable pro-poor economic growth.” It recognizes the importance of sound macroeconomic policies and promotion of the private sector, research and development, agriculture, industry, and export growth.

The parties further agree to pursue economic recovery in Darfur by integrating the province’s economy with the rest of the state, achieving sustainable growth, eradicating poverty, creating job opportunities, creating mechanisms for

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1495 The Interim Agreement for Peace and Self-Government in Kosovo.
1496 Darfur Peace Agreement, art. 19, para. 135.
1497 Darfur Peace Agreement, art. 19, paras. 136-44.
good governance, and investing in infrastructure, social services, and alternative energy sources.\footnote{1498}

**General Reconstruction Fund**

To achieve reconstruction goals, the DPA provides for revenue transfers to local economies from the National Revenue Fund, in addition to the creation of a “Darfur Reconstruction and Development Fund.”\footnote{1499} The funds include US $300 million from the National Revenue Fund, at least US $200 million each year from the Government of Sudan in 2007 and 2008, and funds solicited from international donors.\footnote{1500} The Government of Sudan further committed itself to commit funds as needed until 2015 with the “overall objective of achieving the [Millennium Development Goals].”\footnote{1501} The fund includes a component targeted at the “creation of investment opportunities, enhancement of productive capacities, provision of credit, production inputs and capacity building for women.”\footnote{1502}

**Former Combatants**

The DPA provides for the integration of former rebel group combatants into the “Sudanese armed forces, law enforcement agencies, and security services.”\footnote{1503} Providing for the “integration, disarmament, demobilization and social and economic reintegration and the reform of selected national security institutions,” Article 29 of the Darfur Peace Agreement sets forth a plan to address the targeted needs of integration of former combatants into a unified community.\footnote{1504} This plan includes the creation of a Commission focused on “security forces integration; former combatant disarmament and demobilization; and social and economic reintegration of former combatants.”\footnote{1505}

\footnote{1498}{Darfur Peace Agreement, art. 19, para. 147.}
\footnote{1499}{Darfur Peace Agreement, art. 19, paras. 151-52.}
\footnote{1500}{Darfur Peace Agreement, art. 19, paras. 153-54.}
\footnote{1501}{Darfur Peace Agreement, art. 19, para. 153.}
\footnote{1502}{Darfur Peace Agreement, art. 19, para. 153.}
\footnote{1503}{Darfur Peace Agreement, art. 12, para. 80.}
\footnote{1504}{Darfur Peace Agreement, art. 29.}
\footnote{1505}{Darfur Peace Agreement, art. 29, para. 391.}
Internally Displaced Persons

The Darfur Peace Agreement does not contain an economic reconstruction plan specifically for displaced persons beyond basic provisions for resettlement, protection, and compensation.

SAMPLE LANGUAGE

Article XXX
Objectives

(1) Recognizing the importance of the issues relating to the overall problem of economic reconstruction and development, including those associated with rehabilitation and resettlement of displaced persons and former combatants, a comprehensive economic strategy shall have the following objectives:
   (a) To ensure economic integration and a security for economic development, former combatants shall have opportunities for training and to join the Sudanese army, as well as alternatives to join civilian life;\footnote{Darfur Peace Agreement, art. 29.} 
   (b) To make certain that returning displaced persons, from inside and outside of Sudan, and all war-affected Darfurians shall have available to them job training, employment opportunities, health services, and funds for reestablishing their livelihoods;
   (c) To protect the equal rights of women, the disabled and other marginalized groups to earn a living; and
   (d) To generally revitalize and improve the economy of Darfur.

Article XXX
Former Combatants

This Article provides for integration, disarmament, demobilization, social and economic reintegration, and the reform of selected national security institutions.\footnote{Darfur Peace Agreement, art. 29. For more extensive analysis and sample language on reintegration of former combatants, see chapter on Disarmament, Demobilization, and Reintegration in this guide.}
Article XXX
Economic Assistance for Affected or Vulnerable Groups

Principals of Reconstruction

(1) Rehabilitation and reconstruction of Darfur is a priority; to that end, steps shall be taken to compensate the people of Darfur and address grievances for lives lost, assets destroyed or stolen, and suffering caused.\textsuperscript{1508} Mere compensation, however, is insufficient to revitalize and develop the economy.

(2) The Parties agree that Darfur as a whole, and in particular those areas in need of construction or reconstruction, shall be brought up to the level that will allow them to reach the Millennium Development Goals rapidly. A program for development of basic infrastructure shall be formulated to integrate Darfur with the rest of the economy.\textsuperscript{1509}

(3) The Government shall ensure, through special assistance, the protection, rehabilitation and advancement of vulnerable groups, namely child heads of families, orphans, street children, unaccompanied minors, traumatized children, widows, women heads of families, juvenile delinquents, the physically and mentally disabled, etc.\textsuperscript{1510}

Implementing Mechanisms

(1) The Government will establish within [time period] of signing this agreement a National Commission for Economic Reconstruction and Development, which shall have the mandate of organizing and coordinating, together with international organizations to assist in the reconstruction of the economy of the province.

(2) The Commission will be comprised of [two representatives from each Party, two representatives designated by the displaced persons population, one...]

\textsuperscript{1508} Darfur Peace Agreement, art. 17, para. 101.
\textsuperscript{1509} This language is drawn from the Darfur Peace Agreement, art. 17, para. 104.
representative from [a strategic state] and two representatives of donors, cooperating bodies and international agencies OR as determined by the Parties.\textsuperscript{1511}

(3) Members of the Commission must be recognized as possessing a high moral standing.\textsuperscript{1512}

(4) The Commission shall meet as often as required, but no less frequently than \textit{[once a month]}. Meetings of the Commission may be convened at the request of any of the members and shall be held \textit{[as determined by the Parties]}, except as the members of the Commission may otherwise agree.

(5) The Parties agree to guarantee the personal security of the members of the Commission and personnel involved in the activities agreed.\textsuperscript{1513}

(6) The Commission shall have its headquarters in \textit{[location]}, and may have offices at other locations, as it deems appropriate.

(7) The first meeting of the Commission shall be scheduled \textit{[date]}.

(8) The Commission shall have appropriate facilities and professionally competent staff, experienced in administrative, financial, banking, and legal matters, to assist in carrying out its functions.

(9) The staff shall be headed by an Executive Officer, who shall be appointed by the Commission.\textsuperscript{1514} The Commission shall report to \textit{[authority]}.

\textsuperscript{1511} This language is drawn from Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, art. 9.2, June 17, 1994, \textit{available at} http://www.usip.org/library/pa/guatemala/guat_940617.html (last accessed Sept. 20, 2007).


\textsuperscript{1514} This language is drawn from The General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7: Agreement on Refugees and Displaced Persons, art. IX, Dec. 14, 1995.
Functions of the Commission

(1) The Commission shall draw up a plan of priorities to assist through investments in:
   (a) General Infrastructure (housing, water supply systems, health facilities, and educational facilities);
   (b) The rural sector;
   (c) The private sector; and
   (d) The social sector (education services, health services, and employment services).

(2) The Commission shall promulgate such rules and regulations, consistent with this agreement, as may be necessary to carry out its functions within [time period].1515

(3) The Commission shall further seek to strengthen existing social welfare programmes designed to alleviate extreme poverty. Additional external resources shall be sought for this purpose.1516

(4) The Commission will work in cooperation with the Refugee Return Commission and Compensation Commissions to provide opportunities to returning refugees to receive material needs, and have access to training and education, health, finance, and employment needs.

Support and Assistance

(1) A special fund for reconstruction and development of Darfur shall be established under this Agreement.

(2) The Government will provide funds to the Commission in the amount of [amount] per year.

1515 This language is drawn from The General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7: Agreement on Refugees and Displaced Persons, art. XV, Dec. 14, 1995.
Implementation of all the reforms and programmes contained in the Agreement will require financial support from donors. The Parties to this agreement request and invite the international community to provide financial, technical, and material support and resources to ensure that the resettlement process takes place fully, efficiently, and with respect to dignity, safety, security for the returnees. The Parties recognize that without such assistance, any economic reconstruction and development programs will be very difficult to implement.

The Parties are committed to cooperating by all means necessary to ensure that the resources contributed are used for the benefit of the uprooted population.

1517 This language is drawn from The Arusha Peace and Reconciliation Agreement for Burundi, Protocol V, art. 10 (2000)
TAX STRUCTURES

INTRODUCTION

This chapter presents the core elements of tax structures. This chapter also outlines the Darfur Peace Agreement’s provisions related to tax structures and provides sample language parties may wish to consider when drafting tax structure provisions.

State practice illustrates that typical tax structures include property tax, retail sales tax, value added tax, income tax, and customs duty. States create variations within each tax structure depending on factors such as the level economic development and existing government infrastructure.

The 2006 Darfur Peace Agreement (DPA) establishes the items that are taxable by the central government and the items that are taxable by provincial governments. The DPA does not indicate how these taxes will be collected or whether the tax will be direct or indirect.

CORE ELEMENTS

Direct Versus Indirect Collection

Governments collect a tax either directly or indirectly. If the government collects the tax directly, taxpayers reimburse the government directly. A property tax is one example of a direct tax. The government collects a property tax directly from the individual. For instance, Canadian and Australian provincial governments collect property tax directly from individual property-holders.


In contrast, an intermediary entity collects an indirect tax, rather than the government. The intermediary entity then transfers the revenue to the government. A retail sales tax and a value added tax are common forms of indirect taxation as businesses collect the tax from consumers and then forward this money to the government. For instance, China and Canada tax businesses and individuals in the production and purchase of certain goods.\footnote{Decision of the Standing Committee of the National People’s Congress Regarding the Application of Provisional Regulations on Such Taxes as Value-added Tax, Consumption Tax and Business Tax (China 1994), Appendix 1, art. 2, paras. 1-3, available at http://www.npc.gov.cn/zgrdw/english/news/newsDetail.jsp?id=2204&articleId=345040 (last accessed Sept. 23, 2007); Retail Sales Tax Act (Ontario, Canada, 1990) available at http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90r31_e.htm (last accessed Sept. 29, 2007).}

**Tax Structures**

*Property Tax*

Property tax is a tax that an owner – either an individual or business – of real estate or of other property pays on the value of that property. The amount an individual or business pays in property taxes depends on the assessed value of the property. In some states, public officials assess the property, while in other states the government authorizes private firms to assess the value of property for the purposes of taxation.\footnote{APPRAISAL INSTITUTE OF CANADA, available at http://www.aicanada.ca/e/index.cfm (last accessed Sept. 7, 2007).} For instance, in Canada, members of the Appraisal Institute of Canada can assess the current value of an existing property or the future value of a property under construction.\footnote{APPRAISAL INSTITUTE OF CANADA.}

In many states, the provincial or local governments collect the majority of property taxes, and these revenues contribute to a province’s overall budget. In Canada, provincial governments collect all property taxes.\footnote{CANADA’S DEPOSITORY SERVICES PROGRAM, CANADA’S FISCAL (IM)BALANCE: REVENUES AND EXPENDITURES.} The property taxes each Canadian province collects provide around one-fifth of the total tax revenue.
of that province. In Australia, provincial governments collect more than 70 percent of the total property taxes collected in the entire state.

Sales Tax

Several different types of sales tax exist, the most common of which are retail sales, fuel, and value added taxes. Sales taxes are forms of indirect taxation in which an intermediary entity, usually a business, collects the tax and forwards it to the government.

Retail Sales Tax

A retail (often known as a commercial) sales tax is a tax that a government imposes when an individual purchases goods and/or services. It is an indirect tax because businesses are responsible for collecting the tax and passing the revenue to the government. Governments normally apply a retail sales tax equally to all goods and services, usually as a percentage of the value of the goods or services.

Many states exempt certain goods, such as human necessities and basic foods, from taxation for policy reasons. The state, provincial, or local entity that collects the tax will typically pre-determine what specific products it will exempt from the retail sales tax. Through legislation, the Canadian province of Ontario pre-determines that all food products for human consumption except

1525 Paul Boothe, FORUM OF FEDERATIONS, TAXING, SPENDING AND SHARING IN FEDERATIONS: EVIDENCE FROM AUSTRALIA AND CANADA, in FISCAL RELATIONS IN FOUR COUNTRIES: FOUR ESSAYS, at 4.
1526 Paul Boothe, FORUM OF FEDERATIONS, TAXING, SPENDING AND SHARING IN FEDERATIONS: EVIDENCE FROM AUSTRALIA AND CANADA, in FISCAL RELATIONS IN FOUR COUNTRIES: FOUR ESSAYS, at 5.
1529 Retail Sales Tax Act art. 7 (Ontario, Canada, 1990).
candies, confections, snack foods, and soft drinks are exempt from the retail sales tax. 1530

China imposes a sales tax on tobacco products, alcoholic beverages, cosmetics, skin and hair care products, precious ornaments and precious stones including those for personal adornment, firecrackers and fireworks, gasoline, and automobiles. 1531

Fuel Tax

A fuel tax is a sales tax imposed on the sale of gasoline. Typically, the level of government that collects the tax decides on the level of tax. 1532 In Canada, both the central and provincial governments impose a fuel tax. 1533 In Japan, the Liquefied Petroleum Gas Tax specifies that individuals who purchase gas for their automobiles are subject to pay 17.7 per kiloliter. 1534

Value Added Tax

1530 Retail Sales Tax Act art. 7 (Ontario, Canada, 1990). The success of a retail sales tax often depends on the status of the retail sector of the economy. A retail sales tax may be difficult to collect in states with a historically informal market. Common retail tax collecting problems associated with enterprises operating in informal markets, such as street vendors include: (1) the use of a barter system, (2) failure to register a business operation with the appropriate tax collecting authority, and (3) failure to record business transactions. THE WORLD BANK, THE WORLD BANK GROUP: PUBLIC FINANCE, available at http://www1.worldbank.org/publicsector/pe/Tax/retailtax.htm#example2 (last accessed Sept. 10, 2007).

1531 Decision of the Standing Committee of the National People’s Congress Regarding the Application of Provisional Regulations on Such Taxes as Value-added Tax, Consumption Tax and Business Tax (China 1994), Appendix 1, art. 2, paras. 1-3.

1532 PETRO CANADA WEBSITE, GASOLINE TAXES ACROSS CANADA, available at http://www1.petro-canada.ca/en/media/2128.aspx (last accessed Sept. 29, 2007). For instance, in Canada, the central government receives $.10 per liter of gasoline sole. Then the provinces tax an additional amount. The provincial government in British Columbia taxes each liter of gasoline an additional $.145.

1533 PETRO CANADA, GASOLINE TAXES ACROSS CANADA.

A value added tax, also known as a “goods and services tax,” is common throughout the world. In fact, more than 70 percent of all states, including Australia, China, Sri Lanka, and Lebanon have implemented some form of the value added tax.

In a state using the value added tax, the government levies a tax at each stage of production, beginning with the purchase of the raw materials. A business pays a tax on its purchases, and charges a tax on its sales. Thus, the value added tax is a fraction of the price of each taxable sale beginning with the sale of raw goods and ending with the final sale to the consumer.

As an illustration, when business A purchases raw materials, business A pays a tax on this purchase. Business A must pay this tax to the government. However, when business A then sells goods (made from these raw materials) to business B, business B pays a tax on this purchase. Thus, business A has recouped the cost of the original tax paid on the raw materials. This cycle continues throughout the process of manufacturing the goods. When business B sells the final product to the consumer, the consumer also pays a tax on the purchase, thus allowing business B to recoup the cost of the tax. The final consumer indirectly pays the government the entire tax because it cannot recover the tax by re-selling.

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1537 James M. Brinkley, CONGRESSIONAL RESEARCH SERVICE, FLAT TAX PROPOSALS AND FUNDAMENTAL TAX REFORM: AN OVERVIEW, at 3.

the good. The government thus receives a small part of the total tax from every link in the production chain culminating in the final consumer.

In Sweden, the value added tax is a 25 percent tax on the sale of most goods and services. A reduced rate of 12 percent applies to food and hotel charges and a rate of six percent applies to personal transportation, newspapers, books and magazines, and cultural events. In China, the value added tax is a 17 percent tax on the sale of goods and services excluding exported goods. A reduced rate of 13 percent applies to grain, edible vegetable oil; tap water, central heating, hot water, and gas for use by residents; books, newspapers, magazines; feed, chemical fertilizer, agrochemicals, agricultural machinery, agricultural film; and other goods specified by the State Council.

**Income Tax**

An income tax collects revenue on the income of individuals and corporations. In the case of an individual, states tax wages and salaries; in the case of a corporation, states tax the profits of the corporation.

States use a number of different types of income taxes, ranging from a flat rate tax to a progressive tax. A flat rate tax imposes a tax on all income at the same rate. Thus, all individuals pay the same percentage of their income in

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1541 Decision of the Standing Committee of the National People’s Congress Regarding the Application of Provisional Regulations on Such Taxes as Value-added Tax, Consumption Tax and Business Tax (China 1994), Appendix 1, art. 2, paras. 1-3.
1543 JAMES J. FREELAND, STEPHEN A. LIND, & RICHARD B. STEPHENS, *FUNDAMENTALS OF FEDERAL INCOME TAXATION* (10th ed. 1998). “Salary” is a fixed payment an individual receives for regular work or services, whereas a “wage” is usually paid by the day or week for work or services which occur occasionally.
taxes, regardless of how much they earn.\textsuperscript{1545} Estonia, Latvia, and Lithuania all employ a flat tax rate.\textsuperscript{1546} A progressive tax (also known as a graduated tax) rises as the individual’s taxable income increases.\textsuperscript{1547} Thus, an individual with a higher salary pays a greater percentage of his salary to income taxes. New Zealand, Australia, and Canada all employ a progressive tax to collect personal income taxes.\textsuperscript{1548}

\textit{Customs Duty}

A customs duty is a tariff (or tax) on the import of goods into a state or the export of goods out of a state.\textsuperscript{1549} The central government, not the provincial or local authorities, typically collects customs duties due to its exclusive control over the import and export of goods.\textsuperscript{1550} For instance, in Australia the constitution gives the central government the exclusive power to impose customs duties.\textsuperscript{1551} Likewise, in Argentina the constitution explicitly prohibits provincial governments from establishing customs duties.\textsuperscript{1552}

\textsuperscript{1545} For instance, if the tax rate is 10 percent and an individual earns $100, that individual would pay 10 percent of $100, or $10 in tax.

\textsuperscript{1546} \textit{The Case for Flat Taxes}, \textit{The Economist}, Sept. 14, 2005. These states claim that the introduction of a flat rate tax caused a decline in tax evasion.

\textsuperscript{1547} JAMES J. FREELAND, STEPHEN A. LIND, & RICHARD B. STEPHENS, \textit{Fundamentals of Federal Income Taxation}, (10th ed. 1998). For instance in New Zealand, income earned up to NZ$38,000 is subject to a 19.5 percent tax, while a 33 percent tax is imposed on income earned from NZ$38,001 to NZ$60,000. Income earned beyond NZ$60,001 is taxed at a rate of 39 percent. Therefore, if an individual earned NZ$40,000, he would owe 19.5 percent of the first NZ$38,000 and 33 percent of the remaining NZ$2,000. NEW ZEALAND INLAND REVENUE, \textit{available at} http://www.ird.govt.nz/income-tax-individual/itaxsalaryandwage-incometaxrates.html (last accessed Jan. 26, 2007).

\textsuperscript{1548} The Australian income tax structure includes elements of both a flat tax rate and a progressive tax. The government taxes personal income using a progressive tax structure while taxing business income with a flat rate. This hybrid system is not unique to Australia. India and the Netherlands employ similar income tax structures.


\textsuperscript{1550} ARGENTINA CONST. sec. 15, 16 (1853), \textit{available at} http://www.argentina.gov.ar/argentina/portal/documentos/constitucioningles.pdf (last accessed Sept. 6, 2007).

\textsuperscript{1551} AUSTRALIA CONST. art. 90 (1900), \textit{available at} http://www.aph.gov.au/senate/general/constitution/index.htm (last accessed Sept. 6, 2007).

\textsuperscript{1552} ARGENTINA CONST. sec. 9 (1853).
States often impose customs duties on goods entering the state to safeguard domestic industry. Customs duties on incoming products raise the price of imported goods, thus making domestic goods relatively less expensive than imported goods. In the past, states often used customs duties to discriminate against non-friendly states or reward friendly states. Recently, the international community has moved towards lowering trade barriers and equalizing customs duties, due in large part to the framework of the World Trade Organization.

**DARFUR PEACE AGREEMENT**

The Darfur Peace Agreement (DPA) establishes the different types of tax that the central government and provincial governments, particularly Darfur, may raise and collect.

The Government of Sudan may collect revenue on (1) national personal income tax; (2) corporate or business profit tax; (3) customs duties and import taxes; (4) seaports and airports revenue; (5) service charges; (6) oil revenues; (7) national government enterprises and projects; (8) value added tax or general sales tax or other retail taxes on goods and services; (9) excise duties; (10) loans including borrowing from the Central Bank of Sudan and the public; (11) grants

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1554 WORLD TRADE ORGANIZATION, available at http://www.wto.org/ (last accessed Sept. 6, 2007). The World Trade Organization establishes rules for international trade that have an impact on customs duties. In order to become a member of the World Trade Organization, a state must first submit a memorandum to the members of the World Trade Organization describing its trade and economic polices. Second, an aspiring member enters into bilateral negotiations with member states to discuss tariff rates. Finally, after the terms of accession are finalized, the membership request is submitted to the World Trade Organization General Council. Two-thirds of the General Council must vote in favor of membership in order for a new state to join the World Trade Organization. In addition, a state may require its legislative body to ratify the arrangement prior to completing the membership process. States must ratify the agreement establishing the World Trade Organization in accordance with their domestic laws concerning treaty ratification.
and foreign financial assistance; and (12) other taxes to be legislated by the National Legislature.\footnote{1555}

The provinces of Darfur may raise and administer (1) land and property taxes and royalties; (2) service charges for state services; (3) license fees; (4) Darfur states’ personal income tax; (5) levies on tourism; (6) Darfur states’ share in revenues from oil and other natural resources produced in Darfur states; (7) Darfur state government projects and nature parks; (8) stamp duties; (9) agricultural taxes; (10) excise taxes; (11) loans and borrowing both domestic and foreign in accordance with their creditworthiness and consistent with the national macro-economic policy framework; (12) grants in aid and foreign aid grants; (13) allocation from the National Revenue Fund; (14) all allocations for Darfur Reconstruction and Development Fund, which will be established consistent with the general principles that the Parties agree upon; and (15) all other taxes or fees legislated from time to time, within their jurisdictions.\footnote{1556}

\section*{SAMPLE LANGUAGE}

\textbf{Article XXX}
\textbf{Property Tax}

\textit{Regional Land Tax}

(1) Each year, tax shall be levied in the amount determined under section (3) on land that is included in the tax roll for non-municipal territory and that is liable to assessment and taxation.

(2) Taxes shall be levied on all land described in section (1), unless an Act or regulation expressly provides otherwise, and shall be levied according to the assessed value of the land.\footnote{1557}
(3) The provinces shall not impose any tax on property belonging to the Government of Sudan and the Government of Sudan shall not impose any tax on property belonging to a province.\footnote{This language is drawn from the AUSTRALIA CONST. ch. V, art. 114 (1900).}

(4) Subject to any regulation that may be made under section (5), the amount of tax that is payable under section (2) is calculated using the formula: \(A \times B\), in which “\(A\)” is the prescribed tax rate for the taxation year for the property class in which the land is classified, and “\(B\)” is the assessed value of the land for the taxation year according to the last revised assessment roll for the year.

(5) The [Minister] may make regulations:
   (a) Governing the minimum amount of tax payable on land for a taxation year and prescribing the manner for determining that amount; and
   (b) Limiting the change in the amount of tax payable for a taxation year under section (2) from the amount of tax payable for the previous taxation year.\footnote{This language is drawn from the Provincial Land Tax Act of Ontario, Canada.}

\textbf{Article XXX}

\textbf{Retail Sales Tax}

\textit{Tax on Purchasers of Tangible Personal Property}

(1) Every purchaser of tangible personal property shall pay to the Government of Sudan a tax in respect of the consumption or use thereof, computed at the rate of \([X]\) percent of the fair value thereof.

(2) The purchaser of the following classes of tangible personal property is exempt from the tax imposed by section (1):
   (a) Food products for human consumption, except:
      (i) Candies, confections, snack foods and soft drinks; and
      (ii) Prepared food products purchased from an eating establishment, the price of which exceeds four dollars.\footnote{This language is drawn from the Retail Sales Tax Act of Ontario, Canada.}

OR

\textit{Regulations on Sales Tax}

\footnote{This language is drawn from the Provincial Land Tax Act of Ontario, Canada.}
(1) Tax on taxable consumer goods produced by taxpayers shall be paid at the
time of sale.

(2) The following are taxable consumer goods and their rates of taxation:
   (a) Tobacco at [X per cent];
   (b) Alcoholic beverages and ethyl alcohol at [X per cent];
   (c) Cosmetics at [X per cent];
   (d) Skin and hair care products at [X per cent];
   (e) Precious ornaments and precious stones, including all kinds of gold,
silver, jewelry for personal adornment at [X per cent];
   (f) Firecrackers and fireworks at [X per cent];
   (g) Gasoline at [X per cent];
   (h) Diesel oil at [X per cent];
   (i) Automobile tires at [X per cent];
   (j) Motorcycles at [X per cent]; and
   (k) Automobiles at [X per cent].

Article XXX
Fuel Tax

(1) Those who ship gasoline from refineries or withdraw gasoline from bonded
areas must pay the gasoline tax.

(2) Gasoline is taxed at [X] per kiloliter.

(3) Liquefied petroleum gas tax is an indirect tax imposed on persons who put
liquefied petroleum gas into fuel tanks of automobiles or on those who
receive petroleum gas from a bonded area.

(4) Liquefied petroleum gas is taxed at [X] per kilogram.

Article XXX

1561 This language is from the Decision of the Standing Committee of the National People’s
Congress Regarding the Application of Provisional Regulations on Such Taxes as Value-added
Tax, Consumption Tax and Business Tax (China 1994), Appendix 2, art. 4 and Appendix Table.
1562 This language is from the COMPREHENSIVE HANDBOOK OF JAPANESE TAXES, chs. VII and
VIII.
Value Added Tax

(1) Units and individuals in the territory of Sudan that sell goods, provide processing or repair and replacement services or import goods shall be payers of value added tax and shall pay value added tax in accordance with these Regulations.

(2) The value added tax rate shall be as follows:
   (a) The tax rate for goods sold or imported by taxpayers other than the goods set forth in (b) and (c) of this Article shall be X per cent.
   (b) The tax rate for the sale or import of the following goods shall be X percent:
      (i) Grain, edible vegetable oil;
      (ii) Tap water, central heating, air-conditioning, hot water, coal gas, and coal products for use by residents;
      (iii) Books, newspapers, magazines;
      (iv) Feed, chemical fertilizer, agrochemicals, agricultural machinery, agricultural film; and
      (v) Other goods specified by the National Legislature.
   (c) The tax rate for goods exported by taxpayers shall be zero, except where otherwise determined by the National Legislature.\(^{1563}\)

Article XXX
Income Tax

(1) An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Sudan at any time in the year.

(2) Where a person is not resident in Sudan at any time in the year, an income tax shall be paid if the person, at any time in the year:
   (a) Was employed in Sudan;
   (b) Carried on a business in Sudan; or
   (c) Disposed of a taxable Sudanese property.

\(^{1563}\) This language is drawn from the Decision of the Standing Committee of the National People’s Congress Regarding the Application of Provisional Regulations on Such Taxes as Value-added Tax, Consumption Tax and Business Tax (China 1994), Appendix 1, art. 2, paras. 1-3.
(3) Income tax is imposed on taxable income, at the rate or rates of tax fixed by [domestic law].

OR

(3) Unless this Act provides otherwise, income tax rates shall be 15 and 24%.
   (a) An income tax rate of 15% shall be applied to the following income:
      (i) Income from distributed profits;
      (ii) Income received by sportsmen for sports activities;
      (iii) Income received by performing artists from performing activities;
      (iv) Royalties;
      (v) Income from creative activities under a copyright agreement;
      (vi) Income from the rent of property;
      (vii) Income from individual activities not covered by subparagraphs (ii) – (vi) of this paragraph if, by the decision of the individual, no allowable deductions are made;
      (viii) Income from the sale or other transfer into ownership of property other than that used for the purpose of individual activities; and
      (ix) That part of pension benefits received in any manner provided for in the Law of Sudan or in any other manner provided for in the law of other foreign countries, which is equal to pension contributions paid
   (b) Income not covered by paragraph (a) shall be subject to an income tax rate of 24%.
   (c) Income from activities exercised under a business certificate shall be subject to a fixed amount of income tax determined by municipality councils.

The power to impose duties of customs and of excise, and to grant bounties on the production or export of goods, is exclusive to the Government of Sudan.\textsuperscript{1566}
TRANSITIONAL GOVERNMENTS

INTRODUCTION

This chapter identifies the core elements of an agreement establishing a transitional authority through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement related to a transitional authority and provides sample language parties may wish to consider when drafting provisions establishing a transitional authority in Sudan.

Peace agreements often provide for a transitional period before the implementation of the permanent political settlement. Peace agreement provisions creating a transitional government in the conflict region may include: (1) start date for the transition period; (2) end date for the transition period; (3) powers of the transitional government; (4) the structure of the transitional government; (5) the method of selecting members of the transitional government; (6) procedures for the transitional government; (7) specific tasks assigned to the transitional government; (8) legal and administrative continuity; (9) supervisory mechanisms; and (10) the role of the international community.

The 2006 Darfur Peace Agreement (DPA) provides for the establishment of the Transitional Darfur Regional Authority (TDRA). The DPA grants the TDRA authority over the implementation of the DPA in Darfur and general control over the region pending the outcome of the Darfur referendum in 2010. The DPA provides that the TDRA is responsible for reviewing federal government action in Darfur, facilitating communication with the federal government, and establishing security arrangements.


1568 Darfur Peace Agreement art. 6, para. 53; art. 29, para. 390.
CORE ELEMENTS

Beginning the Transition Period

Generally, a peace agreement will specify when the transition period and creation of a transitional government will begin. Options include commencing the transition period (1) upon signing of the agreement; (2) on a specific date or after some period following signing of the agreement; or (3) only when certain conditions occur (such as the cessation of hostilities). If the agreement establishes a precondition to the commencement of the transition period, the agreement may specify who shall decide when the triggering condition exists. A “pre-transitional” authority that manages the implementation of the transition, foreign or international organization, or a supervisory institution consisting of both domestic and foreign members may make the decision as to when the state meets the precondition for commencement of the transition period.1569

Ending the Transition Period

An agreement may also specify when the transition period will end. States usually provide that a transitional period will end after the satisfaction of some objective condition evidencing the successful transition to a permanent governance structure. These conditions may include holding elections or the adopting a permanent constitution. To prevent a transitional arrangement from becoming a permanent arrangement, an agreement may require that these conditions occur within a specified timeframe.

Most agreements do not specify an end date for the transitional government. Parties may consider, however, including a “penalty-default” in the agreement that would create a permanent arrangement if the transitional government does not create one by a specified time. For example, the Arusha Peace and Reconciliation Agreement for Burundi provided that if the transitional government does not amend or adopt a constitution within twenty-three months of the beginning of the transition period, the supervisory institution overseeing the transition would promulgate a constitution.1570

1569 See discussion of Supervisory Mechanisms below.
Powers

Peace agreements usually provide for the powers of the transitional government. In states that create power-sharing arrangements by creating a federal system of government, parties may delineate which functions belong to the transitional provincial government, and which will remain with the central government.

Structure

A peace agreement may specify which governing institutions will exercise political authority during the transition period. Some agreements provide for the full range of traditional democratic institutions, including a unicameral or bicameral legislature, a head of state, a cabinet, and a constitutional court, in which case the agreement should also allocate all powers and responsibilities among the different institutions.

Selection Method for Members

An agreement may specify the composition and selection method for a transitional government. The challenge associated with doing so, however, is that it may affect the distribution of political power during the transition period. Some agreements, therefore, create a separate institution to select members of transitional government. In Afghanistan, for example, a “Special Independent Commission” selected the members of the provisional Loya Jirga under the guidelines of the agreement.\footnote{Agreement On Provisional Arrangements In Afghanistan Pending The Re-Establishment Of Permanent Government Institutions, art. IV Dec. 5, 2001, \textit{available at} http://www.washingtonpost.com/wp-srv/world/texts/bonnagreement.html (last accessed Sept. 23, 2007).} Another alternative is to name specific individuals to each office, a method used in agreements in both Liberia.\footnote{Abuja Agreement to Supplement the Cotonou and Akosombo Agreements as subsequently clarified by the Accra Agreement, Aug. 19, 1995, part II, sec. A,, Aug. 19, 1995.} A third alternative is for the agreement to predetermine the political or ethnic composition of the transitional government.
government in order to ensure representation for all groups. For example, if the agreement delegates the power of appointing members to a governing institution, it might also specify the political or ethnic composition of that institution as a way of limiting the selection body’s discretion.

**Procedures**

Many agreements contain rules of procedure for transitional governments that include more than one member. For instance, the agreement might require approval by a supermajority before the government can act on certain sensitive matters. In Burundi, the parties agreed to require two-thirds or more of the institution’s members to vote for an item before taking action. In Liberia, on the other hand, the parties did not establish procedures, or delegate to the transitional government the power to determine its own procedures.

**Specific Tasks**

Peace agreements often require the transitional government to carry out specific tasks during the transition period. These usually include organizing elections and/or drafting and adopting a constitution. These tasks might also include: (1) performing a census to prepare for elections; (2) establishing or reforming certain institutions (such as a human rights commission or a central bank); (3) appointing local and administrative officials; (4) obtaining

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1578 Agreement On Provisional Arrangements In Afghanistan Pending The Re-Establishment Of Permanent Government Institutions, art. III(C), (Dec. 5, 2001).
international aid, (5) repatriating refugees, and (6) creating mechanisms for national reconciliation. An agreement may also explicitly require the transitional government to carry out requisite actions for a transition to a permanent settlement to occur or that are too urgent to wait until the end of the transition.

**Legal and Administrative Continuity**

A peace agreement will often specify what law will govern matters not addressed in the agreement, and what existing government agencies will continue to function until new government institutions replace them. As applied by Burundi and Kosovo, the agreements provide that all laws and administrative mechanisms existing prior to the agreements remain in effect unless the agreements explicitly repeals them or the transitional or permanent government affirmatively changes them.

**Supervisory Mechanisms**

Parties to peace agreements often create a separate and independent institution to supervise the transitional government and monitor the implementation of the permanent political settlement. As applied in Burundi and Kosovo, this institution can include foreign members, which may help to ensure neutrality.

**Role of the International Community**

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1579 Agreement On Provisional Arrangements In Afghanistan Pending The Re-Establishment Of Permanent Government Institutions, art. III (.C), (, December 5, 2001).
Some peace agreements specify what role the international community will play in the transitional government. In Burundi, the Arusha Peace and Reconciliation Agreement generally that members of the international community should advise the transitional government.\textsuperscript{1585} Alternatively, the Croatian Erdut Agreement gave international players specific roles in the transitional government, and asked them to establish the transitional administration itself.\textsuperscript{1586} The extent of international involvement in the transition usually depends on the level of trust between the parties and on the technical capacity of local officials.

**DARFUR PEACE AGREEMENT**

At the national level, the Darfur Peace Agreement (DPA) refers to the Interim National Constitution for the governance of the Sudan. At the regional level in Darfur, the DPA provides that the government of Sudan create a Transitional Darfur Regional Authority (TDRA) upon the signing of the agreement.\textsuperscript{1587} The TDRA will remain in power until the outcome of a referendum on the permanent status of Darfur, to occur no later than July 2010.\textsuperscript{1588} If the referendum mandates the creation of a Region of Darfur, the TDRA will create a Constitutional Commission for the formation of the new governmental entity.

The TDRA is composed of the Senior Assistant to the President of Sudan, the Governors of the three Darfur provinces, the heads of a number of Commissions under the DPA, and any other persons agreed to by the parties.\textsuperscript{1589} The TDRA will have the power to create its own procedures and establish its own budget.\textsuperscript{1590}

Beyond the general responsibility for implementing the agreement, the DPA grants the TDRA authority to review recommendations for legislative and

\textsuperscript{1587} Darfur Peace Agreement, art. 6, para. 48.
\textsuperscript{1588} Darfur Peace Agreement, art. 6, para. 56.
\textsuperscript{1589} Darfur Peace Agreement, art. 6, para. 50.
\textsuperscript{1590} Darfur Peace Agreement, art. 6, para. 52.
executive actions, facilitate communication, reconstruction, and rehabilitation, and communicate with the government of Sudan to promote peace and reconciliation. The DPA also provides that the TDRA may undertake any other tasks “as may be agreed upon by the TDRA to promote the objectives of [the DPA].”

Another important function of the TDRA is the establishment of security arrangements for Darfur. Specifically, the DPA tasks the TDRA with the establishment of a Darfur Security Arrangements Implementation Commission (DSAIC), which will act as a subsidiary of the TDRA. The DPA provides that DSAIC will make recommendations regarding security and policing to the TDRA. The DPA requires the Government of Sudan, Sudan Liberation Movement/Army, and the Justice and Equality Movement to implement those security recommendations that the TDRA approves. DSAIC recommendations regarding policing will go to the TDRA and regional governments for action.

SAMPLE LANGUAGE

**Article XXX**

**Transition Period**

(1) Immediately following the signing of this Agreement the [Government of Sudan or International Organization or Other Parties] shall establish a [Transitional Authority].

(2) If a majority of votes cast by all Darfurians in the referendum determines that a Region of Darfur should be formed, the [Transitional Authority] shall form a Constitutional Commission to determine the competencies of the Regional Government of Darfur. The Commission shall present for adoption its proposed Constitution to the Assemblies of the three states of

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1591 Darfur Peace Agreement, art. 6, para. 53.
1592 Darfur Peace Agreement, art. 6, para. 53(f).
1593 Darfur Peace Agreement, art. 29, para. 390.
1594 Darfur Peace Agreement, art. 29, para. 390.
1595 Darfur Peace Agreement, art. 29, paras 448, 451.
1596 Darfur Peace Agreement, art. 29, para. 449.
1597 Darfur Peace Agreement, art. 29, para. 452.
1598 This language is drawn from the Darfur Peace Agreement, para. 48.
Darfur sitting in joint session within [X length of time] of the referendum. The President of the Republic of the Sudan shall then take steps to implement the Constitution as adopted by the Assemblies and any other steps required to establish the region.

(3) In the event of a majority of votes being cast against the proposal to establish a Region, the structure of three states in Darfur shall be retained and the [Transitional Authority] shall be dissolved, in which case, the elected governments of the three states of Darfur shall assume any remaining function of the [Transitional Authority], in their respective states.\textsuperscript{1599}

OR

(1) The transition period shall commence from the time that the conditions necessary for installing the transitional Government in accordance with the applicable instruments have been met, which shall be as soon as possible after three months, and in any event not later than [X length of time], from the date of signature of the Agreement.

(2) The [Transitional Regional Authority] alone shall determine this date, and may bring it forward if it decides that the necessary conditions exist. Until the transition period commences, all parties shall meet their obligations under the Agreement to establish or co-operate in establishing the agreed legal and institutional framework.

(3) The [Transitional Regional Authority], established as set forth in [Article XXX], shall be the mechanism for guaranteeing compliance with the Agreement.

(4) The transition period shall culminate after national elections. The presidential election shall take place after the first democratic election of the legislature. Both elections shall take place within [X amount of time] of the commencement of the transition period.\textsuperscript{1600}

OR

\textsuperscript{1599} This language is drawn from Darfur Peace Agreement, art. 6 paras. 59-60.
\textsuperscript{1600} This language is drawn from BURUNDI, Arusha Peace And Reconciliation Agreement For Burundi, art.13, Aug. 28, 2000, art.13.
There shall be a transitional period of [X months] which may be extended at most to another period of the same duration if so requested by one of the parties.  

**Article XXX**  
**Powers of the Transitional Government**

The [Transitional Authority], in which the Darfurians shall be effectively represented, shall serve as the principal instrument for the implementation of this Agreement and for enhancing coordination and cooperation among the three States of Darfur. The [Transitional Authority] shall be a symbol of reconciliation and unity of the people of Darfur and their effort to build a future based on peace and good neighborliness.

OR

Upon the official transfer of power, the Transitional Government shall be the repository of the [Region’s] sovereignty. The Transitional Government shall be entrusted with the day-to-day conduct of the affairs of [Darfur], and shall have the right to issue decrees for the peace, order, and good government of [Darfur].

**Article XXX**  
**Structure of the Transitional Government**

(1) The [Transitional Authority] shall consist of the following:

(a) [insert participating parties here]

(b) Others that may be agreed by the Parties.

OR

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1601 This language is drawn from The Erdut Agreement, November 12, 1995 (Croatia, 1995).
1602 This language is drawn from Darfur Peace Agreement, art. 6, para. 49.
1603 This language is drawn from the Agreement On Provisional Arrangements In Afghanistan Pending The Re-Establishment Of Permanent Government Institutions, art. 3, Dec. 5, 2001, art. 3.
1604 This language is drawn from Darfur Peace Agreement, art. 6, para. 50.
There shall be a broadly representative Transitional Council, composed of at least [X number] of Darfurians and [X number] of [other Sudanese group or central government officials]. The Transitional Council shall exercise all legislative and executive powers of the State during the transition period.\footnote{This language is drawn from the Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, art. 59, May 5, 1999, art. 59.}

OR

(1) There shall be a Transitional Legislature made up of a Regional Assembly and a Senate, a Transitional Executive, a Judiciary, and other transitional institutions.

(2) The constitutional provisions governing the powers, duties and functioning of the transitional Executive, the transitional Legislature and the Judiciary, as well as the rights and duties of citizens and of political parties and associations, shall be as set forth hereunder.

(3) The precise identity of the members of the transitional Executive shall be decided by the transitional Governor and Vice-Governor after consultations with the heads of the parties participating in the transitional Regional Assembly.

(4) The transitional Governor and Vice-Governor shall determine the initial function of each Minister when allocating the ministries to parties. The transitional Governor and Vice-Governor shall ensure that the minister in charge of [insert function] belongs to a different party from the minister responsible for [the police or other function].

(5) There shall be a Regional Court possessing the jurisdiction and functions set forth in this Agreement. The Court shall be made up of [X number of] members.\footnote{This language is drawn from the Arusha Peace And Reconciliation Agreement For Burundi, art. 15, Aug. 28, 2000, art. 15.}
ARTICLE XXX
Procedure for the Transitional Government

(1) Meetings shall be presided over by the Senior Assistant to the President [or other person as the Parties may agree], and in her/his absence, the Governors of the three Darfur [or other persons as the Parties may agree] states shall preside over the meetings in rotation.

(2) The [Transitional Authority] shall establish its own rules of procedure, engage such staff it deems necessary to carry out its work and establish a budget for that purpose.

(3) The [Government of Sudan shall] provide an adequate budget to finance its activities and may establish a special fund to accommodate international donor funds for its programs.\(^\text{1607}\)

OR

(1) All decisions shall be made based on a simple majority.

(2) The [insert name of institution] shall also devise and implement appropriate rules of procedure in respect of its operations, to be signed by all members upon their induction into office\(^\text{1608}\).

Article XXX
Specific Tasks for the Transitional Government

(1) The Transitional Authority shall exercise the following functions:
   (a) [specify tasks/functions]
   (b) Other functions as may be agreed upon by the TDRA to promote the objectives of this Agreement.\(^\text{1609}\)

\(^{1607}\) This language is drawn from Darfur Peace Agreement, art. 6, paras. 51-52.
\(^{1608}\) This language is drawn from the Akosombo Agreement, art. 12, (Liberia, Sept. 12, 1994) art. 12.)
\(^{1609}\) This language is drawn from Darfur Peace Agreement, art. 6, para. 53.
Article XXX
Supervisory Mechanism

(1) An independent Assessment and Evaluation Commission shall be established during the [insert timeframe] to monitor the implementation of the Agreement.

(2) The composition of the Assessment and Evaluation Commission shall consist of equal representation from the Parties to this Agreement, and not more than [X number of] representatives, respectively, from each of the following categories:
   (a) [insert names of participating parties and third party states]

(3) The Parties shall work with the Commission during the Interim Period with a view to improving the institutions and arrangements created under the Agreement.\textsuperscript{1610}

\textsuperscript{1610} This language is drawn from the Machakos Agreement (Sudan, 2002), para 2.4.
VICTIM COMPENSATION

INTRODUCTION

This chapter presents the core elements of mechanisms used to compensate victims of violence in post-conflict states. This chapter also identifies such mechanisms in the 2006 Darfur Peace Agreement (DPA) and presents sample language for any future agreement.

Civilians residing in conflict areas face the risk of displacement, loss of property, assault, injury, and loss of life. Refugees and internally displaced persons often leave behind their homes and much of their accumulated possessions. Others may suffer debilitating injuries or loss of life because of direct violence.

A central element in post-conflict situations is thus compensation for injury, death, and material hardships. Victim compensation programs in post-conflict areas frequently reimburse victims who lost homes and other property left behind. Compensation for victims provides an element of justice to the victim, provides them with the means to rebuild their lives, offers official acknowledgement of the harm committed against them, and serves as deterrence to potential future violators.\(^{1611}\)

The international conventions that address victim compensation include the International Convention Relating to the Status of Refugees,\(^{1612}\) Universal Declaration of Human Rights,\(^{1613}\) and the International Covenant on Economic,


Social, and Cultural Rights.\textsuperscript{1614} Highlighting the importance the international community places on victim compensation, in 2005 the United Nations Commission on Human Rights called for providing victims of international humanitarian law violations with “equal and effective access to justice . . . reparation for harm suffered [and] . . . access to relevant information concerning violations and reparation mechanisms.”\textsuperscript{1615}

**CORE ELEMENTS**

**Types of Compensation**

Internally displaced persons, refugees, and other people injured during armed conflicts may suffer serious physical, mental, and material damage or loss. Compensating these victims, helps bring closure to the conflict and helps restore the victim to their pre-conflict situation. Compensation cannot bring complete restoration, but it may give victims a starting point from which to rebuild their lives. Compensation schemes may focus on property restitution, monetary compensation for injuries or death, or other rehabilitation programs to assist victims of humanitarian crises.

Some programs offer wide-ranging compensation that covers restitution for injury or death, loss of property, and even environmental damages. For example, the United Nations Compensation Commission, established to compensate victims from Iraq’s invasion of Kuwait, bases its criteria for compensating victims on an international legal claim that Iraq was liable for “any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals, and corporations” due to the hostilities.\textsuperscript{1616}

Other programs may focus specifically on property issues. In Kosovo, the property agency resolved disputes relating to the loss of property rights resulting from “armed conflict.” In the Republic of Georgia, a 2007 law provides for property restitution to compensate victims who lost property or suffered damage because of a defined internal conflict.

Other programs may seek to redress specific injustices by compensating victims of certain crimes. The German “Remembrance, Responsibility and Future” Foundation disbursed five billion dollars in compensation to about 1,614,000 Holocaust survivors. The foundation compensates victims for the “severe injustice” the National Socialist State inflicted on “slave laborers and forced laborers, through deportation, internment, exploitation . . . and a large number of other human rights violations.” Specifically, this law offers compensation to victims held in concentration camps, deported from their homelands, or who “suffered property loss as a consequence of racial persecution.” The German Foundation allows compensation for specific cases of personal damages, injuries, property loss, and death.

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1617 For more information, see the chapter on Property Restitution of this guide.
Negotiated Agreements

Compensation programs are often the result of negotiated agreements between some combination of factional, provincial, state, and international entities with an interest in the outcome of the program. The agreements establish the rights of individuals to restitution, establish a mechanism to administer the compensation, and set forth the process for applying for restitution.

Intra-state Agreements

During the peace process, following civil unrest in a state, the parties to the unrest may negotiate compensation for those displaced or otherwise affected. The Dayton Peace Accords in 1995 set forth an agreement between the constituent parts of Bosnia and Herzegovina. The Accords called on the Federation of Bosnia and Herzegovina and the Republika Srpska to provide for restitution and a right to return to their homes. Specifically, the intra-state agreements mandated the return of property or payment of just compensation to displaced persons and refugees, established a commission to oversee the program, and incorporated a process for administering claims.

Internationally Established Agreements

The international community may also call for and establish methods of victim compensation. To redress the losses of civilians from the invasion of Kuwait, the United Nations Security Council called for the creation of the United Nations Compensation Commission. The resolution established Iraqi liability, created a fund to pay for compensation, a commission to administer claims, and called on the Secretary General to oversee the fund and commission’s operation. The Iraqis accepted the terms of this resolution and their responsibility for damage in a subsequent letter.

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Domestic Agreements with International Cooperation

States can establish compensation programs on their own initiative, however creating a fair program both in actuality and as perceived can be difficult. In June 1998, the Croatian Parliament passed the Programme of Return and Accommodation of Expellees, Displaced Persons and Refugees (Return Programme),\textsuperscript{1629} in cooperation with United Nations High Commissioner for Refugees and the Organization for Security and Cooperation in Europe. The Return Programme originally established local housing commissions to oversee the return of occupied private properties to their pre-war owners.\textsuperscript{1630} Following legislative changes in August 2002, the Ministry for Public Works, Reconstruction, and Construction and its Directorate for Expellees, Returnees, and Refugees assumed the role of the housing commissions.\textsuperscript{1631} This resulted in central government responsibility for the return of occupied properties.

Likewise, in January 2007, the Georgian government implemented a permanent state law to govern victim compensation for property lost fifteen years earlier during the 1989-1992 civil conflict. The law “on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia”\textsuperscript{1632} was the result of a commitment the Georgian government made upon joining the Council of Europe to facilitate

\textsuperscript{1632} Law of Georgia “on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia,” January 01, 2007.
property restitution. Due to the laws recent enactment its full implications remain unknown.

**Unilateral Agreements**

Finally, agreements involving victim compensation may result from a unilateral decision of an international organization or state. In 1999, the United Nations Security Council established the Interim Administrative Mission in Kosovo (IAM). The United Nations Security Council charged the Interim Administrative Mission in Kosovo with performing “basic civil administrative functions” and aiding the return of displaced people to their homes. In fulfilling this mandate, the IAM formed the Kosovo Property Agency to resolving property ownership and property use disputes that resulted from armed conflict and the dislocation of people from their property.

Similarly, but owing to internal forces, the German government, in 2000, undertook to compensate victims of forced labor and other crimes during the period of National Socialist rule. The Law on the Creation of a Foundation ‘Remembrance, Responsibility, and Future’ created a foundation to compensate former forced laborers during the Nazi era in Germany, and to promote education and justice. A board of trustees composed of appointees from the German

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1635 Security Council Resolution 1244, sec. 11 (b) and (k), U.N. Doc. S/RES/1244 (June 10, 1999).
government, governments that accepted large numbers of Jewish migrants, and international organizations, select a board of directors to govern the foundation. 1638

**Compensation Commissions**

Compensation commissions administer claims and distribute funds according to policy guidelines established by their implementing agreements, laws, or orders. Commissions may be composed entirely of nationals from different countries than those involved in claims, international members and local members jointly, or entirely of local members. Local commissions are usually composed of representatives of the parties in conflict.

**International Commissions**

An internationally directed compensation commission allows the provision of victim compensation with or without the cooperation of the perpetrating government or parties. An international commission may run under the direction of an international organization, and include representatives of the international community in the structure of its governance. For example, a Governing Council, composed of representatives of the Security Council members, headed the United Nations Compensation Commission, charged with handling claims resulting from Iraq’s invasion of Kuwait. 1639 The Governing Council was responsible for establishing overall policy for the Compensation Commission. The commissioners and Secretary General nominated and Governing Council appointed secretariat, carried out the day-to-day operations. 1640

**International-Domestic Commissions**

Another model combines both state or provincial level actors and international actors in the governance of a compensation commission. In Kosovo, 1641

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for example, the United Nations set up the Kosovo Property Agency, which is composed of a supervisory board, an executive secretariat, and a property claims commission.\textsuperscript{1641} As originally conceived, the Kosovo Property Agency would aid the courts in carrying out their adjudication of property disputes.\textsuperscript{1642} Seven months after its creation, the United Nations issued a regulation “provisionally providing for the resolution of claims . . . without such claims being referred to the courts.”\textsuperscript{1643} This gave the Kosovo Property Agency full authority to settle property claims of returning refugees and internally displaced persons. That said, the domestic courts retained jurisdiction over property claims, and could hear claims at the request of a claimant.\textsuperscript{1644} Further, the Supreme Court of Kosovo retained jurisdiction over the appeal of Property Claims Commission decisions.\textsuperscript{1645}

Contrary the Kosovo model, where the international community imposed a compensation scheme on a state, in Germany, the state government reached out to the international community when it created the Foundation “Remembrance, Responsibility and Future.” Its establishing law created a Board of Trustees composed of various German government and civil society representatives, as well as representatives of countries that were impacted by the National Socialist’s crimes, and members of various international organizations.”\textsuperscript{1646} This 27-member board established the rules of procedure for the Foundation and appointed the

Board of Directors that runs day-to-day operations. Further, the Board of Trustees, “decides on all fundamental matter that have to do with the tasks of the Foundation,” including decisions regarding the Foundation’s projects, establishing guidelines for using resources, and enabling partner organizations to draw on Foundation Funds in a fair manner. Endowments and gifts from German industry and the German Federal Government created the Foundation’s capital fund for compensation payments.

A 2007 law in the Republic of Georgia lays the framework for the Commission on Restitution and Compensation as a stand-alone institution responsible for returning property, providing an equal substitute property, or providing compensation. The Commission is composed of nine members divided equally between international representatives, Georgians, and Ossetians. The commission members from the domestic parties ensure the representation of their party’s views, while the international representatives impartially mediate disputes.

**Domestic Commissions**

Finally, in some situations state or local governments, without direct international involvement in their governance, establish and lead compensation commissions. In Croatia, for example, the initial Reform Programme left the determination of housing disputes to local housing commissions. In August 2002 centralization of responsibility in the Ministry for Public Works, Reconstruction and Construction and its Directorate for Expellees, Returnees and Refugees, occurred and dramatically increased the refugees or internally displaced persons compensation rate. This resulted in the faster processing of claims, an increased

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1650 Law of Georgia “on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia,” ch. I, art. 5 (2) and ch. II, art. 6 (2), Jan. 1, 2007.
construction of temporary housing, and the purchase of occupied houses for reallocation

While not establishing a separate commission, the Argentinean government passed a law in 1994 that provided for reparations for families of victims of the military regime that ended in 1983. By law, victims’ families that already reported to the National Commission of the Disappeared or who reported to the Office of Human rights were entitled to a payment “equivalent to 100 months at the salary level of the highest-paid civil servant.” This law followed an earlier law, passed in 1987, that provided $140 per child of a disappeared parent until the age of twenty-one at an estimated cost of $2-3 billion dollars.

Processes for Applications and Obtaining Compensations

While procedures differ, compensation commissions generally accept claims from victims or victims’ representatives. The claims process typically requires those seeking compensation to make a fact-based claim, and may require a hearing or other quasi-judicial action before a decision. Depending on their structure, compensation commissions may take a more adversarial approach or more cooperative approach to addressing a claimant’s request for compensation. The compensation commission may accept claims directly from the individual, or it may require governments or other organization to submit claims. Additionally, the compensation commission may disburse funds directly to individuals or to subsidiary organizations, outside organizations, or governments charged with disbursal.

Direct Compensation

Compensation commissions that directly handle claims generally have set procedures for the processing of claims, as well as an appeals process for claimants to pursue. The Kosovo Property Agency provides an example of the process for applying for and obtaining compensation. Claimants first submit a claim to the

1652 Law No. 24 411 (Argentina, 7 Dec. 1994)
Executive Secretariat, which processes the claim before giving it to the Property Claims Commission.\textsuperscript{1655} The Executive Secretariat then notifies other parties with a legal interest in claimed property so that all the parties may participate in the proceedings.\textsuperscript{1656} If a claim is incomplete, is outside the Claims Commission’s jurisdiction, or was previously resolved, the Claims Commission must dismiss the claim.\textsuperscript{1657}

The Kosovo Property Claims Commission’s decisions “may include, but are not limited to eviction, placing the property under administration, a lease agreement, seizure, and demolition of unlawful structures, and auction.”\textsuperscript{1658} The Claims Commission may request further written information or hold a hearing, “including witnesses and experts,” regarding a claim, before issuing its legally binding decision.\textsuperscript{1659} The decision of the Claims Commission is subject to appeal to the Supreme Court of Kosovo.\textsuperscript{1660} The linking of a claims commission, especially one established by an international organization, to a domestic court provides the domestic government with a sense of control. This sense of control adds to the legitimacy of the commission’s decisions.

Direct victim compensation also occurs in the Republic of Georgia. The process begins with the Bureau of the Commission on Restitution and

Compensation assisting claimants in the preparation of their complaints.\(^{1661}\) The Commission on Restitution and Compensation may request and receive information from any “national and legal person or state institution” in Georgia to aid in its work, including the resolution of a claim.\(^{1662}\) The process for resolving a dispute begins with submission of a claim that details the claimant’s name, information on the damaged property, a request for restitution of residence or other property or equivalent compensation, and any relevant evidence.\(^{1663}\) After filing, the claim comes before the committee for a proceeding and adjudication, which may request additional evidence, and then makes a final decision.\(^{1664}\) The Georgian General Administrative Code outlines the proceedings and rules governing the resolution of a claim.\(^{1665}\)

The Commission on Restitution and Compensation can provide for the return of property to its original owner, including the eviction of any secondary occupant. If the secondary occupant was unaware of the illegality of their occupancy, they may also receive compensation.\(^{1666}\) Alternatively, the claims commission may substitute a property for destroyed property or even as a last resort pecuniary compensation.\(^{1667}\) The Georgian State Budget, grants, donations


\(^{1666}\) Law of Georgia “on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia,” ch. IV, art. 29 (4-6), Jan. 1, 2007.

\(^{1667}\) Law of Georgia “on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia,” ch. IV, art. 29 (4-6), Jan. 1, 2007.
from other governments, international and non-governmental organizations, and private persons fund the Commission’s activities.\footnote{Law of Georgia “on Property Restitution and Compensation for Victim of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia,” ch. V, art. 33 (3), Jan. 1, 2007.}

\textit{Disbursal to Other Entities}


A compensation commission may also rely on “partner organizations” to handle claims and disburse money to victims. The German Foundation legislation establishes a list of eligible people who were in concentration camps, forcibly deported, or “suffered property lost as a consequence of racial persecution.”\footnote{The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” sec. 11 (1), BGBl. 2001 I 2036 (2001).} Partner organizations in Warsaw, Moscow, Kiev, Minsk, the German-Czech Future Fund in Prague, the Jewish Claims Conference in New York, and the International
Committee of the Red Cross in Geneva then worked on behalf of the Foundation and disbursed funds to individual claimants. \textsuperscript{1674} The partner organizations determine the appeals process for claims, but they are “subject to no outside instruction,” thereby making the claims process entirely outside the jurisdiction of national or international courts. \textsuperscript{1675}

**DARFUR PEACE AGREEMENT**

The Darfur Peace Agreement (DPA) acknowledges the importance of victim compensation calling for “special attention to displaced and war-affected persons.” \textsuperscript{1676} Central to this effort, the DPA provides for the return of property and reintegrations assistance, “including rights to land and compensation for loses or damages or both sustained as a result of the conflict.” \textsuperscript{1677}

The DPA establishes a hierarchy of commissions to aid returning refugees and internally displaced persons. The overall responsibility for such persons falls on the Darfur Rehabilitation and Resettlement Commission, \textsuperscript{1678} which is to establish Property Claims Committees to adjudicate disputes in both rural and urban areas. \textsuperscript{1679} The Property Claims Committees’ membership is representative of the geographic area in which they have jurisdiction, but otherwise regulated by law. \textsuperscript{1680} The Property Claims Committee can determine their own procedures in their use of mediation and “traditional dispute resolution mechanisms.” \textsuperscript{1681}

\textsuperscript{1674} Otto Graf Lambsdorff, the German government's commissioner for the foundation, on the Establishment of the Foundation "Remembrance, Responsibility and Future," delivered the following speeches during the first reading of the legislation, April 14, 2000, available at http://www.germany.info/relaunch/politics/speeches/041400.html (last accessed Sept. 20, 2007).


\textsuperscript{1677} Darfur Peace Agreement, art. 17, para. 108.

\textsuperscript{1678} Darfur Peace Agreement, art. 18, para. 118.

\textsuperscript{1679} Darfur Peace Agreement, art. 21, para. 197.

\textsuperscript{1680} Darfur Peace Agreement, art. 21, paras. 198 and 197 (c).

\textsuperscript{1681} Darfur Peace Agreement, art. 21, para. 197.
The Compensation Commission is to coordinate its work with the Property Claims Committees and is to refer property disputes to the Committees.\footnote{Darfur Peace Agreement, art. 21, para. 204.} The Darfur Rehabilitation and Resettlement Commission is responsible for resolving disputes that arise between the Compensation Commission and the Property Claims Committees, which cannot be reconciled through consultation between the two.\footnote{Darfur Peace Agreement, art. 21, para. 204.}

The Darfur Compensation Commission is a component of the Transitional Darfur Regional Authority.\footnote{Darfur Peace Agreement, art. 6, para. 50 (h).} The Senior Assistant to the President, who is to represent Darfur, proposes the head of the Darfur Compensation Commission to the President of Sudan for approval.\footnote{Darfur Peace Agreement, art. 8, para. 66 (e).} The Compensation Commission is to be independent and impartial in dealing with “claims for compensation by people of Darfur who have suffered harm, including physical or mental injury, emotional suffering or human and economic lasses, in connection with the conflict.”\footnote{Darfur Peace Agreement, art. 21, para. 209.}

Returning people have the right to property restitution or compensation for the loss of their property.\footnote{Darfur Peace Agreement, art. 21, para. 194.} Compensation, however, is limited to situations where restitution of property is impossible.\footnote{Darfur Peace Agreement, art. 21, para. 196.} The DPA establishes principles of victim compensation, including international, national and customary law, “if restitution is impossible other compensation shall be provided,” compensation is distinct from criminal punishment, and “the capacity of the perpetrator or perpetrators to pay monetary compensation.”\footnote{Darfur Peace Agreement, art. 21, para. 205.}

The restitution procedures, which the relevant commissions are to establish, are to be “simple, accessible, transparent and enforceable,” and the overall claims process is to be “just, timely accessible, free of charge, and age and gender sensitive.”\footnote{Darfur Peace Agreement, art. 21, para. 195.} The Compensation Commission can set its own rules of procedure “based on international principles and practices, national law, and customary law and practices”; further the Commission may set up local branches or specialized
entities to carryout it mandate.\textsuperscript{1691} The powers of the Compensation Commission include making binding awards, using “traditional or customary laws and practices,” apportioning liability between perpetrators, and determining the time within which compensation shall be paid.\textsuperscript{1692}

Mechanisms for the review and enforcement of the Compensations Commissions decisions is left undetermined, as the presidential decree creating the Compensation Commission is to determine the Mechanisms.\textsuperscript{1693}

The Compensation Commission is to pay awards out of the Compensation Fund to which the Government of Sudan has pledged an immediate US $300 million contribution.\textsuperscript{1694}

**SAMPLE LANGUAGE**

**Article XXX**

**Principles of Compensation**

(1) On the principle that any violation of human rights entitles the victim to obtain redress and imposes on the State the duty to make reparation,\textsuperscript{1695} victims shall have the following rights:

(a) All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since [date] and to be compensated for any property that cannot be restored to them.\textsuperscript{1696}

\textsuperscript{1691} Darfur Peace Agreement, art. 21, para. 203.
\textsuperscript{1692} Darfur Peace Agreement, art. 21, para. 206.
\textsuperscript{1693} Darfur Peace Agreement, art. 21, para. 209.
\textsuperscript{1694} Darfur Peace Agreement, art. 21, para. 210-213.
\textsuperscript{1695} This language is drawn from the Agreement on the Basis for the Legal Integration of the Unidad Revolucionaria Nacional Guatemalteca, para. 19, Dec. 12, 1996, available at http://www.usip.org/library/pa/guatemala/guat_961212.html (last accessed Sept. 20, 2007)
(b) Compensation for any direct loss, damage, including environmental
damage and the depletion of natural resources, as a result of the
hostilities in the province since [date].

**Article XXX**

**Formation of a Commission**

The Government of Sudan shall convene a commission to determine the
extent of violations of human rights that occurred in the conflict leading up
to this peace agreement. The commission shall be charged with providing
conclusions and recommendations and implementing a national policy of
compensation and assistance for the victims of human rights violations.

**OR**

The Parties hereby establish an independent Compensation Commission.
The Commission shall have its headquarters in [location] and may have
offices at other locations, as it deems appropriate.

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*1698* This language is drawn from paragraph 19 of the Agreement on the Basis for the Legal Integration of the Unidad Revolucionaria Nacional Guatemalteca, Dec. 12, 1996.

**Article XXX**  
*Functions of the Commission*

(1) The Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.  

(2) The Commission shall have the competence to receive and register and have the competence to resolve, subject to the right of appeal to the [court or appeals entity, independent and subject to no outside influence](#) the following categories of victims of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between [dates]:

(a) Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights; and

(b) The immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

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Article XXX
Distribution of Funds/Claims Process

The Commission shall establish its own rules, regulations, and procedures for disbursing the funds to victims.

OR

(1) Resources of the Compensation Commission Fund, that serve the purpose of the Compensation Commission, will be allocated to partner organizations. They are to be used for one-time payments to persons eligible pursuant to Section [XXX], as well as for covering the personnel and non-personnel expenses of the partner organizations.

(2) Claims for payments from the monies envisaged are to be addressed to the partner organization. Determinations concerning these payments shall be made by a commission to be formed under this partner organization. The commission shall consist of one member each to be named by the [organizations or governmental entities] and a chairperson to be chosen by those two members. The commission shall establish supplemental principles concerning the content and procedure of its determinations, insofar as these are not already established under this Law or the by-laws. The commission shall rule on the submitted applications within a year after expiration of the application deadline.

1704 This language is drawn from The Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” Section 9(1), BGBl. 2001 I 2036 (2001).

WATER RIGHTS

INTRODUCTION

This chapter identifies the core elements of water rights agreements. This chapter also outlines the Darfur Peace Agreement provisions relevant to water rights and presents sample language parties may wish to consider when drafting water rights provisions in a peace agreement.

The guarantee of sufficient, safe water for all people is a fundamental component to establishing peace in post-conflict provinces and can prevent future disputes over scarce resources. International law increasingly recognizes that the right to water either is a human right for all people or recognizes human rights that inherently require access to water such as a right to highest attainable standard of physical health.\textsuperscript{1706} Accordingly, the parties to the Darfur negotiations may wish to include the guarantee of water rights in a peace agreement.

State practice illustrates that water rights agreements generally include provisions that: (1) establish and define the right to water; (2) incorporate the right to water into domestic legislation; and (3) establish enforcement mechanisms for the right to water. Anticipating water scarcity and taking early action to avoid potential water scarcity can help prevent future conflict and help ensure a sustainable agreement. The 2006 Darfur Peace Agreement (DPA) affirms that all persons in Sudan have an affirmative right to water and requires the parties to provide access to water for all.\textsuperscript{1707}

CORE ELEMENTS

Defining the Right to Water

Some states have adopted provisions declaring that all people in the state own the state’s water resources. South Africa’s National Water Act provides that

all water generated in the water cycle is a resource “common to all.”  

In other states, the state government may own all water rights. The Namibian constitution vests ownership of all natural resources in the state, which has a corresponding duty to ensure equal access to water and sufficient and adequate water for all. 

**Incorporation of the Right to Water into Domestic Frameworks**

States incorporate the right to water in their domestic frameworks in a variety of ways. Some states include the right to water in their constitution, while other states pass water allocation laws that mandate equitable distribution.

The Ethiopian constitution requires the state to provide access to clean water to the extent that the state’s resources allow.  Similarly, the Gambian constitution requires the government to make an effort to provide equal access to clean and safe water. The Zambian constitution, like the Ethiopian and Gambian constitutions, also requires the government to provide clean and safe water.

In 2001, Namibia passed the Namibian Water Resources Management Bill. This bill recognizes that water distribution has historically neglected some segments of Namibian society. The bill requires the government to ensure the equitable allocation of water to ensure the right of all citizens to sufficient safe

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water for a healthy and productive life and the redistribution of water.”\textsuperscript{1713} In South Africa, the National Water Act established a basic human needs water reserve\textsuperscript{1714} to ensure that all citizens’ “basic domestic water needs” are met.\textsuperscript{1715} Part 8 of the National Water Act also creates a compulsory licensing procedure that allows the government to allocate water to poor communities through an application process.\textsuperscript{1716}

**Bilateral and Regional Protection Mechanisms**

Some states use multi-lateral or bilateral treaties to guarantee the right to water for all individuals. The governments of Cambodia, Laos, Thailand, and Vietnam all signed the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin (the Agreement), which calls for the “the sustainable development, utilization, conservation and management of the Mekong River Basin water.” Additionally, the Agreement requires that the parties “protect the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin from pollution or other harmful effects resulting from any development plans and uses of water and related resources in the [Mekong] Basin.”\textsuperscript{1717}

The governments of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, and Venezuela are all signatories to the Treaty of Amazonian Cooperation.\textsuperscript{1718} Under the treaty, the parties are obligated to cooperate in

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\textsuperscript{1713} ROBYN STEIN, WATER SECTOR REFORMS IN SOUTHERN AFRICA: SOME CASE STUDIES, 118 (Hydropolitics in the Developing World, African Water Issues Research Unit, 2002).
\end{flushright}
harnessing the natural resources of the Amazon Basin. The treaty also requires that all parties to ensure an equitable distribution of resources and to conserve the environment.\footnote{1719}{Treaty of Amazonian Cooperation (1978), art. 1.}

**Water Rights Enforcement Mechanisms**

States employ a variety of water rights enforcement mechanisms. Some states have water commissions or other government agencies that regulate the distribution of water. Other states employ provincial mechanisms to ensure access to water.


In South Africa, the National Water Act established a Water Tribunal.\footnote{1723}{South Africa National Water Act 36 of 1998, ch. 15.} This tribunal has national jurisdiction and serves as a forum to settle water disputes. The South African Department of Water Affairs notes that the tribunal has jurisdiction over “water allocation, licen[s]e applications, declarations of existing lawful water use or compensation.”\footnote{1724}{WATER TRIBUNAL RULES GAZETTE: MEDIA RELEASE BY THE DEPARTMENT OF WATER AFFAIRS AND FORESTRY (Nov. 1, 2005), available at http://www.dwaf.gov.za/WaterTribunal/documents/doc/paiamanual.doc (last accessed Sept. 13, 2007).}

On a regional level, the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin established the Mekong River
The Mekong River Commission has implemented a variety of policies including food and drought policies and water monitoring. In 2003, the Commission established a framework for monitoring river flow, water quality and other water use issues. The parties agreed to mechanisms to share information, notification procedures, water use monitoring procedures, and water flow maintenance procedures.

**DARFUR PEACE AGREEMENT**

The 2006 Darfur Peace Agreement (DPA) affirms that all Sudanese have the right to safe drinking water. The DPA requires that “[n]o person or group of persons shall be deprived of any traditional or historical right in respect . . . [to] . . . access to water without consultation and compensation on just terms.” In formulating a national development policy, the agreement also calls on all sides to “give special priority to the most disadvantaged [provinces] including Darfur” so

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1732 Darfur Peace Agreement, art. 17, para. 97, sec. c.
1733 Darfur Peace Agreement, art. 19, para. 159.
that marginalized groups receive equitable economic development. The DPA further provides that the rehabilitation of basic social services, like water, in Darfur should be a “key strategic [objective]” in the national development policy.

The DPA also recognizes that competition for water is a significant problem for nomadic herders and farmers. The DPA declares that traditional rights of access to water shall be recognized and protected. Accordingly, the DPA provides that the parties shall work on “developing a framework for equitable access by various users of land and water resources.” The DPA also specifically requires the government of Sudan to restore water services.

**SAMPLE LANGUAGE**

**Article XXX**

**Definition of the Right to Water**

Water, below and above the surface of the land and in the Red Sea and within the territorial waters and the exclusive economic zone of the Republic of the Sudan shall belong to the State if it is not otherwise lawfully owned.

**OR**

Recognizing that while water is a natural resource that belongs to all people, the discriminatory laws and practices of the past have prevented equal access to water, and use of water resource the government should work to ensure the equitable allocation of water for beneficial use, and the redistribution of water.

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1734 Darfur Peace Agreement, art. 19, para. 145.
1735 Darfur Peace Agreement, art. 19, para. 145 sec. b.
1736 Darfur Peace Agreement, art. 19, para. 149.
1737 Darfur Peace Agreement, art. 20, para. 158.
1738 Darfur Peace Agreement, art. 19, para. 149.
1739 Darfur Peace Agreement, art. 27, para. 369.
1740 NAMIBIA CONST. art. 100 (amendment 1998).
1741 This is drawn from South Africa National Water Act 36 of 1998.
**Article XXX**

**Incorporation of the Right to Water into Domestic Frameworks**

To the extent the state’s resources permit, policies shall aim to provide all Sudanese access to clean water [parties may want to consider guaranteeing the right to water to all individuals including refugees and non-citizens].

**OR**

The Government of Sudan has overall responsibility for and authority over the state’s water resources and their use, including the equitable allocation of water to ensure the right of all citizens to sufficient safe water for a healthy and productive life and the redistribution of water.

**Article XXX**

**Water Rights Enforcement and Dispute Resolution Mechanisms**

A water tribunal is hereby established. It shall have jurisdiction over water allocation, license applications, declarations of existing lawful water use or compensation.

**Article XXX**

**Establishment of a National Water Commission**

(1) A National Water Commission (NWC) is established by this section. The NWC consists of:

(a) The Chair; and

1742 This is drawn from ETHIOPIA CONST. art. 90(1) (1994).


(b) At least three, but no more than six [the parties may choose a different number of commissioners based upon provinces or other criteria], Commissioners nominated in accordance with subsection (2) or (3).

(c) The Commonwealth must nominate a person to be appointed as the Chair in consultation with the other parties to the NWI. The Commonwealth may nominate no more than three other persons to be appointed as Commissioners.

(d) The parties to the NWI (other than the Commonwealth) may nominate no more than three persons to be appointed as Commissioners.

(2) The NWC has the following general functions:

(a) If requested to do so by the Minister, to advise and make recommendations to the Commonwealth on matters of national significance relating to water (including the sustainable management of water resources and access to, and use of, water);

(b) If requested to do so by the Minister, to advise and make recommendations to the Minister on matters relating to water;

(c) If requested to do so by the Minister, to advise and make recommendations to the Minister in relation to any other Commonwealth program that relates to the management and regulation of Australia’s water resources; to advise the [Government or other body], where relevant, on whether a [province, region or city] is implementing its commitments under any agreement relating to water.\textsuperscript{1745}

OR

(1) Whenever any difference or dispute may arise between two or more parties to this Agreement regarding any matters covered by this Agreement and/or actions taken by the implementing organization through its various bodies, particularly as to the interpretations of the Agreement and the legal rights of the parties, a National Water Rights Commission shall first make every effort to resolve the issue.\textsuperscript{1746}


\textsuperscript{1746} This is drawn from the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, art. 34, 5 April 1995.
(2) The National Water Rights Commission shall consist of at least two permanent bodies:
   (a) A Council, which shall be composed of one member of [each province or other government body] who would be empowered to make policy decision on behalf of his/her [province]; and
   (b) A Secretariat, which shall render technical and administrative services to the Council and Joint Committee, and be under the supervision of the Joint Committee.

\[1747\] This is drawn from the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, art. 11-33, April 5, 1995.
WOMEN'S RIGHTS

INTRODUCTION

This chapter identifies the various mechanisms states use to protect women’s rights through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement related to the protection women’s rights position and provides sample language parties may wish to consider when drafting women's rights provisions in a peace agreement.

To protect the rights of women in conflict, many states include special provisions for women’s rights in peace agreements and post-conflict constitutions. These rights often include the right to be free from discrimination, the right of women to benefit from development efforts, prohibitions of violence against women, and special protections of the relationship between the mother and child. Additionally, some peace agreements and post-conflict constitutions provide for a woman’s right to education, employment, and property.

To ensure effective representation of women at the political level, many peace agreements and post-conflict constitutions include provisions to promote and protect the right of women to participate in politics and government. Some states simply provide a general commitment to women’s political participation. Other states provide specific mechanisms to ensure women’s political participation, such as legislative set-asides or the creation of public institutions to protect women's interests.

States typically create various mechanisms to ensure the protection of women’s rights established in peace agreements and post-conflict constitutions. These mechanisms may include the establishment of government institutions concerned with women’s affairs and the adoption of specific legislation against gender-based discrimination and violence.

The 2006 Darfur Peace Agreement (DPA) provides numerous mechanisms for the protection of women's rights, including provisions establishing women's right to participate in government institutions, provisions recognizing the role of
women in the economy, and provisions guaranteeing property rights to women. The DPA also requires the Government of Sudan to engage and consult women in the reconstruction, redevelopment, and reintegration efforts in Darfur. The DPA also requires that women who are displaced persons have access to financial assistance and that the government create special programs to address the special needs of women in the reintegration process.

**CORE ELEMENTS**

**Substantive Women’s Rights**

Peace agreements and post-conflict constitutions often include substantive women’s rights provisions. These rights generally include the right to be free from discrimination, the right of women to benefit from development efforts, prohibitions of violence against women, and special protections of the relationship between the mother and child. Additionally, some peace agreements and post-conflict constitutions provide for a woman’s right to education, employment, and property.

*Equality and Freedom from Discrimination*

Many states provide a general guarantee of equality for women and a right to be free from gender based discrimination in both peace agreements and post-conflict constitutions. These provisions are often broad and prohibit discrimination on the grounds of ethnicity, language, religion, or culture. States often invoke international human rights standards or include non-discrimination statements in a peace agreement or post-conflict constitution. Some states do not include any express guarantees for women’s rights, but provide protections indirectly through general human rights guarantees and recognition of the needs of women.

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1749 Darfur Peace Agreement, art. 17, para. 109; art. 27. para. 369, art. 29, para. 438, 445.
1750 Darfur Peace Agreement, art. 21, para. 195.
Invocation of International Women’s Rights Standards

States may provide prohibitions against gender based discrimination by invoking international agreements. Cambodia offers examples of invoking international women’s rights standards in both a peace agreement and a constitution. The Comprehensive Political Settlement of the Cambodia Conflict (“Cambodian Agreement”) provides that all Cambodians enjoy the rights set out in the Universal Declaration of Human Rights and other relevant human rights instruments. The Constitution of Cambodia invokes the rights embodied in the Convention on the Elimination of All Forms of Discrimination against Women.

Express Women’s Rights Provisions

Alternatively, peace agreements and constitutions may include express provisions for the rights of women. The Good Friday Agreement of Northern Ireland affirms the right to equal opportunity in all social and economic activity, regardless of gender. Similarly, the Cambodian Agreement provides for the incorporation of rights relating to security, equality, and freedom from sexual discrimination.

In Afghanistan, general equality provisions are included in both the peace agreement and the Constitution. The Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions

(the Bonn Agreement) specifically describes its objective a broad-based, gender-sensitive, multi-ethnic, and fully representative government.\(^{1755}\) Additionally, Afghanistan’s Constitution provides that all citizens have “equal rights and duties before the law” regardless of gender.\(^{1756}\)

**Indirect Women’s Rights Provisions**

By contrast, other peace agreements make no specific provision for women’s rights, but instead provide general human rights guarantees and include a special recognition of the needs of women. The parties to the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (“Lome Agreement”) committed to promoting human rights and humanitarian law, equality, and the socio-economic well-being of all the people of Sierra Leone.\(^{1757}\) Additionally, Part V of the Lome Agreement provides mechanisms for addressing humanitarian, human rights and socio-economic issues.\(^{1758}\) Without specifically invoking women’s rights, the Lome Agreement recognized the need to assign priority in national development efforts to women who had suffered particular hardships during the conflict.\(^{1759}\)

**Women and Development**

Recognizing the particular hardships that women face during conflict, some states have made special provisions for women’s inclusion in development. These provisions may redress historical inequities in the allocation of development between men and women.

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\(^{1758}\) Lome Agreement, Jul. 7, 1999, part 5.

\(^{1759}\) Lome Agreement, Jul. 7, 1999, art. 28.
The Lome Agreement of Sierra Leone makes special provision for conflict-affected women. The Lome Agreement calls for special attention to the needs of women in formulating and implementing programs for rehabilitation, reconstruction, and development programs, due to their unique victimization during the conflict. The expressed objective of this provision is to enable women to play a central role in the moral, social, and physical reconstruction of Sierra Leone.

**Violence against Women**

In order to provide for the safety and security of women, several states include provisions in peace agreements and post-conflict constitutions that prohibit violence against women. These provisions may criminalize rape, prohibit the exploitation of women, or outlaw violence against women in both public and private settings.

For instance, the constitution of the Democratic Republic of the Congo requires the government to fight all forms of violence against women in public and private life. Notably, the constitution also provides specific protection against sexual violence. Similarly, the Cambodian Constitution prohibits the physical abuse and exploitation of women. The Afghanistan constitution prohibits violence against women more generally, calling for the adoption of measures to ensure the physical well being of women and the family.

**Rights of the Mother and Child**

Some post-conflict constitutions provide special protections for the rights of women in relation to their children. The Afghanistan Constitution calls for the

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1765 CAMBODIA CONST. art. 38 (1999).
1766 CAMBODIA CONST. art. 45 (1999).
1767 AFGHANISTAN CONST. art. 54 (2004).
adoption of necessary measures to ensure the physical and psychological well-being of the family, especially the mother and child.  

*Other Rights*

In addition to these relatively common rights, some states provide additional rights to women including express provisions regarding a woman’s right to education, employment, or property.

*Education*

In order to redress imbalances between the educational opportunities of men and women, some post-conflict states enshrine a woman’s right to education in the constitution. For instance, the Afghanistan constitution requires the state to devise and implement effective programs for balancing and promoting education for women. Similarly, in East Timor, education and literacy programs for women and girls are a priority of the state’s efforts to promote women’s rights in the interim administration.

*Employment*

Some post-conflict states include provisions that promote the equality of women in the workplace. For instance, the Cambodian constitution specifically calls for gender equality in employment.

*Property*

Where women’s rights to own property are limited, some states incorporate provisions for women’s property rights into their constitutions. Providing and protecting the equal right of women to own land is one of the priorities of East

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1768 *Afgahnistan Const.* art. 54 (2004).
1769 *Afgahnistan Const.* art. 44 (2004).
1771 *Cambodia Const.* art. 36 (1999).
Timor’s efforts to improve women’s rights during the transition to independence.\footnote{1772}

**Representation of Women in Politics and Government**

Peace agreements and post-conflict constitutions often provide women the right to participate in government and the political process. Some states simply provide a general commitment to women’s political participation, while other states provide legislative or public institution set-asides.

The Good Friday Agreement on Northern Ireland and the Constitution of Cambodia provide general commitments to the participation of women in politics and government. The Good Friday Agreement recognizes the right of women to full and equal political participation,\footnote{1773} and additionally promotes social inclusion, emphasizing the advancement of women in public life.\footnote{1774} The Constitution of Cambodia recognizes sexual equality in political participation.\footnote{1775}

To promote women’s political participation, the constitution of Afghanistan establishes legislative set-asides for women. The Afghanistan constitution establishes a minimum quota of women delegates in both the upper and lower houses of the Afghan National Assembly.\footnote{1776}

To promote the participation of women in government, the constitution of the Democratic Republic of the Congo provides a general guarantee of gender parity in public institutions.\footnote{1777} The 2003 Transitional Constitution, which has concurrent jurisdiction with the 2006 Constitution, also establishes a right to “significant representation” in public institutions.\footnote{1778}

\footnote{1772 Sherrill Whittington, *The UN Transitional Administration in East Timor: Gender affairs*, 53 DEVELOPMENT BULLETIN, at 77 (2000).}
\footnote{1773 Good Friday Agreement, Apr. 10, 1998, Strand 3, Rights, Safeguards and Equality of Opportunity, para. 1.}
\footnote{1774 Good Friday Agreement, Apr. 10, 1998, Strand 3, Rights, Safeguards and Equality of Opportunity, Economic, Social and Cultural Issues, para. 1.}
\footnote{1775 CAMBODIA CONST. art. 34 (1999).}
\footnote{1776 AFGHANISTAN CONST. art. 83, - 84 (2004).}
\footnote{1777 DEMOCRATIC REPUBLIC OF THE CONGO CONST. art. 14 (2006).}
Mechanisms for Implementing Women’s Rights

In order to ensure the implementation of rights guaranteed in peace agreements and post-conflict constitutions in domestic law, many states pass legislation on women’s rights. States also establish public institutions, such as government ministries or units, devoted to protecting and promoting the rights of women. In addition, task forces can educate public institutions on the rights of women.

**Government Ministries or Units**

In order to implement the substantive rights established in the constitution or guaranteed in a peace agreement, several states established government ministries or other units responsible for women’s affairs. These ministries promote women’s education, increase the participation of women in politics, stem gender-based violence, or enhance the sensitivity of government institutions to the women’s needs.

The Government of Cambodia established the Ministry of Women’s Affairs to educate the population and counter traditional stereotypes of female inferiority. In the interest of increasing women’s political participation, the Ministry of Women’s Affairs initiated programs to prepare women to assume roles in the state’s political leadership.

The Government of Sierra Leone established the Family Support Unit to assist local police in investigating gender-based violence. The Family Support Unit engages in community education and sensitization through radio and

television programs. \(^ {1782}\) The Sierra Leone police operate Family Support Units in eighteen police stations across the country. \(^ {1783}\)

Similarly, East Timor established a Vulnerable Persons Unit to assist the civilian police. \(^ {1784}\) The Vulnerable Persons Unit includes female officers and interpreters. \(^ {1785}\) The East Timorese government also established a Gender Affairs Unit in the Office of the Special Representative of the United Nations Secretary-General. The Unit’s mandate was to mainstream gender throughout all areas of the transitional administration. \(^ {1786}\) The Unit advocated for gender equity and equality and focused on the following priority areas: increased participation in political decision-making; a gender-sensitive legal and judicial system; education and literacy programs for women and girls; and equal rights to land, employment and investment opportunities. \(^ {1787}\)

**Government Task Force**

Another mechanism through which states may implement women’s rights protections is a government task force. States establish task forces as temporary units charged with implementing women’s rights in government institutions.

In an effort to fulfill its constitutional obligation to protect the physical and psychological well being of women, the Government of Afghanistan took affirmative measures to counter the high rates of domestic violence. \(^ {1788}\) The Government of Afghanistan created the Inter-Ministerial Task Force on the

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\(^ {1782}\) [United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices: Sierra Leone.](#)

\(^ {1783}\) [United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices: Sierra Leone.](#)


\(^ {1787}\) Sherrill Whittington, *The UN Transitional Administration in East Timor: Gender affairs*, 53 Development Bulletin at 77.

\(^ {1788}\) Afghanistan Const. art. 54 (2004).
Elimination of Violence Against Women under the Ministry of Women’s Affairs. The Task Force endorsed a work plan to improve the judicial and law enforcement systems. The Task Force trained court officials, staff at the Attorney General’s Office, and police departments in handling cases of violence against women. Additionally, the Task Force has established an initiative for the formal registration of marriages and divorces to ensure the protection of women’s rights under Islamic law and in accordance with international standards. The Task Force also engaged in the construction of safe houses for women escaping domestic violence.  

**DARFUR PEACE AGREEMENT**

The Darfur Peace Agreement (DPA) provides women protection in areas of power and wealth sharing. At the national government level, the DPA provides mechanisms to ensure the effective participation of women in all government branches, including the civil service. Additionally, the DPA’s wealth sharing provisions provide mechanisms ensuring representation in organizations responsible for dispersing the funds. The DPA’s ceasefire agreement also provides mechanisms for the protection, participation, and representation in organizations created by the agreement.

**Power Sharing**

*General Principles for Power Sharing*

The Darfur Peace Agreement recognizes the lack of representation for women in Sudanese government and society. The DPA’s provisions intend to remedy this and ensure the effective participation of women in government.

*Human Rights and Fundamental Freedoms*

The DPA incorporates women's rights, specified in the International Covenant on Civil and Political Rights. The DPA provides for: (1) the right to

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1790 Darfur Peace Agreement, art. 1, para.15.
1791 Darfur Peace Agreement, art. 1, para.15.
marry; (2) maternity and healthcare for pregnant women; and (3) access to education, without discrimination as to gender. The agreement also requires parties to combat harmful customs and other activities that demean the status of women, and to protect lactating women from the death penalty.

**Effective Participation in All Institutions at the Federal Level and At All Other Levels of Governance**

The National Executive, National Legislature, and the National Civil Service

The DPA requires the President of Sudan to ensure the equitable representation of women to appointed National Executive positions. The DPA provides a minimum of twelve seats in the National Assembly for Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) nominees and “highly” recommends that some nominees be women.

The DPA addresses the under-representation of Darfurian women in the National Civil Service by providing both long-term and short-term remedies. Specifically, the parties to the DPA must take “special measures” to ensure the participation of women in the civil service.

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1792 Darfur Peace Agreement, art. 3, para. 28(a). These rights include civil and political rights along with the social and cultural rights ratified by the Government of Sudan. Darfur Peace Agreement, art. 3, para. 28(a).

1793 Darfur Peace Agreement, art. 3, para. 28(a).

1794 Darfur Peace Agreement, art. 3, para. 28.

1795 Darfur Peace Agreement, art. 3, para. 30(c).

1796 Darfur Peace Agreement, art. 8, para. 69(d); art. 70. These positions include positions created by the Darfur Peace Agreement and the Interim National Constitution.

1797 Darfur Peace Agreement, art. 9, para. 71.

1798 Darfur Peace Agreement, art. 11, para. 76.

1799 Darfur Peace Agreement, art. 11, para. 77, sec. b. To address the inequality of women, the Government of Sudan shall reserve “certain” civil service posts for “qualified women, particularly those from the less developed areas such as Darfur.”

1800 Darfur Peace Agreement, art. 11, para. 78.
Wealth Sharing, Concepts and General Principles for Wealth Sharing

The DPA's wealth sharing chapter recognizes that women in the agricultural sector require “special focus.”

Women in Darfur make up the majority of the agricultural workforce.

The Darfur Reconstruction and Development Fund must also “develop special funding mechanisms to address the needs of women.” In addition to financial assistance, the DPA provides protection and necessary documents for women intent on returning home. The DPA also provides for the participation of these returning women in the distribution of food and water while en route to areas of return. The DPA asserts the rights of women to reclaim property lost during the conflict and requires that women have equal and effective participation in the restitution process and on the Compensation Commission. The Compensation Commission is also required to take into account the needs of women and children.

Comprehensive Ceasefire and Final Security Arrangements

The Darfur Peace Agreement’s ceasefire chapter also contains provisions addressing the special needs of women in Sudanese and Darfurian society. The ceasefire requires the parties to protect women from gender-motivated violence.

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1801 Darfur Peace Agreement, art. 17, sec. 109.
1802 Darfur Peace Agreement, art. 17 sec. 109.
1803 Darfur Peace Agreement, art. 19, para. 154(d). The mechanisms cover, but are not limited to the “creation of investment opportunities, enhancement of productive capacities, capacities, provision of credit, production inputs and capacity building for women.” Darfur Peace Agreement, art. 19, para. 154(d).
1804 Darfur Peace Agreement, art. 21, para. 186, 192. This provision requires the relevant authorities to assist the African Union and the international community in protecting women from harassment Darfur Peace Agreement, art. 21, para. 186, 192.
1805 Darfur Peace Agreement, art. 21, para. 187.
1806 Darfur Peace Agreement, art. 21, para. 195.
1808 Darfur Peace Agreement, art. 21, para. 205.
1809 Darfur Peace Agreement, art. 23, para. 217(c); art. 25, para. 236; art. 27, para. 321(c). The DPA ensures that women and children are not subjugated to gender-based violence. Furthermore, the DPA says that the African Union’s Mission in Sudan will not tolerate gender-
Parties also must ensure women’s participation and representation in institutions that monitor and verify the ceasefire,\textsuperscript{1810} and assist with the reintegration process.\textsuperscript{1811}

The Darfur-Darfur Dialogue and Consultation\textsuperscript{1812} (“DDDC”) strives to include women in membership positions.\textsuperscript{1813} The DPA also provides for the protection\textsuperscript{1814} of internally displaced women.\textsuperscript{1815} The DPA further requires the representation for women in security institutions.\textsuperscript{1816}

**SAMPLE LANGUAGE**

**Article XXX**

**Substantive Women’s Rights**

The parties recognize that all persons are equal before the law and are entitled to equal protection of the Constitution, regardless of race, color, gender, language, religion, political or other opinion.\textsuperscript{1817}

**OR**

The Government of Sudan shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of

\textsuperscript{1810} Darfur Peace Agreement, art. 25, para. 229(e); art. 29, para. 394. The DPA supports the participation of women in the ceasefire monitoring process. Additionally, the DPA ensures the fair representation in the Darfur Security Arrangements Implementation Commission.

\textsuperscript{1811} Darfur Peace Agreement, art. 27, para. 369; art. 29, para. 438, 445. Parties are required to pay special attention to the needs of women by setting aside specific resources and provide programs for the reintegration of women, including widows and former combatants.

\textsuperscript{1812} Darfur Peace Agreement, art. 31, para. 458. The DDDC is a conference that provides the different Darfurian stakeholders a place to meet, build consensus “and discuss the challenges of restoring peace to their land.”

\textsuperscript{1813} Darfur Peace Agreement, art. 31, paras. 461-67; art. 31, paras. 475-76, 482, 494. The parties should provide for the participation and representation of women in the DDDC.

\textsuperscript{1814} Darfur Peace Agreement, art. 26, paras. 276-79.

\textsuperscript{1815} Darfur Peace Agreement, art. 26, para. 262(e).

\textsuperscript{1816} Darfur Peace Agreement, art. 29, para. 447(e).

\textsuperscript{1817} This language is drawn from the Darfur Peace Agreement, art. 3, para. 27.
Human rights, the covenants and conventions related to human rights, women’s, and children's rights.1818

**Article XXX**  
**Women and Development**

The Government of Sudan shall provide appropriate financial and technical assistance to women, in particular, those that were victimized during the conflict.1819

**Article XXX**  
**Combating Violence Against Women**

The Government of Sudan shall fight all forms of violence against women.1820

AND/OR

The Government of Sudan shall fight all forms of violence against women.

Special laws shall be enacted in order to protect women against exploitation in employment. Women shall be equal in all fields, including marriage. Marriage shall be conducted according to conditions determined by law based on the principle of mutual consent between one husband and one wife.1821

**Article XXX**  
**Rights of the Mother and Child**

The Government shall adopt the necessary measures in order to ensure the well-being of the mother and child.1822

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1818 This language is from the Constitution of CAMBODIA CONST. art. 31 (1999).
1819 This language is drawn from the Lome Agreement, Jul. 7, 1999, art. 28.
1820 This language is drawn from the CONST. OF THE DEMOCRATIC REPUBLIC OF THE CONGO, art. 14.
1821 This language is drawn from the CAMBODIA CONST. art. 45. (1999).
1822 This language is drawn from the AFGHANISTAN CONST. art. 54 (1999).
AND/OR

The Government shall provide maternity and childcare services for pregnant and breast-feeding women.\textsuperscript{1823}

\textbf{Article XXX}
\textbf{Providing Access to Education for Women}

The Government shall provide access to education to all its citizens regardless of race, color, gender, disability, language, religious creed, political or other opinion.\textsuperscript{1824}

AND/OR

Special measures shall be adopted in order to increase the participation of women at all levels of education.\textsuperscript{1825}

\textbf{Article XXX}
\textbf{Employment Rights}

Women shall enjoy the right to choose any employment according to their ability.\textsuperscript{1826}

AND/OR

Citizens of either sex shall receive equal pay for equal work.\textsuperscript{1827}

\textbf{Article XXX}
\textbf{Property Rights for Women}

Women shall have the right to own property and share in the estate of a deceased family member.\textsuperscript{1828}

\textsuperscript{1823} This language is drawn from the \textsc{Sudanese Interim National Const.} art. 20, sec. 2 (2005).
\textsuperscript{1824} This language is drawn from the Darfur Peace Agreement, art. 3, para. 28(f).
\textsuperscript{1825} This language is drawn from the \textsc{Afghanistan Const.} art. 44 (2004).
\textsuperscript{1826} This language is drawn from the \textsc{Cambodia Const.} art. 36 (1999).
\textsuperscript{1827} This language is from the \textsc{Cambodia Const.} art. 36 (1999).
Article XXX
Representation of Women in Politics and Government

The Government of Sudan shall set aside [X number of positions] in the [insert institutions in which women's participation is mandated] to be occupied by women.¹⁸²⁹

AND/OR

The Government of Sudan shall adopt legislation ensure the participation of women in all levels of government.¹⁸³⁰

AND/OR

The Government of Sudan shall establish a [commission and/or government ministry] to ensure the representation of women in all levels of government.¹⁸³¹

¹⁸²⁸ This language is drawn from the SUDANESE INTERIM NATIONAL CONST. art. 20, sec. 2 (2005).
¹⁸²⁹ This language is drawn from the AFGHANISTAN CONST. arts. 83-84 (2004).
¹⁸³⁰ This language is drawn from the Darfur Peace Agreement art. 1, para.15.
¹⁸³¹ This language is drawn from the East Timor Gender Affairs Unit established in the Office of the Special Representative of the United Nations Secretary-General.