

**RELEVANT CONSTITUTIONAL PROVISIONS IN OTHER  
COUNTRIES AND SAFEGUARDS ON INDIGENOUS  
PEOPLES' RIGHT IN OTHER LAWS**

**Addendum**

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## INTRODUCTION

This document is an addendum to the study entitled “The Constitutional Reform in Nepal: Indigenous Peoples’ Rights”. It contains explanatory comments to the table on relevant constitutional provisions in other countries; see Chapter VIII of the study. The addendum also contains information about safeguards on indigenous rights in other laws than constitutional laws.

## I. CONSTITUTIONAL PROVISIONS

### 1.1. Finland

As a result of constitutional amendments made in 1995, the Finnish Constitution now establishes constitutional guarantees for the indigenous Sami people. The Sami are an indigenous people who constitute an ethnic minority in Finland, Sweden, Norway and Russia. In Finland there are about 7,500 Sami of whom approximately 4,000 live in the municipalities of Inari, Utsjoki and Enontekiö as well as in the northern part of the municipality of Sodankylä. This area constitutes the legally defined Sami homeland in Finland.

#### 1.1.1. Cultural and Linguistic Autonomy

Section 121 (4) of the Constitution of Finland provides that the Sami people shall be ensured *cultural and linguistic autonomy* within their Homeland area.<sup>1</sup> The Constitution also recognizes the Sami people as an indigenous people. The three northernmost municipalities in Finland and the Sami reindeer herding district *Lapin Paliskunta* are defined as the Sami Homeland area by provisions of the Sami Act, which was adopted to implement the constitutional amendment.

According to the amendment of the constitutional provisions on fundamental rights of the Finnish Constitution, the Sami as an indigenous people have the right to maintain and develop their own language and culture. Section 17 (3) affirms the Sami, as an indigenous people, have the right to maintain and develop their own language and culture. It also states that the right of the Sami to use their own language before authorities shall be prescribed by an Act of Parliament. Moreover, the Sami Parliament decides on the use of funds allocated by the State for the supporting of the Sami culture.

#### 1.1.2. Political Representation

Through the Sami Parliament Act, the democratically elected Sami Parliament is recognized as being the representative Sami body with the mandate to implement the cultural and linguistic

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<sup>1</sup> Constitution of Finland, Section 121 (4): “*In their native region, the Sami have linguistic and cultural autonomy, as provided by an Act.*”

autonomy. The Sami Parliament Act clarifies that the Sami Parliament shall represent the Sami people at the national as well as the international level.<sup>2</sup> In addition, Sami individuals participate in the political life of the State through their participation in regular democratic processes. The Sami Parliament is mandated to assert the rights and protect the interests of the Sami people, including by submitting initiatives and proposals to State, regional and municipal authorities and by issuing statements.<sup>3</sup>

### 1.1.3. Negotiations and Consultations

The Parliament Act of Finland establishes that the National Parliament of Finland shall hear representatives of the Sami before deciding on matters affecting them.

Moreover, the Sami Act establishes an obligation for authorities to *negotiate* on all extensive and important questions that can directly or distinctly influence the position of the Sami as an indigenous people. Authorities at local, regional and national levels are obliged to negotiate with the Sami Parliament in matters which directly affect the Sami.

To fulfill the obligation to negotiate, the relevant authorities are required to provide the Sami Parliament with the opportunity to be heard and to negotiate on any specific questions falling within the scope of section 9 of the Sami Act.

The obligation to negotiate with the Sami is applicable within the defined *Sami Homeland area*, in matters such as (1) society planning; (2) conservation, use, rental and transfer of land in state ownership, (3) protected areas and wilderness; (4) license applications regarding mineral prospecting and exploration; (5) changes in legislation or administrative policies that may affect traditional Sami livelihoods; (6) education and Sami language; and (7) social and health services.

### 1.1.4. International Implications

The legal rights of the indigenous Sami people, including constitutional rights, are also applicable within the European Union (EU). A specific protocol on the Sami people was attached to the Act concerning the conditions of accession and the adjustments to the Treaties on which the EU is founded, in the context of the accession of Finland to the EU.<sup>4</sup> The obligations and commitments of Finland with regard to the Sami people under national and international law are recognized in the protocol. It is noted, in particular, that Norway, Sweden and Finland are committed to

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<sup>2</sup> Section 6 of the Sami Act in Finland

<sup>3</sup> The Sámi choose the 20 members of the Delegation in elections held among them every four years.

<sup>4</sup> Protocol 3

preserving and developing the means of livelihood, language, culture and way of life of the indigenous Sami people.

## **1.2. Norway**

In 1988, a specific section on Sami rights was included in the Constitution of Norway, establishing constitutional guarantees for Sami language, culture and society. Section 110a states that it is the obligation of the State to create the conditions necessary for the Sami to protect and develop their language, their culture and their society.

### **1.2.1. Political Representation**

The establishment of the Sami Parliament in 1989 is regarded as an important part of the implementation of section 110a of the Constitution. The Sami Parliament is the representative body of the Sami people, elected by and among the Sami in Norway.

Section 2-1 of the Sami Act provides that the Sami Parliament's mandate includes all questions that the Parliament considers to relate to the Sami. The Parliament can on its own initiative raise and issue statements on all questions within its mandate, and raise questions before public authorities and private institutions; it also has the authority to make decisions when this follows from legislative or administrative provisions.

The Sami in Norway exercise strong cultural and linguistic autonomy, although the Constitution does not clearly establish such autonomy. However, consecutive Norwegian governments have identified the Sami people's right to self-determination as an issue of high priority. It is stated that the question concerning Sami self-determination need to become subject to detailed discussions between the Government and the Sami Parliament. In 2002, the Government informed the national parliament (the Storting) that it is of the view that the interpretation of the scope of the Sami people's right to self-determination must be based on international law and emerging international practice.

Norway has ratified the International Labour Organization's Convention No. 169 concerning Indigenous and Tribal Peoples in Independent State of 1989 (ILO Convention No. 169), which contains a comprehensive set of international minimum standards concerning indigenous peoples' rights. The Convention has positively influenced State policies towards the Sami. Although, the issue of self-determination falls beyond the scope of the ILO Convention, the

instrument has nevertheless, due to its approach to indigenous peoples rights, contributed towards the recognition of Sami self-determination.<sup>5</sup>

### 1.2.2. Language

In Norway, there is no clearly defined Sami Homeland area as the case is in Finland. This is largely due to historical factors, among others. The Sami in Norway are spread over wide parts of the country so that many of the traditional Sami areas appear today as Sami enclaves. The Sami in Norway have also been reluctant to attempt to define such a geographic area for fear that some Sami settlement areas would be excluded. However, in Norway, there is something called the administrative area for Sami language. Within this area, the Sami and Norwegian languages have equal status as national languages.

### 1.2.3. Consultations

In 2005, the Government of Norway and the Sami Parliament signed an agreement on procedures for consultations between State authorities and the Sami Parliament, aimed at strengthening the influence of Sami Parliament in decision-making process affecting the Sami society. The agreement is based on the Sami provision in the Constitution, and Norway's international human rights obligations towards the Sami people, including the ILO Convention No. 169.

### 1.2.4. Objective of Consultations

The stated objective of the procedures for consultations is to contribute to the implementation in practise of the State's obligations to consult indigenous peoples under international law, in particular the ILO Convention No. 169. Moreover, the aim is to seek to achieve agreement between State authorities and the Sami Parliament whenever consideration is being given to legislative or administrative measures that may directly affect Sami interests, and to facilitate the development of a partnership perspective between State authorities and the Sami Parliament that contributes to the strengthening of Sami culture and society.

The consultation procedures apply to the Government and its ministries, directorates and other subordinate State agencies or activities. The procedures apply in matters that may affect Sami interests directly. Key elements of the procedures are following:

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<sup>5</sup> The implication of article 1 (3) of the ILO Convention No. 169 is that the right to self-determination falls beyond the scope of the Convention. Article 1 (3) states that *"the use of the term 'peoples' in this Convention shall not be construed as having any implications as regards the rights which may be attached to the term under international law."*

### 1.2.5. Substantive Scope of Consultations

The obligation to consult the Sami Parliament may include all material and immaterial forms of Sami culture, including music, theatre, literature, art, media, language, religion, cultural heritage, immaterial property rights and traditional knowledge, place names, health and social welfare, day care facilities for children, education, research, land ownership rights and rights to use lands, matters concerning land administration and competing land utilization, business development, reindeer husbandry, fisheries, agriculture, mineral exploration and extraction activities, wind power, hydroelectric power, sustainable development, preservation of cultural heritage, biodiversity and nature conservation.

In matters concerning the material basis for the Sami culture, including land administration, competing land utilization, and land rights, the obligation to consult the Sami Parliament is applicable to traditional Sami areas (as specified in the agreement).

Matters which are of a general nature, and are assumed to affect the general Norwegian society, are not subject to consultations.

### 1.2.6. Procedural Requirements for Consultations

The agreement establishes that State authorities shall fully inform the Sami Parliament about all matters that may directly affect the Sami, as well as about all relevant concerns and queries at all stages of the process.

In order to ensure regular contact between the Government and the Sami Parliament, it is stated in the agreement that regular half-yearly meetings shall be held between the Minister responsible for Sami affairs and the President of the Sami Parliament. Other governmental ministers may attend these meetings when required. At these meetings, the situation and developmental needs of the Sami society, issues of fundamental and principle importance, and ongoing processes, shall be discussed. Such regular half-yearly meetings shall also be held between the Sami Parliament and the Inter-ministerial Coordination Committee for Sami affairs. Among other things, information about relevant current Sami policy matters shall be provided at these meetings.

The agreement establishes that the consultations carried out with the Sami Parliament, in application of the agreement on consultation procedures, shall be undertaken in good faith, with the objective of achieving agreement to the proposed measures. State authorities shall as early as possible inform the Sami Parliament about the commencement of relevant matters that may directly affect the Sami, and identify those Sami interests and conditions that may be affected. After the Sami Parliament has been informed on relevant matters, it shall inform the relevant State authority as soon as possible whether further consultations are required. Moreover, the

Sami Parliament can also independently identify matters which in its view should be subject to consultations.

Consultations shall not be discontinued as long as the Sami Parliament and State authorities consider that it is possible to achieve an agreement.

The agreed procedures state that whenever a matter is submitted for consideration to the Cabinet, the ministerial submission document shall clearly inform other governmental ministries about the concluded agreement with the Sami Parliament and, if necessary, also to include information about matters where agreement has not been reached. The agreement also dictates that in governmental propositions and reports to the national parliament (the Storting), on matters where the governmental position differs from that of the Sami Parliament, the views and positions of the Sami Parliament shall be reflected in the documents submitted.

### **1.3. Russian Federation**

#### **1.3.1. Explicit Constitutional Guarantees for Indigenous Peoples' Human Rights**

Section 69 of the Constitution of the Russian Federation establishes constitutional guarantees for indigenous peoples. This constitutional provision establishes that the Russian Federation shall guarantee the rights of the indigenous small peoples according to the universally recognized principles and norms of international law and international treaties and agreements of the Russian Federation.

#### **1.3.2. Local Self-Government as a Constitutional Right**

The Constitution of Russia identifies local self-government as a constitutional right (sections 3 and 18). This is also applicable to indigenous peoples, although not limited to indigenous peoples.

### **1.4. India**

The Constitution of India has some of the most detailed safeguard provisions on the rights of indigenous peoples (referred to as "scheduled tribes"), disadvantaged groups ("scheduled castes" and "socially and economically backward class of citizens") and minorities). For purposes of convenience these are grouped under separate headings.

#### 1.4.1. Constitutional Safeguards against Arbitrary Legislation without the Consent or Participation of the People Concerned: Mizoram State & Nagaland State, Northeast India

In accordance with a number of specific provisions in the Constitution of India, no acts of the federal parliament of India concerning the *religious or social practices* of the Nagas and Mizos, *their customary laws and procedure, administration of civil and criminal justice* involving their customary law, and *ownership and transfer of land and its resources*, are to apply to the states of Nagaland and Mizoram, unless agreed upon by the legislative assembly of the state concerned.<sup>6</sup>

#### 1.4.2. Constitutional Safeguards on Consultation with Representatives of Indigenous Peoples: Scheduled Areas & Scheduled Tribes under 5<sup>th</sup> Schedule to Constitution of India

In what are known as Scheduled Areas inhabited by indigenous peoples – in several states of India, other than in Northeast India - legislative authority is vested upon the provincial Governor, who is obliged to consult the *Tribes Advisory Council* for legislation affecting those areas. This council is composed of members of the Federal and State legislative assemblies who are of indigenous descent.<sup>7</sup>

#### 1.4.3. Autonomous District Councils for Indigenous Peoples (“scheduled tribes”) under the Sixth Schedule: Meghalaya State, Tripura State and Mizoram State

The Sixth Schedule to the Constitution of India provides for autonomy through *autonomous district and regional councils*. These councils are at a level that is lower than the state, as several regions forming a district and several districts forming a state. The main rationale is to prevent hegemony of smaller indigenous groups by larger population groups (whether of indigenous descent or otherwise). For example, Mizoram state has a number of district and regional councils populated by indigenous people who do not belong to the Mizo group (who themselves are an

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<sup>6</sup> Articles 371G (for Mizoram State) and 371A (for Nagaland State). The provisions are almost identical. The provisions read as follows in the case of Mizoram: ‘notwithstanding anything in this Constitution – (a) no Act of Parliament in respect of – (i) religious or social practices of the Mizos, (ii) Mizo customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Mizo customary law, (iv) ownership of land, shall apply to the state of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides...’.

<sup>7</sup> Article 244 (1) on the 5<sup>th</sup> Schedule contain the following, among other, provisions: (1) “There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State.... (2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor”.

indigenous people and who form the majority population of the state). One such council is the *Chakma Autonomous District Council*. This council – like similar councils in certain parts of Northeast India (such as Tripura State, Meghalaya state, Assam state, etc) have jurisdiction over land administration, administration of justice, and limited legislative powers, among others.<sup>8</sup> The governor of the state - a federal government appointee - retains the substantive legislative powers.<sup>9</sup>

#### 1.4.4. Minister for Tribal Welfare in Chattisgarh, Jharkhand, Madhya Pradesh and Orissa states

Although normally ministers other than the Chief minister are appointed by the State Governor upon the advice of the Chief Minister, in the states of *Chattisgarh, Jharkhand, Madhya Pradesh and Orissa*, one of the ministers is to be in charge of *Tribal Welfare*, who may also have the charge of the welfare of “Scheduled Castes” and “Backward Classes”.<sup>10</sup>

#### 1.4.5. Constitutional Right of Section of Citizens to Protect their Language, Script or Culture and Constitutional Right of Minorities Groups to Establish Educational Institutions in their Own Languages

Any section of citizens with a distinct language, script or culture has the right to conserve the same.<sup>11</sup> Similarly, all minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice.<sup>12</sup>

#### 1.4.6. Constitutional Safeguards on Special Measures & Territorial Rights of Indigenous Peoples

As with most other national constitutions, the Constitution of India also contains clauses on basic human rights and fundamental freedoms of its citizens, including on *Equality and Non-Discrimination*<sup>13</sup> and on *Freedom of Movement*<sup>14</sup> and on *Freedom to Reside and Settle*

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<sup>8</sup> Raja Devasish Roy, *Traditional Customary Laws and Indigenous Peoples in Asia*, Minority Rights Group International, London, March, 2005, p. 15.

<sup>9</sup> Ibid.

<sup>10</sup> Article 164(1), Constitution of India.

<sup>11</sup> Article 29(1), Constitution of India.

<sup>12</sup> Article 30(1), Constitution of India.

*in any part of India*.<sup>15</sup> However, a number of provisos ensure that despite the recognition of the above-mentioned freedoms, the State is nevertheless free to make any laws for the “protection of the interests of any Scheduled Tribe”.<sup>16</sup> In other words, the *Freedom of Movement* of citizens may be regulated in order to protect the interest of any Scheduled Tribe.<sup>17</sup> On the basis of the aforesaid safeguards, the operation of a special law – the Inner-Line Regulation, 1873 – is constitutionally protected, despite the fact that the law forbids the entry of, and acquisition of lands by, any non-native in certain parts of Northeast India (including Arunachal Pradesh, Nagaland and Mizoram states) without an *Inner Line Pass* issued by the concerned government of the state.<sup>18</sup>

Furthermore, the constitution provides that “[the] State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”.<sup>19</sup> Several other laws are protected by the aforesaid constitutional provisions that might otherwise have been deemed to be discriminatory against non-indigenous people.

#### 1.4.7. Reservation for Scheduled Tribes and Scheduled Castes in Jobs and Legislative Bodies

Despite the aforesaid provisions on Equality and Non-Discrimination, the State is free to reserve “posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes...”.<sup>20</sup> Similarly, the state may reserve seats for indigenous people (“Scheduled Castes”

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<sup>13</sup> Articles 15 and 16, Constitution of India.

<sup>14</sup> Article 19(1)(d), Constitution of India.

<sup>15</sup> Article 19(1)(e), Constitution of India.

<sup>16</sup> Article 19(5), Constitution of India.

<sup>17</sup> The comparable provisions in the Constitution of Pakistan (article 15) and in the Constitution of Bangladesh (article 36) also contain provisos that qualify the *Freedom of Movement*, although they do not go so far. Both contain the identically phrased proviso that reads: “subject to any reasonable restrictions imposed by law in the public interest”. A similar clause in the federal Constitution of Malaysia (Article 161A(5) protects affirmative action for the indigenous peoples from being considered as a violation of the Equality clause (article 8).

<sup>18</sup> For a detailed discussion of this law – formally, the *Bengal Eastern Frontier Regulation, 1873 (Regulation V of 1873)* – see P. Chakraborty, *The Inner-Line Regulation of Northeast India*, Linkman Publications, Titagarh, West Bengal, 1995.

<sup>19</sup> Article 46, Constitution of India.

and “Scheduled Tribes”) in the *House of the People* (the federal lower house),<sup>21</sup> and in the Legislative Assemblies of the States.<sup>22</sup>

## 1.5. Pakistan

### 1.5.1. Special Legislative & Judicial Procedure for Tribal Areas

The Constitution of Pakistan recognizes *Federally Administered Tribal Areas* (FATA) and *Provincially Administered Tribal Areas* (PATA). The federal legislature in the case of FATA, and the provincial legislature in the case of PATA, may not legislate for these areas without the direction of the President (in the case of FATA) or the direction of the provincial governor (in the case of PATA), with the consent of the President.<sup>23</sup> Moreover, President, and the Provincial Governor – with the consent of the President – may pass regulations for the FATA, and PATA, respectively.<sup>24</sup> The Supreme Court of Pakistan and the High Courts of the concerned province do not exercise jurisdiction therein unless the concerned legislative body so provides, by law.<sup>25</sup> These provisions are very similar to the provisions of the Government of India Act, 1935, which applied to the *Excluded Areas* of Pakistan until the Constitution of Pakistan, 1956 took effect, and which applied to *Excluded Areas* of Northeast India until the Constitution of India took effect.

### 1.5.2. Guarantees against Arbitrary Amendment of Constitutional Safeguards for Indigenous Peoples

Various safeguards for indigenous peoples in Pakistan are dependent upon the formal categorization of the area in which they live as a Tribal Area; whether Federally administered or Provincially administered. It is thus important that the status of *Tribal Area* is not removed arbitrarily. The Constitution of Pakistan contains the safeguard whereby this status may not be removed by the President before he ascertains the views of the people of the Area concerned, as represented in the tribal *jirga*.<sup>26</sup> This safeguard also existed in the Constitution of Pakistan of

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<sup>20</sup> Article 16(4A), Constitution of India. Similar provisions in the Constitution of Bangladesh {Article 29(3)} reserve governmental posts for “backward section of citizens”.

<sup>21</sup> Article 330, Constitution of India.

<sup>22</sup> Article 332, Constitution of India.

<sup>23</sup> Article 247(3), Constitution of Pakistan.

<sup>24</sup> Article 247(4), Constitution of Pakistan.

<sup>25</sup> Article 247(7), Constitution of Pakistan.

<sup>26</sup> Article 247(6), Constitution of Pakistan.

1962, although it did not refer to the *jirga*.<sup>27</sup> It is worthy of note that the name of the Chittagong Hill Tracts region of Bangladesh (then East Pakistan), which was recognized as a *tribal area* in the Pakistani Constitution of 1962 - was in fact removed, in 1964, without the consent or opinion of the chiefs of the region.<sup>28</sup> The reference to the *jirga* or tribal assembly is a vital safeguard, whose benefit the people of the Chittagong Hill Tracts could not avail of when the region's name was de-listed, as mentioned above.<sup>29</sup> At that time the CHT was represented in the federal legislature by a non-indigenous person.<sup>30</sup>

## 1.6. Bangladesh

The Constitution of Bangladesh does not directly acknowledge the identity of indigenous peoples nor otherwise directly address the issues of indigenous peoples. However, it addresses the matter indirectly, under the rubric of *backward section of citizens*, as mentioned hereunder.

### 1.6.1. Emancipation of Backward Sections from Exploitation

Article 14, in the *Fundamental Principles* section, provides that it shall be a fundamental responsibility of the State to emancipate toiling masses (including “backward sections of people”, peasants and workers) from all forms of exploitation.

### 1.6.2. Special Provisions for the Advancement of Backward Section of Citizens

Article 28(4) qualifies the Equality and Non-Discrimination clauses (articles 27 and 28) by stating that the state may nevertheless take special provisions for the advancement of any “backward section of citizens”, a phrase that is meant to refer to the indigenous peoples (“tribes”; “aboriginal castes and tribes”; “indigenous hillmen”).

### 1.6.3. Special Provisions for Adequate Representation of Backward Section of Citizens in the Service of the Republic

In the spirit of the aforesaid provision, article 29(3)(a) provides further that the State may reserve governmental posts in favour of of any “backward section of citizens”.favour of “backward section of citizens”.

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<sup>27</sup> Article 223, Constitution of Pakistan.

<sup>28</sup> Raja Tridiv Roy, *The Departed Melody: Memoirs*, PPA Publications, Islamabad, Pakistan, 2003, p. 195. See also, Constitution (First Amendment) Act, 1963 and Raja Devasish Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review*, Project to Promote ILO Policy on Indigenous and Tribal Peoples and ILO Office, Dhaka, Bangladesh, July, 2009, pp. 31, 32.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

## II. SAFEGUARDS ON INDIGENOUS PEOPLES' RIGHTS IN OTHER LAWS

### 2.1. Consultative Prerogatives of Chittagong Hill Tracts Regional Council & Hill District Councils, Bangladesh concerning Legislation

In the partially autonomous Chittagong Hill Tracts (CHT) region in Bangladesh, there are a number of safeguards concerning legislation affecting the region. These include the prerogative of the CHT Regional Council<sup>31</sup> and the Hill District Councils<sup>32</sup> to be consulted by the Government of Bangladesh concerning any legislation on the CHT or on any of the hill districts.

### 2.2. Consultative Prerogatives of Traditional Chiefs and Headmen in the Chittagong Hill Tracts, Bangladesh

The three traditional chiefs of the CHT have a general prerogative of consultation on matters affecting their territories.<sup>33</sup> These include consultative prerogatives involving the district administration, hill district councils, the statutory development authority known as the Chittagong Hill Tracts Development Board and the Advisory Committee of the Ministry of Chittagong Hill Tracts.

### 2.3. Indigenous Native Courts & Customary Law in Sabah, Malaysia

Legal, procedural and juridical autonomy of the indigenous peoples of Sabah state in Malaysia.<sup>34</sup> At the community levels, the headmen dispense justice, but at the tier above it the Native Courts, consisting of indigenous chiefs and headmen, exercise judicial authority. At mid-levels judicial

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<sup>31</sup> The concerned provision, section 53 of the CHT Regional Council Act, 1998 (Act XII of 1998) reads as follows: "(1) The Government if it initiates to make any law concerning the Council or the Chittagong Hill Tracts shall take necessary measures for making the law in consultation with the Council and the concerned Hill District Council and after by considering the advice of the Council. (2) The Council may apply or submit recommendations to the Government if the necessity arises to amend such a law which might adversely affect development of the three Hill Districts and the well being of the tribal people or if the necessity arises to make new laws." [*Bangladesh Gazette, The People's Republic of Bangladesh, Extraordinary, Sunday, 24 May, 1998*].

<sup>32</sup> The concerned provision, section 79 of the Hill District Council Acts (Acts XIX, XX and XXI of 1989), reads as follows: "If any law, passed by the [national parliament], applicable to Rangamati Hill District, is found to be hurtful to the district or objectionable to the tribal people in the opinion of the Council, it may file a petition in writing to the Government stating the reasons of its being hurtful or objectionable for the purpose of amending or relaxing its application in writing to the Government and the Government may adopt necessary remedial measures <sup>32</sup>[in the light of the petition.]

<sup>33</sup> Chittagong Hill Tracts Regulation, 1900 (especially, rule 39), Rangamati Hill District Council Act, 1989 (section 78).

<sup>34</sup> The federal Constitution of Malaysia recognizes the special status of the *natives of Sabah and Sarawak* (Article \_\_\_\_, Constitution of Malaysia).

authority is shared between indigenous chiefs and headmen with state judicial officers. Finally, at the higher levels, judicial authority vests upon the concerned High Court.<sup>35</sup>

#### 2.4. Administration of Justice by Traditional Chiefs and Headmen in the Chittagong Hill Tracts, Bangladesh

The system of administration of justice in the Chittagong Hill Tracts region has parallels with the justice administration systems in the Autonomous District Council areas (Sixth Schedule areas) of Northeast India, and with the Native Courts in Sabah, Malaysia. Civil and criminal courts under the Supreme Court of Bangladesh and the Ministry of Law, Justice and Parliamentary Affairs exercise jurisdiction over general civil and criminal matters, but they must only do so in a qualified manner. For example, the civil courts are obliged to dispense justice in accordance with “laws, customs and usages of the district concerned”.<sup>36</sup> Moreover, the law clarifies that the civil courts shall not interfere with the autonomous jurisdiction of the traditional chiefs and headmen.<sup>37</sup>

#### 2.5. Titling of Ancestral Domains and Ancestral Lands of in the Philippines

The landmark piece of legislation in the Philippines, the Indigenous peoples Rights Act, 1997 (Republic Act 8371), while recognizing the rights of the indigenous peoples of the country, provides among others, a unique system of recognition of the land and natural resource rights of these peoples (also called “indigenous cultural communities”). The Act sets up a *National Commission on Indigenous Peoples* (“NCIP”), which is mandated to provide written titles to genuine claims of indigenous communities over *Ancestral Lands* and *Ancestral Domains*. Although the process is laborious and time-consuming, the Commission can provide specialized and focused attention to the formal recognition of the land rights of indigenous communities,

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<sup>35</sup> Raja Devasish Roy, *Traditional Customary Laws and Indigenous Peoples in Asia*, Minority Rights Group International, London, March, 2005, p. 18. For parallel systems, compare with the system in the Chittagong Hill Tracts, Bangladesh and the Sixth Schedule (autonomous District Council) areas in Northeast India.

<sup>36</sup> Section \_\_\_\_, Chittagong Hill Tracts Regulation, 1900.

<sup>37</sup> The law (section \_\_ ) expressly provides that the civil courts shall try cases “except the cases arising out of the family laws and other customary laws of the tribes of the districts of Rangamati, Khagrachari and Bandarban, respectively, which shall be triable by the Mauza Headmen and Circle Chiefs”. For a detailed discussion of the traditional justice system in the Chittagong Hill Tracts, see Raja Devasish Roy, “Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh” in *Arizona Journal of International and Comparative Law*, Vol. 21, No.1, Spring, 2004, pp 113-182 and Raja Devasish Roy, *Traditional Customary Laws and Indigenous Peoples in Asia*, Minority Rights Group International, London, March, 2005, pp. 8, 20, 24.

which would be even more difficult and complicated, were the usual Land Administration bodies of the Government of the Philippines entrusted to do such work.

## 2.6. Identification of Sami land Rights in Norway

In 2005, the national parliament of Norway adopted the Finnmark Act, which recognizes that the indigenous Sami people have, through immemorial usage of land and natural resources, acquired ownership and usufruct rights to lands in Finnmark County.<sup>38</sup> The Act establishes a special mechanism for the identification and protection of rights which the Sami have acquired through immemorial usage.<sup>39</sup> The immediate consequence of the adoption of the Finnmark Act was that approximately 95 per cent of the land in Finnmark County (about 46,000 sq. km – an area approximately the size of Denmark) was transferred from State ownership to a new entity called the Finnmark Estate – a joint body of the Sami Parliament and the County Council of Finnmark.

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<sup>38</sup> Finnmark County is the northernmost county in Norway. The status of Sami rights to land in other counties remains unsolved. The Sami Rights Commission is currently studying the situation in other counties.

<sup>39</sup> The Finnmark Commission, and the Uncultivated Land Tribunal for Finnmark, are the core elements of the newly established land claims mechanism in Finnmark County.