

# REVENUE SHARING

## INTRODUCTION

This chapter presents an overview of the core elements of revenue sharing mechanisms. This chapter also outlines provisions in the 2006 Darfur Peace Agreement relating to revenue sharing and provides sample language parties may wish to consider when drafting provisions for a revenue sharing structure.

States generally provide for revenue sharing in their constitutions.<sup>1</sup> The provisions may list broad principles regarding revenue distribution,<sup>2</sup> or they may list specific distribution schemes.<sup>3</sup> In a centralized tax-collection state, the central government collects a high percentage of taxes. In a decentralized tax-collection state, the central government collects less of the total tax revenue. In both types of states however, the central government gives financial disbursements to provincial governments in need of aid.

The 2006 Darfur Peace Agreement (DPA) provides for equitable wealth sharing among the Sudanese people.<sup>4</sup> The central government must place all revenue collected into the National Revenue Fund, and allocate Darfur a portion of the revenue pursuant to future agreements.<sup>5</sup> The DPA established the Fiscal and Financial Allocation and Monitoring Commission (FFAMC) to recommend formulae for allocation of revenue between provinces and between the central government and Darfur.<sup>6</sup> The DPA authorizes Darfur to collect provincial revenue to provide for provincial development initiatives.<sup>7</sup>

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<sup>1</sup> States distinguish between revenue from taxes and revenue from the sale of natural resources. This chapter will not discuss distribution of revenue from the sale of natural resources.

<sup>2</sup> AUSTRALIA CONST. art. 96 (1900), *available at* <http://www.aph.gov.au/senate/general/constitution/index.htm> (last accessed Aug. 24, 2007); CONSTITUTIONAL ACT (CANADA 1982), art. 36(2), *available at* [http://laws.justice.gc.ca/en/const/annex\\_e.html](http://laws.justice.gc.ca/en/const/annex_e.html) (last accessed Aug. 24, 2007).

<sup>3</sup> INDIA CONST. art. 268-275 (1949), *available at* <http://lawmin.nic.in/coi.htm> (last accessed Aug. 27, 2007).

<sup>4</sup> Darfur Peace Agreement, art. 17, para. 100, 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 20, 2007).

<sup>5</sup> Darfur Peace Agreement, art. 17, para. 98; art. 18, para. 115.

<sup>6</sup> Darfur Peace Agreement, art. 18, para. 121.

<sup>7</sup> Darfur Peace Agreement, art. 18, paras. 113(b), 114.

## CORE ELEMENTS

### Government Institutions Responsible for Coordinating Revenue Distribution

To accommodate changing circumstances, states typically have formal and informal processes and institutions for adjusting financial arrangements between the federal and provincial governments. Interdependence between both levels of government is common due to the difficulty associated with balancing revenue allocation and expenditure responsibility in a single constitutional provision.<sup>8</sup> Generally, states follow four schemes of procedures for adjusting federal-provincial financial arrangements. States often use schemes that allow both federal and provincial representation in decision-making.

The first scheme is the use of an independent expert commission. The federal governments in Australia, India, and South Africa establish different forms of standing or periodic commissions to analyze the distributive formula and recommend any changes in it to parliament.<sup>9</sup> For instance, India has two boards that formulate policy concerning levy and collection of taxes: the Central Board of Excise and Customs and the Central Board of Direct Taxes.<sup>10</sup>

The second scheme is the use of a constitutionally mandated council. Pakistan and Malaysia have constitutionally mandated councils composed of federal and regional representatives that reach agreement on modifications to financial arrangements.<sup>11</sup> Pakistan's constitution provides for its National Finance Commission, consisting of both federal and regional representatives.<sup>12</sup>

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<sup>8</sup> R.L. Watts, FORUM OF FEDERATIONS, PROCESSES FOR ADJUSTING FEDERAL FINANCIAL RELATIONS: EXAMPLES FROM AUSTRALIA AND CANADA, in FISCAL RELATIONS IN FOUR COUNTRIES: FOUR ESSAYS, at 16, 2003.

<sup>9</sup> R.L. Watts, FORUM OF FEDERATIONS, PROCESSES FOR ADJUSTING FEDERAL FINANCIAL RELATIONS: EXAMPLES FROM AUSTRALIA AND CANADA, in FISCAL RELATIONS IN FOUR COUNTRIES: FOUR ESSAYS, at 5, 2003.

<sup>10</sup> INDIA MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, *available at* [http://finmin.nic.in/the\\_ministry/dept\\_revenue/about/index.html](http://finmin.nic.in/the_ministry/dept_revenue/about/index.html) (last accessed Sept. 23, 2007).

<sup>11</sup> R.L. Watts, FORUM OF FEDERATIONS, PROCESSES FOR ADJUSTING FEDERAL FINANCIAL RELATIONS: EXAMPLES FROM AUSTRALIA AND CANADA, in FISCAL RELATIONS IN FOUR COUNTRIES: FOUR ESSAYS, at 5, 2003.

<sup>12</sup> PAKISTAN CONST. art. 160 (1973), *available at* <http://www.pakistani.org/pakistan/constitution/part6.ch1.html> (last accessed Sept. 17, 2007).

The third scheme is the use of a federal parliamentary committee. Germany, Switzerland, Austria, and Belgium have parliamentary committees that determine financial transfers to the regions. Regional governments have some effective formal participation in determining the transfers.<sup>13</sup>

The fourth and final scheme is federal government determination of financial transfers. In Canada, the federal government determines financial transfers to the provinces. Provincial governments have no effective participation in the determination. However, despite the absence of formal provincial participation, extra-parliamentary committees of federal and provincial ministers often discuss federal-provincial financial relations.<sup>14</sup>

### **Methods for Calculating Revenue Distribution**

Most states use some form of a calculation system to determine each province's share of disbursements. In a centralized tax-collection state, the federal government collects most of the revenue and disburses large amounts of aid to the provinces. In a decentralized tax-collection state, the federal government collects only a fraction of the revenue, yet still provides financial disbursements to provinces in need.

In Australia, the federal government collects most of the tax revenue and disburses large transfers to the provinces. Australia uses two main methods of distribution: functional special purpose transfers and unconditional general-purpose transfers. The federal government provides special purpose transfers to provinces to fund areas such as health, education, training, and roads. The government attaches conditions to these transfers, usually requiring a province to spend the transfer a certain way or to match the amount of the transfer.<sup>15</sup> The Commonwealth Grants Commission recommends the amount of general-purpose transfers from the federal government to specific provinces using a horizontal fiscal equalization principle. This enables each provincial government to provide a

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<sup>13</sup> R.L. Watts, FORUM OF FEDERATIONS, PROCESSES FOR ADJUSTING FEDERAL FINANCIAL RELATIONS: EXAMPLES FROM AUSTRALIA AND CANADA, in FISCAL RELATIONS IN FOUR COUNTRIES: FOUR ESSAYS, at 5, 2003.

<sup>14</sup> R.L. Watts, FORUM OF FEDERATIONS, PROCESSES FOR ADJUSTING FEDERAL FINANCIAL RELATIONS: EXAMPLES FROM AUSTRALIA AND CANADA, in FISCAL RELATIONS IN FOUR COUNTRIES: FOUR ESSAYS, at 5, 2003.

<sup>15</sup> DEPARTMENT OF TREASURY AND FINANCE GOVERNMENT OF WESTERN AUSTRALIA, SPECIFIC PURPOSE PAYMENTS, available at [http://www.dtf.wa.gov.au/cms/tre\\_content.asp?ID=780](http://www.dtf.wa.gov.au/cms/tre_content.asp?ID=780) (last accessed Sept. 23, 2007).

similar standard of services. In its determination process, the Commonwealth Grants Commission considers the differing costs of providing services in each province.<sup>16</sup>

In India, the President considers the recommendations of a Finance Commission each year before determining what percentage of the net proceeds of any tax each provincial government will receive. A consideration of which provincial governments paid the tax greatly influences this determination. For instance, the federal government levies and collects revenue on all taxes on the sale or purchase of goods and on taxes on the consignment of goods. The federal government then distributes this revenue to the provinces according to Parliamentary law regarding a formula for distribution.<sup>17</sup> Additionally, the federal government also provides assistance grants to any provincial government that needs assistance based on the determinations of Parliament.<sup>18</sup>

In Austria, regions have administrative and legislative autonomy, but the federal government manages revenue collection. The federal government distributes revenue to the regional governments based on tax revenue criteria, (regional or local revenue of a tax) and demographic criteria (the number of inhabitants of a province).<sup>19</sup> Regional governments then receive special needs transfers for housing development, infrastructure, and environmental purposes, and to equalize their revenue with average revenue.<sup>20</sup> In addition, the federal government maintains a Natural Disaster Fund, from which regional governments may receive transfers in the event of a natural disaster.<sup>21</sup>

In Canada, a decentralized tax-collection state, the federal government collects less of the tax revenue but still disburses financial transfers to low-income provinces. The federal government uses two main methods of revenue distribution: conditional health and social transfers and unconditional equalization

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<sup>16</sup> DEPARTMENT OF TREASURY AND FINANCE GOVERNMENT OF WESTERN AUSTRALIA, COMMONWEALTH GRANTS COMMISSION, *available at* [http://www.dtf.wa.gov.au/cms/tre\\_content.asp?id=779](http://www.dtf.wa.gov.au/cms/tre_content.asp?id=779) (last accessed Aug. 28, 2007)

<sup>17</sup> INDIA CONST. art. 269 (1949).

<sup>18</sup> INDIA CONST. arts. 270, 275 (1949).

<sup>19</sup> FEDERAL MINISTRY OF FINANCE AUSTRIA, FISCAL EQUALIZATION SYSTEM IN AUSTRIA 2, *available at* [http://english.bmf.gv.at/Budget/IntergovernmentalFi\\_252/\\_start.htm](http://english.bmf.gv.at/Budget/IntergovernmentalFi_252/_start.htm) (last accessed Sept. 23, 2007).

<sup>20</sup> FEDERAL MINISTRY OF FINANCE AUSTRIA, FISCAL EQUALIZATION SYSTEM IN AUSTRIA 3.

<sup>21</sup> FEDERAL MINISTRY OF FINANCE AUSTRIA, FISCAL EQUALIZATION SYSTEM IN AUSTRIA 3.

transfers to low-income provinces. The Canada Health Transfer and The Canada Social Transfer distribute equal per capita transfers to the provincial governments to finance health care, post-secondary education, and social assistance programs.<sup>22</sup> The federal government attaches minimal conditions, such as requiring the provincial governments to inform the federal government about their health care services in order to receive these transfers.<sup>23</sup>

The Equalization and Territorial Formula Financing Program considers a ten province standard to determine transfers. The calculation focuses only on tax capacity difference between provinces and not on expenditure capabilities or needs. The federal government measures five tax bases to determine provincial tax capacity: personal income tax, business income tax, consumption tax, property tax, and natural resources.<sup>24</sup> The state then distributes transfers to provinces below the average tax capacity.<sup>25</sup>

### **DARFUR PEACE AGREEMENT**

The 2006 Darfur Peace Agreement (DPA) defines Sudan's wealth broadly to include natural resources, human resources, historical and cultural assets, and financial assets.<sup>26</sup> The DPA also establishes that Sudan will share its wealth equitably on the premise that "all parts of the Sudan are entitled to equitable development."<sup>27</sup>

The DPA establishes that the Sudanese government will place all state-collected revenue in a National Revenue Fund administered by the National Treasury.<sup>28</sup> The DPA mandates that the Sudanese government make financial transfers to the appropriate level of government in Darfur as the parties agree.<sup>29</sup> Darfur is also to receive grants designed to help the region meet specified goals

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<sup>22</sup> DEPARTMENT OF FINANCE CANADA, MAJOR FEDERAL TRANSFERS, *available at* <http://www.fin.gc.ca/access/fedprove.html#Major> (last accessed Aug. 28, 2007).

<sup>23</sup> DEPARTMENT OF FINANCE CANADA, MAJOR FEDERAL TRANSFERS.

<sup>24</sup> DEPARTMENT OF FINANCE CANADA, EQUALIZATION PROGRAM, *available at* <http://www.fin.gc.ca/FEDPROV/eqpe.html> (last accessed Sept. 23, 2007).

<sup>25</sup> DEPARTMENT OF FINANCE CANADA, EQUALIZATION PROGRAM.

<sup>26</sup> Darfur Peace Agreement, art. 17, para. 94.

<sup>27</sup> Darfur Peace Agreement, art. 17, para. 100.

<sup>28</sup> Darfur Peace Agreement, art. 18, para. 115.

<sup>29</sup> Darfur Peace Agreement, art. 17, para. 98.

related to Millennium Development, poverty eradication, and gender development.<sup>30</sup>

Provincial governments “shall endeavor” to pay for their expenditures with revenues raised in their province.<sup>31</sup> The DPA permits each provincial government to determine, without federal interference, “the structure of the revenue base and the level of the charge or tax rate applied to that base.”<sup>32</sup>

The DPA also provides that a Fiscal and Financial Allocation and Monitoring Commission (FFAMC) will ensure Darfur’s representation in fiscal equalization on a basis equal with other regions.<sup>33</sup> The FFAMC will recommend an independent Panel of Experts whom the President will appoint with the national legislature’s approval. The Panel will recommend formulae for vertical allocation between Sudan and the provinces and criteria for horizontal allocation between provinces.<sup>34</sup> If the national legislature approves the Panel report, the FFAMC shall implement it.<sup>35</sup>

#### SAMPLE LANGUAGE

#### **Article XXX**

#### **Equalization and Regional Disparities**

- (1) The Government of Sudan shall:
  - (a) Promote equal opportunities for the well-being of all Sudanese;
  - (b) Further economic development to reduce disparity in opportunities;  
and
  - (c) Provide essential public services of reasonable quality to all Sudanese
  
- (2) The Government of Sudan shall make equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public service at reasonably comparable levels of taxation.<sup>36</sup>

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<sup>30</sup> Darfur Peace Agreement, art. 17, para. 104, and art 18, para. 128.

<sup>31</sup> Darfur Peace Agreement, art. 18, para. 113(b).

<sup>32</sup> Darfur Peace Agreement, art. 18, para. 114.

<sup>33</sup> Darfur Peace Agreement, art. 17, para. 94.

<sup>34</sup> Darfur Peace Agreement, art. 18, para. 121.

<sup>35</sup> Darfur Peace Agreement, art. 18, para. 122.

<sup>36</sup> This language is drawn from the CONSTITUTIONAL ACT OF CANADA art. 36(2).

**OR**

**Article XXX**

The National Legislature of Sudan may grant financial assistance to any province on such terms and conditions as the legislature determines.<sup>37</sup>

**OR**

**Article XXX**

- (1) Taxes collected by the Government of Sudan, with some exceptions, shall be distributed between the government and the provinces.<sup>38</sup>
- (2) The President of Sudan shall determine revenue distribution based on the recommendations of [Independent Finance Commission].
- (3) The National Legislature may determine whether any provinces of Sudan require additional assistance and respond accordingly.<sup>39</sup>

**Article XXX**

**National Finance Commission**

- (1) Within six months of the commencing day and thereafter at intervals not exceeding [five] years, the President of Sudan shall constitute a National Finance Commission consisting of the Minister of Finance of Sudan, the Ministers of Finance of the provincial governments, and any other persons as may be appointed by the President after consultation with the governors of the provinces.
- (2) It shall be the duty of the National Finance Commission to make recommendations to the President as to:
  - (a) The distribution between the federal government and the provinces of the net proceeds of taxes;

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<sup>37</sup> This language is drawn from the AUSTRALIAN CONST. art. 96.

<sup>38</sup> This language is drawn from the INDIAN CONST. art. 268-270.

<sup>39</sup> This language is drawn from the INDIAN CONST. art. 270, 275.

- (b) The making of grants-in-aid by the federal government to the provincial governments;
- (c) The exercise by the federal government and provincial governments of the borrowing powers conferred by the Constitution; and
- (d) Any other matter relating to finance referred to the Commission by the President.<sup>40</sup>

**OR**

**Article XXX**

**Central Boards of Revenue Act**

- (1) The Government of Sudan shall constitute two separate Boards of Revenue to be called the Central Board of Direct Taxes and the Central Board of Excise and Customs and each Board shall, subject to the control of the Government of Sudan, exercise such powers and perform such duties as may be entrusted to that Board by the Government of Sudan or by or under any law.
- (2) Each Board shall consist of such number of persons [not exceeding X] as the Government of Sudan may think fit to appoint.
- (3) Functions relating to matters connected with direct taxes shall be discharged by the Central Board of Direct Taxes.
- (4) Functions relating to any other matter shall be discharged by the Central Board of Excise and Customs.<sup>41</sup>

**Article XXX**

**Duties Levied by the Government of Sudan but Collected and Appropriated by the Regions**

- (1) Stamp duties and duties of excise shall be levied by the Government of Sudan, but shall be collected:

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<sup>40</sup> This language is drawn from the PAKISTAN CONST.

<sup>41</sup> This language is drawn from the Central Boards of Revenue Act (India 1963), art. 2 and 5, available at [http://www.commonlii.org/in/legis/num\\_act/cbora1963242/](http://www.commonlii.org/in/legis/num_act/cbora1963242/) (last accessed Sept. 23, 2007).

- (a) In the case where such duties are leviable within any state territory, by the Government of Sudan
- (b) In other cases, by the provinces within which such duties are respectively leviable.<sup>42</sup>

### **Article XXX**

#### **Taxes Levied and Collected by the Government of Sudan but Assigned to the Regions**

- (1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of Sudan but shall be assigned to the Regions in the manner provided in clause (2).
- (2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to territories of the Government of Sudan, shall be assigned to the Regions within which that tax is leviable in that year, and shall be distributed among those Regions in accordance with such principles of distribution as may be formulated by the national legislature by law.<sup>43</sup>

### **Article XXX**

#### **Taxes Levied and Distributed Between the Government of Sudan and the Regions**

- (1) All taxes and duties, except those referred to in the first two of the three preceding Articles, shall be levied and collected by the Government of Sudan and shall be distributed between the Government of Sudan and the Regions in the manner provided in clause (2).
- (2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall be assigned to the Regions within which that tax or duty is leviable in that year, and shall be distributed among those Regions in such manner and from such times as may be prescribed in the manner provided in clause (3).
- (3) In this article, "prescribed," means:

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<sup>42</sup> This language is drawn from the INDIA CONST. art. 268.

<sup>43</sup> This language is drawn from the INDIA CONST. art. 269.

- (a) Until a Finance Commission has been constituted, prescribed by the President by order, and
- (b) After a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.<sup>44</sup>

**OR**

**Article XXX**

**Fiscal Equalization System Act**

- (1) The Government of Sudan shall determine the distribution of revenue using two main criteria:
  - (a) Tax revenue – allocation based on provincial or local revenue of a tax; and
  - (b) Demographics – allocation based on the number of inhabitants of a province.
- (2) The Government of Sudan shall then allocate funds to cover special needs or purposes, including:
  - (a) Equalizing the average revenue of the provinces of Sudan;
  - (b) Housing development, environmental purposes, and infrastructure; and
  - (c) Transfers in accordance with section (3)
- (3) The Government of Sudan shall finance preventive measures against natural disasters and cover losses incurred by natural disasters through the National Disaster Fund. The Fund shall be financed by [X] percent of the Following taxes:
  - (a) Income tax;
  - (b) Wage tax;
  - (c) Tax on capital yields; and
  - (d) Corporation tax.<sup>45</sup>

**OR**

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<sup>44</sup> This language is drawn from the INDIA CONST. art. 270.

<sup>45</sup> This language is drawn from the Fiscal Equalization System of Austria, at 2-3, *available at* [http://english.bmf.gv.at/Budget/IntergovernmentalFi\\_252/Fiscal\\_Equalisation\\_System.pdf](http://english.bmf.gv.at/Budget/IntergovernmentalFi_252/Fiscal_Equalisation_System.pdf) (last accessed Sept. 23, 2007).

## **Article XXX**

### **General and Specific Purpose Transfers Act**

- (1) The Government of Sudan shall disburse two types of financial transfers to the provinces of Sudan:
  - (a) General purpose transfers; and
  - (b) Specific purpose transfers.
  
- (2) The general-purpose transfers shall equalize provincial revenue and enable each province to provide the same standard of services.
  
- (3) The specific purpose transfers shall be disbursed on the condition that [the provinces spend the money in the manner specified and/or match the amount of the transfer]. The specific purpose transfers shall provide funding for:
  - (a) Health;
  - (b) Education;
  - (c) Roads;
  - (d) Social welfare programs; and
  - (e) Any other area that the [Government of Sudan, National Legislature, or Independent Finance Commission] deems appropriate.<sup>46</sup>

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<sup>46</sup> This language is drawn from the Western Australia Department of Treasury and Finance; and the Department of Finance Canada.