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| Country/ entity | India Darjeeling |
| Region | Asia and Pacific Asia and Pacific |
| Agreement name | Memorandum of Settlement |
| Date | 6 Dec 2005 |
| Agreement status | Multiparty signed/agreed |
| Interim arrangement | Yes |
| Agreement/ conflict level | Intrastate/intrastate conflict (India-Adivasi Conflicts (1955 -) (Northeast India)) |
| Stage | Framework/substantive - comprehensive |
| Conflict nature | Government/territory |
| Peace process | India-Darjeeling peace process |
| Parties | (Subash Ghisingh), Administrator, DGHC; (V. K. Duggal), Home Secretary, Government of India; (A. K Deb), Chief Secretary, Government of WB; |
| Third parties | - |
| Description | Agreement between the Government of India, the Darjeeling Gorkha Hill Council, and the Government of West Bengal on the replacement of the Darjeeling Gorkha Hill Council with a new autonomous Council. Agreement largely focuses on the workings, makeup, and setup, and powers of the new autonomous Council. |

Agreement
document

[IN_051206_Memorandum of Settlement.pdf](#)  | [Download PDF](#)

Groups

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|---|--|
| Children/ youth | Groups→Children/youth→Substantive Page 7-8, Annexure C List of Projects to be taken up by new Council: 7. Establishment of modern dairy, fishery, horticulture and poultry farms / training Centres at different places to encourage youths for self-employment. |
| Disabled persons | No specific mention. |
| Elderly/age | No specific mention. |
| Migrant workers | No specific mention. |
| Racial/ ethnic/ national group | Groups→Racial/ethnic/national group→Rhetorical Page 1, 1. The Government of India and the Government of West Bengal have been making concerted efforts to fulfill the aspirations of Hill people of Darjeeling District (West Bengal) relating to their cultural identity, language, education and economic development. Groups→Racial/ethnic/national group→Substantive Page 1, 5. Objectives The objectives of this agreement are to replace the existing Darjeeling Gorkha Hill Council by an Autonomous Self Governing Council to be known as Gorkha Hill Council, Darjeeling under the Sixth Schedule of the Constitution of India following due consultative, Legislative and constitutional processes by the State and Central Governments so as to fulfill economic, educational and linguistic aspirations and the preservation of land-rights, socio-cultural and ethnic identity of the hill people; and to speed up the infrastructure development in the hill areas. |
| Religious groups | No specific mention. |
| Indigenous people | No specific mention. |

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| Other groups | <p>Groups→Other groups→Substantive Page 2, 7. Status of New Council 7.2.6. The amendments to then Sixth Schedule shall include provision is such a manner that non-tribal are not disadvantaged in relation to the rights enjoyed by them at the commencement of the new Council and their rights and privileges including land rights are fully protected.</p> <p>Page 3, 8. Powers and functions 8.2. There shall be an Executive Council comprising not more than 6 Executive Members from amongst the members of the General Council, one of whom shall be the Chief and another one the Deputy Chief of the said Executive Council. To ensure adequate representation for the non-Tribal members in the Executive Council, at least 2 members of the Executive Council would be non-Tribal. There shall be no bar on nominated members being appointed as members of the Executive Council.</p> <p>Page 3, 8. Powers and functions 8.4. The new Council shall also be competent to make appointments for all posts under its control in accordance with the rules of appointment followed by the Government of West Bengal. However, the posts, where recruitment is made on the recommendation of West Bengal Public Service Commission, shall not be covered under this provision. The new Council may constitute a Selection Board for appointments to be made by it and may also make rules, with the approval of the Governor of West Bengal, to regulate appointments and to ensure adequate representation for all communities living the new Council area.</p> |
| Refugees/ displaced persons | No specific mention. |
| Social class | No specific mention. |

Gender

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|-------------------------------|----------------------|
| Women, girls and gender | No specific mention. |
| Men and boys | No specific mention. |
| LGBTI | No specific mention. |

Family No specific mention.

State definition

Nature of state (general) No specific mention.

State configuration No specific mention.

Self determination No specific mention.

Referendum No specific mention.

State symbols No specific mention.

Independence/ secession No specific mention.

Accession/ unification No specific mention.

Border delimitation No specific mention.

Cross-border provision No specific mention.

Governance

Political institutions (new or reformed) Governance→Political institutions (new or reformed)→New political institutions (indefinite)
Page 1, Untitled Preamble
Between Government of India, Government of West Bengal and Darjeeling Gorkha Hill Council for creating a New Council for the Hill areas of Darjeeling District, under the Sixth Schedule of Constitution of India.

Page 2, 7. Status of New Council

7.2 The provisions of the Sixth Schedule as and when amended and other relevant Articles of the Constitution of India will apply to the new Council, mutatis mutandis in terms of this Settlement. The safeguards for the non-tribal in the new Council area, inter-alia, will include the following:

7.2.1 Provisions of para 1(2) of Sixth Schedule regarding Autonomous Regions will however not be applicable to the new Council.

7.2.2. A provision will be made in para 2(1) of the Sixth Schedule for increasing the number of members for new Council up to 33 out of which 10 will be reserved for Schedule Tribes, 15 for non-tribal communities, 3 open for all communities and 5 to be nominated by Governor of West Bengal from the unrepresented communities. From new Council area of which at least two should be women. Nominated members will have the same rights and privileges as other members including voting rights. Election from the 28 constituencies of the new Council shall be on the basis of adult franchise. The terms of the elected members of the new Council shall be for 5 years.

Page 3, 8. Powers and functions

8.2. There shall be an Executive Council comprising not more than 6 Executive Members from amongst the members of the General Council, one of whom shall be the Chief and another one the Deputy Chief of the said Executive Council. To ensure adequate representation for the non-Tribal members in the Executive Council, at least 2 members of the Executive Council would be non-Tribal. There shall be no bar on nominated members being appointed as members of the Executive Council.

Page 3, 8. Powers and functions

8.3. The New Council shall have the full control over the officers and staff appointed by it and this and connected with the delegated subjects working in the Council area. In case of all India Service Officers and State Government officer on deputation to the Council, it can only recommend suitable action to the State Government. Annual Confidential Reports of all the officers shall, however be written by the appropriate authority in the new Council.

Page 3, 8. Powers and functions

8.4. The new Council shall also be competent to make appointments for all posts under its control in accordance with the rules of appointment followed by the Government of West Bengal. However, the posts, where recruitment is made on the recommendation of West Bengal Public Service Commission, shall not be covered under this provision. The new Council may constitute a Selection Board for appointments to be made by it and may also make rules, with the approval of the Governor of West Bengal, to regulate appointments and to ensure adequate representation for all communities living the new Council area.

Page 3, 8. Powers and functions

8.5. All new posts within the Council are created with the concurrence of State Government. The Council shall have the right to recommend the appointment of

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| Elections | Page 5, 10. Interim administration ii. Elections to the DGHC and to Panchayat bodies in the DGHC area in accordance with the relevant provisions of the Constitution / existing Laws of the Central / State Governments. ... vii. Election and Constitution of new Council within six months of enactment of Parliamentary Acts |
| Electoral commission | No specific mention. |
| Political parties reform | No specific mention. |
| Civil society | No specific mention. |
| Traditional/ religious leaders | No specific mention. |
| Public administration | Page 3, 8. Powers and functions 8.3. The New Council shall have the full control over the officers and staff appointed by it and this and connected with the delegated subjects working in the Council area. In case of all India Service Officers and State Government officer on deputation to the Council, it can only recommend suitable action to the State Government. Annual Confidential Reports of all the officers shall, however be written by the appropriate authority in the new Council. |

Constitution Governance→Constitution→Constitutional reform/making

Page 1, 5. Objectives

The objectives of this agreement are to replace the existing Darjeeling Gorkha Hill Council by an Autonomous Self Governing Council to be known as Gorkha Hill Council, Darjeeling under the Sixth Schedule of the Constitution of India following due consultative, Legislative and constitutional processes by the State and Central Governments so as to fulfill economic, educational and linguistic aspirations and the preservation of land-rights, socio-cultural and ethnic identity of the hill people; and to speed up the infrastructure development in the hill areas.

Page 1-2, 6. Area

The area of the proposed Council under the Sixth Schedule shall comprise all the mouzas, villages and areas as per Annexure A to be notified by the State Government. Any further alteration to the list can be made on the basis of mutual agreement between the Govt. of West Bengal and DGHC, prior to the enactment of Constitution Amendment Act. The above mentioned mouzas, villages and areas shall be comprised in 3 contiguous hills Sub-Divisions viz, Darjeeling, Kalimpong and Kurseong of Darjeeling District after reorganization of the existing Sub-Divisions of Darjeeling district by the Government of West Bengal within a period of 3 months of the signing of this agreement.

Page 2, 7. Status of New Council

7.1 The Government of West Bengal would repeal at appropriate time the existing 'The Darjeeling Gorkha Hill Council Act, 1988' to pave the way for creation of a new autonomous Council under Sixth Schedule of the Constitution of India. Government of India would initiate necessary consultative, legislative and constitutional steps to amend Article 244 of the Constitution appropriately, to include administration of the hill areas of State of West Bengal in the Sixth Schedule.

Page 2-3, 7. Status of New Council

7.2 The provisions of the Sixth Schedule as and when amended and other relevant Articles of the Constitution of India will apply to the new Council, mutatis mutandis in terms of this Settlement. The safeguards for the non-tribal in the new Council area, inter-alias, will include the following:

7.2.1 Provisions of para 1(2) of Sixth Schedule regarding Autonomous Regions will however not be applicable to the new Council.

7.2.2. A provision will be made in para 2(1) of the Sixth Schedule for increasing the number of members for new Council up to 33 out of which 10 will be reserved for Schedule Tribes, 15 for non-tribal communities, 3 open for all communities and 5 to be nominated by Governor of West Bengal from the unrepresented communities. From new Council area of which at least two should be women. Nominated members will have the same rights and privileges as other members including voting rights. Election from the 28 constituencies of the new Council shall be on the basis of adult franchise. The terms of the elected members of the new Council shall be for 5 years.

7.2.3. Safeguards for the settlement rights, transfer and inheritance of property etc, of non-tribal will be suitably incorporated in para 3 of the Sixth Schedule. Any such Law may be made by the new Council in this regard will not in particular:

(a). Extinguish the rights and privileges enjoyed by any citizen of India in respect of his land at the commencement of the new Council, and

(b). Deprivation of any civil rights and liberties of any citizen

Power sharing

Political
power
sharing

No specific mention.

Territorial
power
sharing

Power sharing→Territorial power sharing→Autonomous regions

Page 1,

3. Pursuant to the above mentioned Settlement, GNLf agreed to drop the demand for a separate State of Gorkhaland and an autonomous hill council, viz, Darjeeling Gorkha Hill Council (DGHC), was set up under 'The Darjeeling Gorkha Hill Council Act, 1988' notified by the Government of West Bengal on 15.10.1988. The hill areas under DGHC comprised of the three hill Sub-Divisions of Darjeeling District, viz, Darjeeling, Kalimpong and Kurseong and 13 mouzas of Siliguri Sub-Division of that District.

Page 1,

4. However, Shri Subash Ghisingh (former Chairman and Chief Executive Councilor, DGHC, presently Administrator) had been demanding constitutional status for the DGHC as, according to him, the abovementioned Settlements could not fulfill the aspirations of the people of Darjeeling. A series of tripartite meetings were held between Government of India, Government of West Bengal and Shri Subash Ghisingh to review the implementation of Darjeeling Accord and further issues arising from it. As a result of these meetings, it is hereby agreed in principle to create a self-governing body for the Darjeeling hill areas in the State of West Bengal.

Page 1, 5. Objectives

The objectives of this agreement are to replace the existing Darjeeling Gorkha Hill Council by an Autonomous Self Governing Council to be known as Gorkha Hill Council, Darjeeling under the Sixth Schedule of the Constitution of India following due consultative, Legislative and constitutional processes by the State and Central Governments so as to fulfill economic, educational and linguistic aspirations and the preservation of land-rights, socio-cultural and ethnic identity of the hill people; and to speed up the infrastructure development in the hill areas.

Page 2, 7. Status of New Council

7.1 The Government of West Bengal would repeal at appropriate time the existing 'The Darjeeling Gorkha Hill Council Act, 1988' to pave the way for creation of a new autonomous Council under Sixth Schedule of the Constitution of India. Government of India would initiate necessary consultative, legislative and constitutional steps to amend Article 244 of the Constitution appropriately, to include administration of the hill areas of State of West Bengal in the Sixth Schedule.

Page 3, 8. Powers and functions

8.1. The new Council shall have legislative powers in respect to subjects mutually agreed with State Government to be transferred to it. The list of Subjects is given in Annexure B. Any further alteration to this list can be made on the basis mutual.

Page 6-7, Annexure B

List of Subjects proposed to be transferred to the New Council

1. The allotment, occupation or use or setting apart of land other than any land which is a reserved forest, for the purpose of agriculture or grazing, or for residential or other non-agricultural purposes, or for any other purpose likely to promote the interest of the inhabitants of any village, locality or town. Such allotment, occupation or use, or setting apart of land shall be subject to the provisions of the West Bengal Land Reforms Act, 1955 and the

Economic
power
sharing

Power sharing→Economic power sharing→Sharing of resources
Page 3, 8. Powers and functions

8.9. The State Government would provide an amount, to be decided every year on population ration basis, as grants-in-aid in two equal installments to the new Council for executing development works. The proportionate share for new Council shall be calculated on the basis of the plan funds available after setting aside the funds required for earmarked sectors and the salary. This amount may be reduced proportionately if the State plan allocation is reduced or there is plan cut due to resource problem. In addition, the new Council will be paid a suitable amount of plan funds and non-plan funds to cover the office expenses and the salaries of the staffs working under their control. The new Council shall disburse the salaries of the staffs under their control and would ensure strict economy in the matter.

Page 4, 8. Powers and functions

8.10. The new Council shall prepare a plan with the amounts likely to be available for development works, both under State share and Central share, covering any or all the activities of the departments under their control. The Council shall have full discretion in selecting the activities and choosing the amount for the investment under the same in any year covering all groups of people in a fair and equitable manner. This plan will be a sub set of the State plan and would be treated as its integral part. Once the plan of the State, including the new Council plan, gets the approval of the Planning Commission, the new Council authority shall start execution of their plans in the new Council area. Modifications, if any, made by the Planning Commission in the new Council proposal shall be binding on the new Council authority. The State Government shall not divert the funds allocated to the new Council to other heads and also ensure its timely release. The new Council may have Planning Department to prepare the plans for the new Council is to be submitted to Planning Commission through the Government of West Bengal.

Page 4, 9. Additional Development Packages for the new Council

9.1. The State Government, within the limitation of financial and other constraints, may offer or allow the new Council to offer, possible and sustainable additional incentives for attracting private investment in the new Council area and would also support projects for external funding.

9.2. In order to accelerate the development of the region and to meet the aspirations of the people, the Government of India will provide financial assistance of Rs 30 crore per annum for 5 years for projects to develop the socio-economic infrastructure in the new Council areas over and above the normal plans assistance to the State of West Bengal. Suitable mechanism will be built in the system to ensure that the funds are transferred to the new Council in time and a regular interval. A list of projects which should be considered to be taken up in the new Council areas is a Annexure C.

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| Military power sharing | No specific mention. |
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Human rights and equality

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| Human rights/RoL general | No specific mention. |
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| Bill of rights/similar | No specific mention. |
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| Treaty incorporation | No specific mention. |
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| Civil and political rights | No specific mention. |
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| Socio-economic rights | No specific mention. |
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Rights related issues

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| Citizenship | No specific mention. |
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| Democracy | No specific mention. |
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| Detention procedures | No specific mention. |
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| Media and communication | No specific mention. |
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| Mobility/ access | Page 2, 7. Status of New Council 7.2.3. Safeguards for the settlement rights, transfer and inheritance of property etc, of non-tribal will be suitably incorporated in para 3 of the Sixth Schedule. Any such Law may be made by the new Council in this regard will not in particular: (a). Extinguish the rights and privileges enjoyed by any citizen of India in respect of his land at the commencement of the new Council, and (b). Bar any citizen from acquiring land either by way of inheritance, allotment, settlement or by way of transfer if such citizens were eligible for such bonafide acquisition of land within the new Council area. |
| Protection measures | Rights related issues→Protection measures→Protection of groups Page 2, 7. Status of New Council 7.2.6. The amendments to the Sixth Schedule shall include provision in such a manner that non-tribal are not disadvantaged in relation to the rights enjoyed by them at the commencement of the new Council and their rights and privileges including land rights are fully protected. |
| Other | No specific mention. |

Rights institutions

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|---|----------------------|
| NHRI | No specific mention. |
| Regional or international human rights institutions | No specific mention. |

Justice sector reform

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| Criminal justice and emergency law | No specific mention. |
| State of emergency provisions | No specific mention. |

Judiciary and courts Page 3, 8. Powers and functions
8.8. The Offices of the District Magistrate and Superintendent of Police will be outside the superintendence and control of the new Council.

Prisons and detention No specific mention.

Traditional Laws No specific mention.

Socio-economic reconstruction

Development or socio-economic reconstruction Socio-economic reconstruction→Development or socio-economic reconstruction→Socio-economic development
Page 3, 8. Powers and functions

8.9. The State Government would provide an amount, to be decided every year on population ration basis, as grants-in-aid in two equal installments to the new Council for executing development works. The proportionate share for new Council shall be calculated on the basis of the plan funds available after setting aside the funds required for earmarked sectors and the salary. This amount may be reduced proportionately if the State plan allocation is reduced or there is plan cut due to resource problem. In addition, the new Council will be paid a suitable amount of plan funds and non-plan funds to cover the office expenses and the salaries of the staffs working under their control. The new Council shall disburse the salaries of the staffs under their control and would ensure strict economy in the matter.

Page 4, 8. Powers and functions

8.10. The new Council shall prepare a plan with the amounts likely to be available for development works, both under State share and Central share, covering any or all the activities of the departments under their control. The Council shall have full discretion in selecting the activities and choosing the amount for the investment under the same in any year covering all groups of people in a fair and equitable manner. This plan will be a sub set of the State plan and would be treated as its integral part. Once the plan of the State, including the new Council plan, gets the approval of the Planning Commission, the new Council authority shall start execution of their plans in the new Council area. Modifications, if any, made by the Planning Commission in the new Council proposal shall be binding on the new Council authority. The State Government shall not divert the funds allocated to the new Council to other heads and also ensure its timely release. The new Council may have Planning Department to prepare the plans for the new Council is to be submitted to Planning Commission through the Government of West Bengal.

Page 4, 9. Additional Development Packages for the new Council

9.1. The State Government, within the limitation of financial and other constraints, may offer or allow the new Council to offer, possible and sustainable additional incentives for attracting private investment in the new Council area and would also support projects for external funding.

9.2. In order to accelerate the development of the region and to meet the aspirations of the people, the Government of India will provide financial assistance of Rs 30 crore per annum for 5 years for projects to develop the socio-economic infrastructure in the new Council areas over and above the normal plans assistance to the State of West Bengal. Suitable mechanism will be built in the system to ensure that the funds are transferred to the new Council in time and a regular interval. A list of projects which should be considered to be taken up in the new Council areas is a Annexure C.

Page 7-8, Annexure C

List of Projects to be taken up by new Council:

1. Upgradation of existing educational infrastructure by way of renovation / addition of buildings, providing modern facilities for reaching such as computers, science laboratories etc. from primary level to college level in Council area.

National economic plan No specific mention.

Natural resources No specific mention.

International funds No specific mention.

Business Page 4, 9. Additional Development Packages for the new Council
9.1. The State Government, within the limitation of financial and other constraints, may offer or allow the new Council to offer, possible and sustainable additional incentives for attracting private investment in the new Council area and would also support projects for external funding.

Taxation No specific mention.

Banks No specific mention.

Land, property and environment

Land reform/
rights

Land, property and environment→Land reform/rights→Land reform and management
Page 2, 7. Status of New Council
7.2.3. Safeguards for the settlement rights, transfer and inheritance of property etc, of non-tribal will be suitably incorporated in para 3 of the Sixth Schedule. Any such Law may be made by the new Council in this regard will not in particular:
... (b). Bar any citizen from acquiring land either by way of inheritance, allotment, settlement or by way of transfer if such citizens were eligible for such bonafide acquisition of land within the new Council area.

Land, property and environment→Land reform/rights→Other land rights
Page 1, 5. Objectives

The objectives of this agreement are to replace the existing Darjeeling Gorkha Hill Council by an Autonomous Self Governing Council to be known as Gorkha Hill Council, Darjeeling under the Sixth Schedule of the Constitution of India following due consultative, Legislative and constitutional processes by the State and Central Governments so as to fulfill economic, educational and linguistic aspirations and the preservation of land-rights, socio-cultural and ethnic identity of the hill people; and to speed up the infrastructure development in the hill areas.

Page 2, 7. Status of New Council

7.2.3. Safeguards for the settlement rights, transfer and inheritance of property etc, of non-tribal will be suitably incorporated in para 3 of the Sixth Schedule. Any such Law may be made by the new Council in this regard will not in particular:

(a). Extinguish the rights and privileges enjoyed by any citizen of India in respect of his land at the commencement of the new Council, and

...

Page 2, 7. Status of New Council

7.2.6. The amendments to the Sixth Schedule shall include provision in such a manner that non-tribal are not disadvantaged in relation to the rights enjoyed by them at the commencement of the new Council and their rights and privileges including land rights are fully protected.

Pastoralist/
nomadism
rights

No specific mention.

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| Cultural heritage | <p>Land, property and environment→Cultural heritage→Tangible Page 7-8, Annexure C List of Projects to be taken up by new Council: 2. Establishment of a cultural complex at Darjeeling to promote and develop Hill tradition and cultural heritage.</p> <p>Land, property and environment→Cultural heritage→Intangible Page 1, 5. Objectives The objectives of this agreement are to replace the existing Darjeeling Gorkha Hill Council by an Autonomous Self Governing Council to be known as Gorkha Hill Council, Darjeeling under the Sixth Schedule of the Constitution of India following due consultative, Legislative and constitutional processes by the State and Central Governments so as to fulfill economic, educational and linguistic aspirations and the preservation of land-rights, socio-cultural and ethnic identity of the hill people; and to speed up the infrastructure development in the hill areas.</p> <p>Page 2, 7. Status of New Council 7.2.4. Provision will be added in para 6 of Sixth Schedule that in the new Council area, language and medium of instruction in educational institutions will not be changed without approval of the State Government.</p> <p>Land, property and environment→Cultural heritage→Promotion Page 1, 1. The Government of India and the Government of West Bengal have been making concerted efforts to fulfill the aspirations of Hill people of Darjeeling District (West Bengal) relating to their cultural identity, language, education and economic development.</p> |
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Environment No specific mention.

Water or riparian rights or access No specific mention.

Security sector

Security Guarantees No specific mention.

Ceasefire No specific mention.

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| Police | Page 3, 8. Powers and functions 8.8. The Offices of the District Magistrate and Superintendent of Police will be outside the superintendence and control of the new Council. |
| Armed forces | No specific mention. |
| DDR | No specific mention. |
| Intelligence services | No specific mention. |
| Parastatal/ rebel and opposition group forces | No specific mention. |
| Withdrawal of foreign forces | No specific mention. |
| Corruption | No specific mention. |
| Crime/ organised crime | No specific mention. |
| Drugs | No specific mention. |
| Terrorism | No specific mention. |

Transitional justice

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| Transitional justice general | No specific mention. |
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|---------------------|----------------------|
| Amnesty/ pardon | No specific mention. |
| Courts | No specific mention. |
| Mechanism | No specific mention. |
| Prisoner release | No specific mention. |
| Vetting | No specific mention. |
| Victims | No specific mention. |
| Missing persons | No specific mention. |
| Reparations | No specific mention. |
| Reconciliation | No specific mention. |

Implementation

| | |
|-------------------------------------|----------------------|
| UN signatory | No specific mention. |
| Other international signatory | No specific mention. |
| Referendum for agreement | No specific mention. |

International mission/
force/similar No specific mention.

Enforcement mechanism Page 5,
11. This in principal Memorandum of Settlement is the full and final settlement of the Darjeeling Hill Areas issue and no further demands in this regard would be entertained. The implementation of this Memorandum shall be periodically reviewed by the Government of West Bengal with DGHC.

Related cases No specific mention.

Source On file with author.
