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CONSTITUTIONAL PROVISIONS

**OBJECTIVES FOR THE ESTABLISHMENT OR AMENDMENT OF
CONSTITUTIONAL PROVISIONS**

Drafter's Introduction:

The degree of constitutional change that a government is required to undertake following a conflict depends on the nature of the conflict and the preexisting governmental structure. An agreement resulting from a civil war, for example, might require the state to adopt an entirely new constitution or to enact broad revisions to the existing one. Interstate conflict, on the other hand, might require less significant changes.

This template discusses the factors that negotiators should consider when they include constitutional reform in a peace agreement. It focuses on the procedures and underlying norms that are required for the successful implementation of these changes. While these concerns are most applicable to agreements that call for the drafting of a new constitution, they are also relevant to the amendment of existing ones.

CONSTITUTIONAL PROVISIONS: ELEMENTS FOR A SUCCESSFUL AGREEMENT

Drafter's Note -- Including constitutional provisions in peace agreements helps to ensure the stability of the government and reinforce the role of fundamental norms. Each of the elements discussed in this section furthers the goals of enhancing legitimacy and establishing the rule of law on a firm foundation. The first two provide founding values to guide the constitutional process, the next two are procedural requirements that lend accountability to the reform, and the last one outlines the issues posed by the inclusion of substantive amendments in this process.

1. 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 legal and social norms. A clear statement (preferably with an enforcement mechanism) 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 resulting government.

In addition to advancing these general goals, the parties' stated dedication to a strong constitution also helps to facilitate successful peace negotiations. Peace negotiations take place in a wide variety of settings, but they often reflect a situation of stalemate or balance, sometimes achieved only after international intervention. That situation may change dramatically after the negotiations are complete. A supreme constitution reassures minorities that the ruling party's power will be constrained in the new government, which may make compromise possible.

2. Statement of Democratic Principles

A strong constitution that is based on democratic principles helps to ensure that the government will be stable and enduring. Rather than engaging in violent overthrow of the existing government, political parties in constitutional democracies seek power and reform through peaceful and established means.

Including a statement of democratic principles in the peace agreement also provides a starting point for the development of a democratic society. Unlike other important values (*e.g.* 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, however it is eventually constituted.

3. Adoption

If the parties intend to include constitutional reform in their agreement, they should include a mechanism for adopting the negotiated changes, incorporating the principles of accountability and democratic legitimacy. One way to increase accountability is to set forth a clear process for drafting and ratification—including timelines. A detailed description of the process not only helps to ensure that the parties keep their promises, but, since each party knows that the others will be held accountable, it facilitates productive negotiations. Furthermore, accountability helps to avoid the resumption of violence by clarifying each party's responsibilities and by making it more difficult for the parties to make promises that they do not intend to keep.

The requirement of democratic legitimacy derives from the principle that constitutions should be based on the consent of the governed. The drafting process should be as inclusive as possible, and the drafters should be careful to solicit comments from all segments of society, especially from vulnerable and isolated populations. The actual adoption of the constitution, the process that gives the document the force of law, should be accomplished—to the degree possible given the country's state of development and democratic heritage--through direct referenda or through the participation of representative elected bodies. The officials who manage this process should take great care to ensure that every citizen has the opportunity to participate. Voters must have sufficient resources (time and information) with which to make informed votes. See the Election chapter of this handbook for additional prerequisites to ensure fair elections in a post-conflict society.

There is a tension between the twin goals of accountability and democratic legitimacy with regard to changes that are to be made under an existing constitution. If the citizens are to be given the choice of ratifying or not ratifying a proposed constitutional amendment, either in a referendum or through a legislature, then the government cannot credibly promise to implement the proposed change. In such circumstances, the government should acknowledge this limitation during the peace negotiations and commit to taking specific steps within a specific timeframe to seek ratification of the proposed changes.

4. Amendment

By providing a clear mechanism for constitutional amendment, the drafters can ensure that the government will be flexible enough to withstand changing times and circumstances. The amendment process encourages those with grievances to seek change within the constitutional system and helps to encourage peaceful changes in governance. Including references to such provisions during the negotiation process also helps to reassure the parties challenging the status quo that they will have a means of implementing change in the future.

While flexibility is important, the amendment provision should balance the need for adaptability with the need to retain the constitution as a settled and enduring document. Unlike statutes, constitutions form the foundations of national governments. In the interest of stability, amendment should require a super majority vote, and additional safeguards should be considered.

5. Substantive Provisions

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. In some instances, most notably the Bosnia-Herzegovina Agreement, the negotiators included an entire new constitution in the peace agreement.

Peace negotiations present clear 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. Furthermore, substantive provisions may 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.

As a cautionary note, constitutional changes implemented through peace negotiations may not have the same benefits of democratic legitimacy as might otherwise be achieved by referendum or other means. Moreover, adding too many substantive changes to a proposed peace agreement could make it more difficult for the parties to settle their dispute. Since constitutions, unlike statutes and

agreements, are difficult to change, the costs of including substantive constitutional amendments in a peace agreement might simply be too great for one side to bear. Drafters and negotiators should thus take great care to ensure that the benefits of the proposed changes are not outweighed by the potential costs.

Index of Agreements

Drafter's Note – This is a list of the agreements used throughout this paper that provide precedent language for each of the elements listed above. The agreements will be listed by the name in parentheses listed after the names of the agreements.

1. AFGHANISTAN, Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, December 5, 2001 (Afghanistan Agreement).
2. BOSNIA-HERZEGOVINA, The General Framework Agreement for Peace in Bosnia and Herzegovina, December 14, 1995 (Bosnia Agreement).
3. PAPUA NEW GUINEA, The Bougainville Peace Agreement, August 30, 2001 (Bougainville Agreement).
4. BURUNDI, Arusha Peace and Reconciliation Agreement for Burundi, August 28, 2000 (Burundi Agreement).
5. CAMBODIA, Agreement on the Comprehensive Political Settlement of the Cambodia Conflict, October 23, 1991 (Cambodia Agreement).
6. KOSOVO, Interim Agreement for Peace and Self-Government in Kosovo, February 23, 1999 (Kosovo Agreement).
7. MACEDONIA, Macedonia Framework Agreement, August 13, 2001 (Macedonia Agreement).
8. MEXICO, San Andres Larrainzar Agreements, February 16, 1996 (Mexico/Chiapas Agreement).
9. NORTHERN IRELAND, The Northern Ireland Peace Agreement: The Agreement Reached in the Multi-Party Negotiations, April 10, 1998 (Northern Ireland Agreement).
10. THE SUDAN, Machakos Protocol, July 20, 2002 (Sudan Agreement).

I. Treatment of Constitutional Provisions in Prior Agreements and Model Language

Drafter’s Note -- Existing peace agreements vary significantly in the types of constitutional reforms that they include and the detail with which they describe those reforms. This section provides examples of different approaches that negotiators have taken along with model language. Since each situation is shaped by unique circumstances (*e.g.* degree of democratic heritage, development of infrastructure, etc.), these sample provisions should be tailored to fit the agreement under consideration.

1. Role of the Constitution

Bougainville Agreement

Legal Status of Bougainville Constitution

26. The Bougainville Constitution will be supreme law as regards matters that fall within Bougainville’s jurisdiction, and Bougainville laws and institutions will be required to be consistent with the Bougainville Constitution. The Bougainville Constitution will be enforceable:
- a. in the Supreme Court; and
 - b. the Bougainville courts, to the extent provided for in the Bougainville Constitution.

Sudan Agreement

3.1 Supreme Law

- 3.1.1. The National Constitution of the Sudan shall be the Supreme Law of the land. All laws must comply with the National Constitution.

MODEL LANGUAGE REGARDING THE ROLE OF THE CONSTITUTION

1. The National Constitution shall be the supreme law of the land. Any law, regulation, or practice that conflicts with the National Constitution shall be void.
2. The Constitution shall include a provision stating that the government may not suspend the Constitution for any reason.

2. Democratic Norms

Cambodia Agreement

3. The constitution will state that Cambodia will follow a system of liberal democracy, on the basis of pluralism.

Burundi Agreement

Preamble

We, the Parties,

Aware of the vital need to promote lasting peace in Burundi and to put an end to the conflict, division and suffering inflicted on the Burundian people,

Reaffirming our commitment to a democratic system of government, inspired by the realities of our country, that guarantees security and justice for all, and is founded on the values of unity without exclusion,

3. Government shall be based on the will of the Burundian people, shall be accountable to them, and shall respect their fundamental rights and freedoms.

4. The Government of Burundi shall be so structured as to ensure that all Burundians are represented in and by it; that there is equal opportunity to serve in it; that all citizens have access to government services; and that the decisions and actions of government enjoy the widest possible level of support.

Bosnia Agreement

2. Democratic Principles. Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.

MODEL LANGUAGE REGARDING DEMOCRATIC PRINCIPLES

The parties recognize that legitimate governance is based on the consent of the governed. [Name of State] shall be a liberal democracy, and every citizen shall

have equal opportunity to participate in the government through free and fair elections.

3. Adoption

Drafter’s Note – The adoption of a new constitution—or the amendment of an existing one--can be vital to the success of the new government. The mechanism for adoption should include broad public involvement to both empower the constituent parties and to give the resulting document more democratic legitimacy. The parties to the agreement should also include a clear timeline and system of accountability to ensure that they will fulfill the promises made during the negotiations.

Afghanistan Agreement

I. General provisions

6) A Constitutional Loya Jirga shall be convened within eighteen months of the establishment of the Transitional Authority, in order to adopt a new constitution for Afghanistan. In order to assist the Constitutional Loya Jirga prepare the proposed Constitution, the Transitional Administration shall, within two months of its commencement and with the assistance of the United Nations, establish a Constitutional Commission.

Sudan Agreement

Part C

3.1.2 A representative National Constitutional Review Commission shall be established during the Pre-Transition Period which shall have as its first task the drafting of a Legal and Constitutional Framework to govern the Interim Period and which incorporates the Peace Agreement. [Drafter’s Note – according to Section 2.2, the Pre-Transition Period was to last six months.]

3.1.3 The Framework mentioned above shall be adopted as shall be agreed upon by the Parties.

3.1.4 During the Interim Period an inclusive Constitutional Review Process shall be undertaken. [Drafter’s Note – the Interim Period was

to start at the end of the Pre-Transition Period and was to extend for another six years.]

Drafter’s Note – These excerpts from the Afghanistan and Sudan Agreements provide clear timelines for the creation of a representative constitutional convention. Unfortunately, neither agreement establishes a timeline for the adoption of the complete constitution and neither includes provisions for democratic participation.

Bougainville Agreement

Developing the Bougainville Constitution

14. The Bougainville Interim Provincial Government in consultation with the Bougainville People’s Congress will establish a Constitutional Commission and a Constituent Assembly to make the Bougainville Constitution.

15.

a. The National Government will be kept informed and allowed adequate opportunity to make its views known as proposals for the Bougainville Constitution are developed.

b. Before the Bougainville Constitution is adopted by the Constituent Assembly, there will be consultation with the National Government about the contents of the draft Constitution.

Constitutional Commission to Develop Proposals

16. A Constitutional Commission broadly representative of the people of Bougainville will make proposals for a Bougainville Constitution.

17. The Constitutional Commission will consult widely with the people of Bougainville to understand their views on a Constitution for Bougainville, and will prepare a draft Bougainville Constitution for consideration by the Constituent Assembly.

Constituent Assembly to Debate and Adopt Bougainville Constitution

18. The people of Bougainville, through a representative Constituent Assembly, will consider the draft Bougainville Constitution.

19. The Constituent Assembly will debate and may amend the draft Bougainville Constitution, and will adopt the Constitution in the manner set out in this clause.

Establishing the Constituent Assembly

20. The parties will co-operate in facilitating the establishment of the Constituent Assembly.

Principles and Standards for Development and Contents of Constitution

21. Subject to other provisions of this Agreement, the arrangements used to establish the Bougainville Constitution and the structures and procedures for the autonomous Bougainville Government established under it will meet internationally accepted standards of good governance.

Endorsement of Bougainville Constitution

22.

- a. Following adoption of the Bougainville Constitution, the Constituent Assembly shall transmit a copy of that Constitution to the National Executive Council.
- b. Upon being satisfied that the requirements of the National Constitution for the Bougainville Constitution have been met, the National Executive Council shall advise the head of State to endorse that Constitution.

23. The National Government will gazette the Bougainville Constitution upon its endorsement by the Governor-General.

24. The constitutional amendments will include an agreed procedure to ensure that the Bougainville Constitution can be brought into effect without delay.

Drafter's Note – This provision is an example of an agreement that creates a semi-autonomous region for political minorities. It creates democratic legitimacy by requiring the drafters to consult widely with different groups and by requiring that the final draft be voted into law by democratically-elected bodies. The most significant problem with this text as model language is that it does not include a timeline; however, since the party that stood to benefit from the constitution

(Bougainville) was responsible for drafting it, that requirement was less of a necessity in this particular agreement.

Bosnia Agreement

[The Parties] have further agreed to establish a high-level Transitional Committee, which will take immediate and concrete steps toward the establishment of the Federation and Confederation. The Committee will begin its work on March 4, 1994 in Vienna and will seek to conclude by March 15, 1994:

(1) The Constitution of the Federation;

Drafter's Note – This peace agreement includes detailed provisions that became Bosnia's constitution. While this approach is an effective way to establish a new government quickly, the lack of public involvement limits the democratic legitimacy of this *de facto* constitution. The Kosovo agreement (excerpted in Section III), suffers from the same problem.

Cambodia Agreement

PART II: ELECTIONS, Article 12

The Cambodian people shall have the right to determine their own political future through the free and fair election of a constituent assembly, which will draft and approve a new Cambodian Constitution in accordance with Article 23 and transform itself into a legislative assembly, which will create the new Cambodian Government. This election will be held under United Nations auspices in a neutral political environment with full respect for the national sovereignty of Cambodia.

ANNEX 5: Principles for a New Constitution for Cambodia

6. The constitution will be adopted by a two-thirds majority of the members of the constituent assembly.

Burundi Agreement

4. The transitional National Assembly and the traditional Senate shall within 18 months adopt in the same terms, by a two-thirds majority, a post-transition

Constitution in conformity with the principles set forth in Chapter I of the present Protocol.

5. After such adoption, the text in question shall be submitted to the Constitutional Court for verification of its compliance with the principles set forth in Chapter I. If the text does not so comply, the Court shall indicate which provisions must be amended. If and whenever the Court declines to certify a text submitted to it pursuant to this provision, the transitional National Assembly and the transitional Senate shall within 30 days amend the text and resubmit it to the Court.

6. A text referred to above shall, if certified, be submitted for popular approval by way of referendum. A text which is so approved shall be the post-transition Constitution and shall come into force upon the termination of the transition period.

7. If no duly adopted text has been certified and approved by referendum within 23 months of the commencement of the transition, the Implementation Monitoring Committee may instruct experts - either national or international - to prepare a text in conformity with Chapter I of the present Protocol. The experts shall have regard to any judgements [sic] of the Constitutional Court and to any constitutional texts not certified by it. The text prepared by the experts shall be submitted for direct approval by way of referendum. If approved, it shall become the post-transition Constitution. If not approved, it shall serve provisionally as the Constitution for purposes of the Legislature and Executive elected during the transition period under the provisions of article 20 of the present Protocol. Such first elected Legislature shall draft a post-transition Constitution and adopt it in conformity with the procedure for amending the post-transition Constitution set forth in Chapter I of the present Protocol.

Drafter's Note – The Cambodia and Burundi Agreements provide examples of democratic and inclusive processes. The Burundi agreement combines democratic accountability with a strict timeline for action. The referendum process ensures that a constitution will be adopted even if the legislature fails to do so. This agreement could be improved by including provisions stating that all citizens have a right to participate in the process and by creating an enforcement mechanism to protect that right.

Macedonia Agreement

5. Special Parliamentary Procedures

5.1. On the central level, certain Constitutional amendments in accordance with Annex A and the Law on Local Self-Government cannot be approved without a qualified majority of two-thirds of votes, within which there must be a majority of the votes of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

8. Implementation

8.1. The Constitutional amendments attached at Annex A will be presented to the Assembly immediately. The parties will take all measures to assure adoption of these amendments within 45 days of signature of this Framework Agreement.

Mexico/Chiapas Agreement

4. Various articles in the Constitution of the Republic should be amended. The Federal Government commits itself to promoting the following amendments:
- a) Article 4. So that the demands indicated above (points 1 and 2) are embodied as legitimate rights.
 - b) Article 115. So that the federal pact is strengthened and the participation of indigenous communities in public affairs is guaranteed in the composition of town councils and of predominantly indigenous municipalities.
 - c) Other articles concerning the above-mentioned amendments and to express the content of the new relationship between the State and indigenous peoples in the Constitution.

Drafter's Note – The excerpts from these two agreements provide examples of negotiated changes within existing constitutional frameworks. When the adoption of a constitutional provision requires separate action by the legislature or other elected body, the most that the government can do in a peace agreement is to promise to advocate for the amendment. In order to ensure accountability, those promises should include discrete detailed steps that the government will take in support of the amendment.

Northern Ireland Agreement

3. If the Government declare that the State has become obliged, pursuant to the Agreement, to give effect to the amendment of this Constitution referred to therein, then, notwithstanding Article 46 hereof, this Constitution shall be amended as follows

Drafter’s Note – This provision demonstrates one way in which a government has attempted to lend more credibility to the promises that it made during the negotiations. This provision is self-executing, so the legislature would not need to take additional steps to amend the constitution if the government made the required declaration. This type of provision might work well for secession referenda and similar constitutional modifications; however, it should not be used when democratic accountability regarding the substance of the changes is important.

MODEL ADOPTION LANGUAGE OPTION 1

[This option assumes that there is an elected and representative legislature. It should not be used if the legislature was not elected or if a portion of the citizenry was not able to vote.]

1. Immediately upon this agreement taking effect, the parties shall seek to convene a commission to draft a new constitution. The commission shall be representative of the people and shall be responsible for ensuring that all points of view are considered.
2. The commission shall meet within three months and shall complete its drafting responsibilities within twelve months of the effective date of this agreement.
3. Upon completion of the drafting process, the legislature shall debate the new constitution for no more than sixty days.
4. The constitution shall take effect with an affirmative vote of two-thirds of the legislature.

MODEL ADOPTION LANGUAGE OPTION 2

[This option assumes that the nation contains smaller subunits (*e.g.* states or counties). It can be used when the existing government does not include a democratically-elected and representative legislature.]

[Repeat Sections 1 and 2 from Model Adoption Language 1]

3. While the drafting commission is completing its work, each [local subunit] shall hold free and fair elections to elect a local constitutional convention. The

managers of this process shall ensure that every citizen has the ability to vote in these local elections.

4. The local elections shall conclude within twelve months of the effective date of this agreement. When the local elections have concluded, the drafting commission shall transmit the proposed constitution to the local conventions and those conventions shall vote on the proposal.

5. The conventions shall complete their voting within eighteen months of the effective date of this agreement.

6. The constitution shall take effect with an affirmative vote of two-thirds of the local conventions.

MODEL ADOPTION LANGUAGE OPTION 3

[This option provides for direct public participation in the ratification process. It can be used when the nation does not contain smaller subunits and the existing government does not include a democratically-elected and representative legislature.]

[Repeat Sections 1 and 2 from Model Adoption Language 1]

3. While the drafting commission is completing its work, the [parties or transitional government] shall convene an election commission to organize a ratification vote. This commission shall be responsible for ensuring that every citizen has the right to vote on the proposed constitution and that they have sufficient resources to make informed decisions. If necessary, the election commission shall seek assistance from the United Nations or other international organizations.

4. The ratification vote shall occur within eighteen months of the effective date of this agreement.

5. The constitution shall take effect with an affirmative vote of two-thirds of the national electorate.

4. Amendment

Cambodia Agreement

ANNEX 5: Principles for a New Constitution for Cambodia

1. The constitution will be the supreme law of the land. It may be amended only by a designated process involving legislative approval, popular referendum, or both.

Drafter's Note – Notably, this clause permits amendment by popular referendum, but the lack of detail regarding the “designated process” limits its overall utility.

Bosnia Agreement

Annex 4: Constitution of Bosnia and Herzegovina

Article X: Amendment

1. Amendment Procedure. This Constitution may be amended by a decision of the Parliamentary Assembly, including a two-thirds majority of those present and voting in the House of Representatives.
2. Human Rights and Fundamental Freedoms. No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution or alter the present paragraph.

Drafter's Note – This agreement makes a strong statement regarding the protection of human rights; however, it may be preferable to avoid making provisions of the constitution impossible to amend. Unforeseen situations might arise in which such amendment is necessary, and in any event, such provisions significantly abridge a state's sovereignty.

Macedonia Agreement

Article 131

- (1) The decision to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives.

(2) The draft amendment to the Constitution is confirmed by the Assembly by a majority vote of the total number of Representatives and then submitted to public debate.

(3) The decision to change the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives.

(4) A decision to amend the Preamble, the articles on local self-government, Article 131, any provision relating to the rights of members of communities, including in particular Articles 7, 8, 9, 19, 48, 56, 69, 77, 78, 86, 104 and 109, as well as a decision to add any new provision relating to the subject matter of such provisions and articles, shall require a two-thirds majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

(5) The change in the Constitution is declared by the Assembly.

Sudan Agreement

3.1.5. The Constitution shall not be amended or repealed except by way of special procedures and qualified majorities in order that the provisions of the Peace Agreement are protected.

MODEL AMENDMENT LANGUAGE

1. The legislature may amend the constitution with a favorable vote by two-thirds of its members. In order for such an amendment to take effect, the amendment must then be ratified by a majority of the citizens [or state governments if the nation is a federation] voting in a fair and open election.

2. If the amendment fails to garner a two-thirds vote in the legislature, it may be ratified by popular referendum within one year of the failed vote. Such a referendum would require a two-thirds vote of all of the citizens for passage.

5. Substantive Provisions

Drafter's Note – Many peace agreements include constitutional amendments concerning substantive rights or the form of government. These provisions range from highly technical provisions detailing the structure of the different branches of government to broad aspirational language reiterating the importance of certain fundamental values. This section presents a sample of substantive provisions

concerning human rights. For more samples and further discussion, see the excerpts in Section III of this template (especially the Bosnia and Kosovo Agreements) and the other templates in this handbook that discuss specific substantive rights (e.g. the template addressing issues of human rights and that addressing refugees.).

Bosnia Agreement

Article II: Human Rights and Fundamental Freedoms

1. Human Rights. Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.
2. International Standards. The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.
3. Enumeration of Rights. All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; 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.

Burundi Agreement

Article 3: Charter of Fundamental Rights

1. The rights and duties proclaimed and guaranteed *inter alia* by the Universal Declaration of Human Rights, the International Covenants on Human Rights, the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi. These fundamental rights shall not be limited or derogated from, except in justifiable circumstances acceptable in international law and set forth in the Constitution.

Kosovo Agreement

Article VI: Human Rights and Fundamental Freedoms

1. All authorities in Kosovo shall ensure internationally recognized human rights and fundamental freedoms.
2. The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Kosovo. Other internationally recognized human rights instruments enacted into law by the Kosovo Assembly shall also apply. These rights and freedoms shall have priority over all other law.
3. 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.

II. Summaries of Agreements Regarding Constitutional Provisions

Afghanistan Agreement:

Since the existing government was removed from power, the new governing regime had to construct an entirely new constitution. The post-conflict transition agreement calls for the creation of a small constitutional drafting committee—appointed by the transitional government with assistance from the United Nations—to work out the details of the new constitution. At the end of the drafting stage, a Constitutional *loya jirga*—or “grand assembly”—is to be appointed to manage the adoption process. The *loya jirga* is to consist of representatives of all the major ethnic groups in Afghanistan and is responsible for consulting with the public.

At the time of the drafting of this template, the process is still on-going, so it is hard to judge its success. The rise of warlords the country, along with criticisms regarding the selection of the *loya jirga*, suggests that the process may be difficult. Given the lack of a democratic heritage in Afghanistan, it is unclear whether a broadly representative process would have been feasible.

Bosnia Agreement:

The Yugoslavian state of Bosnia declared independence in April, 1992, and almost immediately fell under attack by Yugoslavian/Serbian nationalists. The resulting civil war lasted until the international community intervened and helped to restore the peace. Under international auspices, the parties negotiated the Dayton Peace Accords in 1995.

The Dayton Accords set forth a fully-developed constitution to guide the transitional government in establishing the new federation of Bosnia-Herzegovina. The terms of the agreement include both procedural as well as substantive provisions. The procedural provisions include an amendment process and a transition plan. The substantive provisions outline the structure of government, create mechanisms to protect human rights, and grant Bosniacs and Croats equal roles in the new republic. The structural section provides that the new government is to consist of three branches and multiple levels. It also creates a power-sharing agreement between the Bosniacs and Croats, and articulates a balance of power and responsibilities between the local and national governments. Further, the

agreement creates a constitutional mandate for the new government to respect human rights and individually incorporates nineteen separate human rights treaties into the new constitution.

The constitution that was outlined in this agreement is still in force today; however, its ultimate effectiveness as a model for other states is not clear. The power-sharing agreement helped to keep the peace in Bosnia while violence erupted in other states in the region; however, since the international community has maintained a heavy presence in the region, states in other regions applying similar measures might not be as successful

Bougainville Agreement

A decade long civil war between Papua New Guinea and separatists on the island of Bougainville finally came to a conclusion on August 30, 2001. Under the terms of the settlement, Papua New Guinea agreed to confer gradually increasing autonomy to Bougainville and to allow the island to hold a referendum on independence in ten to fifteen years. The agreement also included a detailed constitution for the island during the transitional period.

As was the case in other post-war regions, international peacekeepers helped to suppress the outbreak of new violence in Bougainville. Civilian peacekeepers recently replaced soldiers in this role, and the peace agreement is now undergoing a major test.

Burundi Agreement:

After a history of bloody civil wars and repeated coups, some of the warring parties agreed to a broad peace agreement in 2000. The agreement includes measures for the creation of an interim government and a constitution to govern during that transition period. The constitution is described in great detail in the peace agreement and includes both broad, aspirational language as well as specific, substantive provisions. The transitional constitution was adopted, but the refusal of some of the rebels to join the peace agreement has inhibited the country's transition to peace.

Cambodia Agreement:

Cambodia's peace agreement provides a good example of a summary provision that is grounded in democratic accountability. The peace agreement calls for elections, under United Nations auspices, to choose a new governing assembly. The assembly, in turn, is charged with drafting a new Cambodian constitution.

The agreement also includes a set of guiding principles for the assembly to follow. The first one of these acknowledges the country's "tragic recent history" and calls for a "declaration of fundamental rights" to be included in the constitution to ensure that the tragedies are not be repeated. The agreement further declares that Cambodia is to be a liberal democracy, with three branches of power and universal suffrage.

The UN-sponsored election was held in May, 1993 and the resulting "Constituent Assembly" debated and adopted the new constitution in September, 1993. Despite some political turmoil and violence in the late 1990s, the constitution is still in force.

Macedonia Agreement:

After declaring independence from Yugoslavia in 1991 and experiencing sporadic clashes between Albanian and government fighters, culminating in a war between the National Liberation Army and the Macedonian army in 2001, Macedonia finally achieved peace under a framework agreement that was signed on August 13, 2001.

The peace agreement calls for the parties to present a set of constitutional reforms to the Macedonian legislature and to "take all measures to assure adoption of these amendments." The parties were given a timeline of 45 days in which to take these actions. The parliament made the required changes to the Constitution in November, 2001.

Mexico/Chiapas Agreement:

This peace agreement resulted from a long civil war between the government of Mexico and Zapatista rebels in the southern state of Chiapas. The rebels wanted the government to grant greater sovereignty to native groups. As

part of the peace agreement, the parties agreed to have the government amend the Mexican constitution to recognize the rights of indigenous groups explicitly. The state agreed to promote amendments concerning respect for native culture and sovereignty and to seek additional protections for native women.

Unfortunately, the peace agreement did not include any measures to ensure accountability, and the Mexican legislature refused to act on the proposed constitutional amendments. The government objected to the wording of the agreement and attempted to renegotiate with the Zapatistas after the parties signed the agreement. The Zapatistas refused to renegotiate, and violence erupted again. The situation seemed to improve when Vicente Fox was elected President of Mexico, since he was a strong supporter of resolving the Chiapas conflict and pushed an indigenous rights bill through the legislature. Unfortunately, however, the Zapatistas saw this legislation as a watered down version of what was required in the peace agreement, and the fighting has continued.

Sudan Agreement:

After fifteen years of civil war, the Sudanese government created a new constitution in July, 1998; however, that still did not stop the fighting. The government entered into a peace agreement with rebel groups in 2002 and, as part of that agreement, the country will change its constitution once more.

It is difficult to gauge the success of the changes to the Sudanese constitution because the civil war in that country still has not ended. Even though the parties created a transitional government, they have had difficulties implementing the agreement. Given the history of religious strife in the country and the fact that the agreement calls for a liberal democratic constitution, including freedom of religion, there is little cause for optimism.

III. EXCERPTS FROM RELEVANT AGREEMENTS

Drafter’s Note – No single agreement is sufficiently thorough to serve as a “comprehensive model”; therefore, this section provides excerpts from different agreements that may be relevant to specific situations.

This section contains excerpts from the following agreements: Afghanistan, Bosnia, Bougainville (Papau New Guinea), Burundi, Cambodia, Kosovo, Macedonia, Mexico/Chiapas, Northern Ireland, and The Sudan.

Afghanistan

Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions
December 12, 2001

THE INTERIM AUTHORITY

I. General provisions

6) A Constitutional Loya Jirga shall be convened within eighteen months of the establishment of the Transitional Authority, in order to adopt a new constitution for Afghanistan. In order to assist the Constitutional Loya Jirga prepare the proposed Constitution, the Transitional Administration shall, within two months of its commencement and with the assistance of the United Nations, establish a Constitutional Commission.

Bougainville (Papau New Guinea)

The Bougainville Peace Agreement
August 30, 2001

THE PARTIES AGREE AS FOLLOWS:

A. ROLE AND STATUS OF THIS AGREEMENT

1. This Agreement is the basis for drafting the constitutional amendments and other laws, which the National Government will move to provide for implementation.

2. The implementing Constitutional and other laws will state that they are intended to give legal effect to this Agreement.
3. This Agreement:
 - a. will be used as a guide for implementation and to assist the Courts in interpreting the Constitutional and other laws, which give legal effect to this agreement;
 - b. is intended to be interpreted liberally, by reference to its intentions, and without undue reference to technical rules of construction.

B. AUTONOMY

3. BOUGAINVILLE CONSTITUTION

Bougainville Constitution

10. There will be a constitution for Bougainville ("the Bougainville Constitution").

11. The Bougainville Constitution will provide for the organisation and structures of the government for Bougainville under the autonomy arrangements ("the autonomous Bougainville Government") in a manner consistent with this Agreement.

12. Relations between the National Government and the autonomous Bougainville Government will be regulated in accordance with the National Constitution and will not be the subject of provision in the Bougainville Constitution except as specifically provided elsewhere in this Agreement.

13. The Bougainville Constitution will provide for the names of Bougainville and the autonomous Bougainville Government.

Developing the Bougainville Constitution

14. The Bougainville Interim Provincial Government in consultation with the Bougainville People's Congress will establish a Constitutional Commission and a Constituent Assembly to make the Bougainville Constitution.

15.

- a. The National Government will be kept informed and allowed adequate opportunity to make its views known as proposals for the Bougainville Constitution are developed.
- b. Before the Bougainville Constitution is adopted by the Constituent Assembly, there will be consultation with the National Government about the contents of the draft Constitution.

Constitutional Commission to Develop Proposals

16. A Constitutional Commission broadly representative of the people of Bougainville will make proposals for a Bougainville Constitution.
17. The Constitutional Commission will consult widely with the people of Bougainville to understand their views on a Constitution for Bougainville, and will prepare a draft Bougainville Constitution for consideration by the Constituent Assembly.

Constituent Assembly to Debate and Adopt Bougainville Constitution

18. The people of Bougainville, through a representative Constituent Assembly, will consider the draft Bougainville Constitution.
19. The Constituent Assembly will debate and may amend the draft Bougainville Constitution, and will adopt the Constitution in the manner set out in this clause.

Establishing the Constituent Assembly

20. The parties will co-operate in facilitating the establishment of the Constituent Assembly.

Principles and Standards for Development and Contents of Constitution

21. Subject to other provisions of this Agreement, the arrangements used to establish the Bougainville Constitution and the structures and procedures for the autonomous Bougainville Government established under it will meet internationally accepted standards of good governance.

Endorsement of Bougainville Constitution

22.

- a. Following adoption of the Bougainville Constitution, the Constituent Assembly shall transmit a copy of that Constitution to the National Executive Council.
- b. Upon being satisfied that the requirements of the National Constitution for the Bougainville Constitution have been met, the National Executive Council shall advise the head of State to endorse that Constitution.

23. The National Government will gazette the Bougainville Constitution upon its endorsement by the Governor-General.

24. The constitutional amendments will include an agreed procedure to ensure that the Bougainville Constitution can be brought into effect without delay.

Coming into Effect of Bougainville Constitution

25. The Bougainville Constitution will come into effect on a date after its endorsement by the Head of State, and in the manner provided for in that Constitution.

Legal Status of Bougainville Constitution

26. The Bougainville Constitution will be supreme law as regards matters that fall within Bougainville's jurisdiction, and Bougainville laws and institutions will be required to be consistent with the Bougainville Constitution. The Bougainville Constitution will be enforceable:

- a. in the Supreme Court; and
- b. the Bougainville courts, to the extent provided for in the Bougainville Constitution.

Amendment of Bougainville Constitution

27. The Bougainville Constitution may be amended only by the Bougainville legislature following a procedure and requirements

(inclusive of voting majority) as may be prescribed by the Bougainville Constitution.

C. AGREED PRINCIPLES ON REFERENDUM

309. The National Government will move amendments to the National Constitution to guarantee a referendum on Bougainville's future political status.

310. The choices available in the referendum will include a separate independence for Bougainville.

311.

a. The amendments will provide that the outcome will be subject to ratification (final decision-making authority) of the National Parliament.

b. The autonomous Bougainville Government and the National Government will consult over the results of the referendum.

312.

a. The constitutional amendments will guarantee that the referendum will be held:

- no earlier than 10 years and, in any case, no later than 15 years after the election of the first autonomous Bougainville Government;
- when the conditions listed below have been met;
- unless the autonomous Bougainville Government decides, after consultation with the National Government and in accordance with the Bougainville Constitution, that the referendum should not be held.

D. AMENDMENT OF CONSTITUTIONAL ARRANGEMENTS FOR AUTONOMY AND REFERENDUM

325. The constitutional arrangements implementing this agreement may be amended only in accordance with both requirements (a) and (b) below:

- a. after approval by the National Parliament in accordance with the amendment provisions contained in the National Constitution; and
- b.
 - i. in the case of the referendum provisions, after a vote in which a two-thirds absolute majority of members of the Bougainville legislature vote in support; or
 - ii. in the case of the autonomy provisions, after a vote in which a simple majority of members of the Bougainville legislature vote in support.

326. Voting in the Bougainville legislature must be concluded before the second vote on the same Bill to amend is held in the National Parliament.

327. The National Government and the autonomous Bougainville Government will inform each other of any proposed amendments; consult over them through the agreed consultation procedures or the agreed five-yearly reviews before they are formally moved (or, in the case of Private Members' Bills put to the vote for the first time); and resolve any differences through the agreed dispute resolution procedures.

328. The constitutional provisions concerning the above entrenchment arrangements will themselves be subject to the above procedures and requirements.

Bosnia-Herzegovina

The General Framework Agreement for Peace in Bosnia and Herzegovina
December 14, 1995

Article V

The Parties welcome and endorse the arrangements that have been made concerning the Constitution of Bosnia and Herzegovina, as set forth in Annex 4. The Parties shall fully respect and promote fulfillment of the commitments made therein.

ANNEX 4

Constitution of Bosnia and Herzegovina
Preamble

Based on respect for human dignity, liberty, and equality,

Dedicated to peace, justice, tolerance, and reconciliation,

Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society,

Desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy,

Guided by the Purposes and Principles of the Charter of the United Nations,

Committed to the sovereignty, territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law,

Determined to ensure full respect for international humanitarian law,

Inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments,

Recalling the Basic Principles agreed in Geneva on September 8, 1995, and in New York on September 26, 1995,

Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows:

Article I: Bosnia and Herzegovina

1. Continuation. The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be "Bosnia and Herzegovina," shall continue its legal existence under international law as a state, with its internal structure modified as provided herein and with its present internationally recognized borders. It shall remain a Member State of the United Nations and may as Bosnia and Herzegovina maintain or apply for membership in organizations within the United Nations system and other international organizations.

2. Democratic Principles. Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.
3. Composition. Bosnia and Herzegovina shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska (hereinafter "the Entities").
4. Movement of Goods. Services. Capital. and Persons. There shall be freedom of movement throughout Bosnia and Herzegovina. Bosnia and Herzegovina and the Entities shall not impede full freedom of movement of persons, goods, services, and capital throughout Bosnia and Herzegovina. Neither Entity shall establish controls at the boundary between the Entities.
5. Capital. The capital of Bosnia and Herzegovina shall be Sarajevo.
6. Symbols. Bosnia and Herzegovina shall have such symbols as are decided by its Parliamentary Assembly and approved by the Presidency.
7. Citizenship. There shall be a citizenship of Bosnia and Herzegovina, to be regulated by the Parliamentary Assembly, and a citizenship of each Entity, to be regulated by each Entity, provided that:

- a. All citizens of either Entity are thereby citizens of Bosnia and Herzegovina.
- b. No person shall be deprived of Bosnia and Herzegovina or Entity citizenship arbitrarily or so as to leave him or her stateless. No person shall be deprived of Bosnia and Herzegovina or Entity citizenship 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.
- c. All persons who were citizens of the Republic of Bosnia and Herzegovina immediately prior to the entry into force of this Constitution are citizens of Bosnia and Herzegovina. The citizenship of persons who were naturalized after April 6, 1992 and before the entry into force of this Constitution will be regulated by the Parliamentary Assembly.
- d. Citizens of Bosnia and Herzegovina may hold the citizenship of another state, provided that there is a bilateral agreement, approved by the Parliamentary Assembly in accordance with Article IV(4)(d), between Bosnia and Herzegovina and that state governing this matter. Persons with dual citizenship may vote in Bosnia and Herzegovina and the Entities only if Bosnia and Herzegovina is their country of residence.

e. A citizen of Bosnia and Herzegovina abroad shall enjoy the protection of Bosnia and Herzegovina. Each Entity may issue passports of Bosnia and Herzegovina to its citizens as regulated by the Parliamentary Assembly. Bosnia and Herzegovina may issue passports to citizens not issued a passport by an Entity. There shall be a central register of all passports issued by the Entities and by Bosnia and Herzegovina.

Article II: Human Rights and Fundamental Freedoms

1. Human Rights. Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.

2. International Standards. The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.

3. Enumeration of Rights. All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; 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.

4. Non-Discrimination. The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina 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.
5. Refugees and Displaced Persons. All refugees and displaced persons have the right freely to return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.
6. Implementation. Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 above.
7. International Agreements. Bosnia and Herzegovina shall remain or become party to the international agreements listed in Annex I to this Constitution.
8. Cooperation. All competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to: any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in Annex I to this Constitution; the International Tribunal for the Former Yugoslavia (and in particular shall comply with orders issued pursuant to Article 29 of the Statute of the Tribunal); and any other organization authorized by the United Nations Security Council with a mandate concerning human rights or humanitarian law.

Article III: Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities

1. Responsibilities of the Institutions of Bosnia and Herzegovina.

The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

- a. Foreign policy.
- b. Foreign trade policy.

- c. Customs policy.
- d. Monetary policy as provided in Article VII.
- e. Finances of the institutions and for the international obligations of Bosnia and Herzegovina.
- f. Immigration, refugee, and asylum policy and regulation.
- g. International and inter-Entity criminal law enforcement, including relations with Interpol.
- h. Establishment and operation of common and international communications facilities.
- i. Regulation of inter-Entity transportation.
- j. Air traffic control.

1. Responsibilities of the Entities.

- a. The Entities shall have the right to establish special parallel relationships with neighboring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina.
- b. Each Entity shall provide all necessary assistance to the government of Bosnia and Herzegovina in order to enable it to honor the international obligations of Bosnia and Herzegovina, provided that financial obligations incurred by one Entity without the consent of the other prior to the election of the Parliamentary Assembly and Presidency of Bosnia and Herzegovina shall be the responsibility of that Entity, except insofar as the obligation is necessary for continuing the membership of Bosnia and Herzegovina in an international organization.
- c. The Entities shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for the internationally recognized human rights and fundamental freedoms referred to in Article II above, and by taking such other measures as appropriate.
- d. Each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly. The Parliamentary Assembly may provide by law that certain types of agreements do not require such consent.

2. Law and Responsibilities of the Entities and the Institutions.

- a. All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.
- b. The Entities and any subdivisions thereof shall comply fully with this Constitution, which supersedes inconsistent provisions of the law of Bosnia and Herzegovina and of the constitutions and law of the Entities, and with the decisions of the institutions of Bosnia and Herzegovina. The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities.

3. Coordination. The Presidency may decide to facilitate inter-Entity coordination on matters not within the responsibilities of Bosnia and Herzegovina as provided in this Constitution, unless an Entity objects in any particular case.

4. Additional Responsibilities.

- a. Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; are provided for in Annexes 5 through 8 to the General Framework Agreement; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities.
- b. Within six months of the entry into force of this Constitution, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters, including utilization of energy resources and cooperative economic projects.

Article IV: Parliamentary Assembly

The Parliamentary Assembly shall have two chambers: the House of Peoples and the House of Representatives.

1. House of Peoples. The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs).

- a. The designated Croat and Bosniac Delegates from the Federation shall be selected, respectively, by the Croat and Bosniac Delegates to the House of Peoples of the Federation. Delegates from the Republika Srpska shall be selected by the National Assembly of the Republika Srpska.
- b. Nine members of the House of Peoples shall comprise a quorum, provided that at least three Bosniac, three Croat, and three Serb Delegates are present.

2. House of Representatives. The House of Representatives shall comprise 42 Members, two-thirds elected from the territory of the Federation, one-third from the territory of the Republika Srpska.

- a. Members of the House of Representatives shall be directly elected from their Entity in accordance with an election law to be adopted by the Parliamentary Assembly. The first election, however, shall take place in accordance with Annex 3 to the General Framework Agreement.
- b. A majority of all members elected to the House of Representatives shall comprise a quorum.

3. Procedures.

- a. Each chamber shall be convened in Sarajevo not more than 30 days after its selection or election.
- b. Each chamber shall by majority vote adopt its internal rules and select from its members one Serb, one Bosniac, and one Croat to serve as its Chair and Deputy Chairs, with the position of Chair rotating among the three persons selected.
- c. All legislation shall require the approval of both chambers.
- d. All decisions in both chambers shall be by majority of those present and voting. The Delegates and Members shall make their best efforts to see that the majority includes at least one-third of the votes of Delegates or Members from the territory of each Entity. If a majority vote does not include one-third of the votes of Delegates or Members from the territory of each Entity, the Chair and Deputy Chairs shall meet as a commission and attempt to obtain approval within three days of the vote. If those efforts fail, decisions shall be taken by a majority of those present and voting, provided that the

dissenting votes do not include two-thirds or more of the Delegates or Members elected from either Entity.

e. A proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniac, Croat, or Serb people by a majority of, as appropriate, the Bosniac, Croat, or Serb Delegates selected in accordance with paragraph l(a) above. Such a proposed decision shall require for approval in the House of Peoples a majority of the Bosniac, of the Croat, and of the Serb Delegates present and voting.

f. When a majority of the Bosniac, of the Croat, or of the Serb Delegates objects to the invocation of paragraph (e), the Chair of the House of Peoples shall immediately convene a Joint Commission comprising three Delegates, one each selected by the Bosniac, by the Croat, and by the Serb Delegates, to resolve the issue. If the Commission fails to do so within five days, the matter will be referred to the Constitutional Court, which shall in an expedited process review it for procedural regularity.

g. The House of Peoples may be dissolved by the Presidency or by the House itself, provided that the House's decision to dissolve is approved by a majority that includes the majority of Delegates from at least two of the Bosniac, Croat, or Serb peoples. The House of Peoples elected in the first elections after the entry into force of this Constitution may not, however, be dissolved.

h. Decisions of the Parliamentary Assembly shall not take effect before publication.

i. Both chambers shall publish a complete record of their deliberations and shall, save in exceptional circumstances in accordance with their rules, deliberate publicly.

j. Delegates and Members shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the Parliamentary Assembly.

4. Powers. The Parliamentary Assembly shall have responsibility for:

a. Enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under this Constitution.

b. Deciding upon the sources and amounts of revenues for the operations of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina.

- c. Approving a budget for the institutions of Bosnia and Herzegovina.
- d. Deciding whether to consent to the ratification of treaties.
- e. Such other matters as are necessary to carry out its duties or as are assigned to it by mutual agreement of the Entities.

Article V: Presidency

The Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska.

1. Election and Term.

- a. Members of the Presidency shall be directly elected in each Entity (with each voter voting to fill one seat on the Presidency) in accordance with an election law adopted by the Parliamentary Assembly. The first election, however, shall take place in accordance with Annex 3 to the General Framework Agreement. Any vacancy in the Presidency shall be filled from the relevant Entity in accordance with a law to be adopted by the Parliamentary Assembly.
- b. The term of the Members of the Presidency elected in the first election shall be two years; the term of Members subsequently elected shall be four years. Members shall be eligible to succeed themselves once and shall thereafter be ineligible for four years.

2. Procedures.

- a. The Presidency shall determine its own rules of procedure, which shall provide for adequate notice of all meetings of the Presidency.
- b. The Members of the Presidency shall appoint from their Members a Chair. For the first term of the Presidency, the Chair shall be the Member who received the highest number of votes. Thereafter, the method of selecting the Chair, by rotation or otherwise, shall be determined by the Parliamentary Assembly, subject to Article IV(3).
- c. The Presidency shall endeavor to adopt all Presidency Decisions (i.e., those concerning matters arising under Article III(1)(a) - (e)) by consensus. Such decisions may, subject to paragraph (d) below, nevertheless be adopted by two Members when all efforts to reach consensus have failed.

d. A dissenting Member of the Presidency may declare a Presidency Decision to be destructive of a vital interest of the Entity from the territory from which he was elected, provided that he does so within three days of its adoption. Such a Decision shall be referred immediately to the National Assembly of the Republika Srpska, if the declaration was made by the Member from that territory; to the Bosniac Delegates of the House of Peoples of the Federation, if the declaration was made by the Bosniac Member; or to the Croat Delegates of that body, if the declaration was made by the Croat Member. If the declaration is confirmed by a two-thirds vote of those persons within ten days of the referral, the challenged Presidency Decision shall not take effect.

3. Powers.

The Presidency shall have responsibility for:

- a. Conducting the foreign policy of Bosnia and Herzegovina.
- b. Appointing ambassadors and other international representatives of Bosnia and Herzegovina, no more than two-thirds of whom may be selected from the territory of the Federation.
- c. Representing Bosnia and Herzegovina in international and European organizations and institutions and seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member.
- d. Negotiating, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of Bosnia and Herzegovina.
- e. Executing decisions of the Parliamentary Assembly.
- f. Proposing, upon the recommendation of the Council of Ministers, an annual budget to the Parliamentary Assembly.
- g. Reporting as requested, but not less than annually, to the Parliamentary Assembly on expenditures by the Presidency.
- h. Coordinating as necessary with international and nongovernmental organizations in Bosnia and Herzegovina.
- i. Performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the Parliamentary Assembly, or as may be agreed by the Entities.

4. Council of Ministers.

The Presidency shall nominate the Chair of the Council of Ministers, who shall take office upon the approval of the House of Representatives. The Chair shall nominate a Foreign Minister, a Minister for Foreign Trade, and other Ministers as may be appropriate, who shall take office upon the approval of the House of Representatives.

- a. Together the Chair and the Ministers shall constitute the Council of Ministers, with responsibility for carrying out the policies and decisions of Bosnia and Herzegovina in the fields referred to in Article III(1), (4), and (5) and reporting to the Parliamentary Assembly (including, at least annually, on expenditures by Bosnia and Herzegovina).
- b. No more than two-thirds of all Ministers may be appointed from the territory of the Federation. The Chair shall also nominate Deputy Ministers (who shall not be of the same constituent people as their Ministers), who shall take office upon the approval of the House of Representatives.
- c. The Council of Ministers shall resign if at any time there is a vote of no-confidence by the Parliamentary Assembly.

5. Standing Committee.

- a. Each member of the Presidency shall, by virtue of the office, have civilian command authority over armed forces. Neither Entity shall threaten or use force against the other Entity, and under no circumstances shall any armed forces of either Entity enter into or stay within the territory of the other Entity without the consent of the government of the latter and of the Presidency of Bosnia and Herzegovina. All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina.
- b. The members of the Presidency shall select a Standing Committee on Military Matters to coordinate the activities of armed forces in Bosnia and Herzegovina. The Members of the Presidency shall be members of the Standing Committee.

Article VI: Constitutional Court

1. Composition.

The Constitutional Court of Bosnia and Herzegovina shall have nine members.

- a. Four members shall be selected by the House of Representatives of the Federation, and two members by the Assembly of the Republika Srpska. The remaining three members shall be selected by the President of the European Court of Human Rights after consultation with the Presidency.
- b. Judges shall be distinguished jurists of high moral standing. Any eligible voter so qualified may serve as a judge of the Constitutional Court. The judges selected by the President of the European Court of Human Rights shall not be citizens of Bosnia and Herzegovina or of any neighboring state.
- c. The term of judges initially appointed shall be five years, unless they resign or are removed for cause by consensus of the other judges. Judges initially appointed shall not be eligible for reappointment. Judges subsequently appointed shall serve until age 70, unless they resign or are removed for cause by consensus of the other judges.
- d. For appointments made more than five years after the initial appointment of judges, the Parliamentary Assembly may provide by law for a different method of selection of the three judges selected by the President of the European Court of Human Rights.

2. Procedures.

- a. A majority of all members of the Court shall constitute a quorum.
- b. The Court shall adopt its own rules of court by a majority of all members. It shall hold public proceedings and shall issue reasons for its decisions, which shall be published.

3. Jurisdiction.

The Constitutional Court shall uphold this Constitution.

- a. The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to:

- Whether an Entity's decision to establish a special parallel relationship with a neighboring state is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina.
- Whether any provision of an Entity's constitution or law is consistent with this Constitution.

Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity.

b. The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.

c. The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision.

4. Decisions. Decisions of the Constitutional Court shall be final and binding.

Article VII: Central Bank

There shall be a Central Bank of Bosnia and Herzegovina, which shall be the sole authority for issuing currency and for monetary policy throughout Bosnia and Herzegovina.

1. The Central Bank's responsibilities will be determined by the Parliamentary Assembly. For the first six years after the entry into force of this Constitution, however, it may not extend credit by creating money, operating in this respect as a currency board; thereafter, the Parliamentary Assembly may give it that authority.

2. The first Governing Board of the Central Bank shall consist of a Governor appointed by the International Monetary Fund, after

consultation with the Presidency, and three members appointed by the Presidency, two from the Federation (one Bosniac, one Croat, who shall share one vote) and one from the Republika Srpska, all of whom shall serve a six-year term. The Governor, who shall not be a citizen of Bosnia and Herzegovina or any neighboring state, may cast tie-breaking votes on the Governing Board.

3. Thereafter, the Governing Board of the Central Bank of Bosnia and Herzegovina shall consist of five persons appointed by the Presidency for a term of six years. The Board shall appoint, from among its members, a Governor for a term of six years.

Article VIII: Finances

1. The Parliamentary Assembly shall each year, on the proposal of the Presidency, adopt a budget covering the expenditures required to carry out the responsibilities of institutions of Bosnia and Herzegovina and the international obligations of Bosnia and Herzegovina.

2. If no such budget is adopted in due time, the budget for the previous year shall be used on a provisional basis.

3. The Federation shall provide two-thirds, and the Republika Srpska one-third, of the revenues required by the budget, except insofar as revenues are raised as specified by the Parliamentary Assembly.

Article IX: General Provisions

1. No person who is serving a sentence imposed by the International Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold any appointive, elective, or other public office in the territory of Bosnia and Herzegovina.

2. Compensation for persons holding office in the institutions of Bosnia and Herzegovina may not be diminished during an officeholder's tenure.

3. Officials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina.

Article X: Amendment

1. Amendment Procedure. This Constitution may be amended by a decision of the Parliamentary Assembly, including a two-thirds majority of those present and voting in the House of Representatives.
2. Human Rights and Fundamental Freedoms. No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution or alter the present paragraph.

Article XI: Transitional Arrangements

Transitional arrangements concerning public offices, law, and other matters are set forth in Annex II to this Constitution.

Article XII: Entry into Force

1. This Constitution shall enter into force upon signature of the General Framework Agreement as a constitutional act amending and superseding the Constitution of the Republic of Bosnia and Herzegovina.
2. Within three months from the entry into force of this Constitution, the Entities shall amend their respective constitutions to ensure their conformity with this Constitution in accordance with Article III(3)(b).

Annex I: Additional Human Rights Agreements To Be Applied In Bosnia And Herzegovina

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
4. 1957 Convention on the Nationality of Married Women
5. 1961 Convention on the Reduction of Statelessness
6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
8. 1966 Covenant on Economic, Social and Cultural Rights
9. 1979 Convention on the Elimination of All Forms of Discrimination against Women

10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
12. 1989 Convention on the Rights of the Child
13. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
14. 1992 European Charter for Regional or Minority Languages
15. 1994 Framework Convention for the Protection of National Minorities

Annex II: Transitional Arrangements

1. Joint Interim Commission.

- a. The Parties hereby establish a Joint Interim Commission with a mandate to discuss practical questions related to the implementation of the Constitution of Bosnia and Herzegovina and of the General Framework Agreement and its Annexes, and to make recommendations and proposals.
- b. The Joint Interim Commission shall be composed of four persons from the Federation, three persons from the Republika Srpska, and one representative of Bosnia and Herzegovina.
- c. Meetings of the Commission shall be chaired by the High Representative or his or designee.

2. Continuation of Laws.

All laws, regulations, and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina .

3. Judicial and Administrative Proceedings.

All proceedings in courts or administrative agencies functioning within the territory of Bosnia and Herzegovina when the Constitution enters into force shall continue in or be transferred to other courts or agencies in Bosnia and Herzegovina in accordance with any legislation governing the competence of such courts or agencies.

4. Offices.

Until superseded by applicable agreement or law, governmental offices, institutions, and other bodies of Bosnia and Herzegovina will operate in accordance with applicable law.

5. Treaties.

Any treaty ratified by the Republic of Bosnia and Herzegovina between January 1, 1992 and the entry into force of this Constitution shall be disclosed to Members of the Presidency within 15 days of their assuming office; any such treaty not disclosed shall be denounced. Within six months after the Parliamentary Assembly is first convened, at the request of any member of the Presidency, the Parliamentary Assembly shall consider whether to denounce any other such treaty.

Declaration On Behalf Of The Republic Of Bosnia And Herzegovina

The Republic of Bosnia and Herzegovina approves the Constitution of Bosnia and Herzegovina at Annex 4 to the General Framework Agreement.
For the Republic of Bosnia and Herzegovina

Declaration On Behalf Of The Federation Of Bosnia And Herzegovina

The Federation of Bosnia and Herzegovina, on behalf of its constituent peoples and citizens, approves the Constitution of Bosnia and Herzegovina at Annex 4 to the General Framework Agreement.
For the Federation of Bosnia and Herzegovina

Declaration On Behalf Of The Republika Srpska

The Republika Srpska approves the Constitution of Bosnia and Herzegovina at Annex 4 to the General Framework Agreement.
For the Republika Srpska

Burundi

Arusha Peace and Reconciliation Agreement for Burundi

August 28, 2000

Protocol II: Democracy and Good Governance

Preamble

We, the Parties,

Aware of the vital need to promote lasting peace in Burundi and to put an end to the conflict, division and suffering inflicted on the Burundian people,

Reaffirming our commitment to a democratic system of government, inspired by the realities of our country, that guarantees security and justice for all, and is founded on the values of unity without exclusion,

Have agreed:

1. To ensure that a constitutional text for the people of Burundi is drafted during the transition period that is in conformity with the principles set forth in Chapter I of the present Protocol, and to ensure that such a text is adopted and brought into force in accordance with the time-frames and procedures herein, in conformity with a vision of democracy and good governance and the principles listed hereunder.
2. To provide for a transition period that is in conformity with the transitional arrangements set forth in Chapter II of the present Protocol.
3. To give effect, within the designated time limits, to the obligations set forth in this and other protocols with regard to the establishment of the transitional institutions.

Chapter I: Constitutional Principles of the Post-Transition Constitution

Article 1: Fundamental values

1. All Burundians are equal in value and dignity. All citizens are entitled to equal rights and to equal protection of the law. No Burundian shall be excluded from the social, economic or political life of the nation on account of her/his race, language, religion, gender, or ethnic origin.
2. All Burundians are entitled to live in Burundi in security and peace, and must live in harmony with one another while respecting one another's dignity and tolerating one another's differences.
3. Government shall be based on the will of the Burundian people, shall be accountable to them, and shall respect their fundamental rights and freedoms.
4. The Government of Burundi shall be so structured as to ensure that all Burundians are represented in and by it; that there is equal opportunity to serve in it; that all citizens have access to government services; and that the decisions and actions of government enjoy the widest possible level of support.

5. The task of government shall be to realize the aspirations of the Burundian people, and in particular to heal the divisions of the past, to improve the quality of life of all Burundians, and to ensure that all Burundians are able to live in Burundi free from fear, discrimination, disease and hunger.

6. The function of the political system shall be to unite, reassure and reconcile all Burundians while ensuring that the Government is able to serve the people of Burundi, who are its source of power and authority. In its functioning the Government shall respect the separation of powers, the rule of law, and the principles of good governance and transparency in the management of public affairs.

Article 2: General principles

1. Burundi shall be a sovereign independent nation, united but respecting its ethnic and religious diversity and recognizing the Bahutu, the Batutsi and the Batwa, who make up the one nation of Burundi.

2. The national territory of Burundi shall be inalienable and indivisible subject to the provisions of the Constitution. Its frontiers shall be those recognized by international law.

3. Burundi shall be divided into provinces, communes and *collines* or zones, and such other subdivisions as are provided for by law. Their organization and operation shall be determined by the Constitution and by law.

4. The National Assembly shall take a decision regarding the status and revival of the monarchy, and any party peacefully promoting the restoration of the monarchy shall be allowed to function.

5. The national language of Burundi shall be Kirundi. The official languages shall be Kirundi and any other languages decided upon by the National Assembly.

Article 3: Charter of Fundamental Rights

1. The rights and duties proclaimed and guaranteed *inter alia* by the Universal Declaration of Human Rights, the International Covenants on Human Rights, the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi. These fundamental rights shall not be limited or derogated from, except in justifiable

circumstances acceptable in international law and set forth in the Constitution.

2. All citizens shall have rights and obligations.
3. Human dignity shall be respected and protected.
4. All women and men shall be equal. No one may be discriminated against, *inter alia*, on grounds of origin, race, ethnicity, gender, colour, language, social situation, or religious, philosophical or political convictions, or by reason of a physical or mental handicap. All citizens shall enjoy equal protection of the law, as well as equal treatment under the law.
5. No person shall be arbitrarily dealt with by the State or its organs.
6. All women and men shall have the right to life.
7. All women and men shall have the right to personal freedom, including to physical and mental integrity, and to freedom of movement. Torture and any other kind of cruel, inhuman, degrading treatment or punishment shall be prohibited. Everyone shall have the right to be free from violence from either public or private sources.
8. No one shall be held in slavery or servitude. Slavery and the slave trade shall be prohibited in all their forms.
9. The State shall to the extent possible ensure that all citizens have the means to lead an existence consistent with human dignity.
10. All women and men shall have the right to respect for their private and family life, residence and personal communications.
11. There shall be freedom of marriage, including the right to choose one's partner. Marriage shall be entered into only with the free and full consent of the intending spouses.
12. The family, as the fundamental unit of society, shall be entitled to protection by society and the State.
13. Freedom of expression and of the media shall be guaranteed. The State shall respect freedom of religion, belief, conscience and opinion.
14. Freedom of assembly and association shall be guaranteed, as shall freedom to form non-profit-making associations or organizations in conformity with the law.
15. All Burundian citizens shall have the right to move and settle freely anywhere in the national territory, as well as to leave it and return to it.
16. No one shall be arbitrarily deprived of her/his nationality or denied the right to change it.
17. No one may be denied access to basic education. The State shall organize public education, and shall develop and promote access to secondary and post-secondary education.

18. The State shall ensure the good management and utilization of the nation's natural resources on a sustainable basis, conserving such resources for future generations.
19. Property rights shall be guaranteed for all women and men. Compensation that is fair and equitable under the circumstances shall be payable in case of expropriation, which shall be allowed only in the public interest and in accordance with a law which shall also set forth the basis of compensation.
20. The right to form and join trade unions and to strike shall be recognized. The law may regulate the exercise of these rights and prohibit certain categories of persons from going on strike.
21. Everyone shall have the right, in judicial or administrative proceedings, for her/his case to be dealt with equitably and decided within a reasonable time limit. Everyone shall have the right to due process and a fair trial.
22. No one may be deprived of her/his liberty other than in conformity with the law.
23. The State shall be under an obligation to promote the development of the country, especially rural development.
24. Each individual shall have the duty to respect and show consideration for her/his fellow citizens without any discrimination.
25. All citizens shall be required to discharge their civic obligations, and to defend their homeland.
26. Every child shall have the right to special measures to protect or promote her/his care, welfare, health and physical security, and to be protected from maltreatment, abuse or exploitation.
27. No child shall be used directly in armed conflict, and children shall be protected in times of armed conflict.
28. No child shall be detained except as a measure of last resort, in which case the child may be detained only for the shortest appropriate period of time and shall have the right to be kept separately from detained persons over the age of 16 years and to be treated in a manner, and kept in conditions, that take account of her/his age.
29. Any restriction of a fundamental right must have a legal basis; it must be justified by the public interest or by the protection of another person's fundamental right; it must be proportional to the objective pursued.
30. Fundamental rights must be respected throughout the legal, administrative and institutional order. The Constitution shall be the supreme law and must be upheld by the Legislature, the Executive and the Judiciary. Any law that is not in conformity with the Constitution shall be invalid.

Article 4: Political parties

1. The multiparty system shall be recognized in the Republic of Burundi.
2. Political parties may be formed freely in conformity with the law.
3. A political party shall be a non-profit association uniting citizens around a democratic blueprint for society founded on national unity, and having a political programme with precise objectives dictated by the desire to serve the public interest and ensure the development of all citizens.
4. Political parties must comply with democratic principles in their organization and functioning, be open to all Burundians and be national in character and leadership, and shall not promote ethnic, regional or religious violence and hatred.
5. Political parties - and coalitions of political parties - shall promote the free expression of suffrage and shall participate in political life by peaceful means.
6. For the purposes of promoting democracy, a national law may authorize the financing of political parties on an equitable basis in proportion to the number of seats they hold in the National Assembly. Such financing may apply both to the functioning of the political parties and to electoral campaigns, and shall be transparent. The law shall define the types of subsidies, benefits and facilities that the State may grant political parties.
7. Registration of political parties shall fall within the competence of the Ministry of the Interior.
8. The law shall guarantee non-interference by the public authorities in the internal functioning of political parties, save for such restrictions as may be necessary for the prevention of ethnic hatred and the maintenance of public order.
9. Political parties may form coalitions during elections in accordance with the electoral law.

Article 5: Elections

1. The right to vote shall be guaranteed.
2. Elections shall be free, fair and regular in accordance with the electoral law and the law governing political parties.
3. Elections shall be organized impartially at the national, commune and *colline* levels and at other levels prescribed by the Constitution or by law.
4. Until amended in accordance with the post-transition Constitution, the rules relating to the electoral system shall be the same as those governing the

elections for institutions at the national, commune and *colline* levels to be held during the transition period.

5. An Independent National Electoral Commission constituted in conformity with the provisions of article 20 of the present Protocol shall guarantee the freedom, impartiality and independence of the electoral process.

Article 6: The Legislature

1. Legislative power shall be exercised by the National Assembly and, where specified herein, by the National Assembly and the Senate. A law adopted by a legislative body or bodies may only be amended by the same body or bodies.

2. The number of members of the National Assembly shall be specified in the Constitution, and in the first instance shall be 100. The Constitution may allow for the number of members to be determined in accordance with a designated ratio per number of inhabitants or by setting an absolute number.

3. The National Assembly shall pass legislation, oversee the actions of the Government and exercise all other functions assigned to it by the Constitution. The National Assembly shall be responsible for approving the national budget. This provision shall not preclude the submission of matters for popular approval by way of referendum.

4. A Court of Audit responsible for examining and certifying the accounts of all public services shall be established and organized by law. Its composition shall be specified in the post-transition Constitution. It shall be given the resources required for the performance of its duties.

Administrative departments shall not withhold their co-operation from the Court of Audit. The Court of Audit shall submit to the National Assembly a report on the regularity of the general account of the State, and shall also ascertain whether public funds have been spent in accordance with the proper procedures and in accordance with the budget approved by the National Assembly.

5. The Constitution may not be amended except with the support of a four-fifths majority in the National Assembly and a two-thirds majority in the Senate.

6. Organic laws may not be amended except by a three-fifths majority in the National Assembly and with the approval of the Senate.

7. Members of the National Assembly and the Senate may not be prosecuted, made the subject of a warrant, arrested, detained or subjected to

a penalty for acts performed as a member of the National Assembly or of the Senate.

8. Any criminal case involving a person holding political office shall be referred to a Chamber of the Supreme Court, and in the event of conviction, any appeal shall be receivable by the Chambers of the Supreme Court sitting together.

9. During sessions, a member of the National Assembly or the Senate may be prosecuted in respect of acts other than those referred to in paragraph 7 above only with the authorization of the National Assembly or the Senate, as the case may be.

10. The mechanisms for replacing members of the National Assembly or the Senate in the event of the vacancy of a seat shall be determined by law.

11. The National Assembly and the Senate shall adopt the rules of procedure governing their respective organization and functioning and the election of their bureaux. The post-transition Constitution must specify the duties of the bureaux, when the National Assembly shall convene for the first time and who shall preside at the initial meeting. The National Assembly's Bureau shall have a multiparty character, while the Senate's Bureau shall be of a multi-ethnic character.

12. The compensation and benefits regime, as well as the incompatibility regime, for members of the National Assembly and of the Senate shall be established by law.

13. The opposition parties within the National Assembly shall participate by right in parliamentary commissions, whether sectoral or of inquiry.

14. There shall be a Senate having the functions set forth herein, and such other functions as are allocated to it in the Constitution or in any law. The Senate shall comprise two delegates from each province. They shall be elected by an Electoral College comprising members of the commune councils in the province in question, shall be from different ethnic communities and shall be elected in separate ballots.

15. A former president shall be entitled to sit in the Senate. The Senate may co-opt up to three members of the Batwa group so as to ensure representation of this community.

16. The Senate shall have the following functions:

- a. To approve constitutional amendments and organic laws, including laws governing the electoral process;
- b. To receive the report of the Ombudsperson on any aspect of the public administration;

- c. To conduct inquiries into the public administration and where necessary recommend action, to ensure that no region or group is excluded from the delivery of public services;
- d. To monitor compliance with those precepts of the Constitution requiring representativeness or balance in the composition of any part of the public service, including the defence and security forces;
- e. To advise the President and the National Assembly on any matter, including legislation;
- f. To monitor compliance with the present Protocol;
- g. To comment on or suggest amendments to legislation adopted by the National Assembly, as well as to initiate and introduce bills for consideration by the National Assembly;
- h. To approve laws dealing with the boundaries, functions and powers of provinces, communes and *collines*.

17. The Senate shall approve solely the following appointments:

- a. The heads of the defence forces, the police and the intelligence service;
- b. The provincial governors appointed by the President of the Republic;
- c. The Ombudsperson;
- d. The members of the Judicial Service Commission;
- e. The members of the Supreme Court;
- f. The members of the Constitutional Court;
- g. The Principal State Prosecutor and members of the National Department of Public Prosecutions;
- h. The presidents of the Court of Appeal and the Administrative Court;
- i. The principal State Prosecutor in the Court of Appeal;
- j. The presidents of the Court of First Instance, the Commercial Court and the Labour Court;
- k. The State Prosecutors.

18. The Senate shall ensure that commune councils in general reflect the ethnic diversity of their constituencies; if the composition of any Commune Council does not do so, it may order the co-optation of persons by the Commune Council from an underrepresented ethnic group to that Council, provided that no more than one-fifth of the Council may consist of such co-opted persons. The persons to be co-opted shall be identified by the Senate

from a list of names supplied to it by the Commune Council or by any *colline* chief within the commune.

19. Where the Senate proposes amendments to laws other than those in respect of which its consent is necessary, the National Assembly must consider those proposed amendments, and may if it so chooses give effect to them, before referring the bill to the President for his formal assent.

20. Members of the National Assembly and of the Senate shall have the right to debate the Government's actions and policies.

21. The Constitution shall grant the Senate the powers and resources necessary to perform its functions.

Article 7: The Executive

1.

a. The Constitution shall provide that, save for the very first election of a President, the President of the Republic shall be elected by direct universal suffrage in which each elector may vote for only one candidate. The President of the Republic shall be elected by an absolute majority of the votes cast. If this majority is not obtained in the first round, a second round shall follow within 15 days.

b. Only the two candidates who have received the greatest number of votes during the first round may stand in the second round. The candidate who receives the majority of votes cast in the second round shall be declared the President of the Republic.

c. For the first election, to be held during the transition period, the President shall be indirectly elected as specified in article 20, paragraph 10 below.

2. The President of the Republic shall exercise regulatory power and shall ensure the proper enforcement and administration of legislation. She/he shall exercise her/his powers by decrees, countersigned, where required, by a Vice-President or a minister concerned.

3. She/he shall be elected for a term of five years, renewable only once. No one may serve more than two presidential terms.

4. In the exercise of her/his functions, the President of the Republic shall be assisted by two Vice-Presidents. They shall be appointed by the President of the Republic, who shall previously have submitted their candidacy for approval by the National Assembly and the Senate, voting separately, by a majority of their members. The President of the Republic may dismiss the

Vice-Presidents. They shall belong to different ethnic groups and political parties.

5. The President of the Republic, after consultation with the two Vice-Presidents, shall appoint the members of the Government and terminate their appointments.

6. Parties or coalitions thereof shall be invited, but not obliged, to submit to the President a list of persons to serve as ministers if such parties or coalitions have received more than one-twentieth of the vote. They shall be entitled to at least the same proportion, rounded off downwards, of the total number of ministers as their proportion of members in the National Assembly. If the President dismisses a minister, she/he must choose a replacement from a list submitted by the party or coalition of the minister in question.

7. The President of the Republic shall be the Head of State and Commander-in-Chief of the defence and security forces. She/he shall declare war and sign armistices following consultation with the Government and the bureaux of the National Assembly and of the Senate.

8. The President of the Republic may be impeached for serious misconduct, impropriety or corruption by resolution of two-thirds of the members of the National Assembly and the Senate sitting together.

9. The President of the Republic may be charged only with the crime of high treason. The case shall be heard by the Supreme Court and the Constitutional Court sitting together and presided over by the President of the Supreme Court.

10. The Supreme Court shall receive a written statement of the assets and property of the President, the Vice-Presidents and members of the Government when they assume and relinquish office.

Article 8: Local government

1. The provinces shall be administered by civilian governors appointed by the President of the Republic and confirmed by the Senate.

2. Communes shall be decentralized administrative entities. They shall be the basis of economic and social development, and shall be divided into *collines* or zones and such other subdivisions as are provided for by law.

3. The law shall make provision for the circumstances under which a commune administrator may be dismissed or suspended, by the central authorities or by the Commune Council, for good cause including incompetence, corruption, gross misconduct or embezzlement.

Article 9: The Judiciary

1. The judicial authority of the Republic of Burundi shall be vested in the courts.
2. The Judiciary shall be impartial and independent and shall be governed solely by the Constitution and the law. No person may interfere with the Judiciary in the performance of its judicial functions.
3. The Judiciary shall be so structured as to promote the ideal that its composition should reflect that of the population as a whole.
4. The courts and tribunals shall operate in Kirundi and the other official languages. Laws shall be enacted and published in Kirundi and the other official languages.
5. The Constitution shall provide for a Supreme Court of Burundi. Its Rules of Procedure, composition and chambers, and the organization of its chambers, shall be determined by an organic law.
6. The judges of the Supreme Court shall be appointed by the President from a list of candidates nominated by the Judicial Service Commission and approved by the National Assembly and the Senate.
7. There shall be a National Department of Public Prosecutions attached to the Supreme Court; its members shall be appointed in the same manner as the judges of the Supreme Court.
8. The other courts and tribunals recognized in the Republic of Burundi shall be the Court of Appeal, the High Courts, the Resident Magistrates' Courts and such other courts and tribunals as are provided for by law. The *Ubushingantahe* Council shall sit at the level of the *colline*. It shall administer justice in a conciliatory spirit.
9. The President of the Court of Appeal, the presidents of the High Courts, the public prosecutors and the state counsels shall be appointed by the President of the Republic following nomination by the Judicial Service Commission and confirmation by the Senate.
10. The Government, within the limits of its resources, shall ensure that magistrates possess the desired qualifications and necessary training for the performance of their duties, and that the resources needed by the Judiciary are made available to it.
11. No one shall be denied a post in the magistracy on grounds of ethnic origin or gender.
12. A Judicial Service Commission with an ethnically balanced composition shall be established. It shall be made up of five members nominated by the Executive, three judges of the Supreme Court, two magistrates from the National Department of Public Prosecutions, two judges from the resident

magistrates' courts and three members of the legal profession in private practice. The judges, magistrates and members of the legal profession shall be chosen by their peers. All members of the Commission shall be approved by the Senate.

13. The Commission shall have a secretariat. It shall be chaired by the President of the Republic, assisted by the Minister of Justice. It shall meet on an *ad hoc* basis. Its members who are not members of the Judiciary shall not be construed as members of the Judiciary solely because they are members of this oversight commission.

14. The Judicial Service Commission shall be the highest disciplinary body of the magistracy. It shall hear complaints by individuals, or by the Ombudsperson, against the professional conduct of magistrates, as well as appeals against disciplinary measures and grievances concerning the career of magistrates. No magistrate may be dismissed other than for professional misconduct or incompetence, and solely on the basis of a finding by the Judicial Service Commission.

15. Trials shall be public except where the interests of justice or a compelling public interest require otherwise. Judgements shall be reasoned and shall be handed down in public.

16. Magistrates shall be appointed by decree of the President on the proposal of the Judicial Service Commission. The presidents of resident magistrates' courts shall be appointed in the same manner except that the nominees shall be proposed to the President after obtaining the approval of the Senate.

17. The Constitutional Court shall be the highest court for constitutional matters. Its jurisdictions shall be those set forth in the 1992 Constitution. The organization of the Court shall be laid down in an organic law. Reference is made for this purpose to the elements contained in Chapter II of the present Protocol.

18. The members of the Constitutional Court, seven in number, shall be appointed by the President of the Republic and confirmed by the Senate by a two-thirds majority. They shall have a term of office of six years non-renewable. The first Constitutional Court shall be that established under Chapter II of the present Protocol for the transition period. The members shall have the qualifications set forth in Chapter II of the present Protocol.

19. Matters shall be referred to the Constitutional Court by the President of the Republic, the President of the National Assembly or the President of the Senate, by petition by one quarter of the Members of the National Assembly or one quarter of the Members of the Senate, or by the Ombudsperson. In addition, every natural person with a direct interest in the matter, as well as

the Public Prosecutor, may request the Constitutional Court to rule on the constitutionality of laws, either directly by means of an action or by an exceptional procedure for claiming unconstitutionality raised in a matter which concerns that person before an authority.

20. The Constitutional Court may sit validly only if at least five of its members are present.

21. Decisions of the Constitutional Court shall be taken by an absolute majority of its members, except that the President of the Court shall have a casting vote if the Court is evenly split on any matter.

22. The Constitutional Court shall be competent to:

- a. Rule on the constitutionality of adopted laws and regulatory acts;
- b. Rule on the constitutionality of executive action;
- c. Interpret the Constitution and rule on vacancies in the posts of President of the Republic and President of the National Assembly if a dispute arises in regard thereto;
- d. Rule on the regularity of presidential and legislative elections;
- e. Administer the oath to the President of the Republic before she/he assumes office;
- f. Verify the constitutionality of organic laws before their promulgation, and of the Rules of Procedure of the National Assembly before their application;
- g. Rule on any other matters expressly provided for in the Constitution.

Article 10: The administration

1. The administration shall function in accordance with the democratic values and principles enshrined in the Constitution, and with the law.

2. The administration shall be so structured, and all civil servants shall so perform their duties, as to serve all users of public services with efficiency, courtesy, impartiality and equity. Embezzlement, corruption, extortion and misappropriation of all kinds shall be punishable in accordance with the law. Any state employee convicted of corruption shall be dismissed from the public administration following a disciplinary inquiry.

3. The administration shall be organized in ministries, and every minister in charge of a ministry shall report to the President of the Republic and to the National Assembly on the manner in which the ministry performs its functions and utilizes the funds allocated to it.

4. The administration shall be broadly representative and reflect the diversity of the components of the Burundian nation. The practices with respect to employment shall be based on objective and equitable criteria of aptitude and on the need to correct the imbalances and achieve broad representation.
5. A law shall specify the distinction between posts that are career or technical posts and those that are political posts.
No civil servant or member of the Judiciary may be accorded favourable or unfavourable treatment solely on grounds of her/his gender, ethnicity or political affiliation.
7. An independent Ombudsperson shall be created by the Constitution. The organization and functioning of her/his service shall be determined by law.
8. The Ombudsperson shall hear complaints and conduct inquiries relating to mismanagement and infringements of citizens' rights committed by members of the public administration and the judiciary, and shall make recommendations thereon to the appropriate authorities. She/he shall also mediate between the administration and citizens and between administrative departments, and shall act as an observer of the functioning of the public administration.
9. The Ombudsperson shall possess the powers and resources required to perform her/his duty. She/he shall report annually to the National Assembly and the Senate. Her/his report shall be published in the Official Gazette of Burundi.
10. The Ombudsperson shall be appointed by the National Assembly by a three-quarters majority. The appointment shall be subject to confirmation by the Senate.

Article 11: Defence and security forces

1. The post-transition Constitution shall contain in full the principles relating to the defence and security forces and principles of organization of those forces set forth respectively in articles 10 and 11 of Protocol III to the Agreement.
2. An organic law shall determine the organization and functioning of the defence and security forces.
3. The military head of the defence force shall be appointed by the President, subject to confirmation by the Senate.
4.
 - a. The defence and security forces shall be subordinate to the civil authority of the State, and shall uphold the Constitution and the law.

- b. The defence and security forces shall be professional and non-partisan, and shall not promote or disadvantage any political party or ethnic group.
 - c. The defence and security forces shall be trained at all levels to respect international humanitarian law and the supremacy of the Constitution.
 - d. For a period to be determined by the Senate, not more than 50% of the national defence force shall be drawn from any one ethnic group, in view of the need to achieve ethnic balance and to prevent acts of genocide and *coups d'état*.
 - e. No civilian shall be subject to a military code of justice or tried by a military court.
5. Only the President may authorize the employment of the defence and security forces:
- a. In defence of the State;
 - b. In the restoration of order and public safety;
 - c. In the discharge of international obligations and commitments.

If the defence and security forces are employed in any of the capacities set forth above, the President shall promptly inform the National Assembly and the Senate of the nature, extent and reasons for this employment. If the National Assembly is not in session it shall be convened within seven days for the consideration of such matter, as specified in Protocol III to the Agreement.

Chapter II: Transitional Arrangements

Article 12: Objectives

1. Exceptional and special arrangements concerning the government of Burundi shall be made pending the adoption and entry into force of a Constitution that is in conformity with the constitutional principles set forth in Chapter I of the present Protocol.
2. The objectives of the transitional arrangements shall be:
 - a. To ensure the adoption of a post-transition Constitution that is in conformity with the constitutional principles;

Article 15: Transitional institutions

1. There shall be a transitional Legislature made up of a National Assembly and a Senate, a transitional Executive, a Judiciary and other transitional institutions as set forth in the present Protocol.
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 and, where this text is silent, in the Constitution of the Republic of Burundi of 13 March 1992. When there is any conflict between that Constitution and the Agreement, the provisions of the Agreement shall prevail. To give legal effect to this provision, the terms of the Agreement shall be appropriately adopted and promulgated within Burundi within four weeks of its signature.

4. The transitional National Assembly and the traditional Senate shall within 18 months adopt in the same terms, by a two-thirds majority, a post-transition Constitution in conformity with the principles set forth in Chapter I of the present Protocol.
5. After such adoption, the text in question shall be submitted to the Constitutional Court for verification of its compliance with the principles set forth in Chapter I. If the text does not so comply, the Court shall indicate which provisions must be amended. If and whenever the Court declines to certify a text submitted to it pursuant to this provision, the transitional National Assembly and the transitional Senate shall within 30 days amend the text and resubmit it to the Court.
6. A text referred to above shall, if certified, be submitted for popular approval by way of referendum. A text which is so approved shall be the post-transition Constitution and shall come into force upon the termination of the transition period.
7. If no duly adopted text has been certified and approved by referendum within 23 months of the commencement of the transition, the Implementation Monitoring Committee may instruct experts - either national or international - to prepare a text in conformity with Chapter I of the present Protocol. The experts shall have regard to any judgements of the Constitutional Court and to any constitutional texts not certified by it. The text prepared by the experts shall be submitted for direct approval by way of referendum. If approved, it shall become the post-transition Constitution. If

not approved, it shall serve provisionally as the Constitution for purposes of the Legislature and Executive elected during the transition period under the provisions of article 20 of the present Protocol. Such first elected Legislature shall draft a post-transition Constitution and adopt it in conformity with the procedure for amending the post-transition Constitution set forth in Chapter I of the present Protocol.

Cambodia

Agreement on the Comprehensive Political Settlement of the Cambodia Conflict
October 23, 1991

Part I: Arrangements During the Transitional Period

Section I: Transitional Period

Article 1

For the purposes of this Agreement, the transitional period shall commence with the entry into force of this Agreement and terminate when the constituent assembly elected through free and fair elections, organized and certified by the United Nations, has approved the constitution and transformed itself into a legislative assembly, and thereafter a new government has been created.

PART II: Elections

Article 12

The Cambodian people shall have the right to determine their own political future through the free and fair election of a constituent assembly, which will draft and approve a new Cambodian Constitution in accordance with Article 23 and transform itself into a legislative assembly, which will create the new Cambodian Government. This election will be held under United Nations auspices in a neutral political environment with full respect for the national sovereignty of Cambodia.

Article 13

UNTAC shall be responsible for the organization and conduct of these elections based on the provisions of annex 1, section D, and annex 3.

Part: VII: Principles for a New Constitution for Cambodia

Article 23:

Basic principles, including those regarding human rights and fundamental freedoms as well as regarding Cambodia's status of neutrality, which the new Cambodian Constitution will incorporate, are set forth in annex 5.

Annex 5: Principles for a New Constitution for Cambodia

1. The constitution will be the supreme law of the land. It may be amended only by a designated process involving legislative approval, popular referendum, or both.
2. Cambodia's tragic recent history requires special measures to assure protection of human rights. Therefore, the constitution will contain a declaration of fundamental rights, including the rights to life, personal liberty, security, freedom of movement, freedom of religion, assembly and association including political parties and trade unions, due process and equality before the law, protection from arbitrary deprivation of property or deprivation of private property without just compensation, and freedom from racial, ethnic, religious or sexual discrimination. It will prohibit the retroactive application of criminal law. The declaration will be consistent with the provisions of the Universal Declaration of Human Rights and other relevant international instruments. Aggrieved individuals will be entitled to have the courts adjudicate and enforce these rights.
3. The constitution will declare Cambodia's status as a sovereign, independent and neutral State, and the national unity of Cambodian people.
4. The constitution will state that Cambodia will follow a system of liberal democracy, on the basis of pluralism. It will provide for periodic and genuine elections. It will provide for the right to vote and to be elected by universal and equal suffrage. It will provide for voting by secret ballot, with a requirement that electoral procedures provide a full and fair opportunity to organize and participate in the electoral process.

5. An independent judiciary will be established, empowered to enforce the rights provided under the constitution.
6. The constitution will be adopted by a two-thirds majority of the members of the constituent assembly.

Kosovo

Interim Agreement for Peace and Self-Government in Kosovo

February 23, 1999

Chapter 1

Constitution

Affirming their belief in a peaceful society, justice, tolerance, and reconciliation,

Resolved to ensure respect for human rights and the equality of all citizens and national communities,

Recognizing that the preservation and promotion of the national, cultural, and linguistic identity of each national community in Kosovo are necessary for the harmonious development of a peaceful society,

Desiring through this interim Constitution to establish institutions of democratic self-government in Kosovo grounded in respect for the territorial integrity and sovereignty of the Federal Republic of Yugoslavia and from this Agreement, from which the authorities of governance set forth herein originate,

Recognizing that the institutions of Kosovo should fairly represent the national communities in Kosovo and foster the exercise of their rights and those of their members,

Recalling and endorsing the principles/basic elements adopted by the Contact Group at its ministerial meeting in London on January 29, 1999,

Article I: Principles of Democratic Self-Government in Kosovo

1. Kosovo shall govern itself democratically through the legislative, executive, judicial, and other organs and institutions specified herein. Organs and institutions of Kosovo shall exercise their authorities consistent with the terms of this Agreement.

2. All authorities in Kosovo shall fully respect human rights, democracy, and the equality of citizens and national communities.

3. The Federal Republic of Yugoslavia has competence in Kosovo over the following areas, except as specified elsewhere in this Agreement: (a) territorial integrity, (b) maintaining a common market within the Federal Republic of Yugoslavia, which power shall be exercised in a manner that does not discriminate against Kosovo, (c) monetary policy, (d) defense, (e) foreign policy, (f) customs services, (g) federal taxation, (h) federal elections, and (i) other areas specified in this Agreement.

4. The Republic of Serbia shall have competence in Kosovo as specified in this Agreement, including in relation to Republic elections.

5. Citizens in Kosovo may continue to participate in areas in which the Federal Republic of Yugoslavia and the Republic of Serbia have competence through their representation in relevant institutions, without prejudice to the exercise of competence by Kosovo authorities set forth in this Agreement.

6. With respect to Kosovo:

- (a) There shall be no changes to the borders of Kosovo;
- (b) Deployment and use of police and security forces shall be governed by Chapters 2 and 7 of this Agreement; and
- (c) Kosovo shall have authority to conduct foreign relations within its areas of responsibility equivalent to the power provided to Republics under Article 7 of the Constitution of the Federal Republic of Yugoslavia.

7. There shall be no interference with the right of citizens and national communities in Kosovo to call upon appropriate institutions of the Republic of Serbia for the following purposes:

- (a) assistance in designing school curricula and standards;
 - (b) participation in social benefits programs, such as care for war veterans, pensioners, and disabled persons; and
 - (c) other voluntarily received services, provided that these services are not related to police and security matters governed by Chapters 2 and 7 of this Agreement, and that any Republic personnel serving in Kosovo pursuant to this paragraph shall be unarmed service providers acting at the invitation of a national community in Kosovo.
- The Republic shall have the authority to levy taxes or charges on those citizens requesting services pursuant to this paragraph, as necessary to support the provision of such services.

8. The basic territorial unit of local self-government in Kosovo shall be the commune. All responsibilities in Kosovo not expressly assigned elsewhere shall be the responsibility of the communes.

9. To preserve and promote democratic self-government in Kosovo, all candidates for appointed, elective, or other public office, and all office holders, shall meet the following criteria:

(a) No person who is serving a sentence imposed by the International Criminal Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold any office; and

(b) All candidates and office holders shall renounce violence as a mechanism for achieving political goals; past political or resistance activities shall not be a bar to holding office in Kosovo.

Article II: The Assembly General

1. Kosovo shall have an Assembly, which shall be comprised of 120 Members.

(a) Eighty Members shall be directly elected.

(b) A further 40 Members shall be elected by the members of qualifying national communities.

(i) Communities whose members constitute more than 0.5 per cent of the Kosovo population but less than 5 per cent shall have ten of these seats, to be divided among them in accordance with their proportion of the overall population.

(ii) Communities whose members constitute more than 5 per cent of the Kosovo population shall divide the remaining thirty seats equally. The Serb and Albanian national communities shall be presumed to meet the 5 per cent population threshold.

Other Provisions

2. Elections for all Members shall be conducted democratically, consistent with the provisions of Chapter 3 of this Agreement. Members shall be elected for a term of three years.

3. Allocation of seats in the Assembly shall be based on data gathered in the census referred to in Chapter 5 of this Agreement. Prior to the completion of the census, for purposes of this Article declarations of national community membership made during voter registration shall be used to determine the percentage of the Kosovo population that each national community represents.

4. Members of the Assembly shall be immune from all civil or criminal proceedings on the basis of words expressed or other acts performed in their capacity as Members of the Assembly.

Powers of the Assembly

5. The Assembly shall be responsible for enacting laws of Kosovo, including in political, security, economic, social, educational, scientific, and cultural areas as set out below and elsewhere in this Agreement. This Constitution and the laws of the Kosovo Assembly shall not be subject to change or modification by authorities of the Republics or the Federation.

(a) The Assembly shall be responsible for:

- (i) Financing activities of Kosovo institutions, including by levying taxes and duties on sources within Kosovo;
- (ii) Adopting budgets of the Administrative organs and other institutions of Kosovo, with the exception of communal and national community institutions unless otherwise specified herein;
- (iii) Adopting regulations concerning the organization and procedures of the Administrative Organs of Kosovo;
- (iv) Approving the list of Ministers of the Government, including the Prime Minister;
- (v) Coordinating educational arrangements in Kosovo, with respect for the authorities of national communities and Communes;
- (vi) Electing candidates for judicial office put forward by the President of Kosovo;
- (vii) Enacting laws ensuring free movement of goods, services, and persons in Kosovo consistent with this Agreement;
- (viii) Approving agreements concluded by the President within the areas of responsibility of Kosovo;

- (ix) Cooperating with the Federal Assembly, and with the Assemblies of the Republics, and conducting relations with foreign legislative bodies;
- (x) Establishing a framework for local self- government;
- (xi) Enacting laws concerning inter-communal issues and relations between national communities, when necessary;
- (xii) Enacting laws regulating the work of medical institutions and hospitals;
- (xiii) Protecting the environment, where inter- communal issues are involved;
- (xiv) Adopting programs of economic, scientific, technological, demographic, regional, and social development, as well as urban planning;
- (xv) Adopting programs for the development of agriculture and of rural areas;
- (xvi) Regulating elections consistent with Chapters 3 and 5;
- (xvii) Regulating Kosovo-owned property; and
- (xviii) Regulating land registries.

(b) The Assembly shall also have authority to enact laws in areas within the responsibility of the Communes if the matter cannot be effectively regulated by the Communes or if regulation by individual Communes might prejudice the rights of other Communes. In the absence of a law enacted by the Assembly under this subparagraph that preempts communal action, the Communes shall retain their authority.

Procedure

6. Laws and other decisions of the Assembly shall be adopted by majority of Members present and voting.

7. A majority of the Members of a single national community elected to the Assembly pursuant to paragraph 1(b) may adopt a motion that a law or other decision adversely affects the vital interests of their national community. The challenged law or decision shall be suspended with regard to that national community until the dispute settlement procedure in paragraph 8 is completed.

8. The following procedure shall be used in the event of a motion under paragraph 7:

(a) The Members making the vital interest motion shall give reasons for their motion. The proposers of the legislation shall be given an opportunity to respond.

(b) The Members making the motion shall appoint within one day a mediator of their choice to assist in reaching an agreement with those proposing the legislation.

(c) If mediation does not produce an agreement within seven days, the matter may be submitted for a binding ruling. The decision shall be rendered by a panel comprising three Members of the Assembly: one Albanian and one Serb, each appointed by his or her national community delegation; and a third Member, who will be of a third nationality and will be selected within two days by consensus of the Presidency of the Assembly.

(i) A vital interest motion shall be upheld if the legislation challenged adversely affects the community's fundamental constitutional rights, additional rights as set forth in Article VII, or the principle of fair treatment.

(ii) If the motion is not upheld, the challenged legislation shall enter into force for that community.

(d) Paragraph (c) shall not apply to the selection of Assembly officials.

(e) The Assembly may exclude other decisions from this procedure by means of a law enacted by a majority that includes a majority of each national community elected pursuant to paragraph 1(b).

9. A majority of the Members shall constitute a quorum. The Assembly shall otherwise decide its own rules of procedure.

Leadership

10. The Assembly shall elect from among its Members a Presidency, which shall consist of a President, two Vice-Presidents, and other leaders in accordance with the Assembly's rules of procedure. Each national community meeting the threshold specified in paragraph 1(b)(ii) shall be represented in the leadership. The President of the Assembly shall not be from the same national community as the President of Kosovo.

11. The President of the Assembly shall represent it, call its sessions to order, chair its meetings, coordinate the work of any committees it may

establish, and perform other tasks prescribed by the rules of procedure of the Assembly.

Article III: President of Kosovo

1. There shall be a President of Kosovo, who shall be elected by the Assembly by vote of a majority of its Members. The President of Kosovo shall serve for a three-year term. No person may serve more than two terms as President of Kosovo.

2. The President of Kosovo shall be responsible for:

- (i) Representing Kosovo, including before any international or Federal body or any body of the Republics;
- (ii) Proposing to the Assembly candidates for Prime Minister, the Constitutional Court, the Supreme Court, and other Kosovo judicial offices;
- (iii) Meeting regularly with the democratically elected representatives of the national communities;
- (iv) Conducting foreign relations and concluding agreements within this power consistent with the authorities of Kosovo institutions under this Agreement. Such agreements shall only enter into force upon approval by the Assembly;
- (v) Designating a representative to serve on the Joint Commission established by Article I.2 of Chapter 5 of this Agreement;
- (vi) Meeting regularly with the Federal and Republic Presidents; and
- (vii) Other functions specified herein or by law.

Article IV: Government and Administrative Organs

1. Executive power shall be exercised by the Government. The Government shall be responsible for implementing the laws of Kosovo, and of other government authorities when such responsibilities are devolved by those authorities. The Government shall also have competence to propose laws to the Assembly.

- (a) The Government shall consist of a Prime Minister and Ministers, including at least one person from each national community meeting the threshold specified in paragraph 1(b)(ii) of Article II. Ministers shall head the Administrative Organs of Kosovo.

(b) The candidate for Prime Minister proposed by the President shall put forward a list of Ministers to the Assembly. The Prime Minister, together with the list of Ministers, shall be approved by a majority of those present and voting in the Assembly. In the event that the Prime Minister is not able to obtain a majority for the Government, the President shall propose a new candidate for Prime Minister within ten days.

(c) The Government shall resign if a no confidence motion is adopted by a vote of a majority of the members of the Assembly. If the Prime Minister or the Government resigns, the President shall select a new candidate for Prime Minister who shall seek to form a Government.

(d) The Prime Minister shall call meetings of the Government, represent it as appropriate, and coordinate its work. Decisions of the Government shall require a majority of Ministers present and voting. The Prime Minister shall cast the deciding vote in the event Ministers are equally divided. The Government shall otherwise decide its own rules of procedure.

2. Administrative Organs shall be responsible for assisting the Government in carrying out its duties.

(a) National communities shall be fairly represented at all levels in the Administrative Organs.

(b) Any citizen in Kosovo claiming to have been directly and adversely affected by the decision of an executive or administrative body shall have the right to judicial review of the legality of that decision after exhausting all avenues for administrative review. The Assembly shall enact a law to regulate this review.

3. There shall be a Chief Prosecutor who shall be responsible for prosecuting individuals who violate the criminal laws of Kosovo. He shall head an Office of the Prosecutor, which shall at all levels have staff representative of the population of Kosovo.

Article V: Judiciary

General

1. Kosovo shall have a Constitutional Court, a Supreme Court, District Courts, and Communal Courts.

2. The Kosovo courts shall have jurisdiction over all matters arising under this Constitution or the laws of Kosovo except as specified in paragraph 3. The Kosovo courts shall also have jurisdiction over questions of federal law, subject to appeal to the Federal courts on these questions after all appeals available under the Kosovo system have been exhausted.
3. Citizens in Kosovo may opt to have civil disputes to which they are party adjudicated by other courts in the Federal Republic of Yugoslavia, which shall apply the law applicable in Kosovo.
4. The following rules will apply to criminal cases:
 - (a) At the start of criminal proceedings, the defendant is entitled to have his or her trial transferred to another Kosovo court that he or she designates.
 - (b) In criminal cases in which all defendants and victims are members of the same national community, all members of the judicial council will be from a national community of their choice if any party so requests.
 - (c) A defendant in a criminal case tried in Kosovo courts is entitled to have at least one member of the judicial council hearing the case to be from his or her national community. Kosovo authorities will consider and allow judges of other courts in the Federal Republic of Yugoslavia to serve as Kosovo judges for these purposes.

Constitutional Court

5. The Constitutional Court shall consist of nine judges. There shall be at least one Constitutional Court judge from each national community meeting the threshold specified in paragraph 1(b)(ii) of Article II. Until such time as the Parties agree to discontinue this arrangement, 5 judges of the Constitutional Court shall be selected from a list drawn up by the President of the European Court of Human Rights.
6. The Constitutional Court shall have authority to resolve disputes relating to the meaning of this Constitution. That authority shall include, but is not limited to, determining whether laws applicable in Kosovo, decisions or acts of the President, the Assembly, the Government, the Communes, and the national communities are compatible with this Constitution.
 - (a) Matters may be referred to the Constitutional Court by the President of Kosovo, the President or Vice-Presidents of the Assembly, the Ombudsman, the communal assemblies and councils,

and any national community acting according to its democratic procedures.

(b) Any court which finds in the course of adjudicating a matter that the dispute depends on the answer to a question within the Constitutional Court's jurisdiction shall refer the issue to the Constitutional Court for a preliminary decision.

7. Following the exhaustion of other legal remedies, the Constitutional Court shall at the request of any person claiming to be a victim have jurisdiction over complaints that human rights and fundamental freedoms and the rights of members of national communities set forth in this Constitution have been violated by a public authority.

8. The Constitutional Court shall have such other jurisdiction as may be specified elsewhere in this Agreement or by law.

Supreme Court

9. The Supreme Court shall consist of nine judges. There shall be at least one Supreme Court judge from each national community meeting the threshold specified in paragraph 1(b)(ii) of Article II.

10. The Supreme Court shall hear appeals from the District Courts and the Communal Courts. Except as otherwise provided in this Constitution, the Supreme Court shall be the court of final appeal for all cases arising under law applicable in Kosovo. Its decisions shall be recognized and executed by all authorities in the Federal Republic of Yugoslavia.

Functioning of the Courts

11. The Assembly shall determine the number of District and Communal Court judges necessary to meet current needs.

12. Judges of all courts in Kosovo shall be distinguished jurists of the highest moral character. They shall be broadly representative of the national communities of Kosovo.

13. Removal of a Kosovo judge shall require the consensus of the judges of the Constitutional Court. A Constitutional Court judge whose removal is in question shall not participate in the decision on his case.

14. The Constitutional Court shall adopt rules for itself and for other courts in Kosovo. The Constitutional and Supreme Courts shall each adopt decisions by majority vote of their members.

15. Except as otherwise specified in their rules, all Kosovo courts shall hold public proceedings. They shall issue published opinions setting forth the reasons for their decisions.

Article VI: Human Rights and Fundamental Freedoms

1. All authorities in Kosovo shall ensure internationally recognized human rights and fundamental freedoms.
2. The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Kosovo. Other internationally recognized human rights instruments enacted into law by the Kosovo Assembly shall also apply. These rights and freedoms shall have priority over all other law.
3. 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.

Article VII: National Communities

1. National communities and their members shall have additional rights as set forth below in order to preserve and express their national, cultural, religious, and linguistic identities in accordance with international standards and the Helsinki Final Act. Such rights shall be exercised in conformity with human rights and fundamental freedoms.
2. Each national community may elect, through democratic means and in a manner consistent with the principles of Chapter 3 of this Agreement, institutions to administer its affairs in Kosovo.
3. The national communities shall be subject to the laws applicable in Kosovo, provided that any act or decision concerning national communities must be non-discriminatory. The Assembly shall decide upon a procedure for resolving disputes between national communities.
4. The additional rights of the national communities, acting through their democratically elected institutions, are to:

(a) preserve and protect their national, cultural, religious, and linguistic identities, including by:

- (i) inscribing local names of towns and villages, of squares and streets, and of other topographic names in the language and alphabet of the national community in addition to signs in

Albanian and Serbian, consistent with decisions about style made by the communal institutions;

- (ii) providing information in the language and alphabet of the national community;
- (iii) providing for education and establishing educational institutions, in particular for schooling in their own language and alphabet and in national culture and history, for which relevant authorities will provide financial assistance; curricula shall reflect a spirit of tolerance between national communities and respect for the rights of members of all national communities in accordance with international standards;
- (iv) enjoying unhindered contacts with representatives of their respective national communities, within the Federal Republic of Yugoslavia and abroad;
- (v) using and displaying national symbols, including symbols of the Federal Republic of Yugoslavia and the Republic of Serbia;
- (vi) protecting national traditions on family law by, if the community decides, arranging rules in the field of inheritance; family and matrimonial relations; tutorship; and adoption;
- (vii) the preservation of sites of religious, historical, or cultural importance to the national community in cooperation with other authorities;
- (viii) implementing public health and social services on a non-discriminatory basis as to citizens and national communities;
- (ix) operating religious institutions in cooperation with religious authorities; and
- (x) participating in regional and international non-governmental organizations in accordance with procedures of these organizations;

(b) be guaranteed access to, and representation in, public broadcast media, including provisions for separate programming in relevant languages under the direction of those nominated by the respective national community on a fair and equitable basis; and

(c) finance their activities by collecting contributions the national communities may decide to levy on members of their own communities.

5. Members of national communities shall also be individually guaranteed:

- (a) the right to enjoy unhindered contacts with members of their respective national communities elsewhere in the Federal Republic of Yugoslavia and abroad;
- (b) equal access to employment in public services at all levels;
- (c) the right to use their languages and alphabets;
- (d) the right to use and display national community symbols;
- (e) the right to participate in democratic institutions that will determine the national community's exercise of the collective rights set forth in this Article; and
- (f) the right to establish cultural and religious associations, for which relevant authorities will provide financial assistance.

6. Each national community and, where appropriate, their members acting individually may exercise these additional rights through Federal institutions and institutions of the Republics, in accordance with the procedures of those institutions and without prejudice to the ability of Kosovo institutions to carry out their responsibilities.

7. Every person shall have the right freely to choose to be treated or not to be treated as belonging to a national community, and no disadvantage shall result from that choice or from the exercise of the rights connected to that choice.

Article VIII: Communes

1. Kosovo shall have the existing communes. Changes may be made to communal boundaries by act of the Kosovo Assembly after consultation with the authorities of the communes concerned.
2. Communes may develop relationships among themselves for their mutual benefit.
3. Each commune shall have an Assembly, an Executive Council, and such administrative bodies as the commune may establish.
 - (a) Each national community whose membership constitutes at least three percent of the population of the commune shall be represented on the Council in proportion to its share of the communal population or by one member, whichever is greater.
 - (b) Prior to the completion of a census, disputes over communal population percentages for purposes of this paragraph shall be resolved by reference to declarations of national community membership in the voter registry.

4. The communes shall have responsibility for:

- (a) law enforcement, as specified in Chapter 2 of this Agreement;
- (b) regulating and, when appropriate, providing child care;
- (c) providing education, consistent with the rights and duties of national communities, and in a spirit of tolerance between national communities and respect for the rights of the members of all national communities in accordance with international standards;
- (d) protecting the communal environment;
- (e) regulating commerce and privately-owned stores;
- (f) regulating hunting and fishing;
- (g) planning and carrying out public works of communal importance, including roads and water supplies, and participating in the planning and carrying out of Kosovo-wide public works projects in coordination with other communes and Kosovo authorities;
- (h) regulating land use, town planning, building regulations, and housing construction;
- (i) developing programs for tourism, the hotel industry, catering, and sport;
- (j) organizing fairs and local markets;
- (k) organizing public services of communal importance, including fire, emergency response, and police consistent with Chapter 2 of this Agreement; and
- (l) financing the work of communal institutions, including raising revenues, taxes, and preparing budgets.

5. The communes shall also have responsibility for all other areas within Kosovo's authority not expressly assigned elsewhere herein, subject to the provisions of Article II.5(b) of this Constitution.

6. Each commune shall conduct its business in public and shall maintain publicly available records of its deliberations and decisions.

Article IX: Representation

1. Citizens in Kosovo shall have the right to participate in the election of:

- (a) At least 10 deputies in the House of Citizens of the Federal Assembly; and

(b) At least 20 deputies in the National Assembly of the Republic of Serbia.

2. The modalities of elections for the deputies specified in paragraph 1 shall be determined by the Federal Republic of Yugoslavia and the Republic of Serbia respectively, under procedures to be agreed with the Chief of the Implementation Mission.

3. The Assembly shall have the opportunity to present to the appropriate authorities a list of candidates from which shall be drawn:

(a) At least one citizen in Kosovo to serve in the Federal Government, and at least one citizen in Kosovo to serve in the Government of the Republic of Serbia; and

(b) At least one judge on the Federal Constitutional Court, one judge on the Federal Court, and three judges on the Supreme Court of Serbia.

Article X: Amendment

1. The Assembly may by a majority of two-thirds of its Members, which majority must include a majority of the Members elected from each national community pursuant to Article II.1(b)(ii), adopt amendments to this Constitution.

2. There shall, however, be no amendments to Article I.3-8 or to this Article, nor shall any amendment diminish the rights granted by Articles VI and VII.

Article XI: Entry into Force

This Constitution shall enter into force upon signature of this Agreement.

Macedonia

Framework Agreement

August 13, 2001

5. Special Parliamentary Procedures

5.1. On the central level, certain Constitutional amendments in accordance with Annex A and the Law on Local Self-Government cannot be approved without a

qualified majority of two-thirds of votes, within which there must be a majority of the votes of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

8. Implementation

8.1. The Constitutional amendments attached at Annex A will be presented to the Assembly immediately. The parties will take all measures to assure adoption of these amendments within 45 days of signature of this Framework Agreement.

ANNEX A: CONSTITUTIONAL AMENDMENTS

Preamble

The citizens of the Republic of Macedonia, taking over responsibility for the present and future of their fatherland, aware and grateful to their predecessors for their sacrifice and dedication in their endeavors and struggle to create an independent and sovereign state of Macedonia, and responsible to future generations to preserve and develop everything that is valuable from the rich cultural inheritance and coexistence within Macedonia, equal in rights and obligations towards the common good -- the Republic of Macedonia, in accordance with the tradition of the Krushevo Republic and the decisions of the Antifascist People's Liberation Assembly of Macedonia, and the Referendum of September 8, 1991, they have decided to establish the Republic of Macedonia as an independent, sovereign state, with the intention of establishing and consolidating rule of law, guaranteeing human rights and civil liberties, providing peace and coexistence, social justice, economic well-being and prosperity in the life of the individual and the community, and in this regard through their representatives in the Assembly of the Republic of Macedonia, elected in free and democratic elections, they adopt [ellipses in original]

Article 7

- (1) The Macedonian language, written using its Cyrillic alphabet, is the official language throughout the Republic of Macedonia and in the international relations of the Republic of Macedonia.
- (2) Any other language spoken by at least 20 percent of the population is also an official language, written using its alphabet, as specified below.

(3) Any official personal documents of citizens speaking an official language other than Macedonian shall also be issued in that language, in addition to the Macedonian language, in accordance with the law.

(4) Any person living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of the central government with responsibility for that municipality; such an office shall reply in that language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government, which shall reply in that language in addition to Macedonian.

(5) In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law.

(6) In the units of local self-government where at least 20 percent of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20 percent of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.

Article 8

(1) The fundamental values of the constitutional order of the Republic of Macedonia are:

- the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution;
- equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life;
- [ellipses in original]

Article 19

(1) The freedom of religious confession is guaranteed.

(2) The right to express one's faith freely and publicly, individually or with others is guaranteed.

(3) The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, and other Religious communities and groups are separate from the state and equal before the law.

(4) The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, and other Religious communities and

groups are free to establish schools and other social and charitable institutions, by ways of a procedure regulated by law.

Article 48

- (1) Members of communities have a right freely to express, foster and develop their identity and community attributes, and to use their community symbols.
- (2) The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of all communities.
- (3) Members of communities have the right to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity.
- (4) Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.

Article 56

. . . [ellipses in original]

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

Article 69

. . . [ellipses in original]

- (2) For laws that directly affect culture, use of language, education, personal documentation, and use of symbols, the Assembly makes decisions by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who claim to belong to the communities not in the majority in the population of Macedonia. In the event of a dispute within the Assembly regarding the application of this provision, the Committee on Inter-Community Relations shall resolve the dispute.

Article 77

- (1) The Assembly elects the Public Attorney by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.
- (2) The Public Attorney protects the constitutional rights and legal rights of citizens when violated by bodies of state administration and by other bodies and organizations with public mandates. The Public Attorney shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life.
. . . . [ellipses in original]

Article 78

- (1) The Assembly shall establish a Committee for Inter-Community Relations.
- (2) The Committee consists of seven members each from the ranks of the Macedonians and Albanians within the Assembly, and five members from among the Turks, Vlachs, Romanies and two other communities. The five members each shall be from a different community; if fewer than five other communities are represented in the Assembly, the Public Attorney, after consultation with relevant community leaders, shall propose the remaining members from outside the Assembly.
- (3) The Assembly elects the members of the Committee.
- (4) The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution.
- (5) The Assembly is obliged to take into consideration the appraisals and proposals of the Committee and to make decisions regarding them.
- (6) In the event of a dispute among members of the Assembly regarding the application of the voting procedure specified in Article 69(2), the Committee shall decide by majority vote whether the procedure applies.

Article 84

The President of the Republic of Macedonia
. . . [ellipses in original]

- proposes the members of the Council for Inter-Ethnic Relations;(to be deleted) [ellipses in original]

Article 86

- (1) The President of the Republic is President of the Security Council of the Republic of Macedonia.
- (2) The Security Council of the Republic is composed of the President of the Republic, the President of the Assembly, the Prime Minister, the Ministers heading the bodies of state administration in the fields of security, defence and foreign affairs and three members appointed by the President of the Republic. In appointing the three members, the President shall ensure that the Security Council as a whole equitably reflects the composition of the population of Macedonia.
- (3) The Council considers issues relating to the security and defence of the Republic and makes policy proposals to the Assembly and the Government.

Article 104

- (1) The Republican Judicial Council is composed of seven members.
- (2) The Assembly elects the members of the Council. Three of the members shall be elected by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.
. . . . [ellipses in original]

Article 109

- (1) The Constitutional Court of Macedonia is composed of nine judges.
- (2) The Assembly elects six of the judges to the Constitutional Court by a majority vote of the total number of Representatives. The Assembly elects three of the judges by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.
. . . . [ellipses in original]

Article 114

- . . . [ellipses in original]
- (5) Local self-government is regulated by a law adopted by a two-thirds majority vote of the total number of Representatives, within which there

must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia. The laws on local finances, local elections, boundaries of municipalities, and the city of Skopje shall be adopted by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who claim to belong to the communities not in the majority in the population of Macedonia.

Article 115

(1) In units of local self-government, citizens directly and through representatives participate in decision-making on issues of local relevance particularly in the fields of public services, urban and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sport, social security and child care, education, health care and other fields determined by law.
. . . . [ellipses in original]

Article 131

- (1) The decision to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives.
- (2) The draft amendment to the Constitution is confirmed by the Assembly by a majority vote of the total number of Representatives and then submitted to public debate.
- (3) The decision to change the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives.
- (4) A decision to amend the Preamble, the articles on local self-government, Article 131, any provision relating to the rights of members of communities, including in particular Articles 7, 8, 9, 19, 48, 56, 69, 77, 78, 86, 104 and 109, as well as a decision to add any new provision relating to the subject matter of such provisions and articles, shall require a two-thirds majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.
- (5) The change in the Constitution is declared by the Assembly.

Mexico/Chiapas

San Andres Larrainzar Agreements, February 16, 1996

Document 1: Joint Declaration that the Federal Government and the EZLN Shall
Submit to National Debating and Decision-Making Bodies

Commitments of the Federal Government to Indigenous Peoples

3. The responsibilities that the Federal Government takes on as commitments that the Mexican State should fulfill with indigenous peoples in their new relationship are:

1. Recognizing indigenous peoples in the general Constitution. The State should promote recognition, as a constitutional guarantee, of the right to free determination of indigenous peoples, who are those who "descend from populations that inhabited the country during the era of the conquest or colonization and of the establishment of the current state borders and that, irrespective of their legal status, conserve their own social, economic, cultural and political institutions, or part of them. Awareness of their indigenous identity should be considered a fundamental criterion for determining the groups to which the provisions on indigenous peoples apply." The right to free determination shall be exercised within a constitutional framework of autonomy, ensuring national unity. They may, consequently, decide upon their form of internal government and their ways of organizing themselves politically, socially, economically and culturally. The constitutional framework of autonomy will make it possible to attain the effectiveness of social, economic, cultural and political rights with respect to their identity.

2. Broadening political participation and representation. The State should promote legal and legislative changes to broaden local and national political participation and representation of indigenous peoples, respecting their different situations and traditions, and strengthening a new federalism in the Mexican Republic. The claim that the voices and demands of indigenous peoples be heard and addressed should lead to recognition of the political, economic, social and cultural rights of indigenous peoples, within the framework of the Mexican nation, and to a decisive reform of the State with regard to institutional practices. The Federal Government shall promote the constitutional and legal amendments that correspond to the agreements and consensus reached.

New Legal Framework

5. The establishment of the new relationship between indigenous peoples and the State is necessarily based on the building of a new legal framework at national level and in the states. The Federal Government assumes the commitment to promote the following actions:

1. Recognition in the national Political Constitution of indigenous demands that should be embodied as legitimate rights.

a) Political rights. To strengthen their political representation and participation in the legislatures and in the government, with respect for their traditions and in order to guarantee the validity of their own forms of internal government.

b) Jurisdictional rights. To accept their own procedures to designate their authorities and their regulatory systems for the settlement of internal disputes, with respect for human rights.

c) Social rights. To guarantee their forms of social organization, satisfaction of their essential human needs and their internal institutions.

d) Economic rights. To develop their organization schemes and alternatives for work and improve efficiency in production.

e) Cultural rights. To develop their creativity and cultural diversity and the continuance of their identities.

4. Various articles in the Constitution of the Republic should be amended. The Federal Government commits itself to promoting the following amendments:

a) Article 4. So that the demands indicated above (points 1 and 2) are embodied as legitimate rights.

b) Article 115. So that the federal pact is strengthened and the participation of indigenous communities in public affairs is guaranteed in the composition of town councils and of predominantly indigenous municipalities.

c) Other articles concerning the above-mentioned amendments and to express the content of the new relationship between the State and indigenous peoples in the Constitution.

5. The corresponding regulatory laws and legal instruments of a formal nature should establish the provisions to make them compatible with the constitutional amendments on new indigenous rights.

In this regard, the Federal Government commits itself to promoting, on the basis of the constitutional amendments, the issuance of the general legislation making it possible immediately to count on legal mechanisms and procedures so that

- a) the review and amendment of different federal laws is initiated;
- b) legislation is passed in the states of the Republic.

Northern Ireland

The Northern Ireland Peace Agreement: The Agreement reached in the multi-party negotiations

April 10, 1998

Annex B: Irish Government Draft Legislation to Amend the Constitution

Add to Article 29 the following sections:

1. The State may consent to be bound by the British-Irish Agreement done at Belfast on the 10th day of April 1998, hereinafter called the Agreement.

2. Any institution established by or under the Agreement may exercise the powers and functions thereby conferred on it in respect of all or any part of the island of Ireland notwithstanding any other provision of this Constitution conferring a like power or function on any person or any organ of State appointed under or created or established by or under this Constitution. Any power or function conferred on such an institution in relation to the settlement or resolution of disputes or controversies may be in addition to or in substitution for any like power or function conferred by this Constitution on any such person or organ of State as aforesaid.

3. If the Government declare that the State has become obliged, pursuant to the Agreement, to give effect to the amendment of this Constitution referred to therein, then, notwithstanding Article 46 hereof, this Constitution shall be amended as follows:

ii. the following Articles shall be substituted for Articles 2 and 3 of the English text:

Article 2

It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage.

Article 3

1. It is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island. Until then, the laws enacted by the Parliament established by this Constitution shall have the like area and extent of application as the laws enacted by the Parliament that existed immediately before the coming into operation of this Constitution.

2. Institutions with executive powers and functions that are shared between those jurisdictions may be established by their respective responsible authorities for stated purposes and may exercise powers and functions in respect of all or any part of the island."

iv. the following section shall be added to the English text of this Article:

"The State may exercise extra-territorial jurisdiction in accordance with the generally recognised principles of international law."

4. If a declaration under this section is made, this subsection and subsection 3, other than the amendment of this Constitution effected thereby, and subsection 5 of this section shall be omitted from every official text of this

Constitution published thereafter, but notwithstanding such omission this section shall continue to have the force of law.

5. If such a declaration is not made within twelve months of this section being added to this Constitution or such longer period as may be provided for by law, this section shall cease to have effect and shall be omitted from every official text of this Constitution published thereafter.

The Sudan

Machakos Protocol

July 20, 2002

Part C

3.1 Supreme Law

3.1.1 The National Constitution of the Sudan shall be the Supreme Law of the land. All laws must comply with the National Constitution. This constitution shall regulate the relations and allocate the powers and functions between the different levels of government as well as prescribe the wealth sharing arrangements between the same. The National Constitution shall guarantee freedom of belief, worship and religious practice in full to all Sudanese citizens.

3.1.2 A representative National Constitutional Review Commission shall be established during the Pre-Transition Period which shall have as its first task the drafting of a Legal and Constitutional Framework to govern the Interim Period and which incorporates the Peace Agreement.

3.1.3 The Framework mentioned above shall be adopted as shall be agreed upon by the Parties.

3.1.4 During the Interim Period an inclusive Constitutional Review Process shall be undertaken.

3.1.5 The Constitution shall not be amended or repealed except by way of special procedures and qualified majorities in order that the provisions of the Peace Agreement are protected.

Additional Sources of Information:

Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787* (1986)

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Lloyd Cutler and Herman Schwartz, *Constitutional Reform in Czechoslovakia: E Duobus Unum?*, 58 *University of Chicago Law Review* 511 (1991).

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