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**Chapter 22**

**Sharing Resource Wealth in Conflict Settlements**

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**1 Introduction**

This chapter looks at the role of natural resources in conflicts and their place in conflict settlements. The scope is wider than ‘peace agreements’ because there are lessons relevant for peace agreements to be found in a variety of conflicts around resources, whether in a context of violence or of more peaceful politics. Very often the issues relating to resources are seen narrowly in terms of *resource revenue sharing*. Revenue sharing can, indeed, be central to resolving some conflicts. However, there can also be conflicts over access to and the actual use of resources. Even resources with little potential economic rent may be important for the sustenance and way of life of some peoples – so *access and use* can be important aspects of sharing the wealth of natural resources. Finally, the revenues from natural resources or their use and sustainability depend fundamentally on the management arrangements around them – on who decides. So, *resource management* arrangements are also part of the nexus of issues related to conflict and natural resources.

The chapter reviews experience on these three dimensions in a variety of conflict settlements, but then turns to how federal and devolved regimes have dealt with these matters, especially relating to petroleum. Federal experience highlights the role – often surprisingly limited – of ‘ownership’ in relation to resource management and revenue sharing. Federal and devolved regimes hold lessons for the possible settlement of some resource conflicts, which can have a strong regional dimension. Finally, the chapter considers how resource provisions in conflict settlements may relate to achieving peace and ending a conflict on the one hand, and to developing arrangements that will promote longer-term development on the other hand.

## 2 Natural Resources and Conflict

Natural resources play a role in many conflicts, sometimes as the principle object of the conflict, and at other times as a facilitator. Paul Collier and Anke Hoeffler have identified six possible links or ‘channels of causation’ between natural resources and conflict:

- Natural resources can be ‘honeypots’ over which people fight – though the fighting may be criminal or political.
- They can give secessionist movements credibility by suggesting affluence after independence. This can aid in mobilizing popular regional support for secession.
- They can provide financing for rebel groups. This may be especially true of diffuse resources, such as alluvial diamonds and coffee, and less so for point resources, such as oil.
- Rich resource endowments may relieve governments of the need for broader taxation and thus have the perverse effect of detaching governments from the need to be responsive to their population or electorates, which paying taxes would entail. Corruption is virtually endemic in poor countries with valuable resources.
- Rich resource endowments can also distort economic development by introducing ‘Dutch disease’, whereby the resource industry drives up exchange rates, rendering other industries non-competitive in export markets.
- A resource-based economy can be exposed to major shocks with commodity price collapses, which can force major fiscal cutbacks and increase the risk of conflict.<sup>1</sup>

The apparent relevance of natural resources in violent political conflicts was underlined in a United Nations report that found that in the 60 years since 1950 at least 40% of civil wars in Africa have been associated with natural resources. The resources in question include gems, timber, opium, oil, diamonds, tin, coca, gold, cobalt, cotton, natural gas, coffee, rubber, palm

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<sup>1</sup> Paul Collier and Anke Hoeffler, ‘High-Value Natural Resources, Development, and Conflict: Channels of Causation’, in Paivi Lujala and Siri Aas Rustad (eds.), *High-Value Natural Resources and Post-Conflict Peacebuilding* (Abingdon: Earthscan, 2012).

oil, nuts, fish, and charcoal.<sup>2</sup> Another study of conflict and natural resources in Africa added land, phosphates, bananas, water, pasture, livestock and ivory to the list of relevant resources.<sup>3</sup>

While natural resources can thus provide a causal link to violence, this is not automatic. The actual outbreak of violence will depend on other factors shaping the political, social and economic context. Collier and Hoeffler have found that the risk of civil war is highest when primary commodity exports make up about 25% of GDP, while at higher levels the risk generally decreases except in the case of high levels of oil dependency.<sup>4</sup> A critical factor in terms of context is the capacity and quality of government. Collier refers to the ‘seemingly intractable problem of unaccountable governance in the bottom billion’ where too often things go wrong because ‘incentives to plunder are too strong’<sup>5</sup> Thus, the least developed countries are especially at risk for violent conflict over resources. While more developed countries are not immune, with stronger governmental capacity they are more likely to be able to suppress or deter violence and to steer conflict into peaceful political channels.

A United Nations manual observes that ‘natural resource conflicts often occur at different scales or levels in ways that interconnect at local, regional, national, transboundary, or international levels.’<sup>6</sup> Thus, the spatial dimension of resource conflicts can be central to their dynamics. Very local conflicts, such as over water or pasturage, can be largely confined to small groups without presenting a direct challenge to the state – in fact, the state may serve as mediator or enforce a solution developed by others. In some cases, there may be warlordism with competing factions fighting over resources but having no real political agenda because the resource wealth is a greater prize than the capture of a very weak state. However, when

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<sup>2</sup> United Nations Environmental Program, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment* (Nairobi: UNEP, 2009), 11, 30.

<sup>3</sup> Sylvester Maphosa, ‘Natural Resources and Conflict: Unlocking the Economic Dimension of Peace-building in Africa’, African Institute of South Africa, Policy Brief No. 74, March 2012: [www.africaportal.org/documents/9915/No.-74.-Natural-Resources-and-Conflict..pdf](http://www.africaportal.org/documents/9915/No.-74.-Natural-Resources-and-Conflict..pdf) [last accessed 2 October 2018].

<sup>4</sup> Collier and Hoeffler, ‘High-Value Natural Resources, Development, and Conflict’, 298.

<sup>5</sup> Paul Collier, *The Plundered Planet: Why We Must—and How We Can—Manage Nature for Global Prosperity* (New York: Oxford University Press, 2010).

<sup>6</sup> United Nations Department of Political Affairs and United Nations Environment Programme, *Natural Resources and Conflict: A Guide for Mediation Practitioners* (New York, NY: United Nations, 2015), 11.

resources are regionally concentrated and the relevant regional population has a distinct ethnic or religious identity, combined with grievances over disempowerment, poverty and exploitation, a resource conflict may be linked to a major political challenge to the state. Regional rebels may seek independence or at least significant autonomy and benefits from the resources within the current state.

Different resources give rise to different forms of conflict and different demands. A key distinction is between resources that can generate significant economic rent – revenues for government or others – versus those that have weak revenue potential but are important in terms of their use by local inhabitants. Oil is the classic example of a resource that can provide enormous fiscal dividends for governments, so conflicts around oil tend to focus on who receives the revenues, as well as who controls petroleum activities. The same is true of many valuable minerals that are mined underground or through open-pits. There can also be non-fiscal issues, such the availability of jobs in these capital intensive industries and dealing with environmental impacts. In conflicts over land, water, and fisheries, by contrast, the central issue is usually access to the actual resource for the use of particular populations. Of course, in many cases the fiscal and use dimensions are both present, at least to some degree. Offshore fishing rights, for instance, can be sold to produce revenues for governments and so deprive locals of employment possibilities.

Mediators of various kinds have often participated in the conclusion of intra-state peace settlements that include provisions related to natural resources. On occasion, such as the negotiation of Sudan's Comprehensive Peace Agreement in 2005 (CPA),<sup>7</sup> international mediators played a central role in developing an elaborate set of provisions around natural resources, which were a critical issue for both parties to the conflict. But the influence of mediators, including those representing the UN Security Council, varies a great deal according to context. Later in this chapter I discuss some principles of 'best practice' in resource management, as well as their limits. Too often mediators have taken a narrow view of desirable natural resource provisions, but even if they advocate a more comprehensive and principled approach, they may find little interest on the part of the negotiating parties. And even the best provisions face the challenge of being respected during implementation.

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<sup>7</sup> Comprehensive Peace Agreement between the Government of Sudan and the SPLM/SPLA, 9 January 2005.

### 3 Resource Wealth Sharing Provisions in Peace Settlements

In looking at the provisions of peace settlements in relation to resource wealth sharing, it is important to distinguish the different dimensions of wealth sharing—sharing revenues, sharing the actual resource, and sharing control or management. When economic rents are significant the issue of *revenue sharing* (along with associated questions such as how revenues are collected, monitored, and used) is usually a dominant concern of the parties. With many resources, however, the economic rents are non-existent or minor (even if potential rents might be captured with an enlightened management regime). Instead, the focus of wealth sharing can be on who gets *access to use the resource* and on what conditions. In all cases, issues of *resource management* can be important because management will affect the pace of development, economic rents, the allocation of contracts, the productivity of the resource, its sustainability and environmental impacts, as well as its employment and other benefits. However, as we shall see, sharing management, which presents fundamental issues of governance, is more difficult than sharing resource revenues or the use of a renewable resource; this is further complicated when management control is seen as an avenue to enrichment through corruption.

Given this background, how have peace settlements actually dealt with these dimensions of revenue sharing, resource sharing and resource management? In the repository of ‘peace agreements’ in the UN Peacemaker database, there is tremendous variety in the content of resource provisions.<sup>8</sup> But, it is remarkable how few of these agreements are highly detailed given the variety of links between natural resources and conflict. Many are very sketchy. Moreover, and importantly, provisions relating to natural resources are usually only one part of a settlement dealing with many other issues. In fact, the success of resource provisions in conflict settlements can often depend heavily on other, non-resource arrangements. This chapter gives particular emphasis to conflict settlements that have a territorial dimension – those where at least one of the parties to the conflict has a territorial character and demands. Territorially organized groups may seek a special sharing of resource revenues, access to the use of resources, or control of resource activities, but such demands are often associated with

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<sup>8</sup> UN Peacemaker: <https://peacemaker.un.org/> [last accessed 2 October 2018].

much broader demands for local autonomy, which may be necessary to implement any resource sharing arrangements.

The nature of the conflicts in which resource issues are relevant varies greatly, from full-scale civil war or insurgency, to violent criminality, to periodic outbursts of civil violence in an environment of competitive electoral politics. Similarly, the ‘settlements’ range from those negotiated with a degree of equality between the sides, to those effectively imposed by a government, perhaps after a military or electoral victory. The legal form and force of settlements may be weak and essentially political agreements, or be strong with the force of law, perhaps entrenched in a constitution or with some element of international sanction.<sup>9</sup> What follows is largely a description of some elements in settlements as they relate to revenue sharing, resource sharing and resource management, with evaluation following in Section 5 of the chapter.

Relatively few of the peace provisions relating to natural resources make explicit reference to instruments of international law, although the peace agreements often include language, e.g. on human rights, that parallels that of international declarations and covenants. This lack of reference to international law is not surprising in intra-state settlements – to the extent that such agreements have legal force, it is primarily within the context of domestic law. In international law, according to the principle of permanent sovereignty over natural resources, a state has the sovereign right to original ownership of its resources, which entitles it to use, exploit and dispose of them for its benefit.<sup>10</sup> However, sovereign authority over natural resources can be understood as conditioned by the right of a country’s people to freely dispose of their natural resources, which was recognised in both the ICCPR and the ICESCR,

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<sup>9</sup> On the links between territorial cleavages, power arrangements and the ending of conflicts see: George Anderson and Sujit Choudhry, ‘Territorial Cleavages and Constitutional Transitions: Mobilization, Process and Design’, in George Anderson and Sujit Choudhry (eds.), *Territory and Power in Constitutional Transitions* (Oxford: Oxford University Press, forthcoming 2019).

<sup>10</sup> *Armed Activities on the Territory of the Congo (DRC v. Uganda)* [2005] ICJ Reports 168, para. 244. For more detail on the development and content of the principle of permanent sovereignty over natural resources see: Nico Schrijver, *Sovereignty over Natural Resources: Balancing Duties and Rights* (Cambridge: Cambridge University Press, 2008); Daniëlla Dam-De Jong, *International Law and Governance of Natural Resources in Conflict and Post-Conflict Situations* (Cambridge: Cambridge University Press, 2015), Chapters 2-3. For its relevance to the illegal exploitation of natural resources during wartime see Chapter 24 by Daniëlla Dam-de Jong in this volume.

as part of an intra-state dimension to the right to self-determination.<sup>11</sup> Although the content of this right is largely undefined, it may entail a broad obligation on states to use natural resources for the benefit of their population as a whole; and also a right of the people to participate in the process of political decision-making regarding natural resources.<sup>12</sup> The application of these principles within a state, however, allow for wide latitude, ranging from highly centralised to very devolved regimes of resource ownership and management—including federations in which sovereignty is constitutionally divided between orders of government. This is reflected in the very different domestic legal frameworks regulating ownership rights to natural resources, resource management and revenue sharing that we find in intra-state peace agreements as well as more settled constitutional arrangements in countries with little or no recent history of violence.

### **3.1 Natural Resource Provisions in Peace Agreements**

#### ***Provisions on Resource Revenue Sharing***

Most peace settlements have remarkably brief and often superficial provisions regarding resource revenue sharing. They frequently include some broad principles such as ‘equitable’ sharing,<sup>13</sup> or a ‘better division of national wealth’,<sup>14</sup> which may be expressed as being between different levels of government, or amongst the population. But, even when revenue sharing is important, the commitment may stop there (as in Comoros) or a settlement may leave the details for further determination at a later date (as in Madagascar). The Chittagong Agreement, for instance, provided that the Hill District Councils were to receive part of the royalty from forest and mineral resources as well as tax revenues from fishing, but the amounts were not specified.<sup>15</sup> Similarly, in Niger in 1995, the settlement merely referred to ‘a share ... to be determined’ for local government, without committing to any specific

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<sup>11</sup> International Covenant on Civil and Political Rights, New York, 16 December 1966, in force 23 March 1976, 999 UNTS 171, Article 1(1); International Covenant on Economic, Social, and Cultural Rights, New York, 16 December 1966, in force 3 January 1976, 993 UNTS 3, Article 1(1).

<sup>12</sup> When read with the right to political participation: ICCPR. Article 25.

<sup>13</sup> Accords d'Antananarivo (Comoros), 23 April 1999, Article 1(a); Charte de la Transition (Madagascar), 9 August, 2009, Titre 1, Article 2.

<sup>14</sup> Accord de paix entre le Gouvernement de la République du Tchad et le Mouvement National (MN), 25 July 2009, Article 10.

<sup>15</sup> Chittagong Hill Tracts Peace Accord (Bangladesh), 2 December 1997, paras. 35(g), (i), (l).

principles of determination.<sup>16</sup> And, the 2015 Agreement on the Resolution of the Conflict in South Sudan states that ‘wealth sharing and revenue allocation [between States and Counties] shall be worked out within three (3) months of the commencement of the Transitional Period’ and ‘shall be determined in the permanent constitution’.<sup>17</sup>

In some cases, specific principles or criteria for determining shares in resource revenue or other related financial distributions are given. The Doha Document for Peace, signed in 2011, is a good example. In that agreement, and also some other peace agreements for Sudan, there was a list of criteria including population, development indicators, effective revenue collection, impact of conflict, and geographic size that are to be assigned weights by a joint commission for fiscal allocations to determine wealth sharing between the states within Sudan.<sup>18</sup> These more specific principles can be framed by broader principles such as ‘equitable sharing’ so as ‘to enable each level of government to discharge its legal and constitutional responsibilities and duties to the people’.<sup>19</sup> Compensatory principles may also be used in a manner that can serve as a form of revenue sharing by factoring compensation into the costs of resource development. In Chiapas in 1996, for example, there was provision for compensation for damage to habitat caused by resource exploration and development.<sup>20</sup>

Some more robust settlements contain at least some quantitative apportionment of resource revenue as can be seen in the following:

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<sup>16</sup> Accord établissant une paix définitive entre le Gouvernement de la République du Niger et l’Organisation de la Résistance Armée (ORA), 15 April 1995, Article 22.B.

<sup>17</sup> Agreement on the Resolution of the Conflict in South Sudan, 17 August 2015, Chapter IV, Articles 6.2.4 and 6.2.5.

<sup>18</sup> Doha Document for Peace in Darfur (DDPD) (Sudan), 31 May 2011, Chapter III, Article 25. See also: Sudan Peace Agreement, 21 April 1997, Chapter Three, 4. Wealth Sharing; CPA, Chapter V: The Resolution of the Conflict in Southern Kordofan and Blue Nile States, Article 8.8.

<sup>19</sup> Doha Document for Peace in Darfur, Chapter III, Article 16, para.96.

<sup>20</sup> Actions and Measures for Chiapas Joint Commitments and Proposals from the State and Federal Governments and the EZLN (Mexico), 16 February 1996, Institutions for the Promotion, Development and Diffusion of Indigenous Cultures.

- Russian-Chechen settlement, 1995: The Chechen government was to decide issues of ownership, use and distribution of natural resources, and hence would receive 100% of resource revenues.<sup>21</sup>
- Indonesian-Aceh settlement, 2005: Aceh was to receive 70% of revenues from all current and future hydrocarbon deposits and other natural resources in Aceh and the territorial sea.<sup>22</sup>
- Philippine-Bangsamoro settlement: The 2012 Framework Agreement had very general language about equitable sharing and revenue sharing to be agreed by the parties, but in the addendum document of 2014 further details were spelled out. The Bangsamoro would receive 100% of non-metallic revenues, 75% of metallic revenues, 50% of fossil fuel revenues – although after four year these amounts would be deducted from the amount of annual block grants to be received from the central government with longer term fiscal arrangements to be reviewed annually by an Intergovernmental Fiscal Policy Board.<sup>23</sup> To date, this agreement is not yet ratified.
- Mali settlement, 2015: The Peace and Reconciliation Agreement of 2015 provided for territorial collectivities to receive 30% of budgetary receipts including an equalisation formula with special attention to the northern regions. In addition, territorial collectives were to receive ‘a percentage’ of revenues from the exploitation of natural resources on their territory according to criteria ‘to be mutually agreed’.<sup>24</sup>

It is also worth pointing out that resource revenue sharing may be implemented through broader fiscal arrangements. In Papua New Guinea, the settlement with Bougainville in 2001 provided that the national government and Autonomous Bougainville Government ‘will agree

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<sup>21</sup> Agreement on the Basic Principles of Relations between the Russian Federation and the Chechen Republic, 3 December 1995.

<sup>22</sup> Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, 15 August 2005, Article 1.3.4.

<sup>23</sup> Framework Agreement on the Bangsamoro, 15 October 2012; Annex on Revenue Generation and Wealth-sharing, 13 July 2013, I. Taxation, A. Taxing Powers, para. 4; VII. Natural Resources.

<sup>24</sup> Accord Pour la Paix et la Reconciliation au Mali – Issu du Processus d’Alger, 20 June 2015, Articles 14-15.

to equitable arrangements for sharing revenues' from offshore resources,<sup>25</sup> and that the re-opening of the lucrative Panguna mine would be on the basis of a re-negotiated settlement, with proceeds contributing to the restoration of services programs in the province.<sup>26</sup> Thus the terms regarding revenues from offshore resources are very general while those for the reopening of the very lucrative Panguna mine are left for subsequent negotiation. Against that backdrop, the agreement also includes extensive revenue sharing provisions through some devolved taxation powers and through fiscal grants that the national government is to provide.<sup>27</sup> Some of the grants are to be unconditional while others would be for specific purposes. The amounts of the general grants are to be adjusted in the same manner as those for provincial government activity; the amounts of development grants are to be determined by a formula. For the most part these provisions should be operational, but they do leave some flexibility to the national government to alter its general grants, so long as Bougainville is treated equitably.

### ***Provisions on Jurisdiction over, Access to and Use of Resources***

Relatively few intra-state peace agreements, other than those with indigenous peoples (discussed below), give significant attention to the sharing of actual resources. In some agreements, such as that in the Central African Republic in 2015, the language on use of resources, despite the centrality of resources to the conflict, is simple boilerplate: 'ensure the transparent and rational use of natural resources ... in order to contribute to the country's development'.<sup>28</sup> Such weak provisions have no real impact on how the national government is to use and exploit the natural resources over which it has ownership or jurisdiction.

However, in some cases when recognition of rights to use and exploit particular resources is important for a sub-national government or newly autonomous or devolved region more substantive provisions may be negotiated. The Aceh Memorandum of Understanding of 2005, for example, gives the government of Aceh jurisdiction over 'living natural resources in the

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<sup>25</sup> Bougainville Peace Agreement, 30 August 2001, Article 8.

<sup>26</sup> Waigani Communiqué, 18 May 1995.

<sup>27</sup> Bougainville Peace Agreement, Chapter 9.

<sup>28</sup> Republican Pact for Peace, National Reconciliation, and Reconstruction in the Central African Republic, 11 May 2015, Economic and Social Development.

territorial sea’ as well as on land.<sup>29</sup> Similarly, the Bangsamoro settlement would provide the Bangsamoro government with exclusive jurisdiction over ‘ancestral domain and natural resources’, and ‘all fishery, marine and aquatic resources’ within its territory, and its qualified citizens shall have ‘preferential rights’ in relation to fossil fuel and uranium concessions, as well as to living resources in the joint management zone offshore.<sup>30</sup> The Chechen Agreement on Basic Principles of Relations in 1995 effectively devolved jurisdiction over all resources to the Chechen government (although the main resource, petroleum, had been largely depleted).

Issues can also arise in peace negotiations in connection with the sharing of access to and use of natural resources between sub-national regions and local communities. In the 1985 Memorandum of Settlement for Punjab, for example, provision is made for the sharing of river waters for use by local farmers, and for consumption purposes, between the states of Punjab, Haryana and Rajasthan.<sup>31</sup> As another example, the 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law, between the Government of the Philippines and the National Democratic Front of the Philippines, requires the government to ‘respect the rights of peasants to land tenure and to own through land reform the land that they till’ and the ‘right of poor fisherfolk to fish in the waters of the Philippines’.<sup>32</sup> In the context of customary tribal claims, the Doha Document for Peace sets out a commitment that: ‘Tribal traditional land ownership rights (hawakeer), historical rights to land, traditional and customary livestock routes and access to water sources shall be recognised and protected’.<sup>33</sup>

Extremely unequal land ownership was a major issue in Colombia’s long armed conflict with FARC. So, access to land and land use, as well as the establishment of special development

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<sup>29</sup> Memorandum of Understanding (Indonesia), Article 1.3.3.

<sup>30</sup> Annex on Power-Sharing to the Framework Agreement on the Bangsamoro, 12 August 2013, Part Three, paras. III.(29), (37); Part Four, para. 2; On the Bangsamoro Waters and Zones of Joint Cooperation, Addendum to the Annex on Revenue Generation and Wealth Sharing and the Annex on Power-Sharing, 25 January 2014, para. 9.

<sup>31</sup> Memorandum of Settlement on Punjab, 24 July 1985, Article 9.1-9.2.

<sup>32</sup> Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law, 16 March 1998, Part III, Article 12.

<sup>33</sup> Doha Document for Peace in Darfur, Chapter III, Article 34, para. 188.

programs, were a priority in Colombia's peace negotiations, with a first agreement on rural reform and development in 2014, which was incorporated into the Final Agreement of 2016.<sup>34</sup> The land provisions deal with the establishment of a land fund to help facilitate comprehensive access to land ownership for land-poor peasants, formalisation of the titles of small rural property owners, and a special development program, along with citizen oversight regarding the transparency and acceptability of resource management.

### ***Provisions on Resource Management***

The effect of commitments in peace agreements to share resources or resource revenues can depend heavily on the management arrangements. Those who control the levers of governmental power can decisively determine the kind and pace of resource development, as well as the fiscal terms and resulting governmental revenues. When the conflict has had a strongly territorial character, the general governance arrangements, including federalism or devolution, can be central to the terms of a peace agreement.

Sometimes, an agreement on resource management is sought between a central government and an already existing regional government within a federal or devolved structure, so the issue relates to the respective powers over resources of the two orders of government. This is evident in the Agreement on the Basic Principles of Relations between the Russian Federation and the Chechen Republic, which effectively granted Chechnya full powers to control and manage resources within its territory. (This was unique within Russian experience, where the general movement was to centralise control and revenues.)<sup>35</sup> Often the agreement is sought with a rebel leadership, who may be seeking a separate government for their region and people, as was the case for Aceh, Bangsamoro, Bougainville, Mizoram, and South Sudan. So, the agreement may have to deal with more general issues of creating a new government (or governments) as well as the respective authority of the central and regional governments in relation to resources. In Papua New Guinea, for example, the agreement provided for the establishment of the Autonomous Government of Bougainville, which would have the right to assume 'increasing control' over a range of powers, including over the vital

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<sup>34</sup> Hacia un Nuevo Campo Colombiano: Reforma Rural Integral, 6 June 2014; Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, 24 November 2016, Chapter 1.

<sup>35</sup> Galina Kurlyandskaya *et al.*, 'Russia', in George Anderson (ed.), *Oil and Gas in Federal Systems* (Toronto: Oxford University Press, 2012), 284.

mining sector and a role in the allocation of fishing rights in its offshore area.<sup>36</sup> In 1989, rebels succeeded in shutting the Panguna mine, which provided 40% of Papua New Guinea's GNP but was deeply resented in Bougainville because of its environmental devastation, the racist culture of its management, and the weak employment and revenue sharing benefits locally. The situation deteriorated into a bloody civil war that ended with a peace agreement in 2001. Despite the Bougainville Government now having legal authority over the mine, revenues from which would be essential if Bougainville's independence were to be realised, the mine remains shut because of deep divisions within the Bougainville population<sup>37</sup>.

Central authorities may resist giving any very formal commitment to create or empower subnational governments. Thus, in Mali, the agreement of 2015 was 'without prejudice to the sovereign prerogatives of the state' though the parties agreed on 'the need for a consultation between the state and region on the exploitation of natural resources, notably minerals'.<sup>38</sup> An undertaking to consult guarantees little or nothing, but if honoured it would at least admit the legitimacy of the subnational governments having voice and an interest in resource developments.

### ***Comprehensive Peace Agreement for Sudan 2005***

A notable exception to the sketchiness of many peace agreements on resource issues is the CPA in Sudan, signed in January 2005, which brought an end to a civil war over religion, race, and resources that had raged, with one eleven year hiatus, since 1955. The CPA emerged at the end of a complex process of formal negotiations, which started in 2002, and produced six protocols on key issues that formed the basis for the eventual comprehensive agreement. The key issues included wealth sharing as well as process, security arrangements, power sharing, and regional issues. The CPA provided for a devolved system of government, with an interim Government of National Unity in Khartoum as well as what was effectively a federal

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<sup>36</sup> Bougainville Peace Agreement, 30 August 2001, Introduction and Outline, 1. Autonomy; Articles 85-88; The Constitution of the Autonomous Region of Bougainville 2004, Section 23; Schedule 4; Constitution of the Independent State of Papua New Guinea 1975 (as amended to 2014), Section 290.

<sup>37</sup> Catherine Wilson, 'The New Battle for Bougainville's Panguna Mine', *The Interpreter*, 21 August 2018: [www.lowyinstitute.org/the-interpreter/new-battle-bougainville-s-panguna-mine](http://www.lowyinstitute.org/the-interpreter/new-battle-bougainville-s-panguna-mine) [last accessed 10 December 2018].

<sup>38</sup> Accord Pour la Paix et la reconciliation au Mali, Article 12.

arrangement within this devolved structure for southern Sudan.<sup>39</sup> There were power-sharing protections for the south in central institutions, e.g. a requirement that legislation affecting the interests of states would require a two-thirds majority, that some presidential decisions would require the consent of the first vice-president, who would be a southerner, and that 34% of ministerial posts would go to southerners.<sup>40</sup> A new Constitutional Court was to adjudicate on disputes related to the interim constitution.<sup>41</sup> All of these were interim arrangements because a critical provision recognised the right of southern Sudan to self-determination, where the question of independence would be put to a referendum in six years.<sup>42</sup> An Assessment and Evaluation Commission, composed of Sudanese and international representatives, with a British chair, was to monitor the implementation of the CPA.<sup>43</sup>

Resource issues were central in the agreement. The majority of the country's substantial oil production was in southern Sudan, which had less than a third of the population, while the delivery of oil to markets required traversing northern Sudan. A National Petroleum Commission with equal representation of the north and south was to make decisions by consensus on matters such as petroleum policies, all contracts, and regulations and procedures.<sup>44</sup> An Oil Revenue Stabilisation Account would receive net revenues from exports above an agreed benchmark price and a Future Generation Fund would be established once national oil production reached two million barrels per day.<sup>45</sup> Producing states or regions would receive at least 2% of revenues from their oil production. After these allocations, the balance of net revenues from southern oil production would be shared 50/50 between the national and southern Sudan governments. There were detailed separate provisions regarding the sharing of non-oil revenues.<sup>46</sup>

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<sup>39</sup> See e.g. CPA, Chapter II: Power Sharing, Article 1.5.

<sup>40</sup> CPA, Chapter II, Articles 2.2.5, 2.2.7.3, 2.3.6.

<sup>41</sup> CPA, Chapter II, Article 2.11.2.

<sup>42</sup> CPA, Chapter II, Articles 1.3, 2.5,

<sup>43</sup> CPA, Chapter II, Article 2.4.

<sup>44</sup> CPA, Chapter III: Wealth Sharing, Articles 3.2-3.5.

<sup>45</sup> CPA, Chapter III, Article 5: Guiding Principles for Sharing Oil Revenue.

<sup>46</sup> CPA, Chapter III, Article 6: Sharing of Non-Oil Revenue.

A related issue had to do with the major oil producing region of Abyei, which was claimed by both north and south; there was to be a referendum of residents on whether to join the north or south, the outcome of which would have important implications for oil revenue sharing.<sup>47</sup> A joint Fiscal and Financial Allocation and Monitoring Commission would oversee the implementation of the financial provisions.<sup>48</sup> There were articles dealing with reconstruction and development funds for north and south, including multi-donor funds.<sup>49</sup>

The Assessment and Evaluation Commission in its mid-term report of 2008 found many deficiencies in the implementation of the CPA, but that the wealth sharing arrangements were largely being implemented. There was slippage and weaknesses in power-sharing and the critical issue of Abyei needed priority attention.<sup>50</sup> A less optimistic and more politically unvarnished view was that activities during the interim period from 2005 to 2011 ‘utterly failed to make unity attractive for southern voters’, with:

... widespread short-comings in implementation of the CPA’s key provisions: the sharing of oil revenue was ambiguous; the withdrawal of combatants across borders delayed; security sector reform superficial and ineffective; national legal reforms stymied; and contested borders left unresolved. The CPA’s protocol governing the disputed sub-region of Abyei was violently abrogated. Additionally, the gaping failure of the period was the deeply flawed interim elections that were delayed repeatedly and only eventually held in April 2010. The elections were boycotted by the opposition parties in the North ... and in the South were marred by accusations of intimidation by the dominant SPLM government.<sup>51</sup>

The problems with implementation included a lack of capacity, especially in the south, but more fundamentally a lack of political will on both sides to make a united Sudan function in a way that would serve joint interests. Perhaps the best outcome of the CPA was that it provided a relatively peaceful framework for the breakup of the country, although the conflict

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<sup>47</sup> CPA, Chapter IV: The Resolution of the Abyei Conflict, Article 1.3.

<sup>48</sup> CPA, Chapter III, Article 8: Fiscal and Financial Allocation and Monitoring Commission (FFAMC).

<sup>49</sup> See e.g. CPA, Chapter III, Article 15.

<sup>50</sup> Assessment and Evaluation Commission, ‘Mid Term Evaluation Report’, Submitted pursuant to the CPA, July 2008: [https://reliefweb.int/sites/reliefweb.int/files/resources/99898E01F6E35B10852575ED00759A94-Full\\_Report.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/99898E01F6E35B10852575ED00759A94-Full_Report.pdf) [last accessed 9 October 2018].

<sup>51</sup> Matthew LeRiche and Matthew Arnold, *South Sudan: From Revolution to Independence*, (Oxford: Oxford University Press, 2013), 18-19.

over Abyei, and other border issues, remain unresolved and have led to clashes, while South Sudan itself has spiralled into civil war.

### ***Resource Provisions in Agreements with Aboriginal Groups***

Settlements of conflicts with aboriginal groups merit separate mention for two reasons: there are distinct principles around aboriginal rights; and, settlements with aboriginals tend to focus more heavily on the use of resources and their management than on revenue sharing. The distinct principles have been captured in the Indigenous and Tribal Peoples Convention, approved by the International Labour Organization. This calls for recognition of the ‘rights of ownership and possession by the peoples concerned over the lands which they traditionally occupy’, and for their rights to the ‘natural resources pertaining to their lands (to be) ... specially safeguarded’.<sup>52</sup> For sub-surface resources where the State retains ownership, governments are to establish procedures to consult regarding any prejudice to indigenous communities’ interests from proposed activities and, whenever possible, to provide for them to participate in the benefits and receive compensation for any damages.<sup>53</sup> Twenty-three countries, including fifteen in Latin America, have ratified the convention; but even in some countries that have not ratified, the convention has become politically significant. However, as the experience of Mexico and Guatemala indicates (discussed below), ratification has not always led to countries honouring the obligations.

Aboriginals, who have lived in a particular area for many generations and engaged in traditional resource harvesting and use, often come into conflict with resource developers and governments over resource development and revenue sharing. Agreements have been concluded with aboriginal groups in a number of countries, including Canada, Colombia, Guatemala, Mexico, New Zealand, Panama, and the Philippines. Not all of these agreements are ‘peace agreements’ following significant violence, but all have arisen in contexts of prolonged conflict of one kind or another, and offer some lessons. The following examples illustrate some of the issues and different approaches to resolving them.

### **Guatemala**

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<sup>52</sup> ILO Convention No. 169, Indigenous and Tribal Peoples Convention, Geneva, 27 June 1989, in force 5 September 1991, 1650 UNTS 383, Articles 14(1), 15(1).

<sup>53</sup> *Ibid.*, Articles 6, 15(2)

The 1995 Agreement on Identity and Rights of Indigenous Peoples had extensive provisions on the historic discrimination against indigenous peoples, their identity, the rights of indigenous women, cultural rights, language, place names, spirituality, education and science, mass media, customary law, local governance and participation of indigenous at all levels of government.<sup>54</sup> The government undertook to promote approval of ILO Convention No. 169 and to promote a bill incorporating the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>55</sup> The natural resource provisions were dealt with as rights relating to land.<sup>56</sup> The government undertook to regularise land tenure of indigenous communities and to establish rules recognizing the right to administer their lands in accordance with custom, as well as to require approval of indigenous communities for natural resource projects affecting their subsistence and way of life, while providing compensation for losses suffered as a result of resource exploitation. There were no provisions regarding resource revenue sharing as such.

The UN Secretary-General was formally requested to undertake verification of the implementation of the agreement.<sup>57</sup> Guatemala ratified ILO Convention No. 169 in 1996. However, in 1999 a referendum on four proposed constitutional amendments that would have recognised indigenous rights was defeated. A human rights NGO found that ‘little that is concrete has occurred to improve the lot of the indigenous population following the end of the 36-year civil war’, given a lack of political will to enforce laws and implement the peace accords. Less than 1% of export-oriented agricultural producers still control 75% of the best land. There have been recent violent conflicts over mining and hydro-electric developments, which has led to the forced removal of indigenous residents as well as pollution. The government has authorised major resource projects on indigenous lands without their

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<sup>54</sup> Agreement on Identity and Rights of Indigenous Peoples (Guatemala), 31 March 1995; incorporated into: Agreement on a Firm and Lasting Peace, 29 December 1996, Article 15(d).

<sup>55</sup> *Ibid.*, I. Identity of Indigenous Peoples, C. International Instruments.

<sup>56</sup> *Ibid.*, IV. Civil, Political, Social and Economic Rights, F. Rights relating to lands of the indigenous peoples.

<sup>57</sup> *Ibid.*, VII. Final Provisions, para. 1.

approval and ‘the existing legal mechanisms available for indigenous communities to defend their rights to land and to free, prior and informed consent are not effective’.<sup>58</sup>

## **Mexico**

In February 1996, the Mexican government signed an accord with the representatives of the EZLN (Zapatistas) that was to be a first step in ending the conflict in Chiapas.<sup>59</sup> The accord included respect for the diversity of the indigenous population and called for their greater participation relating to public expenditures and their own development plans, while affirming their autonomy and right to self-determination within the constitutional framework of the State. On resources, it stipulated that legislation would recognise the right of indigenous to receive compensation when the exploitation of their natural resources by the State causes damage to their habitat,<sup>60</sup> and their ‘right to use and enjoy the natural resources of their territory, as defined by Articles 13.2 and 14 of the ILO Convention 169, through the agency of the government or administration established, with the exception of resources in strategic areas and those over which exclusive control falls to the nation’.<sup>61</sup>

In the end, the measures amounted to little more than an agreement to dialogue, with recognition of the need for a new legal framework. The Mexican government soon dissociated itself from the accord and put forward alternative positions, which the ELZN rejected. Eventually, the Mexican Congress passed a law that allowed state governments to choose whether to recognise indigenous autonomy, which few have done. The conflict remains unresolved, although in 2017 the Zapatistas formally renounced violence on the grounds that Mexico has too much of it; at the same time, they exercise effective control over many communities.<sup>62</sup>

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<sup>58</sup> Minority Rights Group, ‘Guatemala: Maya’, January 2018: <http://minorityrights.org/minorities/maya-2/> [last accessed 10 October 2018].

<sup>59</sup> Agreement Regarding the Joint Proposals between the Federal Government and the EZLN, 16 February 1996.

<sup>60</sup> *Ibid.*, para. 2.

<sup>61</sup> Commitments for Chiapas by the State and Federal Governments and the EZLN under Paragraph 1.3 of the Rules of Procedure, 16 February 1996, Constitutional Framework for Autonomy.

<sup>62</sup> Paulina Villegas, ‘In a Mexico “Tired of Violence”, Zapatista Rebels Venture into Politics’, *New York Times*, 26 August 2017: [www.nytimes.com/2017/08/26/world/americas/mexico-zapatista-subcommander-marcos.html](http://www.nytimes.com/2017/08/26/world/americas/mexico-zapatista-subcommander-marcos.html) [last accessed 10 October 2018].

## **Panama**

By contrast, the accord with the Ngäbe-Buglé people in 2012 seems quite robust in its specifics.<sup>63</sup> It cancelled all mineral concessions within their territory and required any hydro project to obtain approval from the Ngäbe-Buglé authorities and by referendum. It also provided the Ngäbe-Buglé people with a share of revenues and of non-specialised jobs. However, a court challenge by the Ngäbe-Buglé people has failed to halt the construction or operation of the Barro Blanco dam, which flooded some of their territory. And, in 2003, UN Special Rapporteur James Anaya found numerous violations of indigenous rights because of the development of large investment projects in their territories, with ‘the loss of large areas of indigenous lands and natural resources, as well as the fragmentation of control and decision-making that indigenous authorities exert on their land.’<sup>64</sup>

## **Canada**

While there has been no violence between the government and most indigenous people in Canada, in 1973 the federal government committed itself to negotiating comprehensive land settlements with indigenous groups that were not already resolved under treaty. By 2015, the federal government had settled 26 comprehensive claims and was negotiating several others. By way of example, the Nisga’a Final Agreement of 1999 in British Columbia and the Nunavut settlement of 1993 in the High Arctic are both exceptionally detailed and took years to negotiate.

Under the Nisga’a Final Agreement, some 2,000 square kilometers of land is owned in fee simple by the Nisga’a nation, with full rights to subsurface minerals.<sup>65</sup> The accord sets out principles and authorities in relation to forestry, fisheries and wildlife management.

The Nunavut settlement led to the creation of a vast new territory within the federal system, in which the majority of the population is Inuit. It sets out the powers and responsibilities of

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<sup>63</sup> Normativa Resultante de la Discusión Relativa al Artículo 5 Eliminado en el Primer Debate del Proyecto de Ley 415 del 25 de Enero de 2012, 7 February 2012; Acuerdo entre el Gobierno Nacional y la Autoridad Tradicional de la Comarca Ngäbe-Buglé, 15 March 2012.

<sup>64</sup> ‘UN expert urges Panama to strengthen rights of indigenous people’, *UN News*, 29 July 2013: [www.un.org/apps/news/story.asp?NewsID=45518#.Wk59Ja2-Ikg](http://www.un.org/apps/news/story.asp?NewsID=45518#.Wk59Ja2-Ikg) [last accessed 13 October 2018].

<sup>65</sup> Nisga’a Final Agreement, 27 April 1999.

the territorial government, while also creating an Inuit trust corporation for funds reserved for their benefit.<sup>66</sup> The Inuit corporation is to own 18% of the territory's land and 2% of the subsurface and to receive all revenues from them. The territorial government, which serves all residents of the territory, receives 50% of the first CA\$2 million in resource revenues from public lands plus 5% of revenues beyond that (which is negligible against a block grant well in excess of CA\$1 billion).<sup>67</sup> Resource management was a critical issue: wildlife and water management is effectively devolved to boards that have a majority of local representatives, although the federal government has the right, subject to strict criteria, to disallow decisions that run counter to federal policy. There are different categories of land, some of which are Inuit owned, while for others the local and territorial governments have specified rights. There are provisions for Inuit shares of resource royalties and for consultations with them on petroleum resource activities.

Since these modern treaties were settled, the Supreme Court of Canada has greatly strengthened the nature of all governments' obligation to consult aboriginals on projects that would affect their rights. An assessment of Canada's modern treaties has found that they have significantly increased the real income of the affected communities (by some 17% over ten years compared with communities not under modern treaties). These modern treaties have clarified property rights and facilitated the cooperation between aboriginal communities and private companies in developing extractive industries such as mining.<sup>68</sup>

### **3.2 Comparative Experience in Federal and Devolved Regimes**

Several federal and devolved regimes have had major political conflicts around natural resources, which have led to settlements. While deals on natural resources reached peacefully through domestic politics fall outside any strict definition of 'peace agreements', the

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<sup>66</sup> Agreement between the Inuit of the Nunavut Settlement Area and her Majesty in Right of Canada, 25 May 1993.

<sup>67</sup> Anthony Speca, 'Nunavut, Greenland and the politics of resource revenues', *Policy Options*, 1 May 2012: <http://policyoptions.irpp.org/magazines/budget-2012/nunavut-greenland-and-the-politics-of-resource-revenues/> [last accessed 13 October 2018]. By comparison, in its agreement with Denmark, the Greenland government receives all of the first 75 million krone in resource revenues and effectively 50% of the rest (100% minus 50% reduction in its block grant).

<sup>68</sup> Fernando Aragon, 'The Effect of First Nations Modern Treaties on Local Income', C.D. Howe Institute E-Brief, 28 October 2015: [www.cdhowe.org/public-policy-research/effect-first-nations-modern-treaties-local-income](http://www.cdhowe.org/public-policy-research/effect-first-nations-modern-treaties-local-income) [last accessed 13 October 2018].

experiences in such regimes can offer lessons of potential relevance to the design of resource settlements in future peace agreements. The natural resource that has most often been at the centre of political confrontation and conflict is petroleum. It is a ‘point resource’, extracted in particular localities whose inhabitants may consider it ‘their’ oil or gas; it generates huge rents, because the cost of extraction is normally well below the market price. So, this section focuses on issues around the sharing and management of petroleum revenues within federations. This can serve as a proxy for many other extractive non-renewable resources and contains lessons of general application. One lesson is the great variety of approaches, which means there is no single best way – or certainly not one widely accepted way – to manage these issues.

Conflict around resources in federal and devolved countries varies with the role they have in a national economy, but other factors matter too. As I wrote in a comparison of petroleum revenue powers and sharing across federal systems:

The greater the importance of petroleum revenues, the greater the political stakes relating to their allocation. There is no unique approach, and the rules for the allocation of resource revenues reflect constitutional provisions, the broader culture around fiscal sharing and equalization in the federation, and, perhaps, the depth of regional divisions (where deeper divisions may make the producing regions less inclined to share).<sup>69</sup>

The issues around revenue sharing and management have sometimes caused severe conflict, including outbreaks of violence, within federal or devolved systems. The Nigerian and Venezuelan economies have been dominated by petroleum, while in Russia, Malaysia and Mexico petroleum has been exceptionally important but not fully dominant economically. In Canada and Brazil the petroleum sector has been a significant but usually a secondary part of the national economy, whose political sensitivity has waxed and waned with oil prices and other issues, such as climate change.

The management and fiscal arrangements for petroleum vary greatly and reflect the circumstances of individual countries. In federations where petroleum dominates or is extremely important, the central government invariably takes control of management, while

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<sup>69</sup> George Anderson, ‘Reflections on Oil and Gas in Federal Systems’, in Anderson, ‘Oil and Gas in Federal Systems’, 371, at 380-381.

producing states may get substantial (Nigeria), little (Venezuela) or virtually no (Russia) special allocation of revenues. In Russia's case, petroleum production was long concentrated in two jurisdictions with very small populations and for a while they received a substantial share of petroleum revenues, but this was cut sharply in 2002 and progressively reduced to zero by 2010.<sup>70</sup> In fiscally centralised Malaysia, the states receive a 5% royalty for petroleum produced in their region, but this is a small fraction of the federal government's fiscal take from petroleum, much of which is through the state oil company, Petronas.<sup>71</sup> Until recently, Mexico had no royalty or fiscal regime for petroleum and the federal government received its fiscal take directly from the state oil company, Pemex, with no special share assigned to producing regions.<sup>72</sup> By contrast, in Brazil, it is the producing states, and even the municipalities adjacent to producing areas, including the offshore zone, that are the big fiscal winners, getting a much larger share of petroleum revenues than the federal or other state governments.<sup>73</sup>

Such different arrangements produce highly variable allocations of petroleum revenues within federations. The balance adopted between the competing principles of derivation and equalisation is key: regimes favouring the derivation principle demonstrate the greatest disparities in fiscal shares. These disparities are a function of the size of production, the overall fiscal take from the industry, and the share allocated on the basis of derivation to the producing states. When these are all large, fiscal disparities across states can be dramatic, and especially in per capita terms if the producing jurisdictions (states or municipalities) have relatively small populations. In Nigeria, when oil prices are high, the per capita revenues flowing to states can vary by a factor of ten times or more between the most favoured petroleum producing state and the poorest non-producing state.<sup>74</sup>

Political conflict around resource revenues is most likely when the revenues are substantial, but the political cultures across federations have, for historic or other reasons, very different

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<sup>70</sup> Kurlyandskaya *et al.*, 'Russia', in Anderson, 'Oil and Gas in Federal Systems', 284, at 297.

<sup>71</sup> Wee Chong Hui, 'Malaysia', in Anderson, 'Oil and Gas in Federal Systems', 157, at 168-172.

<sup>72</sup> Victor Carreon-Rodriguez and Juan Rosselon, 'Mexico', in Anderson, 'Oil and Gas in Federal Systems', 192.

<sup>73</sup> Sergio Wulff Gobetti *et al.*, 'Brazil', in Anderson, 'Oil and Gas in Federal Systems', 61.

<sup>74</sup> Rotimi Suberu, 'Nigeria', in Anderson, 'Oil and Gas in Federal Systems', 227, at 239-240.

approaches to the competing claims of ‘derivation’ and ‘equalisation’ as principles for revenue allocation. This means that the political tolerance for disparities on the one hand, or for lack of a share of local revenues on the other, can be as important in shaping conflict as the actual allocation of petroleum revenues. One caveat, however, is that when petroleum revenues rise or fall dramatically this can place what might have been a relatively stable accord on petroleum revenue allocation under strain – so producing states may want a greater share as total petroleum revenues plummet, while non-producing states may ‘want in’ if they soar. Canada had a major political conflict over petroleum revenues when they peaked after the second oil shock in the early 1980s; and, in Brazil, the major offshore petroleum discoveries sparked renewed political tensions over the sharing of revenues.

While petroleum revenues are often shared in federations, federations almost always concentrate petroleum and other major non-renewable resource *management* within only one order of government. In the older federations (Argentina, Australia, Canada, United States) the management of on-shore petroleum is with the member states, reflecting the historic origins of these federations in bringing together formerly autonomous units. In all other federations – including those in the developing world with modern constitutions – management is with the federal government. The order of government that does not have direct management of petroleum may, in some cases, have some regulatory authority over the industry, e.g. through jurisdiction on labour, environment, internal market, exports or some powers of taxation. Canada is the one major exception to management always being with one order of government. It has joint management of its petroleum resources offshore in the provinces of Newfoundland and Nova Scotia, where under federal-provincial agreements jointly appointed management boards oversee day-to-day regulation, while major decisions (such as initiating licensing rounds or approving development plans) require the consent of the federal and provincial ministers.

Federal constitutions can deem ‘ownership’ of sub-surface resources to be with the national government, the state governments or joint. Surprisingly, however, ‘ownership’ does not necessarily indicate which order of government manages the resource or gets the primary fiscal benefit. For example, in India and Malaysia ownership is with the states, but management is with the federal government, which gets most of the revenue; in Pakistan

ownership is joint, but management is federal. In Brazil, ownership and management are federal, but most revenues go to the states and municipalities; while, in Argentina, ownership and management are provincial but most revenue goes to the federal government.<sup>75</sup>

It can almost be argued that ‘ownership’ is irrelevant to which order of government manages the resource or receives the greater share of revenues. Of course, in several federations the ‘owner’ does manage the resource and gets the larger share of revenues, but in many others this is not the case because other provisions constrain the legal importance of ownership (rather as bylaws can limit what a property owner can do with his property). In India, Malaysia, and Pakistan, the value of resource ownership to the states seems limited to receiving ‘resource royalties’, but the value of these royalties are determined by the federal governments, which extract far more significant revenues using other instruments. This point about the irrelevance or marginal importance of ownership was graphically demonstrated in Sudan’s CPA, which set aside the issue of ownership and focused on management and revenue sharing arrangements.<sup>76</sup> The symbolism of ownership was too politically fraught to permit agreement on where it lay, so the negotiators worked around it by focusing on control and wealth-sharing.<sup>77</sup>

With this background, we can look at experiences of political conflict over petroleum resources in three devolved regimes. Of these, only Nigeria is technically a federation, but Bolivia and Peru also have elected governments at the regional level with significant responsibilities.

## **Nigeria**

Oil was a significant cause of Nigeria’s civil war in that the Igbo elites strongly resented the new state structure imposed by the military, which they saw as concentrating most of their population in a state that was cut off from the significant oil production in neighbouring states. At the beginning of Nigeria’s petroleum industry in the 1960s, producing states

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<sup>75</sup> Anderson, ‘Reflections on Oil and Gas in Federal Systems’, 378-379.

<sup>76</sup> CPA, Chapter III, Articles 2.1-2.2.

<sup>77</sup> Nicholas Haysom and Sean Kane, ‘Negotiating Natural Resources for Peace: Ownership, Control and Wealth-sharing’, Humanitarian Dialogue Briefing Paper, October 2009, 8-9: [http://comparativeconstitutionsproject.org/files/resources\\_peace.pdf](http://comparativeconstitutionsproject.org/files/resources_peace.pdf) [last accessed 16 October 2018].

received 50% of petroleum revenues, but during the long period of military rule this was cut back as production rose substantially, eventually to nothing (except special grants to deal with environmental damage). The minimum share of producing states was set at 13% in the 1999 Constitution at the time of transition to democracy,<sup>78</sup> but this was imposed by the outgoing military and there has never been a general political agreement on the respective shares in petroleum revenue. The producing states continue to argue for a higher share, even though they are highly privileged compared to the non-oil producing states, e.g. in 2008 they received over 50% of federal transfers to the states while having only 22% of the population.<sup>79</sup>

The benefits of these large transfers, for which state governments have no accountability, have not been felt by the populations of the oil producing states, with continuing corruption, poverty, unemployment and environmental despoliation. Criminal gangs attack oil installations and bunker large quantities of oil. The federal government's response has been to create a special Niger Delta Development Commission, as well as a separate Ministry, which have additional financial resources. In practice, however, these have not been effective, and so there continues to be political acrimony over shares as well as the violent criminality plaguing the industry.<sup>80</sup>

## **Bolivia**

Bolivia's mining and petroleum sectors came to dominate exports in the early 2000s and this new wealth led to major political struggles between the traditional elites of the lowlands and the popular-indigenous movements of the highlands. At different stages, the conflict saw lowland gas producing departments holding referendums on autonomy, a major constitutional crisis, and bitter national elections.

In 2005, petroleum revenues went largely to the centre, but under a complex formula a significant share was distributed to producing departments and a much lesser share to other

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<sup>78</sup> Constitution of the Federal Republic of Nigeria 1999, section 162(2).

<sup>79</sup> Suberu, 'Nigeria', 239.

<sup>80</sup> Alphonsus Isidiho and Mohammad Sabran, 'Challenges Facing Niger Delta Development Commission (NDDC) Projects in Imo State and Niger Delta Region in Nigeria' (2015) 5(6) *International Journal of Humanities and Social Science* 37.

departments; per capita petroleum revenues varied by department from US\$875 to only US\$28. The following year, newly elected President Morales reduced by 30% the share of petroleum revenues going to producing departments, and this sparked serious outbreaks of violence, which led to mediation by neighbouring countries. Morales' victories in referendums and elections gave him the upper hand politically, permitting him to reach agreements on key constitutional items with the opposition. He succeeded in imposing new fiscal arrangements to the advantage of the centre, the highland areas and indigenous people, but the producing departments continued to receive substantial benefits from petroleum revenues, even if less than they had demanded. The political situation has stabilised, but the dramatic fall in petroleum prices since 2014, along with Morales' ambitions for an additional presidential term, has exacerbated tensions over revenue sharing.<sup>81</sup>

## **Peru**

Peru has developed a decentralised system of government with regions, provinces and districts or municipalities below the national level. The country's extractive industries – copper, silver and gold – drove a 76% increase in GDP between 2005 and 2015 and a halving of poverty to 21% of the population. Over time, Peru has developed a complicated system with four major kinds of resource revenues, each of which is allocated in a different way amongst governments. The major beneficiaries are producing districts or municipalities, with producing regions in second place. In 2014, the most favoured municipality received US\$471 per capita, while the least favoured got US\$20 per capita; for regions, the per capita allocations ranged from US\$145 to zero (although these disparities are somewhat reduced by larger shares of non-resource transfers going to non-producing regions and districts).

The strong emphasis on distributing resource revenues to producing areas – the derivation principle – responded to demands from those areas for benefits from the exploitation of 'their' resources, as well as for compensation for environmental damage.<sup>82</sup> One study found that high resource revenues tend to increase conflict in producing regions, while another

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<sup>81</sup> Gustavo Bonifaz Moreno and George Gray Molina, 'Bolivia', in Anderson and Choudhry, 'Territory and Power in Constitutional Transitions'.

<sup>82</sup> María Lasa Aresti, 'Mineral Revenue Sharing in Peru', Natural Resource Governance Institute, Revenue Sharing Case Study, April 2016: [https://resourcegovernance.org/sites/default/files/documents/mineral-revenue-sharing-in-peru\\_0.pdf](https://resourcegovernance.org/sites/default/files/documents/mineral-revenue-sharing-in-peru_0.pdf) [last accessed 16 October 2018].

suggests that they create perverse incentives that discourage open and democratic government.<sup>83</sup> As of 2007, Peru was experiencing some 200 community-level conflicts a year, 70% of which were linked to extractive resources, and these imposed significant economic costs and resulted in many deaths and injuries. The subject matter of these disputes includes pollution, water-use, land-acquisition, human rights violations and weak governance.

The government has strengthened environmental institutions, expanded programs for social investment in territories with extractive industry and developed new participatory multi-stakeholder dialogue mechanisms around resource development. The dialogue mechanisms address specific territorial needs and have resulted in concrete commitments and actions, including significant investments, by all parties. These processes have required substantial capacity development through training, regulatory frameworks, coordination mechanisms and support to civil society, and they are credited with resolving between 21 and 53 conflicts a year between 2012 and 2015.<sup>84</sup>

## **4 Evaluation of Resource Provisions in Conflict Settlements**

### **4.1 Conflict Settlements and Peace**

The primary objective of most conflict settlements is to resolve the conflict, that is to achieve at least the level of agreement necessary for guns to be put down, the violence to end, and peace to be achieved. The most elaborate agreements – those for Aceh, Bougainville, the Bangsamoro, Colombia (FARC) and Sudan – were all the products of very extensive negotiations, often stretching over years. If achieving peace is the standard, these agreements largely succeeded, and the resource provisions were important.

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<sup>83</sup> Aldo Ponce and Cynthia McClintock, 'The Explosive Combination of Local Bureaucracies and Mining Production: Evidence from Localized Societal Protests in Peru' (2014) 56(3) *Latin American Politics and Society* 118; John Crabtree, 'Funding Local Government: Use (and Abuse) of Peru's Canon System' (2014) 33(4) *Bulletin of Latin American Research* 452.

<sup>84</sup>Allianzas para el Diálogo, 'Partnerships for Dialogue: Prevention of Social Conflicts with the Use of Natural Resources', UNDP Oslo Workshop, Institutionalizing Dialogue in Peru, undated: [www.undp.org/content/dam/undp/library/Democratic%20Governance/OGC/Luis%20F%20Presentation%20Dialogue%20Peru%20-%20Oslo%20Workshop%20Final.pdf](http://www.undp.org/content/dam/undp/library/Democratic%20Governance/OGC/Luis%20F%20Presentation%20Dialogue%20Peru%20-%20Oslo%20Workshop%20Final.pdf) [last accessed 16 October 2018].

Thus, the peace settlement terms for Aceh, where sharing of resource revenues was central, have proven adequate to maintain the peace, even if there have been disputes over implementation. Similarly, the Moro Islamic Liberation Front has ended its insurgency on the basis of the Comprehensive Agreement on the Bangsamoro in the Philippines, even though this has not been approved by Congress or implemented (although other Islamic groups in the region have continued fighting). In Papua New Guinea, the 2001 Bougainville Peace Agreement, where the issue of mining was central, has served to maintain the peace, though the fate of the mine still remains unresolved and highly contentious. Sudan's CPA of 2005, where wealth sharing was critical, did bring an end to full scale civil war between the north and south, but there were clashes over the disputed, oil-rich region of Abyei, which led to a contested arbitration result, major military engagement and the need for a large UN peacekeeping force. And, since independence, South Sudan has spiralled into a catastrophic state of virtual anarchy with multiple factions fighting one another. Several agreements with tribal peoples in Northeastern India, where typically new federal states were established, have succeeded in ending major insurgencies. While there has been no recent violence in Canada, the comprehensive land settlements are exceptionally detailed and robust in implementation; this reflects both the length of time taken in negotiations as well as the sophistication of the negotiating parties.

By contrast, many other peace agreements were put together under extreme time constraints, often with outside players putting pressure on the factions in conflict. The resulting agreements are often very short and full of ambiguities, with no real shared understanding or consensus amongst the parties. These quick deals often fail to resolve the longer-term conflict. The inadequacy of the resource provisions may be partly to blame, but the broader dynamics of the conflict are often the more fundamental problem. Examples include Mali, Comoros, Madagascar, as well as some of the agreements with indigenous peoples, such as Guatemala and Mexico, where the governments failed to honour their undertakings. There are examples – Bougainville, the Bangsamoro, Sudan – of fairly quick and sketchy initial agreements being followed by extensive negotiations that result in more elaborate deals, with concrete provisions relating to resources; and these can succeed. But when a thin agreement has no real process for elaboration and implementation, the chances of success are very limited.

## 4.2 Conflict Settlements and Development

### *EITI and the Natural Resource Charter*

Even if a few peace agreements dealing with resource sharing succeed in stopping the conflict, these do not demonstrate any serious commitment to addressing the longer-term challenges of successfully managing and sharing natural resources, despite the well-known, sad history of mismanagement and expropriation of natural resource wealth especially in developing countries – the ‘resource curse’. As Paul Collier has written:

Historically, the natural resources of the poorest countries have often been plundered. The few have expropriated the many, and the present has expropriated the future. Harnessing natural resources for the sustained benefit of ordinary citizens requires that an entire chain of decisions, from the discovery process through to the use of revenues, be got right not just once but repeatedly.<sup>85</sup>

Thus, good governance and transparency are highly relevant to resource management and resource revenue sharing, first as a way to limit corrupt diversion of revenues, and secondly to promoting accountability regarding the collection and allocation of revenues. Two international initiatives have made especially significant contributions to the potential development of international standards in this regard.

In 2002, British Prime Minister Tony Blair proposed to the World Summit on Sustainable Development in Johannesburg the creation of the Extractive Industries Transparency Initiative (EITI). The EITI was to create global standards for good governance of extractive industries, notably through transparency of contracts, licensing arrangement, and revenue flows, which would enhance accountability and reduce opportunities for corruption. It was founded the following year and is now supported by 51 countries and managed by a secretariat in Oslo. To be accepted into the program, countries must undertake various steps relating to government, corporate and civil society engagement and a multi-stakeholder work plan. The multi-stakeholder groups are central to success and they prepare annual reports with recommendations. The secretariat evaluates the reports in terms of level of progress, which periodically results in a country being suspended for poor performance. The initiative has standards right across the ‘value chain’ from contracts and licenses, to production, to

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<sup>85</sup> Paul Collier, ‘The Natural Resource Charter and the EITI’, Extractive Industries Transparency Initiative, 24 November 2009: <https://eiti.org/blog/natural-resource-charter-eiti> [last accessed 23 October 2018].

revenue collection and revenue allocation, and social and economic contributions. EITI gives strong emphasis to increasing capacity and information to inform policy processes. Independent assessments of the EITI suggest that it has successfully established standards of transparency as global norms and its use of multi-stakeholder groups serves as a mitigating factor in addressing tensions around resource management issues, but this in turn depends on the non-governmental actors being treated as full and equal partners and on visible political support from government officials.<sup>86</sup>

The EITI's focus was heavily on transparency and stakeholder engagement, but this left other critical issues associated with resource management unaddressed. So, a group of leading experts, many of whom had been involved with the EITI, conducted a process leading to the drafting of the Natural Resource Charter in 2010.<sup>87</sup> It is now led by an oversight board and operated as a program within the Natural Resource Governance Institute. It provides a set of principles for governments and societies on how to best harness opportunities from the extractive sector by drawing on ingredients of success in various countries. It sets out twelve precepts for good governance through the resource management value chain. These deal with: strategy and consultations; accountability and transparency; exploration and license allocation; taxation; local effects; nationally owned resource companies; revenue distribution; revenue volatility; government spending; private sector development; the role of multinational companies; and the role of the international community. Each precept is set out in a sentence and then elaborated at some length. For example, precept 7 is 'The government should invest revenues to achieve optimal and equitable outcomes, for current and future generations' and what this might mean in practice is elaborated over three pages, with advice on such matters as developing mechanisms to stabilise government spending despite volatile commodity prices, managing inflows of money into the economy to avoid undermining the competitiveness of non-commodity export sectors, giving priority to investments of long-

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<sup>86</sup> See generally: EITI International Secretariat, 'The EITI Standard 2016', Revised Version, 24 May 2017: [https://eiti.org/sites/default/files/documents/the\\_eiti\\_standard\\_2016\\_-\\_english.pdf](https://eiti.org/sites/default/files/documents/the_eiti_standard_2016_-_english.pdf) [last accessed 23 October 2018]; EITI, '2017 Progress Report', 8 February 2017: [https://eiti.org/sites/default/files/documents/eiti\\_progress\\_report\\_2017.pdf](https://eiti.org/sites/default/files/documents/eiti_progress_report_2017.pdf) [last accessed 23 October 2018]. For the re-evaluations, see: 2017 Progress Report, 34.

<sup>87</sup>Natural Resource Governance Institute, 'Natural Resource Charter', Second Edition, 2014: <https://resourcegovernance.org/analysis-tools/publications/natural-resource-charter-2nd-ed> [last accessed 23 October 2018].

term benefit, and so on.<sup>88</sup> This very substantive charter has been used to benchmark petroleum policies, legislation and administration in countries, even ones such as Nigeria with weak transparency and major political tensions.<sup>89</sup>

### ***Conflict Settlements with a Focus on Resources and Long-Term Development***

Few conflict settlements give any indication of serious concern with long-term development, along the lines of the Resource Charter. Thus the Aceh Memorandum of Understanding, for example, provided for 70% of resource revenues to be turned over to the government of Aceh, but it gave only a weak consultative role to Aceh regarding resource management and it had no stipulations regarding what Aceh should do with the revenues it receives. Given that it was known, at the time of the negotiations, that the major gas reservoir was nearing the end of its productive life, the agreement basically set up Aceh for a period of fiscal boom, likely to be followed by a bust. The Bougainville Peace Agreement provided for significant self-government by locals of their resources, but contained no principles or procedures for good resource management.

Perhaps the single greatest exception is Sudan's CPA, which is rare in its level of detail, including on resource revenue transparency and management. However, its implementation was weak. Some of this may have been because of the difficulties associated with making the jointly-managed National Petroleum Commission effective. As we have seen, joint management is almost unheard of in federal arrangements. But there was also deep mistrust, so that within two years the southern representatives withdrew from the national government. The part of the agreement that was largely implemented dealt with oil revenue sharing, but the focus here was on ensuring transparency in the allocation of nationally collected funds to the states and the Government of South Sudan, not on what the recipients did with the funds they received. Unfortunately, political elites in South Sudan largely repeated the corruption so endemic in poor petro-states, which, when combined with exceptionally weak governmental capacity, ensured that there were few development benefits from the flood of new cash.

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<sup>88</sup> Natural Resource Charter, 25-27.

<sup>89</sup> Oxford Policy Management, 'Bringing the Natural Resource Charter to life: Lessons from Nigeria', Briefing Note, August 2013: <http://cpparesearch.org/nu-en-pl/wp-content/uploads/2015/01/Bringing-the-Natural-Resoure-Charter-to-life-OPM-Briefing-Note-August-....pdf> [last accessed 23 October 2018].

An exceptionally detailed agreement was reached between Chad and the World Bank in 2000 designed to ensure the development benefits of a major petroleum and pipeline project.<sup>90</sup> While not designed to resolve a violent conflict, it addressed regional tensions in the country and was hailed at the time as a model for progressive petroleum development in a developing country. The Bank agreed to help finance a US\$44.2 billion pipeline, which would permit the exploitation of a large gas field in poor, land-locked Chad. In exchange for its financial support, the Bank negotiated an agreement to assist Chad ‘in building capacity to implement its petroleum revenue management strategy to enable it to effectively absorb and allocate expected oil revenue, and thus pursue the poverty-reduction objective of petroleum resources development’.<sup>91</sup> This entailed developing public financial management, a poverty database and strategy, and a human resources plan. A Petroleum Revenue Oversight and Control Committee was to oversee spending, while an international advisory group would monitor progress. Chad’s government was to meet the Bank’s conditions regarding a specific spending schedule for royalties and dividends: gas revenues were to be held in an account in London (to counter the effect of Dutch disease) that the Bank had the power to freeze in the event of non-compliance. The first 10% of net revenue was to go to a future generation’s fund and, of the remainder, 80% was to go to priority sectors for development and 5% to develop the oil producing region; the remaining 15% was to be spent according to the government’s discretion. The agreement failed, despite its elaborate architecture. President Deby consistently tried to undermine it, winning some initial concessions on implementation, but eventually so alienating the Bank that it terminated the agreement. The end result was that the project strengthened the central government’s dictatorship and provided funds for patronage, corruption and armed repression, while doing little for development or revenue sharing with the producing region.<sup>92</sup>

A happier example of resource sharing with a view to mitigating conflict was the Liberia Forest Initiative. The Accra Accord of 2003 brought an end to the country’s civil war and led

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<sup>90</sup> Chad Management of the Petroleum Economy Project Development Credit Agreement, 20 March 2000.

<sup>91</sup> Loan Agreement (Petroleum Development and Pipeline Project), IBRD Loan Number 4558-CD, 29 March 2001, Schedule 2.

<sup>92</sup> John Gould and Matthew Winters, ‘Petroleum Blues: The political economy of resources and conflict in Chad’, in Lujala and Rustad, ‘High-Value Natural Resources and Post-Conflict Peacebuilding’, 313.

to the creation of a transitional government of national unity.<sup>93</sup> While the accord said nothing about resources, it was recognised that the civil war had been largely funded by the proceeds of ‘conflict timber’ buying arms. In 2004, a US led international mission came to Liberia to prepare an action plan on rehabilitation and reform of the forest sector. Its objectives included creating conditions favourable to the lifting of UN sanctions, reestablishing the timber industry on a transparent and sustainable basis, managing revenues transparently and for the general benefit, and promoting community involvement in managing forest resources. The Forest Initiative involved major multilateral organisations and served as a coordinating mechanism for their activities and policies. The country adopted a forestry reform law in 2006, established a forestry development authority and joined the EITI in 2008. The success of the program depended on capacity building, a heavy emphasis on community engagement and the strong political support of the president.<sup>94</sup>

## 5 Some Conclusions and Lessons

While many intra-state conflicts involve conflict over resources at least to some degree, *relatively few conflict settlements include explicit or meaningful provisions regarding the sharing of natural resource revenues, access to and the use of natural resources, or natural resource management.* This may reflect the fact that many conflict settlements are set out in relatively short documents, and put together under great pressures of time and politics, often with significant involvement by non-combatant foreign governments and international organisations. Their focus is on stopping the bloodshed as soon as possible, with minimal attention to longer-term objectives. Occasionally, these quick deals have some reference to natural resources, but these are often ambiguous or sketchy.

However, a few conflict settlements include detailed provisions related to natural resources. In some cases, they are highly complex, reflecting long and detailed negotiations, which may have gone through several phases, as in Sudan. *Where natural resources do feature in peace*

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<sup>93</sup> Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia and the political parties (Accra Peace Agreement), 18 August 2003.

<sup>94</sup> Liberia Forest Initiative, ‘Action Plan for Forest Sector Rehabilitation and Reform’, Liberia Forest Assessment Mission, 1 June 2004: [https://rmpportal.net/library/content/usda-forest-service/africa/liberia\\_report\\_final.pdf](https://rmpportal.net/library/content/usda-forest-service/africa/liberia_report_final.pdf) [last accessed 23 October 2018].

*settlements, the focus is most often on resource revenue sharing.* There can sometimes be provisions regarding resource use, notably for renewable resources. *Provisions on resource management arrangements are quite rare,* especially those that go beyond general commitments to good governance and undertakings to consult. This may be presumed to relate to the lack of expertise in resource matters of negotiators, as well as the low priority of resource issues at the point when the focus is on ending a conflict.<sup>95</sup>

*There is no general pattern to revenue sharing provisions.* Our review of experience in federal and devolved countries showed that there is no common standard for the sharing of resource revenues between the governments of producing regions, non-producing regions and national governments. Our sampling of conflict settlements with resource provisions, which are almost always in regionalised regimes, indicates the same. A number of agreements refer to a principle such as ‘equity’ for allocating revenues, but equity means treating like cases alike, and so what is equitable in any situation can be very much in the eyes of the beholder. In particular, from one perspective, all citizens of the country should all share equally; but from another, resource producing states and non-producing states are different and should be treated differently.

This lack of consistency is graphically illustrated by the varied resource revenue sharing formulas for producing areas. These run from flat percentages: 100% of revenues for Chechnya, a very modest producer; 70% for Aceh; an undefined amount in Mali. There are some complex formulae: in Sudan, there was provision for a future generations fund, a stabilisation fund and then distribution of the remainder of southern production being shared 50/50 between north and south, with carve outs for producing regions. In the Philippines, the Bangsamoro were to receive 100%, 75% or 50% of resource revenues depending on the resource, but these sums were to be subtracted from block grants and reviewed after five years. The Framework Agreement on the Bangsamoro is unusual in linking resource revenues to block grants, which can make sense when a regional government receives major fiscal support from the national government. The same approach is taken in the Nunavut Agreement

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<sup>95</sup> Jon Unruh and Julia Bailey point to this dilemma in relation to the absence of attention in peace negotiations to the severe degradation of spatially extensive resources caused by violent conflict. They argue that resource conservation measures can be integrated into peace processes, but they need to be adapted to the context and should not replicate conventional management approaches: Jon Unruh and Julia Bailey, ‘Management of Spatially Extensive Natural Resources in Postwar Contexts: Working with the Peace Process’ (2009) 74(2) *GeoJournal* 159.

(and that between Greenland and Denmark). However, few federations have formulas for adjusting block grants to take account of resource revenues: Canada does (though how it does this has differed greatly over time), while Nigeria does not (which is part of the explanation for the huge per capita fiscal disparities across Nigeria's states). The Bougainville Peace Agreement in Papua New Guinea linked local revenue-raising with fiscal transfers from the centre, but left for future negotiation any fiscal sharing of revenues from the lucrative Panguna mine.

The academic literature on fiscal federalism sets out some normative principles for revenue sharing. Since non-renewable resources are finite, *there should be some set-aside for future generations*. Furthermore, due to the highly volatile character of resource revenues, *there should be stabilisation funds*. That literature is also sensitive to the broader issues of equitable sharing between the producing areas of a country and the remainder, with *a strong leaning towards equalisation across the country rather than a great weight on derivation*.<sup>96</sup> However, when a key issue in dispute is revenue sharing between the producing region(s) and the country at large, the former are likely to get a preferred share if they have enough leverage to force a negotiated settlement. Such leverage itself can be a matter of degree depending on the military and political strength of the different sides. Leverage aside, a national government typically will be more prepared to give a large share of resource revenues if these are minor in the national picture, while it will hold to a small share of revenues that are nationally important. Other factors, such as the size of the population in the producing region could weigh as well. In principle, it should be possible to prevent grossly excessive resource revenues flowing to producing regions by introducing formulas that 'claw back' some part of other fiscal transfers, and by having caps or other mechanisms to limit shares when the amounts are very large. However, it appears that no current formula reflects such a design, and too often formulae are expressed in terms of a simple percentage which is to apply, fair weather or foul.

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<sup>96</sup> See e.g. Robin Boadway and Anwar Shah, *Fiscal Federalism: Principles and Practice of Multiorder Governance* (Cambridge: Cambridge University Press, 2009), 300-301; Giorgio Brosio, 'The Assignment of Revenue from Natural Resources', in Ehtisham Ahmad and Giorgio Brosio (eds.), *Handbook of Fiscal Federalism* (Cheltenham: Edgar Elgar, 2006), 431.

*The ‘curse’ of natural resource wealth often has relatively little to do with revenue sharing between governments and much more to do with what governments do with the revenues they receive.* Advocates of ‘good governance’ will argue for transparency and perhaps for requirements that revenues be spent on certain purposes (as in the World Bank’s loan agreement with Chad discussed above). Such thinking is central to the EITI and the Resource Charter. But when there has been a conflict within a country between factions that are fighting over shares of the national wealth, they may be able to come to a settlement on cutting up the pie, while at the same time having scant interest in constraining one another (and still less themselves) regarding how they use the money. In other words, sharing arrangements provide no intrinsic support for better governance along the lines set out in the Resource Charter. The problem is even greater when a conflict settlement results in the creation of new regional governments, which may have little capacity to assume their responsibilities effectively. So ‘peace’ may be bought but achieve little in paving the way to social and economic development.

*A separate issue around sharing resource wealth is that of access to and use of the natural resource itself.* This is particularly important for communities that rely on fish, forests, wildlife, and water for their traditional pursuits and livelihood. Pastoralists also seek access to traditional grazing lands.<sup>97</sup> These are a notable element in many agreements with indigenous people and central to the ILO’s Indigenous and Tribal Peoples Convention. Unfortunately, respect for the rights of indigenous peoples, even when set out in peace agreements, has often not been respected or enforced, as we saw in the Guatemalan and Mexican cases. By contrast, the complex modern aboriginal treaties in Canada provide good models for sharing natural resources, but Canada has the advantages of capacity, patience, and due process rare in countries with violent conflicts. Canada’s new treaties distinguish between resource harvesting for personal use or consumption and that for commercial sale, with indigenous people having a first claim on the former, with their rights regarding the latter being more

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<sup>97</sup> On land and conflict see: Jon Unruh and Rhodri Williams, *Land and Post-conflict Peacebuilding* (Abingdon: Earthscan, 2013).

limited. While this chapter has not gone into conflicts over sharing water, these can be significant both within and between countries.<sup>98</sup>

*Sharing natural resource management presents special challenges and is much less frequent than sharing resource revenues.* The managers of a resource determine the terms and pace of development, which bears directly on the level and timing of resource revenues. While some conflict settlements are forthcoming on revenue sharing, they are much less so regarding management: Aceh got 70% of gas revenues but no real role on offshore management; South Sudan got about 50% of petroleum revenues but was effectively marginalised regarding management, partly because of grandfathering provisions but also because the joint petroleum commission was not effective. Instead of joint management of resources, sometimes there is divided management – where a local government is given authority to manage certain resources while the national government manages others. This is the model used in the Framework Agreement on the Bangsamoro in the Philippines. When natural resources (or a particular resource) are considered of central importance for the national economy and government revenues, central governments tend to be more flexible on revenue sharing than in ceding management responsibilities to regional governments.

*While it might be expected that parties to a conflict would often ‘split the difference’ on management and agree to joint management of some kind, this is rare.* Joint management was adopted in the Sudanese model, but did not work. The role of the federal versus regional governments in resource management was also a major issue in the constitutional negotiations in Iraq in 2005 and Yemen in 2014. In both cases, muddled arrangements resulted. In Iraq, the hastily drafted constitution of 2005 was found by an expert workshop to contain ‘ambiguities, omissions and contradictions in the articles of the constitution relating to petroleum’.<sup>99</sup> These reflected the fundamental differences of view between Iraq’s Kurds and Arabs over how the country’s principal resource should be managed – an issue which is still unresolved, although the federal government has recently asserted its jurisdiction through

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<sup>98</sup> On federal experience, see: George Anderson, ‘Water Resources Management in Federal Systems’, in Dustin Garrick *et al.* (eds.), *Federal Rivers: Managing Water in Multi-Layered Political Systems* (Cheltenham: Edward Elgar, 2014), 339.

<sup>99</sup> Revenue Watch Institute, ‘Managing Iraq’s Petroleum’, Iraq Revenue Watch: Workshop, April 2006: [https://resourcegovernance.org/sites/default/files/documents/rwi\\_managing-iraq-petroleum061906\\_0.pdf](https://resourcegovernance.org/sites/default/files/documents/rwi_managing-iraq-petroleum061906_0.pdf) [last accessed 24 October 2018].

a new National Oil Company law. In Yemen, the Draft Constitution of 2015 produced hopelessly complex arrangements around natural resource management, with three levels of government all having overlapping and unclear roles. These provisions reflected both an inability to agree as well as a lack of understanding of the technical challenges of managing the industry.<sup>100</sup> These examples illustrate how difficult it can be to develop joint or shared management arrangements around natural resources, especially when they play a critical role in a nation's or region's economy.<sup>101</sup> Joint management typically means shared veto rights, which can politicise management of the industry, while increasing uncertainty and opportunities for corruption.

*When the national government maintains management of resources, there can still be important engagement of local communities and of regional and local governments in consultative processes.* This falls well short of joint management, but it has had notable successes, as the Liberian Forestry Initiative and the Peruvian multi-stakeholder dialogue mechanisms illustrate. These successes have depended fundamentally on the political will of governments to make them matter. Some conflict settlement agreements contain references to public consultations, but a paper obligation or undertaking to consult is only as good as the underlying intention to use consultations in a meaningful way to reach accommodations and lessen conflict. Language in settlements or constitutions is rarely able to make an obligation to consult meaningful, even if certain mechanical steps must be followed. Canada is an exception given the Supreme Court's finding of a constitutional duty to consult, and where appropriate to accommodate, stemming from the 'Honour of the Crown' and its unique relationship with Aboriginal peoples. But few countries are likely to accept the courts having an oversight of their governments' political consultations and accommodations.<sup>102</sup>

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<sup>100</sup> The 2015 Draft Yemeni Constitution, Chapter VIII: Water, Environment and Natural Resources. The author participated in the drafting process.

<sup>101</sup> In Canada, the federal government negotiated joint offshore petroleum management with two Atlantic provinces. The institutions have functioned effectively partly because there are no fundamental differences on management and the issuing of licenses and contracts is not a source of corrupt enrichment.

<sup>102</sup> Given this, the courts can review in any case whether the duty has been met with honourable dealings: Indigenous and Northern Affairs, 'Aboriginal Consultation and Accommodation', Updated Guidelines for Federal Officials to Fulfill the Duty to Consult, March 2011: [www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675#chp1\\_2](http://www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675#chp1_2) [last accessed 26 October 2018].

*There are now standards and guidelines regarding good resource management that should be considered during negotiation of the resource provisions of peace settlements.* The EITI and the Resource Charter have well-developed and tested principles and processes for better resource management that could be referenced, incorporated or adapted in peace agreements. That said, the challenge of implementation is considerable, given often weak capacity and incentives for perverse practices. So, words in a settlement are no guarantee. As we saw in Sudan, a well-developed and comprehensive set of measures can fail because one or both sides do not have the will or capacity to respect what is on paper. Even when a party to an agreement may have significant leverage to enforce provisions, as the World Bank had against Chad, this may not ensure the agreement's implementation if the other party is determined to undermine it. Perhaps no expert has reflected more deeply on the challenge of the resource curse than Paul Collier. He describes the chain of decisions that need to go right if a country is to become prosperous through development of resources, but finds that the chain usually breaks because the incentives to plunder are too strong – the weakest link problem. Unfortunately, he concludes that the international community cannot force good management of these countries, which often do not need foreign aid given their resources. His hope is that initiatives such as EITI and the Resource Charter provide guidance that will help citizens in developing countries to harness their assets for prosperity. Thus, bringing these concepts into conflict settlements would be a positive step, where possible, but there should be no illusions that this will lead to miracles.