

# JOINT NATURAL RESOURCE AUTHORITIES

## INTRODUCTION

This chapter identifies the core elements of joint natural resource authorities. This chapter also outlines the provisions of the Darfur Peace Agreement (DPA) related to the position or activities of a joint natural resource authority and provides sample language parties may wish to consider when drafting provisions establishing joint natural resource authority.

The allocation of natural resources, including the right to water,<sup>1</sup> is a significant element in ensuring fair access to natural resources by all parties. Joint natural resource authorities promote provincial participation in the control of certain natural resources within a state. The authorities can promote power sharing between the central and provincial governments in respect to disputed natural resources. Further, joint natural resource authorities may encourage and monitor equitable natural resource revenue allocation to central, provincial, and sub-provincial governments.

This chapter begins by examining the core elements of a natural resource authority. Most joint natural resource authorities address petroleum and mineral rights, with the state addressing water rights in a separate agreement or mechanism. Accordingly, this section focuses on authorities that regulate petroleum and mineral extraction. States use various methods to manage natural resources, including using institutions that share power among different levels of government. A joint natural resource authority is composed of representatives of the federal and provincial governments that possess authority to manage natural resources. Although the joint natural resource authority may not have complete control over natural resources, it allows for provincial participation and encourages equitable and responsible regulation.

The DPA addresses natural resource issues in Darfur.<sup>2</sup> The DPA mandates the creation of a Land Commission and calls on all parties to recognize the importance of traditional rights.

---

<sup>1</sup> For more information on water rights, see the Water Rights chapter of this guide.

<sup>2</sup> Darfur Peace Agreement, May 5, 2006, *available at* [http://www.unmis.org/english/2006Docs/DPA\\_ABUJA-5-05-06-withSignatures.pdf](http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf) (last accessed Sept 18, 2007).

## CORE ELEMENTS

### Composition of the Authority

Composition of the joint natural resources authority varies by state depending on the particular circumstances of the state and the represented interests. Some states, like Sudan, use authorities that represent all provinces and the federal government. Other states, like Australia and Canada, use multiple authorities, each composed of the federal government and one province. In both structures, the function of this authority is to represent and protect both federal and provincial interests. This diversity in representation promotes equitable control over natural resources and power sharing.

Australia's joint authorities are limited to two parties, the central government, and the individual provincial governments. The joint authorities are power-sharing arrangements between the central and provincial governments. Each joint authority is composed of two members, the Australian Government Minister for Resources and the individual province's Minister for Mines.<sup>3</sup> Each of the two members have the authority to delegate a proxy or agent to act on his behalf in the joint authority.<sup>4</sup>

Like the Australian joint natural resource authorities, the Canada-Nova Scotia Offshore Petroleum Board (the Board) is a joint authority limited to two parties. The Canada-Nova Scotia Offshore Petroleum Board is composed of representatives from the Canadian federal government and the Nova Scotia government. Of the five members on the Board, the Canadian and Nova Scotia governments each appoint two members<sup>5</sup>, and the final member is a chairperson jointly appointed by both governments.<sup>6</sup>

### Functions of the Authority

---

<sup>3</sup> Petroleum (Submerged Lands) Act 1967 sec. 8(a) (Australia), *available at* [http://bar.austlii.edu.au/au/legis/cth/consol\\_act/pla1967267/s8a.html](http://bar.austlii.edu.au/au/legis/cth/consol_act/pla1967267/s8a.html) (last accessed Sept. 20, 2007).

<sup>4</sup> Petroleum (Submerged Lands) Act 1967 (Australia) sec. 8(b)(1), *available at* [http://bar.austlii.edu.au/au/legis/cth/consol\\_act/pla1967267/s8b.html](http://bar.austlii.edu.au/au/legis/cth/consol_act/pla1967267/s8b.html) (last accessed Sept. 24, 2007). Day-to-day administration and decision-making are typically undertaken by the proxies of the Australian Government Minister for Resources and the relevant State Minister for Mines.

<sup>5</sup> CANADA-NOVA SCOTIA OFFSHORE PETROLEUM BOARD, OFFICIAL WEBSITE, *available at* <http://www.cnsopb.ns.ca/index.html> (last accessed Sept. 24, 2007).

<sup>6</sup> CANADA-NOVA SCOTIA OFFSHORE PETROLEUM BOARD, OFFICIAL WEBSITE.

States allocate a wide variety of authority to joint natural resource authorities. In some states, the authority has near complete control over maintenance, regulation, and licensing of petroleum resources; while other states create a more limited role for the authority. States will tailor the power allocated to the authority depending on the particular government structure of the state, the location of resources, and the capabilities of the parties involved.

### *Competencies of Joint Authorities*

Some joint authorities exercise control over the daily operations of petroleum resources. The Canada-Nova Scotia Board of Petroleum Resources has control over most daily administrative decisions and is the primary point of contact for third parties involved in petroleum exploration and extraction. In this respect, the Board operates in the offshore area as the Nova Scotia Department of Energy operates within provincial boundaries. Other joint authorities have more limited responsibilities. In Greenland, the Joint Committee on Mineral Resources has limited power and does not possess binding authority. It functions as an advisory body to the governments of both Greenland and Denmark.

Other joint authorities are involved in policy-making and strategic planning in regards to natural resources and petroleum. The Joint Committee on Mineral Resources in Greenland limited advisory authority. Although the Joint Committee has no binding authority, it is the only official forum for discussion of resource issues between the two governments, and therefore, serves an important function.<sup>7</sup>

The majority of joint authorities are responsible for licensing and contracting of petroleum or natural resource exploration and extraction rights. In Australia, the joint authority issues grants, revokes licenses, and regulates existing license agreements to explore, drill, and extract petroleum.<sup>8</sup> The Canada-Nova Scotia Board of Petroleum Resources also issues some discovery and production licenses, approves development plans, and makes decisions regarding operating licenses and

---

<sup>7</sup> Order no. 368 of June 18, 1998 on the Act on Mineral Resources in Greenland (the Mineral Resources Act) (Greenland), *available at* [http://www.bmp.gl/administration/EB1\\_20ba\\_10nn\\_Mineral-Resources-Act-sec.pdf](http://www.bmp.gl/administration/EB1_20ba_10nn_Mineral-Resources-Act-sec.pdf) (last accessed Sept. 21, 2007).

<sup>8</sup> MINERAL AND PETROLEUM EXPLORATION & DEVELOPMENT IN AUSTRALIA: A GUIDE FOR INVESTORS, 1, *available at* [http://www.investaustralia.gov.au/media/IR\\_MIN\\_Exploration\\_and\\_Mining\\_Legislation\\_Offshore.pdf](http://www.investaustralia.gov.au/media/IR_MIN_Exploration_and_Mining_Legislation_Offshore.pdf) (last accessed Sept. 21, 2007).

authorizations for work.<sup>9</sup> In Greenland, the Joint Committee on Mineral Resources is encouraged to comment on the granting of prospecting, exploration, or production licenses.<sup>10</sup> In Jordan, the Natural Resource Authority (NRA) regulates minerals and petroleum reserves by issuing permits and licenses for extraction. The NRA also may recommend policies regarding resource extraction to the national government.<sup>11</sup>

### *Limits on Authority Decisions*

Some states limit the authority of joint natural resource authorities by providing for appeal of decisions or requiring approval of certain actions. In Nova Scotia, while the Board of Petroleum Resources has considerable power over certain exclusive responsibilities, its decisions over other matters are subject to challenge and review by representatives of the central government or government of Nova Scotia.<sup>12</sup> The federal and provincial ministers or, in some instances, solely the provincial minister, may veto particular decisions of the board.<sup>13</sup>

### **Devolution of Natural Resource Authority in Peace Agreements**

Agreements on natural resource allocation may play significant roles in resolving disputes. During the negotiations between Indonesia and the Free Aceh Movement fighters, the Indonesian central government granted Aceh 70 percent of all revenue from oil and natural resources within Aceh territory. In exchange for this condition, the Free Aceh Movement gave up its decades-long fight for independence. Indonesia then allocated Aceh a significant amount of political authority and self-governance. The willingness of Indonesia's central government to relinquish this control over natural resources in Aceh played a large role in the Free Aceh Movement's decision to sign the peace agreement.<sup>14</sup>

---

<sup>9</sup> Canada-Nova Scotia Offshore Petroleum Resources Accord (1986), art. 12.03, *available at*, <http://www.cnsopb.ns.ca/regulatory/pdf/Accord.pdf> (last accessed Sept. 3, 2007).

<sup>10</sup> GREENLAND BUREAU OF MINERALS AND PETROLEUM, *available at* [http://www.bmp.gl/administration/legal\\_foundations.html](http://www.bmp.gl/administration/legal_foundations.html) (last accessed Sept. 3, 2007).

<sup>11</sup> JORDAN NATURAL RESOURCE AUTHORITY, ABOUT US, *available at* <http://www.nra.gov.jo/side.htm> (last accessed Sept. 21, 2007).

<sup>12</sup> Canada-Nova Scotia Offshore Petroleum Resources Accord (1986), art. 12.

<sup>13</sup> Canada-Nova Scotia Offshore Petroleum Resources Accord (1986), art. 34.

<sup>14</sup> Special Autonomy for the Province of Aceh Special Region as the Province of Nanggroe Aceh Darussalam, Law No. 18/2001, *available at* [http://gtzsfm.or.id/documents/laws\\_n\\_regs/laws/2001/Law18\\_2001.pdf](http://gtzsfm.or.id/documents/laws_n_regs/laws/2001/Law18_2001.pdf) (last accessed Sept. 24, 2007).

Natural resources played a pivotal role in ending the conflict between Bougainville and Papua New Guinea. A copper mine in Bougainville generated approximately one-sixth of Papua New Guinea's tax revenue. Under an agreement between Bougainville and Papua New Guinea's central government, Bougainville received surface, but not subsurface, title to the lands in the Bougainville territory. In return, the Bougainville government must approve all major development projects on the land. In addition, mine development that affects the surface rights of Bougainville citizens must include adequate compensation for these citizens.

### **DARFUR PEACE AGREEMENT**

While the 2006 Darfur Peace Agreement (DPA) does not explicitly create a Natural Resource Authority, it contains several provisions regarding the allocation of natural resources.<sup>15</sup> For example, the DPA declares that the parties "agree to establish a mechanism to introduce processes for ensuring the sustainable use and control of land and other natural resources."<sup>16</sup> Further, the agreement provides that provinces with natural resources have the "right to negotiate and to be granted the negotiated share of revenue generated there from."<sup>17</sup>

The DPA creates a Land Commission that addresses the issue of traditional rights to land, land management, and natural resource extraction.<sup>18</sup> Additionally, the DPA addresses natural resources issues in Darfur.<sup>19</sup> The DPA calls for the establishment of a "system for regulating land use planning and the development of natural resources that shall apply to land in Darfur, including land owned by the [Government of Sudan], for development and other national projects."<sup>20</sup> The DPA also mandates that the local government in Darfur enact legislation to create an authority to address land use issues.<sup>21</sup>

### **SAMPLE LANGUAGE**

#### **Article XXX**

---

<sup>15</sup> Darfur Peace Agreement.

<sup>16</sup> Darfur Peace Agreement, art. 17, para. 111.

<sup>17</sup> Darfur Peace Agreement, art. 20, para. 161.

<sup>18</sup> Darfur Peace Agreement, art. 20, paras. 163-169.

<sup>19</sup> Darfur Peace Agreement, art. 20, para. 170-1.

<sup>20</sup> Darfur Peace Agreement, art. 20, para. 170.

<sup>21</sup> Darfur Peace Agreement, art. 20, para. 173.

## **Establishment of Joint Authority**

For the purposes of this agreement, there is established a Joint Authority consisting of the [National Government Minister] and the [Provincial Minister].<sup>22</sup>

### **Article XXX**

#### **Composition of the Authority**

##### *Natural Resources Commission*

- (1) The Parties agree that an independent National Resources Commission (NRC) shall be established [the parties may wish to declare exactly when and how the commission will be created] and its decisions shall be by consensus.

**OR**

### **Article XXX**

#### **(1) Constitution of the Board**

- (a) The Parties agree to establish, by legislation, a Sudan—Darfur Natural Resources Board (“the Board”) and to empower the Board to act in all such matters relating to Resources as are in accordance with this Accord.
- (b) Subject to the terms of this Accord, the Board shall be an independent board.
- (c) The Board shall consist of five members, including the Chairman, none of whom shall act as representatives of either Party.

#### **(2) Appointment of Members**

- (a) The Chairman of the Board shall be appointed jointly by the Parties for a term of six years.
- (b) The other members of the Board may be appointed jointly, or in the alternative, each Party may appoint two members.
- (c) At any given time, no more than two members of the Board may be public servants, and no more than one member appointed by each Party shall be a public servant.

---

<sup>22</sup> This language is drawn from the Petroleum (Submerged Lands) Act 1967 (Australia) sec. 8(a).

- (d) Where the Parties fail to agree on the appointment of the Chairman either Party may, by notice to the other, require the submission of the candidates' names to a panel of three arbitrators appointed, who shall appoint the Chairman from among the candidates nominated by each Party.
- (e) Each member of the Board shall be appointed for a term of six years.
- (f) Of the members first appointed, other than the Chairman, one shall be appointed by each Party for a term of four years and one shall be appointed by each Party for a term of five years.
- (g) The members appointed for terms of four or five years may be among those members appointed jointly.
- (h) An alternate member may be appointed to serve in the absence or incapacity of a member by the Party or Parties that appointed the member.
- (i) Each member of the Board who is not a public servant holds office during good behavior but may be removed for cause by the Party or Parties that appointed the member.<sup>23</sup>

**OR**

**Article XXX**

- (1) The Authority Board of Directors shall be Composed of the Minister as Chairman and the membership of [list desired ministry representatives and others].
- (2) The Board selects a Vice-Chairman from its members. At least five of the members must be present at a meeting to establish a quorum, and decisions shall be taken by a majority of votes of not less than five of the members present.
- (3) The Board shall meet under the chairmanship of the President and in case of his absence his Vice President presides over and if both are absent, the Board elects a temporary chairman for the session.
- (4) The Board may, if it deems appropriate, request experts, consultants, officials or supervisors to attend its meetings for seeking their advice

---

<sup>23</sup> This language is drawn from Canada-Nova Scotia Offshore Petroleum Resources Accord (1986).

without having the right to vote.<sup>24</sup>

### **Article XXX**

#### **Functions of the Authority**

- (1) The Natural Resource Board shall have the following functions:
  - (a) Formulate public policies and guidelines in relation to the development and management of the petroleum or natural resources sector;
  - (b) Monitor and assess the implementation of these policies to ensure that the work is in the best interests of the people of Sudan;
  - (c) Develop strategies and programs for the petroleum or natural resources sector;
  - (d) Negotiate and approve all oil contracts for the exploration and development for natural resources in the Sudan, and ensure they are consistent with the principles, policies and guidelines of this act;
  - (e) Develop its internal regulations and procedures.<sup>25</sup>

**OR**

### **Article XXX**

- (1) A Joint Authority has such functions as are conferred on it by [the implementing legislation] in relation to the operation of this [legislation] in respect to all areas in respect of which the Joint Authority is established.<sup>26</sup>

---

<sup>24</sup> This language is drawn from Law No. 12 for the Year 1968 The Organization of Natural Resources Affairs Law (Jordan, 1968), *available at* <http://www.nra.gov.jo/legal/English/Law%2012%20for%201968%20and%20ammendments%20for%20Regulating%20Natural%20Resources%20Affairs.pdf> (last accessed Sept. 21, 2007).

<sup>25</sup> This language is drawn from The Protocol on Wealth-Sharing (Sudan, 2004), art. 3.4.

<sup>26</sup> This language is drawn from Petroleum (Submerged Lands) Act 1967 (Australia) sec. 8(c), *available at* [http://bar.austlii.edu.au/au/legis/cth/consol\\_act/pla1967267/s8c.html](http://bar.austlii.edu.au/au/legis/cth/consol_act/pla1967267/s8c.html) (last accessed Sept. 24, 2007). The Australian Petroleum (Submerged Lands) Act 1967 tasks the Joint Authority with numerous responsibilities including the issuing: Division 2: Exploration Permits for Petroleum; Division 2A: Retention of Leases for Petroleum; Division 3: Production Licenses for Petroleum; Division 3A: Infrastructure Licenses; Division 4: Pipeline Licenses; Division 5: Registration of Instruments; Division 6-7: Safety and Health Provisions. *Petroleum (Submerged Lands) Act 1967* (Australia), *available at* [http://bar.austlii.edu.au/au/legis/cth/consol\\_act/pla1967267/index.html#s8c](http://bar.austlii.edu.au/au/legis/cth/consol_act/pla1967267/index.html#s8c) (last accessed Sept. 24, 2007).

- (2) An Authority called the “Natural Resources Authority” shall be established in accordance with this Law and shall be entrusted with the responsibility of prospecting, geological and economic studies needed for the natural resources, supervising technically the methods of mining [or other natural resource extraction], and exploiting such in accordance with the provisions of this Law.<sup>27</sup>

---

<sup>27</sup> This language is drawn from Law No. 12 for the Year 1968 The Organization of Natural Resources Affairs Law (Jordan, 1968) art. 3-7.