

Indigenous Provisions in Constitutions Around the World

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EUROPEAN COUNTRIES

Denmark

1953 Constitution

<http://www.unhcr.org/refworld/country,,NATLEGBOD,,DNK,,3ae6b518c,0.html>

(...)

Section 28

The Folketing shall consist of one assembly of not more than one hundred and seventy-nine members, of whom two members shall be elected in the Faeroe Islands and two members in **Greenland**.

(...)

Section 31

(1)The members of the Folketing shall be elected by general and direct ballot.

(...)

(5)Special rules for the representation of **Greenland** in the Folketing may be laid down by statute.

Section 32

(1)The members of the Folketing shall be elected for a period of four years.

(...)

(5)Special rules may be provided by statute for the commencement and termination of Faroes and **Greenland** representation in the Folketing.

(...)

Section 42

(1)Where a Bill has been passed by the Folketing, one-third of the members of the Folketing

may, within three weekdays from the final passing of the Bill, request of the President that the Bill be submitted to a referendum.

(...)

(8) Rules for referenda, including the extent to which referenda shall be held in the Faroe Islands and in **Greenland**, shall be laid down by statute.

Finlandia

1999 Constitution (<http://www.wipo.int/wipolex/en/details.jsp?id=7503>)

(...)

Section 17 - Right to one's **language and culture**

The national languages of Finland are Finnish and Swedish.

The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.

The Sami, as an indigenous people, as well as the Roma and other groups, have the right to **maintain and develop their own language and culture**. Provisions on **the right of the Sami to use the Sami language before the authorities are laid down by an Act**. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.

(...)

Section 121 - Municipal and other regional self-government

Finland is divided into municipalities, whose administration shall be based on the self-government of their residents.

Provisions on the general principles governing municipal administration and the duties of the municipalities are laid down by an Act.

The municipalities have the right to levy municipal tax. Provisions on the general principles governing tax liability and the grounds for the tax as well as on the legal remedies available to the persons or entities liable to taxation are laid down by an Act.

Provisions on **self-government** in administrative areas larger than a municipality are laid down by an Act. In their **native region**, the **Sami** have **linguistic and cultural self-government**, as provided by an Act.

Norway

1814 Constitution (<http://www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/The-Constitution/>) or (http://www.servat.unibe.ch/icl/no00000_.html)

(...)

Article 110 a

It is the responsibility of the authorities of the State to create conditions enabling the **Sami people** to preserve and develop its language, culture and way of life.

Russia

1993 Constitution (http://www.wipo.int/wipolex/es/text.jsp?file_id=207714)

(...)

Article 26

1. Everyone shall have the right to determine and indicate his nationality. No one may be forced to determine and indicate his or her nationality.

2. Everyone shall have the right to use his or her **native language**, to a free choice of the language of communication, upbringing, education and creative work.

(...)

Article 68

1. The Russian language shall be the state language on the whole territory of the Russian Federation.

See Federal Law No. 53-FZ of June 1, 2005 on the State Language of the Russian Federation

2. The Republics shall have the right to establish their own state languages. In the bodies of state authority and local self-government, state institutions of the republics they shall be used together with the state language of the Russian Federation.

3. The Russian Federation shall guarantee to all of its peoples the right to preserve their **native language** and to create conditions for its study and development.

Article 69

The Russian Federation shall guarantee the rights of the **indigenous minority peoples** according to the universally recognised principles and norms of international law and international treaties

and agreements of the Russian Federation.

On guarantees of rights of indigenous minority peoples of the Russian Federation, see Federal Law No. 82-FZ of April 30, 1999

(...)

Article 71

The jurisdiction of the Russian Federation includes:

(...)

c) regulation and protection of the rights and freedoms of man and citizen; citizen ship in the Russian Federation, regulation and protection of the rights of **national minorities**;

(...)

Article 72

1. The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation includes:

(...)

b) protection of the rights and freedoms of man and citizen; protection of the rights of **national minorities**; ensuring the rule of law, law and order, public security and the border zone regime;

(...)

l) protection of the traditional habitat and way of life of small **ethnic communities**;

(...)

Sweden

The Constitution

Like most other democracies, Sweden has a written Constitution which sets out the rules for how society shall be governed. The Constitution therefore has a special position in society.

The Constitution consists of **four fundamental laws**: the Instrument of Government, the Act of Succession, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. The Riksdag Act is not one of the fundamental laws but occupies a position between a

fundamental law and an ordinary law.

Sweden's Constitution (http://www.riksdagen.se/templates/R_Page_____6307.aspx)

INSTRUMENT OF GOVERNMENT (1974 amended 2010)

Chapter 1. Basic principles of the form of government

Art. 2. Public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the individual.

The personal, economic and cultural welfare of the individual shall be fundamental aims of public activity. In particular, the public institutions shall secure the right to employment, housing and education, and shall promote social care and social security, as well as favourable conditions for good health.

The public institutions shall promote sustainable development leading to a good environment for present and future generations.

The public institutions shall promote the ideals of democracy as guidelines in all sectors of society and protect the private and family lives of the individual.

The public institutions shall promote the opportunity for all to attain participation and equality in society and for the rights of the child to be safeguarded. The public institutions shall combat discrimination of persons on grounds of gender, colour, national or **ethnic origin**, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the individual.

The opportunities of the **Sami people** and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own shall be promoted.

(...)

Chapter 2. Fundamental rights and freedoms

(...)

Freedom of trade

Art. 17. Limitations affecting the right to trade or practise a profession may be introduced only in order to protect pressing public interests and never solely in order to further the economic interests of a particular person or enterprise.

The right of the **Sami** population to practise **reindeer husbandry** is regulated in law.

(...)

Art. 21. The limitations referred to in Article 20 may be imposed only to satisfy a purpose acceptable in a democratic society. The limitation must never go beyond what is necessary with regard to the purpose which occasioned it, nor may it be carried so far as to constitute a threat to the free formation of opinion as one of the fundamentals of democracy. No limitation may be imposed solely on grounds of a political, religious, **cultural** or other such opinion.

(...)

Art. 22. A draft law under Article 20 shall be held in abeyance, unless rejected by the Riksdag, for a minimum of twelve months from the date on which the first Riksdag committee report on the proposal was submitted to the Chamber, if so moved by at least ten members. The Riksdag may, however, adopt the proposal directly if it has the support of at least five sixths of those voting.

Paragraph one shall not apply to any draft law prolonging the life of a law for a period not exceeding two years. Nor shall it apply to any draft law concerned only with:

1. prohibition of the disclosure of matters which have come to a person's knowledge in the performance of public or official duties, where secrecy is called for with regard to interests under Chapter 2, Article 2 of the Freedom of the Press Act;
2. house searches and similar invasions of privacy; or
3. deprivation of liberty as a penal sanction for a specific act. The Committee on the Constitution determines on behalf of the Riksdag whether paragraph one applies in respect of a particular draft law.

Art. 23. Freedom of expression and freedom of information may be limited with regard to the security of the Realm, the national supply of goods, public order and public safety, the good repute of the individual, the sanctity of private life, and the prevention and prosecution of crime. Freedom of expression may also be limited in business activities. Freedom of expression and freedom of information may otherwise be limited only where particularly important grounds so warrant.

In judging what limitations may be introduced in accordance with paragraph one, particular attention must be paid to the importance of the widest possible freedom of expression and freedom of information in political, religious, professional, scientific and **cultural matters**. The adoption of provisions which regulate in more detail a particular manner of disseminating or receiving information, without regard to its content, shall not be deemed a limitation of the freedom of expression or the freedom of information.

(...)

Chapter 14. Local authorities

Art. 1. Sweden has municipalities and county councils. Decision-making powers in these local authorities are exercised by elected assemblies.

Art. 2. The local authorities are responsible for local and regional matters of public interest on the principle of local self-government. More detailed rules on this are laid down in **law**. By the same principle, the local authorities are also responsible for other matters laid down in **law**.

Art. 3. Any restriction in local **self-government** should not exceed what is necessary with regard to the purpose of the restriction.

(...)

THE ACT OF SUCCESSION (1810)

Not mention at all

FREEDOM OF THE PRESS ACT (1949)

(...)

Art. 8. Provisions laid down in law apply in respect of the rights vested in the originator of a work of literature or art or the originator of a photographic picture, of rights neighbouring on such copyright, and the prohibition of the reproduction of works of literature or art in such a way as to **encroach upon cultural interests**.

(...)

THE FUNDAMENTAL LAW ON FREEDOM OF EXPRESSION (1991)

(...)

Chapter 7. On offences against the freedom of the press

(...)

Art. 4. With due regard to the purpose of freedom of the press for all under Chapter 1, the following acts shall be deemed to be offences against the freedom of the press if committed by means of printed matter and if they are punishable under law:

(...)

11. agitation against a population group, whereby a person threatens or expresses contempt for a population group or other such group with allusion to race, colour, national or **ethnic** origin, religious faith or sexual orientation;

ASIAN COUNTRIES

Afghanistan

2004 Constitution (http://www.afghan-web.com/politics/current_constitution.html)

In the name of God, the Merciful, the Compassionate

Preamble

We the people of Afghanistan:

(...)

4. Understanding the fact that Afghanistan is a single and united country and belongs to all ethnicities residing in this country,

Article Six

Ch. 1, Art. 6

The state is obliged to create a prosperous and progressive society based on social justice, protection of human dignity, protection of human rights, realization of democracy, and to ensure national unity and equality among all **ethnic groups and tribes** and to provide for balanced development in all areas of the country.

(...)

Article Twenty

Ch.1. Art. 20

The National Anthem of Afghanistan shall be in Pashtu and mention “Allahu Akbar” and the names of the **ethnic** groups of Afghanistan.

(...)

Article Thirty-Five

Ch. 2, Art. 14

The citizens of Afghanistan have the right to form social organizations for the purpose of securing material or spiritual aims in accordance with the provisions of the law.

(...)

Formation and functioning of a party based on **ethnicity**, language, Islamic school of thought (*mazhab-i fiqhi*) and region is not permissible.

(...)

Article Sixty-Six
Ch. 3, Art. 7

(...)

The President cannot act based on linguistic, **ethnic**, religious, political, and regional considerations during his term in office.

Article Eighty
Ch. 4, Art. 10

The Minister during the course of their work cannot use their posts for linguistic, regional, **ethnic**, religion and partisan purposes.

Armenia

1995 constitution(http://www.wipo.int/wipolex/en/text.jsp?file_id=178763)

Article 37

Citizens belonging to **national minorities** are entitled to the preservation of their traditions and the development of the

language and culture.

(...)

Armenia

1995 Constitution (<http://www.wipo.int/wipolex/en/details.jsp?id=9385>)

Not mention at all

Bahrain

2002 Constitution (www.wipo.int/wipolex/en/text.jsp?file_id=189442)

Not mention at all

Bangladesh

1972 Constitution with amendments until 2004
(http://www.wipo.int/wipolex/es/text.jsp?file_id=191720)

Not mention at all

Buthan

2008 Constitution (http://www.wipo.int/wipolex/es/text.jsp?file_id=167939)

Not mention at all

Brunei

1951 constitution with ammendment until 2008

(http://www.wipo.int/wipolex/en/text.jsp?file_id=198527)

Not mention at all

Cambodia

1993 constitution with amendments until 1999

(<http://www.wipo.int/wipolex/es/details.jsp?id=5886>)

Not mention at all

China

1982 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=184044)

Article 4 [Nationalities, Minorities, Regions, Languages]

(1) All **nationalities in the People's Republic of China** are equal. The state protects the lawful rights and interests of the **minority nationalities** and upholds and develops the relationship of equality, unity, and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited.

The state helps the areas inhabited by **minority nationalities** speed up their economic and cultural development in accordance with the peculiarities and needs of the different **minority nationalities**.

(2) Regional autonomy is practiced in areas where people of minority nationalities live in compact communities; in these areas organs of **self-government** are established for the exercise of the right of autonomy. All the national autonomous areas are inalienable parts of the People's Republic of China.

(3) The people of all nationalities have the freedom to use and develop their own spoken and written languages, and to preserve or reform their own ways and **customs**.

(...)

Article 122 [Minorities]

(1) The state gives financial, material, and technical assistance to the **minority nationalities** to

accelerate their economic and cultural development.

(2) The state helps the national autonomous areas train large numbers of cadres at different levels and specialized personnel and skilled workers of different professions and trades from among the **nationality or nationalities** in those areas.

(...)

Article 134 [Language in Trials]

(...)

(2) In an area where people of a minority nationality live in a compact community or where a number of nationalities live together, hearings should be conducted in the language or languages in common use in the locality; indictments, judgements, notices, and other documents should be written, according to actual needs, in the language or languages in common use in the locality.

Cyprus

1960 constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=189902)

Not mention at all

Georgia

1995 Constitution (<http://www.wipo.int/wipolex/es/details.jsp?id=7523>)

(...)

Article 14

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Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, **ethnic** and social belonging, origin, property and title, place of residence.

(...)

Article 38

1. Citizens of Georgia shall be equal in social, economic, cultural and political life irrespective of their national, **ethnic**, religious or linguistic belonging. In accordance with universally recognised principles and rules of international law, they shall have the right to develop freely, without any discrimination and interference, their culture, to use their mother tongue in private and in public.

2. In accordance with universally recognised principles and rules of international law, the exercise of **minority rights** shall not oppose the sovereignty, state structure, territorial integrity and political independence of Georgia.

India

Constitution 2007 (http://www.wipo.int/wipolex/es/text.jsp?file_id=184878)

15. (1) *The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*

(...)

(4) *Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the **Scheduled Tribes**.*

(5) *Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the **Scheduled Tribes** in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.*

Equality of opportunity in matters of public employment.

16. (1) *There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*

(2) *No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.*

(...)

(4A) *Nothing in this article shall prevent the State from making any provision for reservation 3[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the **Scheduled Tribes** which, in the opinion of the State, are not adequately represented in the services under the State.*

Cultural and Educational Rights

*Protection of interests of **minorities**.*

29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

*Right of **minorities** to establish and administer educational institutions.*

30. (1) All **minorities**, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

[(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a **minority**, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a **minority**, whether based on religion or language.

(...)

*Promotion of educational and economic interests of Scheduled Castes, **Scheduled Tribes** and other weaker sections.*

46. 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.

(...)

[PART IX

THE PANCHAYATS

243. In this Part, unless the context otherwise requires,—

(a) “district” means a district in a State;

(b) “Gram Sabha” means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;

(c) “intermediate level” means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this

Part;

(d) “Panchayat” means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;

(e) “Panchayat area” means the territorial area of a Panchayat;

(f) “population” means the population as ascertained at the last preceding census of which the relevant figures have been published;

(g) “village” means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

243A. A Gram Sabha may exercise such powers and perform such functions at the village level as the

Legislature of a State may, by law, provide.

243B. (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

Reservation of seats.

243D. (1) Seats shall be reserved for—

(a) the Scheduled Castes; and

*(b) the **Scheduled Tribes**, in every Panchayat and the number of seats so reserved*

shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be

reserved for women belonging to the Scheduled Castes or, as the case may be, the **Scheduled Tribes**.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the **Scheduled Tribes**) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the **Scheduled Tribes** and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the **Scheduled Tribes** in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the **Scheduled Tribes** in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

(...)

Reservation of seats.

243T. (1) Seats shall be reserved for the Scheduled Castes and the **Scheduled Tribes** in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the **Scheduled Tribes** in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the **Scheduled Tribes**.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the **Scheduled Tribes**) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the **Scheduled Tribes** and women in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

PART X

THE SCHEDULED AND TRIBAL AREAS

Administration of Scheduled Areas and Tribal Areas.

244. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and **Scheduled Tribes** in any State other than [the States of Assam, [Meghalaya, Tripura and Mizoram]]].

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in [the States of Assam, [Meghalaya, Tripura and Mizoram]]].

246. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included 2[in a State] notwithstanding that such matter is a matter enumerated in the

State List.

(...)

SPECIAL PROVISIONS RELATING

TO CERTAIN CLASSES

*Reservation of seats for Scheduled Castes and **Scheduled Tribes** in the House of the People.*

330. (1) Seats shall be reserved in the House of the People for —

(a) the Scheduled Castes;

*(b) the **Scheduled Tribes** except the **Scheduled Tribes** in the autonomous districts of Assam; and*

*(c) the **Scheduled Tribes** in the autonomous districts of Assam.*

*(2) The number of seats reserved in any State 2[or Union territory] for the Scheduled Castes or the **Scheduled Tribes** under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State 2[or Union territory] in the House of the People as the population of the Scheduled Castes in the State 2[or Union territory] or of the **Scheduled Tribes** in the State 2[or Union territory] or part of the State 2[or Union territory], as the case may be, in respect of which seats are so reserved, bears to the total population of the State 2[or Union territory].*

*(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the **Scheduled Tribes** in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.*

(...)

*332. (1) Seats shall be reserved for the Scheduled Castes and the **Scheduled Tribes**, 3[except the Scheduled Tribes in the autonomous districts of Assam], in the Legislative Assembly of every State*

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

*(3) The number of seats reserved for the Scheduled Castes or the **Scheduled Tribes** in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the **Scheduled Tribes** in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.*

(3A) Notwithstanding anything contained in clause (3), until the taking effect, under article 170, of the re-adjustment, on the basis of the first census after the year [2026], of the number of seats in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, the seats which shall be reserved for the **Scheduled Tribes** in the Legislative Assembly of any such State shall be,—

(a) if all the seats in the Legislative Assembly of such State in existence on the date of coming into force of the Constitution (Fifty-seventh Amendment) Act, 1987 (hereafter in this clause referred to as the existing Assembly) are held by members of the **Scheduled Tribes**, all the seats except one;

(b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members belonging to the **Scheduled Tribes** in the existing Assembly bears to the total number of seats in the existing Assembly.]

(3B) Notwithstanding anything contained in clause (3), until the re-adjustment, under article 170, takes effect on the basis of the first census after the year 2[2026], of the number of seats in the Legislative Assembly of the State of Tripura, the seats which shall be reserved for the **Scheduled Tribes** in the Legislative Assembly shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy- second Amendment) Act, 1992, of members belonging to the **Scheduled Tribes** in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly.]

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district

(6) No person who is not a member of a **Scheduled Tribe** of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district:

*Provided that for elections to the Legislative Assembly of the State of Assam, the representation of the **Scheduled Tribes** and non-Scheduled Tribes in the constituencies included in the Bodoland Territorial Areas District, so notified, and existing prior to the constitution of Bodoland Territorial Areas District, shall be maintained.*

Reservation of seats and special representation to cease after sixty years.

334. Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to—

(a) the reservation of seats for the Scheduled

*Castes and the **Scheduled Tribes** in the House of the People and in the Legislative Assemblies of the States; and*

(b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination, shall cease to have effect on the expiration of a period of [sixty years] from the commencement of this Constitution:

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or ssembly, as the case may be.

*Claims of Scheduled Castes and **Scheduled Tribes** to services and posts.*

*335. The claims of the members of the Scheduled Castes and the **Scheduled Tribes** shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:*

*Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the **Scheduled Tribes** for relaxation inqualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.]*

*National Commission for **Scheduled Tribes**.*

*338A. (1) There shall be a Commission for the **Scheduled Tribes** to be known as the National Commission for the **Scheduled Tribes**.*

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission—

*(a) to investigate and monitor all matters relating to the safeguards provided for the **Scheduled Tribes** under this Constitution or under any other law for the time being in force or under any*

order of the Government and to evaluate the working of such safeguards;

*(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the **Scheduled Tribes**;*

*(c) to participate and advise on the planning process of socio-economic development of the **Scheduled Tribes** and to evaluate the progress of their development under the Union and any State;*

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

*(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the **Scheduled Tribes**; and*

*(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the **Scheduled Tribes** as the President may, subject to the provisions of any law made by Parliament, by rule specify.*

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely: —

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) *The Union and every State Government shall consult the Commission on all major policy matters affecting **Scheduled Tribes.**]*

*Control of the Union over the administration of Scheduled Areas and the welfare of **Scheduled Tribes.***

339. (1) *The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the **Scheduled Tribes** in the States.*

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) *The executive power of the Union shall extend to the giving of directions to 1[a State] as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the **Scheduled Tribes** in the State.*

Scheduled Tribes.

342. (1) *The President may with respect to any State [or Union territory], and where it is a State, after consultation with the Governor thereof,] by public notification⁶, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be **Scheduled Tribes** in relation to that State or Union territory, as the case may be.*

(2) *Parliament may by law include in or exclude from the list of **Scheduled Tribes** specified in a notification issued under clause (1) any **tribe** or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.*

*[350A. It shall be the endeavour of every State and every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to **linguistic minority groups**; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.*

*Special Officer for **linguistic minorities.***

350B. (1) *There shall be a Special Officer for **linguistic minorities** to be appointed by the President.*

*(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for **linguistic minorities** under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.]*

SIXTH SCHEDULE

[Articles 244(2) and 275(1)]

Provisions as to the Administration of Tribal Areas in 1[the States of Assam, Meghalaya, Tripura and Mizoram]

*1. **Autonomous districts and autonomous regions.**—(1) Subject to the provisions of this paragraph, the tribal areas in each item of 3[4[Parts I, II and IIA] and in Part III] of the table appended to paragraph 20 of this Schedule shall be an autonomous district.*

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

(...)

*2. **Constitution of District Councils and Regional Councils.**—2(1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.¹*

(...)

¹ Paragraph 2 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, so as to insert the following proviso after sub-paragraph (1), namely:—

“Provided that the Bodoland Territorial Council shall consist of not more than forty-six members of whom forty shall be elected on the basis of adult suffrage, of whom thirty shall be reserved for the Scheduled Tribes, five for non-tribal communities, five open for all communities and the remaining six shall be nominated by the Governor having same rights and privileges as other members, including voting rights, from amongst the un-represented communities of the Bodoland Territorial Areas District, of which at least two shall be women.”

Paragraph 2 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s. 2, so as to insert the following proviso after sub-paragraph (3), namely:—

“Provided that the District Council constituted for the North Cachar Hills District shall **be called as the North Cachar Hills Autonomous Council and the District Council constituted for the Karbi Anglong District shall be called as the Karbi Anglong Autonomous Council.**”
See http://www.wipo.int/wipolex/es/text.jsp?file_id=184878, *Constitution of India at 292.*

4. Administration of justice in autonomous districts and autonomous regions.—

(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(...)

(5) On and from such date as the President may, 2[after consulting the Government of the State concerned], by notification appoint in this behalf, this paragraph shall have effect in relation to such autonomous district or region as may be specified in the notification, as if—

(i) in sub-paragraph (1), for the words “between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply,” the words “not being suits and cases of the nature referred to in sub-paragraph (1) of paragraph (5) of this Schedule, which the Governor may specify in this behalf”, had been substituted;

(ii) sub-paragraphs (2) and (3) had been omitted;

(iii) in sub-paragraph (4)—

(a) for the words “A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating”, the words “the Governor may make rules regulating” had been substituted; and

(b) for clause (a), the following clause had been substituted, namely:—

“(a) the constitution of village councils and courts, the powers to be exercised by them under this paragraph and the courts to which appeals from the decisions of village councils and courts shall lie;”;

(c) for clause (c), the following clause had been substituted, namely:—

“(c) the transfer of appeals and other proceedings pending before the Regional or District Council or any court constituted by such Council immediately before the date appointed by the President under sub-paragraph (5);”; and

(d) in clause (e), for the words, brackets and figures “sub-paragraphs (1) and (2)”, the word,

brackets and figure “sub-paragraph (1)” had been substituted.]

(...)

SEVENTH SCHEDULE

(Article 246)

(...)

List III—Concurrent List

(...)

*15. Vagrancy; **nomadic and migratory tribes.***

(...)

NINTH SCHEDULE

(Article 31B)

(...)

*150. The **Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (Kerala Act 31 of 1975).***

Indonesia

1945 Constitution amended until 2002 (http://www.wipo.int/wipolex/es/text.jsp?file_id=200129)

Citizens and Residents

Article 26

*(1) Citizens shall consist of **indigenous Indonesian peoples** and persons of foreign origin who have been legalised as citizens in accordance with law.*

Iran

1979 Constitution (<http://www.wipo.int/wipolex/en/details.jsp?id=7697>)

(...)

CHAPTER II:

The Official Language, Script, Calendar, and Flag of the Country

Article 15 The official language and script of Iran, the lingua franca of its people, is Persian. Official documents, correspondence, and texts, as well as text-books, must be in this language and script. However, the use of regional and tribal languages in the press and mass media, as well as for teaching of their literature in schools, is allowed in addition to Persian.

(...)

The Rights of the People

Article 19

All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and color, race, language, and the like, do not bestow any privilege.

Iraq

Constitution (www.uniraq.org/documents/iraqi_constitution.pdf*)*

(...)

Article 35:

*The state shall promote cultural activities and institutions in a manner that befits the civilizational and cultural history of Iraq, and it shall seek to support **indigenous Iraqi cultural orientations**.*

(...)

*Second: The State shall seek the advancement of the Iraqi clans and **tribes**, shall attend to their affairs in a manner that is consistent with religion and the law, and shall uphold their noble human values in a way that contributes to the development of society. The State shall prohibit the tribal traditions that are in contradiction with human rights.*

Israel

Unwritten constitution

Japan

1946 Constitution (http://www.wipo.int/wipolex/es/text.jsp?file_id=191550)

Not mention at all

Jordan

1947 Constitution (<http://www.kinghussein.gov.jo/government1.html>)

Not mention at all

Kazakhstan

1995 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=189327)

*We, the people of Kazakhstan, united by a common historic fate, creating a state on the **indigenous Kazakh land**, considering ourselves a peace-loving and civil society, dedicated to the ideals of freedom, equality and concord, wishing to take a worthy place in the world community, realizing our high responsibility before the present and future generations, proceeding from our sovereign right, accept this Constitution.*

(...)

Article 39

1. Rights and freedoms of an individual and citizen may be limited only by laws and only to the extent necessary for protection of the constitutional system, defense of the public order, human rights and freedoms, health and morality of the population.

*2. Any actions capable of upsetting **interethnic** concord shall be deemed unconstitutional.*

DRKorea

1998 Constitution (http://www.novexcn.com/dprk_constitution_98.html)

Not mention at all

Korea South

1948 constitution (http://korea.assembly.go.kr/res/low_01_read.jsp?boardid=1000000035)

Not mention at all

Kuwait

1962 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=181003)

Not mention at all

Kyrgyzstan

1998 constitution (confinder.richmond.edu/admin/docs/kyrgyz_const.pdf)

Chapter 1

The Political Regime

Article 1.

The Lao People's Democratic Republic is an independent country with sovereignty and territorial integrity over its territorial waters and airspace. It is a unified country belonging to all **multi-ethnic** people and is indivisible.

(...)

Article 15

1. The dignity of individuals in the Kyrgyz Republic is absolute and inviolable.

2. Every person from birth is entitled to basic human rights and freedoms. These rights shall be recognized as absolute, inalienable, and protected by law and the courts from infringement by any other person.

*3. All persons in the Kyrgyz Republic shall be equal before the law and the court. No one shall be subject to any type of discrimination, violation of his rights and freedoms, on the **grounds of ethnic origin**, sex, race, nationality, language, religious belief, or other conditions or circumstances of a personal or social nature.*

(...)

Laos

2003 Constitution (http://www.wipo.int/wipolex/es/text.jsp?file_id=180175)

CONSTITUTION OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC PREAMBLE

*The **multi-ethnic** Lao people have existed and developed on this beloved land for thousands of years.*

(...)

Chapter 1

The Political Regime

Article 1.

*The Lao People's Democratic Republic is an independent country with sovereignty and territorial integrity over its territorial waters and airspace. It is a unified country belonging to all **multi-ethnic people** and is indivisible.*

Article 2.

*The State of the Lao People's Democratic Republic is a people's democratic state. All powers belong to the people, [and are exercised] by the people and for the interests of the **multi-ethnic people** of all social strata with the workers, farmers and intelligentsia as key components.*

Article 3.

*The rights of the **multi-ethnic people** to be the masters of the country are exercised and ensured through the functioning of the political system with the Lao People's Revolutionary Party as its leading nucleus.*

(...)

Article 7.

*The Lao Front for National Construction, the Lao Federation of Trade Unions, the Lao People's Revolutionary Youth Union, the Lao Women's Union and other social organisations are the organs to unite and mobilise all strata of the **multi-ethnic people** to take part in the tasks of protection and construction of the country; to develop the right of self-determination of the people and to protect the legitimate rights and interests of members of their respective organisations.*

Article 8.

*The State pursues the policy of promoting unity and equality among all ethnic groups. All ethnic groups have the right to protect, preserve and promote the fine customs and cultures of their own tribes and of the nation. All acts creating division and discrimination among **ethnic groups** are prohibited.*

*The State implements every measure to gradually develop and upgrade the socio-economic levels of all **ethnic groups**.*

(...)

Article 13. (New)

*The national economy of the Lao People's Democratic Republic relies on a stable multi-sectoral economy which is encouraged [by the government; such economy shall] expand manufacturing capacity, broaden production, businesses and services, transform the natural economy into a trading and manufacturing economy, and modernise; [while] combining with regional and global economies to stabilise and develop the national economy continuously and to improve the material and spiritual living conditions of the **multi-ethnic people**.*

(...)

Article 22. The State attends to developing education and implements compulsory primary

*education in order to build good citizens with revolutionary competence, knowledge and abilities. The State and society attend to developing high quality national education, to create opportunities and [favourable] conditions in education for all people throughout the country, especially people in remote areas, **ethnic groups**, women and disadvantaged children.*

(...)

Article 35.

*Lao citizens are all equal before the law irrespective of their gender, social status, education, beliefs and **ethnic group**.*

(...)

*Article 52. The National Assembly is the representative of the rights, powers and interests of the **multi-ethnic people**. The National Assembly is also the legislative branch that has the right to make decisions on fundamental issues of the country, [and] to oversee the activities of the executive organs, the people's courts and the Office of the Public Prosecutor.*

(...)

Article 65.

*The President of the State is the Head of State of the Lao People's Democratic Republic and the representative of the **multi-ethnic** Lao people both within the country and abroad.*

(...)

Lebanon Constitution

1926 Constitution amendments until 1991

http://www.wipo.int/wipolex/en/text.jsp?file_id=184204)

Not mention at all

Malaysia

1957 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=194852)

Article number: 16a

16a. Subject to Article 18, any person of or over the age of eighteen years who is on Malaysia Day

ordinarily resident in the State of Sabah or Sarawak is entitled, upon making application to the Federal

Government before September 1971, to be registered as a citizen if he satisfies the Federal Government -

(...)

*(d) except where the application is made before September 1965, and the applicant has attained the age of forty-five years at the date of the application, that he has a sufficient knowledge of the Malay language or the English language or, in the case of an applicant ordinarily resident in Sarawak, the Malay language, the English language or any **native language** in current use in Sarawak.*

Article number: 74

(see ninth schedule, native law and land issues)

(1) Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List of the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule).

(2) Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.

(3) The power to make laws conferred by this Article is exercisable subject to any conditions or restrictions imposed with respect to any particular matter by this Constitution.

(4) Where general as well as specific expressions are used in describing any of the matters enumerated in the Lists set out in the Ninth Schedule the generality of the former shall not be taken to be limited by the latter.

(...)

Article number: 75

75. If any State law is inconsistent with a federal law, the federal law shall prevail and the State law

shall, to the extent of the inconsistency, be void.

Article number: 76

76.

(1) Parliament may make laws with respect to any matter enumerated in the State List, but only as

follows, that is to say:

(a) for the purposed of implementing any treaty, agreement or convention between the Federation and any other country, or any decision of an international organization of which the Federation is a member; or

(b) for the purpose of promoting uniformity of the laws of two or more State; or

(c) if so requested by the Legislative Assembly of any State.

*(2) No law shall be made in pursuance of paragraph (a) of Clause (1) with respect to any matters of Islamic law or the custom of the Malays or to any matters of **native law or custom** in the States of Sabah and Sarawak and no Bill for a law under that paragraph shall be introduced into either House of Parliament until the Government or any State concerned has been consulted.*

(3) Subject to Clause (4), a law made in pursuance of paragraph (b) or paragraph (c) of Clause (1) shall not come into operation in any State until it has been adopted by a law made by the Legislature of that State, and shall then be deemed to be a State law and not a federal law, and may accordingly be amended or repealed by a law made by the Legislature.

(4) Parliament may, for the purpose only of ensuring uniformity of law and policy, make laws with respect to land tenure, the relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases and charges in respect of land, easements and other rights and interests in land, compulsory acquisition of land, rating and valuation of land, and local government; and Clauses (1) (b) and (3) shall not apply to any law relating to any such matter.

(...)

Article number: 89

*(1) Any land in State which immediately before Merdeka Day was a **Malay reservation** in accordance with the existing law until otherwise provided by an Enactment-*

(a) passed by a majority of the total number of members of the Legislative Assembly and by the votes of not less than two-thirds of the members present and voting; and

(b) approved by resolution of each house of Parliament passed by a majority of the total number of members by that House and by the voices of not less than two-thirds of the members voting.

(1A) Any law made under Clause (1) providing for the forfeiture or reversal to the State Authority, or for the deprivation, of the ownership of any **Malay reservation**, or of any right or interest therein, on account of any person, or any corporation, company or other body (whether corporate or unincorporated) holding the same ceasing to be qualified or competent under the relevant law relating to **Malay reservations** to hold the same, shall not be invalid on the ground of inconsistency with Article 13.

(2) Any land in a State which is not for the time being a **Malay reservation** in accordance with the existing law and has not been developed or cultivated may be declared as a **Malay reservation** in accordance with that law:

Provided that-

(a) where any land in a State is declared a **Malay reservation** under this Clause, an equal area of land in that State which has not been developed or cultivated shall be made available for general alienation; and

(b) the total area of land in a State for the time being declared as a **Malay reservation** under this Clause shall not at any time exceed the total area of land in that State which has been made available for general alienation in pursuance of paragraph (a).

(3) Subject to Clause (4), the Government of any State may, in accordance with the existing law, declare as a **Malay reservation-**

(a) any land acquired by that Government by agreement for that purpose;

(b) on the application of the proprietor, and with the consent of every person having a right or interest therein, any other land; and shall, in accordance with the existing law, immediately declare as a **Malay reservation**, in a case where any land ceases to be a **Malay reservation**, any other land of a similar character and of an area not exceeding the area of that land.

(4) Nothing in this article shall authorise the declaration as a Malay reservation of any land which at time of the declaration is owned or occupied by a person who is not a Malay or in or over which such a person has then any right or interest.

(5) Without prejudice to Clause (3), the Government of any State may, in accordance with law, acquire land for the settlement of Malays or other communities, and establish trusts for that purpose.

(6) In this Article "**Malay reservation**" means land reserved for alienation to Malays or to natives of the State in which it lies; and "Malay" includes any person who, under the law of the

*State in which he is resident, is treated as a **Malay for the purposes of the reservation** of land.*

*(7) Subject to Article 161a, this Article shall have effect notwithstanding any other provision of this Constitution; but (without prejudice to any such other provision) no land shall be retained or declared as a **Malay reservation** except as provided by this Article and Article 90.*

(8) The provisions of this article shall apply to the Federal Territory of Kuala Lumpur in the like manner that they apply to a state, save that Clause (1) in its application to the Federal Territory of Kuala Lumpur shall be modified to read that any land in the Federal Territory of Kuala Lumpur which immediately before Merdeka Day was a Malay reservation in accordance in accordance with that law until otherwise provided by an Act of Parliament passed by a majority of the total number of members of each House of Parliament and by the votes of not less than two-thirds of the members present and voting in each House.

(...)

Article number: 145

(...)

(3) The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial.

(...)

Article number: 150

*(6A) Clause (5) shall not extend the powers of Parliament with respect to any matter of Islamic law or the custom of the Malays, or with respect to any matter of **native law or custom** in the State of Sabah or Sarawak; nor shall Clause (6) validate any provision inconsistent with the provisions of this Constitution relating to any such matter or relating to religion, citizenship, or language.*

(...)

Article number: 153

*153. (1) It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and **natives** of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article.*

(2) Notwithstanding anything in this Constitution, but subject to the provisions of Article 40 and of this Article, the Yang di-Pertuan Agong shall exercise his functions under this Constitution

*and federal law in such manner as may be necessary to safeguard the special provision of the Malays and **natives** of any of the States of Sabah and Sarawak and to ensure the reservation for Malays and natives of any of the States of Sabah and Sarawak of such proportion as he may deem reasonable of positions in the public service (other than the public service of a State) and of scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal Government and, when any permit or licence for the operation of any trade or business is required by federal law, then, subject to the provisions of that law and this Article, of such permits and licences.*

(3) The Yang di-Pertuan Agong may, in order to ensure in accordance with Clause (2) the reservation to Malays and natives of any of the States of Sabah and Sarawak of positions in the public service and of scholarships, exhibitions and other educational or training privileges or special facilities, give such general directions as may be required for that purpose to any Commission to which Part X applies or to any authority charged with responsibility for the grant of such scholarships, exhibitions or other educational or training privileges or special facilities; and the Commission or authority shall duly comply with the directions.

(...)

*(6) Where by existing federal law a permit or licence is required for the operation of any trade or business the Yang di-Pertuan Agong may exercise his functions under that law in such manner, or give such general directions to any authority charged under that law with the grant of such permits or licences, as may be required to ensure the reservation of such proportion of such permits or licences for Malays and **natives** of any of the States of Sabah and Sarawak as the Yang di-Pertuan Agong may deem reasonable, and the authority shall duly comply with the directions.*

(...)

*(8) Notwithstanding anything in this Constitution, where by any federal law any permit or licence is required for the operation of any trade or business, that law may provide for the reservation of a proportion of such permits or licences for Malays and **natives** of any of the States of Sabah and Sarawak; but no such law shall for the purpose of ensuring such a reservation-*

(...)

(8A) Notwithstanding anything in this Constitution, where in any University, College and other educational institution providing education after Malaysian Certificate of Education or its equivalent, the number of places offered by the authority responsible for the management of the University, College or such educational institution to candidates for any course of study is less than the number of candidates qualified for such places, it shall be lawful for the Yang di-

*Pertuan Agong by virtue of this Article to give such directions to the authority as may be required to ensure the reservation of such proportion of such places for Malays and **natives** of any of the States of Sabah and Sarawak as the Yang di-Pertuan Agong may deem reasonable, and the authority shall duly comply with the directions.*

(...)

(9A) In this Article the expression "natives" in relation to the State of Sabah or Sarawak shall have the meaning assigned to it in Article 161A.

Article number: 160

160.

(1) The Interpretation and General Clauses Ordinance, 1948, as in force immediately before Merdeka Day shall, to the extent specified in the Eleventh Schedule, apply for the interpretation of this Constitution as it applies for the interpretation of any written law within the meaning of that Ordinance, but with the substitution of references to the Yang di-Pertuan Agong for references to the High Commissioner.

(2) In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say -

*"Aborigine" means an **aborigine** of the Malay Peninsula;*

(...)

Concurrent List" means the Third List set out in the Ninth Schedule;

PART XIII - ADDITIONAL PROTECTIONS FOR STATES OF

SABAH AND SARAWAK

Article number: 161

(..)

*(5) Notwithstanding anything in Article 152, in the State of Sabah or Sarawak a **native language** in current use in the State may be used in native courts or for any code of **native law** and custom, and in the case of Sarawak, until otherwise provided by enactment of the Legislature, may be used by a member addressing the Legislative Assembly or any committee thereof.*

Article number: 161a

(4) The Constitutions of the States of Sabah and Sarawak may make provision corresponding (with the necessary modifications) to Article 153.

(5) Article 89 shall not apply to the State of Sabah or Sarawak, and Article 8 shall not invalidate or prohibit any provision of State law in the State of Sabah or Sarawak for the reservation of and for **natives** of the State or for alienation to them, or for giving them preferential treatment as regards the alienation of land by the State.

(6) In this Article "**native**" means-

(a) in relation to Sarawak, a person who is a citizen and either belongs to one of the races specified in Clause (7) as **indigenous** to the State or is of mixed blood deriving exclusively from those races; and

(b) in relation to Sabah, a person who is a citizen, is the child or grandchild of a person of a **race indigenous** to Sabah, and was born (whether on or after Malaysia Day or not) either in Sabah or to a father domiciled in Sabah at the time of the birth.

(7) The races to be treated for the purposes of the definition of "native" in Clause (6) as **indigenous** to Sarawak are the Bukitans, Bisayahs, Dusuns, Sea Dayaks, Land Dayaks, adayans, Kalabit, Kayans, Kenyags (Including Sabups and Sipengs), Kajangs (including Sekapans,Kejamans, Lahanans, Punans, Tanjongs dan Kanowits), Lugats, Lisums, Malays, Melanos,

Muruts, Penans, Sians, Tagals, Tabuns and Ukits.

(...)

Article number: 161e

(...)

(2) No amendment shall be made to the Constitution without the concurrence of the Yang di-Pertuan Negeri of the State of Sabah or Sarawak or each of the States of Sabah and Sarawak concerned, if the amendment is such as to affect the operation of the Constitution as regards any of the following matters:

(...)

(d) religion in the State, the use in the State or in Parliament of any language and the special treatment of **natives** of the State;

(...)

NINTH SCHEDULE LEGISLATIVE LISTS

List I - Federal List

(...)

6. *The machinery of government, subject to the State List, but including -*

(...)

*(e) Government and administration of the Federal Territories of Kuala Lumpur and Labuan including Islamic law therein to the same extent as provided in item I in the State List and in respect of the Federal Territory of Labuan, **native law and custom** to the same extent as provided in item 13 of the Supplement to State List for States of Sabah and Sarawak;*

(...)

List II - State List

(...)

2. *Except with respect to the Federal Territories of Kuala Lumpur and Labuan, land including -*

(...)

*(b) Malay reservations or, in the States of Sabah and Sarawak, **native reservations**;*

(...)

List IIA - Supplement to State List for State of Sabah and Sarawak

*13. **Native law and custom**, including the personal law relating to marriage, divorce, guardianship, maintenance, adoption, legitimacy, family law, gifts or succession testate or intestate; registration of adoptions under **native law or custom**; the determination of matters of **native law or custom**; the constitution, organization and procedure of **native courts** (including the right of audience in such courts), and the jurisdiction and powers of such courts, which shall extend only to the matters included in this paragraph and shall not include jurisdiction in respect of offences except in so far as conferred by federal law.*

Maldives

2008 Constitution (www.maldivesinfo.gov.mv/home/upload/.../Compilation.pdf)

Not mention at all.

Mongolia

1992 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=183021)

(...)

Article 8

1. The Mongolian language is the official language of the State.

2. Section 1 of this Article shall not affect the right of national minorities of other tongues to use their **native languages** in education and communication and in the pursuit of cultural, artistic and scientific activities.

(...)

Article 14

(...)

2. No person shall be discriminated against on the basis of **ethnic origin**, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education. Everyone shall have the right to act as a legal person.

(...)

The President of Mongolia

Article 30

(...)

2. An **indigenous** citizen of Mongolia who has attained the age of forty five years and has permanently resided as a minimum for the last five years in native land, shall be eligible for election to the post of President for a term of four years.

(...)

Myanmar

2008 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=181169)

Not mention at all

Nepal

2007 Constitution (http://www.wipo.int/wipolex/es/text.jsp?file_id=189179)

(...)

13. Right to equality: (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.

(...)

Provided that nothing shall be deemed to prevent the making of special provisions by law for the

protection, empowerment or advancement of women, Dalits, **indigenous peoples** (Adibasi, Janajati), Madhesi or farmers, workers, economically, socially or culturally backward classes or children, the aged and the disabled or those who are physically or mentally incapacitated.

21. Right to social justice: The economically, socially or educationally backward women, Dalits, **indigenous peoples**, Madhesi communities, oppressed classes, poor farmers and labors shall have the right to take part in the structures of the State on the basis of the principle of 'proportional inclusion.

33. Obligations of the State: The State shall have the following obligations:

(...)

(d) To make an inclusive, democratic and progressive restructuring of the State, by ending the existing centralized and unitary structure of the State so as to address the problems including those of women, Dalit, **indigenous people**, Madhesi, oppressed, excluded and minority

communities and backward regions, while at the same time doing away with discrimination based on class, caste, language, gender, culture, religion and region;

(dl) To have participation of Madhesi, dalit, **indigenous peoples**, women, labors, farmers, disabled, backward classes and regions in all organs of the State structure on the basis of proportional inclusion;

(...)

35. Policies of the State:

(...)

(10) The State shall pursue a policy of uplifting the economically and socially backward **indigenous peoples**, Madhesi, Dalit, marginalized communities, and workers and farmers living below the poverty line, by making a provision of reservation in education, health, housing, food sovereignty and employment, for a certain period of time.

(...)

12) The State shall, for the purposes of national development, pursue a policy of attracting foreign capital and technology, while giving priority to **indigenous** investment.

(...)

(14) The State shall pursue a policy of making a special provision, based on positive discrimination, for the minorities, landless people, landless squatters, bonded labors, the disabled, backward regions and communities and victims of conflict, the women, Dalit, **indigenous people**, Madhesi and Muslims, as well.

(...)

CONSTITUENT ASSEMBLY

63.

Constitution of Constituent Assembly:

(...)

3)The Constituent Assembly shall be composed of the following number of members who are elected on the basis of the equality of population, geographical congeniality and specificity, and on the basis of the percentage of the population in Madhes, in accordance with the mixed electoral system, as provided in the law, and who nominated as follows:

(...)

(c) Twenty six members to be nominated by the Council of Ministers, on the basis of understanding, from amongst the prominent persons who have rendered outstanding contributions to national life, and the indigenous peoples which could not be represented through the elections as referred to in Clauses (a) and (b).

(...)

4) In selecting candidates pursuant to Sub-clause (a) of Clause (3), political parties shall take into account the principle of inclusiveness; and in enlisting candidates pursuant to Sub-clause (b), political parties shall ensure proportional representation of the women, Dalit, **oppressed communities/ indigenous peoples**, backward regions, Madhesi and other Classes, as provided in law.

(...)

STRUCTURE OF STATE AND LOCAL SELF- GOVERNANCE

138. Progressive restructuring of the State: (1) There shall be made progressive restructuring of the State with inclusive, democratic federal system of governance, by doing away with the centralized and unitary structure of the State so as to end discriminations based on class, caste, language, gender, culture, religion and region.

(1a) Recognizing the desire of the **indigenous peoples** and of the people of backward and other area including Madhesi people towards autonomous provinces Nepal shall be a federal democratic republican state.

Provinces shall be autonomous and vested with full authority. The boundaries, number, names and structures, as well as full details of the lists, of autonomous provinces and the center and

allocation of means, resources and powers shall be determined by the Constituent Assembly, while maintaining the sovereignty, unity and integrity of Nepal.

(...)

144. Constitution of the Nepal Army: (1) There shall be an organization of the Nepal Army in Nepal.

(...)

(4a)104In order to make the Nepal Army inclusive and national in character, the entry of the Mahesi, **indigenous peoples**, Dalit, women and people in backward area shall be ensured by law, on the basis of the principles of equality and inclusion.

(...)

154. Constitution of commissions: The Government of Nepal may constitute such commissions as may be required for the protection and promotion of the rights and interests of various sectors Including women, Dalit, **indigenous peoples**, Madhesi, disabled, labours or farmers. The provisions relating to the formation, functions, duties and powers of such commissions shall be as determined by law.

(...)

Schedule-4

(Relating to clause (3) of Article 166)

The Comprehensive Peace Accord concluded between the Government of Nepal and Communist Party of Nepal (Maoist)

(...)

3. Political-economic-social transformation and conflict management:

Both parties agree to adopt the following policies and programs for the political, economic and social transformation and to positively manage the conflicts existing in the country:

(...)

3.5

To end the existing centralized and unitary structure of the State so as to address the problems including those of women, Dalit, **indigenous peoples**, Madhesi, oppressed, excluded and **minority communities** and backward regions, and make an inclusive, democratic and progressive restructuring of the State, while at the same time doing away with discriminations

based on class, caste, language, gender, culture, religion and region.

Oman

1996 constitution (<http://www.wipo.int/wipolex/en/details.jsp?id=6118>)

Not mention at all

Pakistan

1973 Constitution (http://www.wipo.int/wipolex/es/text.jsp?file_id=189231)

Not mention at all

Phillipines

1987 Constitution (<http://www.wipo.int/wipolex/en/details.jsp?id=3451>)

(...)

ARTICLE II

DECLARATION OF PRINCIPLES AND STATE POLICIES PRINCIPLES

(...)

Section 22. The State recognizes and promotes the rights of **indigenous cultural communities** within the framework of national unity and development.

ARTICLE VI

THE LEGISLATIVE DEPARTMENT

(...)

Section 5. (...)

2.

The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, **indigenous cultural** communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

ARTICLE XII

NATIONAL ECONOMY AND PATRIMONY

(...)

Section 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of **indigenous cultural communities** to their ancestral lands to ensure their economic, social, and cultural well-being.

(...)

ARTICLE XIII

SOCIAL JUSTICE AND HUMAN RIGHTS

(...)

Section 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of **indigenous communities** to their ancestral lands. The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

(...)

ARTICLE XIV

EDUCATION, SCIENCE AND TECHNOLOGY, ARTS, CULTURE AND SPORTS

(..)

Section 2. The State shall:

(...)

4.

Encourage non-formal, informal, and **indigenous learning systems**, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs; and

(...)

Section 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

(...)

ARTICLE XVI

GENERAL PROVISIONS

(...)

Section 12. The Congress may create a consultative body to advise the President on policies affecting **indigenous cultural communities**, the majority of the members of which shall come from such communities.

Qatar

2003 Constitution (<http://www.wipo.int/wipolex/es/details.jsp?id=9626>)

Not mention at all

Rusia

1993 Constitution (http://www.wipo.int/wipolex/es/text.jsp?file_id=207714)

(...)

Article 26

1. Everyone shall have the right to determine and indicate his nationality. No one may be forced to determine and indicate his or her nationality.
2. Everyone shall have the right to use his or her **native language**, to a free choice of the language of communication, upbringing, education and creative work.

(...)

Article 68

1. The Russian language shall be the state language on the whole territory of the Russian Federation.

See Federal Law No. 53-FZ of June 1, 2005 on the State Language of the Russian Federation

2. The Republics shall have the right to establish their own state languages. In the bodies of state authority and local self-government, state institutions of the republics they shall be used together with the state language of the Russian Federation.
3. The Russian Federation shall guarantee to all of its peoples the right to preserve their **native language** and to create conditions for its study and development.

Article 69

The Russian Federation shall guarantee the rights of the **indigenous minority peoples** according to the universally recognised principles and norms of international law and international treaties and agreements of the Russian Federation.

On guarantees of rights of indigenous minority peoples of the Russian Federation, see Federal Law No. 82-FZ of April 30, 1999

(...)

Article 71

The jurisdiction of the Russian Federation includes:

(...)

c) regulation and protection of the rights and freedoms of man and citizen; citizen ship in the Russian Federation, regulation and protection of the rights of **national minorities**;

(...)

Article 72

1. The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation includes:

(...)

b) protection of the rights and freedoms of man and citizen; protection of the rights of **national minorities**; ensuring the rule of law, law and order, public security and the border zone regime;

(...)

l) protection of the traditional habitat and way of life of small **ethnic communities**;

Saudi Arabia

1992 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=200063)

Not mention at all

Singapore

1965 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=188428)

(...)

PART XIII

GENERAL PROVISIONS

Minorities and special position of Malays

152. —(1) It shall be the responsibility of the Government constantly to care for the interests of the racial and religious **minorities** in Singapore.

(2) The Government shall exercise its functions in such manner as to recognise the special position of the Malays, who are the **indigenous people** of Singapore, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language.

Sri Lanka

1978 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=186852)

(...)

Election of Members of Parliament on the basis of the total number of votes polled at a General Election.

99A.

(...) The Commissioner of Elections shall before issuing the aforesaid notice determine whether the number of members belonging to any community, **ethnic** or otherwise, elected to Parliament under Article 98 is commensurate with the national population ratio and request the Secretary of such recognized political party or group leader of such independent group in so nominating persons to be elected as Members of Parliament to ensure as far as practicable, that the representation of all communities is commensurate with its national population ratio.

(...)

APPENDIX II

Land and Land Settlement

State land shall continue to vest in the Republic and may be disposed of in accordance with Article 33 (d) and written law governing this matter.

Subject as aforesaid, land shall be a Provincial Council Subject, subject to the following special provisions : -

(...)

2 : 5 The distribution of all allotments of such land in such projects will be on the basis of national ethnic ratio. In the distribution of allotments according to such ratios, priority will be given to persons who are displaced by the project, landless of the District in which the project is situated and thereafter the landless of the Province.

(...)

Syria

Constitution

(http://www.law.yale.edu/rcw/rcw/jurisdictions/asw/syrianarabrep/syria_constitution.htm)

Not mention at all

Tajikistan

Constitution (<http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan003670.htm>)

Article 2: The state language of Tajikistan is Tajik. Russian is a language of inter-ethnic communication. All nations and peoples residing on the territory of the republic have the right to use freely their **native languages**.

Thailand

2007constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=185054)

Not mention at all

Timor-Leste

2002constitution (http://www.wipo.int/wipolex/es/text.jsp?file_id=196269)

(...)

PART II

FUNDAMENTAL RIGHTS, DUTIES, FREEDOMS AND GUARANTEES

TITLE I GENERAL PRINCIPLES

Section 16

(Universality and Equality)

1. All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties.

2. No one shall be discriminated against on grounds of colour, race, marital status, gender, **ethnic origin**, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition.

(...)

Section 38

(Protection of personal data)

3. The processing of personal data on private life, political and philosophical convictions, religious faith, party or trade union membership and ethnic origin, without the consent of the interested person, is prohibited.

Turkey

1982 Constitution version 2004 (<http://www.wipo.int/wipolex/en/details.jsp?id=7287>)

Not mention at all

Turkmenistan

Constitution (<http://legislationline.org/documents/section/constitutions/country/51>)

Article 11: The state is responsible for safeguarding the national historical and cultural heritage, natural environment, ensuring equality between social and **ethnic communities**. The state encourages scientific and artistic creativity and distribution of its positive results, promotes development of international relations in the fields of science, culture, education and training, sports and tourism.

(...)

Article 30: Citizens have the right to form political parties and other public associations operating within the framework of the Constitution and laws.

Prohibited is the establishment and activity of political parties, other public, paramilitary associations, aimed at bringing violent change to the constitutional order, introducing violence in their activity, opposing the constitutional rights and freedoms of citizens, advocating war, racial, **national** or religious hatred, encroaching on the health and morals of the people, as well as the political parties with **ethnic** or religious attributes.

United Arab Emirates

1971 Constitution

(<http://www.uaecabinet.ae/English/UAEGovernment/Pages/ConstitutionOfUAE.aspx>)

Not mention at all

Uzbekistan

1992 constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=190788)

(...)

Article 4. The state language of the Republic of Uzbekistan shall be Uzbek. The Republic of Uzbekistan shall ensure a respectful attitude toward the **languages, customs and traditions of all nationalities and ethnic groups** living on its territory, and create the conditions necessary for their development.

Vietnam

1992 Constitution (http://www.wipo.int/wipolex/es/text.jsp?file_id=183902)

(...)

Article 5

L'État de la République socialiste du Vietnam est un État uni de toutes les **ethnies** vivant ensemble sur le territoire vietnamien.

Il applique la politique préconisant l'égalité, la solidarité et l'entraide mutuelle entre les ethnies en interdisant tout comportement raciste et de désunion entre les **ethnies**.

Toute ethnie a droit à l'usage de sa propre langue et écriture, à la préservation de son **identité**, à la valorisation de ses belles moeurs et traditions culturelles.

L'État applique la politique de développement de tous les domaines en faveur des membres des **ethnies minoritaires** en améliorant progressivement leur vie dans tous ses aspects matériels et moraux.

(...)

Article 36

(...)

L'État applique une politique privilégiée à l'enseignement dans les régions montagneuses, les régions des **ethnies minoritaires** et les régions exposées à des difficultés particulières pour en assurer le développement.

(...)

Article 39

(...)

L'État accorde la priorité au programme de soins médicaux des habitants des régions montagneuses et des membres des **ethnies minoritaires**.

(...)

Article 94

L'Assemblée nationale élit le Conseil des ethnies qui est composé d'un Président, des vice-Présidents et des autres membres.

Le Conseil des ethnies est en charge des questions relatives aux ethnies et faire des propositions à l'Assemblée nationale sur ces questions. Il contrôle l'application de la politique des ethnies, des programmes et des plans de développement socio-économique des régions montagneuses et habitées par des **ethnies minoritaires**.

Yemen

2001 constitution (<http://www.unhcr.org/refworld/category,LEGAL,,,YEM,3fc4c1e94,0.html>)

(...)

Article (40): Military, security, police and other forces shall not be employed in the interest of a party, an individual or group. They shall be safeguarded against all forms of differentiation resulting from party affiliation, racism, factionalism, regionalism and **tribalism** in order to guarantee their neutrality and the fulfillment of their duties in the proper manner. The members of all forces are banned from party memberships and activities according to the law.

AFRICAN COUNTRIES

Algeria

1996 Constitution (<http://www.worldlii.org/dz/legis/const/1996/>)

In the Name of God the Merciful and the Compassionate

Preamble

(...)

The 1st of November 1954 was a turning point for its destiny and a crowning for the long resistance to aggressions carried out against its culture, its values and the fundamental components of its identity which are Islam, Arabity and **Amazighity**. Its current struggles are well rooted in the glorious past of the nation.

(...)

Angola

2010 Constitution (<http://www.eisa.org.za/WEP/ang5.htm>)

Artigo 23.o

(Princípio da igualdade)

1. Todos são iguais perante a Constituição e a lei.
2. Ninguém pode ser prejudicado, privilegiado, privado de qualquer direito ou isento de qualquer dever em razão da sua ascendência, sexo, **raça, etnia**, cor, deficiência, língua, local de nascimento, religião, convicções políticas,

ideológicas ou filosóficas, grau de instrução, condição económica ou social

ou profissão. (Projectos A, B e C e consulta pública – aprovado por

consenso)

Artigo 48.o

(Liberdade de associação)

4. São proibidas as associações ou quaisquer agrupamentos cujos fins ou actividades sejam contrários à ordem constitucional, incitem e pratiquem a

violência, **promovam o tribalismo**, o racismo, a ditadura, o fascismo, e a xenofobia, bem como as associações do tipo militar, paramilitar ou militarizadas. (Fusão dos projectos A, B e C – aprovado por consenso)

Benin

1990 Constitution English (<http://aceproject.org/ero-en/regions/africa/BJ/Benin%20Constitution%201990.doc/view>) French (http://www.wipo.int/wipolex/en/text.jsp?file_id=195505)

1. Article 10

Every person has a right to culture. The state has the duty to safeguard and promote the national values of civilisations, as much material as spiritual, as well as the cultural traditions.

2. Article 11

All communities comprising the Beninese nation shall enjoy the freedom to use their spoken and written languages and to develop their own culture while respecting those of others. The state must promote the development of national languages of intercommunication.

Art 10. -Toute personne a droit à la culture. L'Etat a le devoir de sauvegarder et de promouvoir les valeurs nationales de civilisation tant matérielles que spirituelles, ainsi que les traditions culturelles.

Art 11. -Toutes les communautés composant la Nation béninoise jouissent de la liberté d'utiliser leurs langues parlées et écrites et de développer leur propre culture tout en respectant : celles des autres.

L'Etat doit-promouvoir le développement de langues nationales d'Intercommunication.

Botswana

1966 Constitution (<http://www.parliament.gov.bw/pgcontent.php?UID=680>)

15. Protection from discrimination on the grounds of race, etc.

(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons, attributable wholly or mainly to their respective descriptions by race, **tribe**, place of origin, political opinions, colour, creed or sex

whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision-

(a) for the appropriation of public revenues or other public funds;

(b) with respect to persons who are not citizens of Botswana;

(c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

Copyright Government of Botswana

(d) for the application in the case of members of a particular race, community or **tribe of customary law** with respect to any matter whether to the exclusion of any law in respect to that matter which is applicable in the case of other persons or not; or

(e) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

Burkina Faso

1991 Constitution French (<http://www.law.cornell.edu/world/africa.html#burkina>)

English (www.kituoachakatiba.org/index2.php?option=com_docman...36)

Article 13

Political parties and formations create themselves freely. They concur with the spirit of political life, to the formation and to the education of the people as well as to the expression of suffrage. They freely conduct their activities with respect to the laws. All political parties and formations are equal in rights and duties.

However, **tribalist**, regional, confessional, or racist **political parties** or formations are not authorised.

Article 23

The family is the basic unit of society. The state owes it protection. Marriage is founded on the free consent of the man and of the woman. All discrimination founded on race, colour, religion, **ethnicity**, caste, social origin, or fortune is forbidden in the matter of marriage. Children are equal in rights and in duties within their familial relations. The parents have the natural right and the duty to bring up and to educate their children.

They must give them respect and assistance.

Article 13

Les partis et formations politiques se créent librement. Ils concourent à l'animation de la vie politique, à l'information et à l'éducation du peuple ainsi qu'à l'expression du suffrage. Ils mènent librement leurs activités dans

le respect des lois. Tous les partis ou formations politiques sont égaux en droits et en devoirs. Toutefois, ne sont pas autorisés les **partis ou formations politiques tribalistes**, régionalistes, confessionnels ou racistes.

Article 23

La famille est la cellule de base de la société. L'Etat lui doit protection. Le mariage est fondé sur le libre consentement de l'homme et de la femme. Toute discrimination fondée sur la race, la couleur, la religion, l'ethnie, la caste, l'origine sociale, la fortune est interdite en matière de mariage. Les enfants sont égaux en droits et en devoirs dans leurs relations familiales. Les parents ont le droit naturel et le devoir d'élever et d'éduquer leurs enfants. Ceux-ci leur doivent

respect et assistance.

Burundi

2005 Constitution (<http://www.africanlegislaturesproject.org/content/constitution-burundi>)

Article unique :

La Constitution de la République du Burundi adoptée par Référendum du 28 février 2005 et dont le texte est annexé à la présente loi, est promulguée.

Fait à Bujumbura, le 18 / mars / 2005

Domitien NDAYIZEYE.

Vu et scellé du Sceau de la République,

Le Ministre de la Justice et Garde des Sceaux

Didace KIGANAHE.

LA CONSTITUTION DE LA REPUBLIQUE DU BURUNDI PREAMBULE NOUS, PEUPLE BURUNDAIS

(...)

La protection et l'inclusion des groupes ethniques, culturels et religieux minoritaires dans le système général de bonne gouvernance ;

Article 1

Le Burundi est une République indépendance, souveraine, laïque, démocratique, unitaire et respectant sa **diversité ethnique** et religieuse.

2. DES VALEURS FONDAMENTALES

Article 13

Tous les burundais sont égaux en mérite et en dignité. Tous les citoyens jouissent des mêmes droits et ont droit à la même protection de la loi.

Aucun burundais ne sera exclu de la vie sociale, économique ou politique de la nation du fait de sa race, de sa langue, de sa religion, de son sexe ou de son **origine ethnique**.

Article 78

Les partis politiques, dans leur organisation et leur fonctionnement, doivent répondre aux principes démocratiques. Ils doivent être ouverts à tous les Burundais et leur caractère national doit également être reflété au niveau de leur direction. Ils ne peuvent prôner la violence, l'exclusion et la haine sous toutes leurs formes, notamment celles basées sur l'**appartenance ethnique**, régionale, religieuse ou genre.

Article 80

La loi garantit la non-ingérence des pouvoirs publics dans le fonctionnement interne des partis politiques, sauf pour ce qui est des restrictions nécessaires à **la prévention de la haine ethnique**, politique, régionale, religieuse ou de genre et au maintien de l'ordre public.

Article 91

La commission est chargée des missions suivantes:

(...)

g) Assurer le respect des dispositions de la présente Constitution relatives à **la multiethnicité** et au genre et connaître des contestations à cet égard.

Article 99

Chaque candidature aux élections présidentielles doit être parrainée par un groupe de deux cents personnes formé en tenant compte des composantes ethniques et du genre.

(...)

Article 135

Les membres du Gouvernement font ou proposent les nominations dans l'administration publique et aux postes diplomatiques en prenant en compte la nécessité de maintenir un **équilibre ethnique**, régional, politique et entre les genres.

Article 143

L'Administration est largement représentative de la nation burundaise et doit refléter la diversité de ses composantes. Les pratiques qu'elle observe en matière d'emploi sont fondées sur des critères d'aptitude objectifs et équitables ainsi que sur la nécessité de corriger les déséquilibres et d'assurer une large **représentation ethnique**, régionale et de genre. La représentation ethnique dans les entreprises publiques est pourvue à raison de **60% au plus pour les Hutu et 40% au plus pour les Tutsi**.

2. DE L'ASSEMBLEE NATIONALE

Article 164

L'Assemblée nationale est composée d'au moins cent députés à raison de **60% de Hutu et de 40% de Tutsi**, y compris un minimum de 30% de femmes, élus au suffrage universel direct pour un mandat de cinq ans et de trois députés issus de l'ethnie Twa cooptés conformément au code électoral.

Articles 168

Les élections des députés se déroulent suivant le scrutin des listes bloquées à la représentation proportionnelle. Ces listes doivent avoir un **caractère multiethnique** et tenir compte de l'équilibre entre les hommes et les femmes. Pour trois candidats inscrits à la suite sur une liste, deux seulement peuvent appartenir au même groupe ethnique, et au moins un sur quatre doit être une femme.

Article 180

Le Sénat est composé de:

- 1) Deux délégués de chaque province, élu par un collige électoral composé de membres des Conseils communaux de la province considérée, provenant de **communautés ethniques** différentes et élus par des scrutins distincts;
- 2) Trois personnes issues de l'ethnie Twa;
- 3) Les anciens Chefs d'Etat.

Il est assuré un minimum de 30% de femmes. La loi électorale en détermine les modalités pratiques, avec cooptation le cas échéant.

Article 187

Le Sénat est doté des compétences suivantes:

(...)

- 5) Contrôler l'application des dispositions constitutionnelles **exigeant la représentativité ethnique** et de genre et l'équilibre dans toutes les structures et les institutions de l'Etat notamment l'administration publique et les corps de défense et de sécurité;

Article 208

Le pouvoir judiciaire est structuré de façon à refléter dans sa composition l'ensemble de la population. Les procédures de recrutement et nomination dans le corps judiciaire obéissent impérativement au souci de promouvoir l'équilibre régional, **ethnique** et l'équilibre entre genres.

Article 247

Les corps de défense et de sécurité développent en leur sein une culture non discriminatoire, **non ethniste** et non sexiste.

Article 255

L'Etat a le devoir de mettre en place une politique des réformes pertinentes en matière de défense et de sécurité qui renforce l'unité et la cohésion du peuple burundais, notamment en assurant les **équilibres ethniques**, régionaux et de genres nécessaires.

Article 257

Les corps de défense et de sécurité sont ouverts sans discrimination à tous les citoyens burundais désireux d'en faire partie. Leur organisation est basée sur le volontariat et le professionnalisme.

Pendant une période à déterminer par le Sénat, **les Corps de défense et de sécurité ne comptent pas plus de 50% de membres appartenant à un groupe ethnique particulier**, compte tenu de la nécessité d'assurer l'équilibre ethnique et de prévenir les actes de génocide et les coups d'Etat.

Article 266

La Commission électorale nationale indépendante veille à ce que les Conseils Communaux reflètent d'une manière générale la diversité ethnique de leur électorat. Au cas où la composition d'un Conseil Communal ne refléterait pas cette **diversité ethnique**, la commission électorale nationale indépendante peut ordonner la cooptation au Conseil de personnes provenant d'un groupe ethnique sous-représenté, à condition que les personnes ainsi cooptées ne constituent pas plus d'un cinquième des membres du Conseil. Les personnes à coopter sont désignées par la commission électorale nationale indépendante.

Cameroon

1996 constitution (confinder.richmond.edu/admin/docs/Cameroon.pdf)

CONSTITUTION

of the Republic of Cameroon

PREAMBLE

We, the people of Cameroon,

Proud of our linguistic and cultural diversity, an enriching feature of our national identity, but profoundly aware of the imperative need to further consolidate our unity, solemnly declare that we constitute one and the same Nation, bound by the, same destiny, and assert our firm, determination to build the Cameroonian Fatherland on the basis of the ideals of fraternity, justice and progress;

(...)

We, people of Cameroon,

Declare that the human person, without distinction as to race, religion, sex or belief, possesses

inalienable and sacred rights;

Affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human

Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and

all duly ratified international conventions relating thereto, in particular, to the following principles:

(...)

- the State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law;

(...)

Article 57

(...)

3) The Regional Council shall be headed by an **indigene** of the Region elected from among its members

for the life of the Council.

Cape Verde

1991

no mention

Centre African Republic

2004 Constitution <http://www.sangonet.com/actu-snews/ICAR/Dsp/constitution2004-qmout.html>

Projet de Constitution adopté à l'unanimité par Le Conseil National de Transition (CNT)

P R E A M B U L E

LE PEUPLE CENTRAFRICAIN

Fier de son unité nationale, linguistique et de **sa diversité ethnique**, culturelle et religieuse qui contribuent à l'enrichissement de sa personnalité,

(...)

Résolu à construire un Etat de droit fondé sur une démocratie pluraliste, garantissant la sécurité des personnes et des biens, la protection des plus faibles, notamment les personnes vulnérables, les minorités et le plein exercice des libertés et droits

(...)

Art 5: Tous les êtres humains sont égaux devant la loi sans distinction de race, **d'origine ethnique**, de région, de sexe, de religion, d'appartenance politique et de position sociale.

(...)

Art 20: Les partis ou groupements politiques concourent à

l'expression du suffrage, à l'animation de la vie politique, économique et sociale.

(...)

Il leur est interdit de s'identifier à une race, à une ethnie, à un sexe, à une religion, à une secte, à une langue ou à une région.

Chad

1996 Constitution (<http://www.africanlegislaturesproject.org/content/constitution-chad>)

no mention at all

Federal Islamic Republic of the Comoros

(www.constitutionnet.org/files/Comoros%20Constitution.pdf)

Congo

1992 Constitution (<http://www.worldlii.org/cg/legis/const/1992/>)

Article 11 Equality, Gender Equality, Liability

(1) The State shall assure the equality of all citizens before the law, without discrimination of origin, social or material situation, racial, **ethnic** and regional origin, sex, instruction, language, attitude vis-avis religion and philosophy, or place of residence. It shall respect all the rights and liberties within limits compatible with public order and good mores.

Article 31 Work, Labor Equality, No Forced Labor, No Slavery

(...)

(2) Any discrimination based on race, sex, physical state, regional and **ethnic origin**, ideology, religion, or philosophy shall be prohibited.

(...)

Article 35 Culture

(1) Citizens shall possess a right to culture and to the respect of their **cultural identity**. All the communities composing the Congolese Nation shall possess the freedom to use their languages and their own culture without prejudicing those of others.

(...)

Article 42 Child Protection, Child Nationality

(1) Every child, without a single discrimination based on race, color, sex, language, religion, national, social or **ethnic origin**, fortune or birth, shall have the right, on the part of his family, society, and the State to measures of protection which stem from his condition as a minor.

(...)

Article 50 Minority Rights

The State shall guarantee the rights of minorities.

(...)

Article 55 Right to Development

The Congolese People shall have the right to economic, **cultural**, and social development.

Democratic Republic of Congo

2005 Constitution (<http://www.presidentrdc.cd/constitution.html>)

Article 13

Aucun Congolais ne peut, en matière d'éducation et d'accès aux fonctions publiques ni en aucune autre matière, faire l'objet d'une mesure discriminatoire, qu'elle résulte de la loi ou d'un acte de l'exécutif, en raison de sa religion, de son origine familiale, de sa condition sociale, de sa résidence, de ses opinions ou de ses convictions politiques, de son appartenance à une race, à une ethnie, à une tribu, à une minorité culturelle ou linguistique.

Ivory Coast

2000 Constitution (<http://confinder.richmond.edu/>)

PREAMBLE

The People of Côte d'Ivoire,

(...)

Conscious of their ethnic, cultural and religious diversity, and desirous to build one nation unified in solidarity and prosperous;

(...)

Article 13

The Political Parties and Groups form themselves and exercise their activities freely within the condition of respecting the laws of the Republic, the principles of national sovereignty and of democracy. They are equal in rights and subject to the same obligations. Political Parties or Groups created on regional, confessional, **tribal, ethnic** or racial bases, are forbidden.

Djibouti

1992 Constitution (<http://confinder.richmond.edu/>)

Article 6

Political parties shall be instrumental in the expression of the suffrage. They shall be formed and carry on their activities freely in respect for the Constitution and the principles of national sovereignty and democracy. They shall be prohibited from identifying themselves by race, **ethnic group**, sex, religion, sect, language or region. The formalities with respect to registration of political parties and the exercise and cessation of their activities shall be determined by law.

Egypt

1980 Constitution (<http://www.uam.es/otroscentros/medina/egypt/egypolcon.htm>)

Article 40

All citizens are equal before the law. They have equal public rights and duties without discrimination between them due to race, **ethnic origin**, language, religion or creed.

Equatorial Guinea

1982 Constitution (www.constitutionnet.org/.../Equatorial%20Guinea%20Constitution.pdf)

Article 9: Political parties shall be integral political organizations of persons who shall associate freely to participate in the political orientation of the State. They shall represent multipartism and democracy, and shall thus express popular will as the basis of any political participation.

Its political parties shall not be allowed to have appellations similar to those that existed before October 12, 1968; their ambitions and perspectives shall have to be nationalistic and shall therefore, not be based on **tribe, ethnic inclinations**, religion, gender, district, municipality, social condition or profession. The law shall regulate their creations and functioning.

Eritrea

1997 Constitution (www.ilo.org/wcmsp5/groups/.../wcms_126648.pdf)

Article 6 - National Unity and Stability

1.

As the people and government strive to establish a united and advanced country within the context of the diversity of Eritrea, they shall be guided by the basic principle “unity in diversity.”

(...)

Federal Democratic Republic of Ethiopia

(<http://www.ethiobar.net/type/English/genifo/conchp32.htm>)

Article 39

Rights of Nations, Nationalities, and Peoples

1. Every Nation, Nationality and **People** in Ethiopia has an unconditional right to self-determination, including the right to secession.
2. Every Nation, Nationality and **People** in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.
3. Every Nation, Nationality and **People** in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.

4. The right to **self-determination**, including secession, of every Nation, Nationality and People shall come into effect:
 - (a) When a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the Nation, Nationality or People concerned;
 - (b) When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession;
 - (c) When the demand for secession is supported by majority vote in the referendum;
 - (d) When the Federal Government will have transferred its powers to the council of the Nation, Nationality or **People** who has voted to secede; and
 - (e) When the division of assets is effected in a manner prescribed by law.

5. A "Nation, Nationality or **People**" for the purpose of this Constitution , is a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.

Article 40

The Right to Property

3.The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and **Peoples** of Ethiopia and shall not be subject to sale or to other means of exchange.

(...)

6. Without prejudice to the right of Ethiopian Nations, Nationalities, and **Peoples** to the ownership of land, government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law. Particulars shall be determined by law.

Article 47 Member States of the Federal Democratic Republic

(...)

2. Nations, Nationalities and Peoples within the States enumerated in sub-Article 1 of this article have the right to establish, at any time, their own States.

PART ONE

The House of Peoples' Representatives

Article 54

Members of the House of Peoples' Representatives

(...)

2. Members of the House shall be elected from candidates in each electoral district by a plurality of the votes cast. Provisions shall be made by law for special representation for **minority Nationalities and Peoples**.

3. Members of the House, on the basis of population and special representation of minority Nationalities and Peoples, shall not exceed 550; of these, minority Nationalities and Peoples shall have at least 20 seats. Particulars shall be determined by law.

(...)

PART TWO

THE HOUSE OF THE FEDERATION

Article 61

Members of the House of the Federation

1. The House of the Federation is composed of representatives of Nations, Nationalities and Peoples.

(...)

Article 62 Powers and Functions of the House of the Federation

(...) 3. It shall, in accordance with the Constitution, decide on issues relating to the rights of Nations, Nationalities and **Peoples to self-determination**, including the right to secession.

Article 86 Principles for External Relations

(...)

4. To observe international agreements which ensure respect for Ethiopia's sovereignty and are not contrary to the interests of its **Peoples**.

(...)

Article 87 Principles for National Defence

1. The composition of the national armed forces shall reflect the equitable representation of the Nations, Nationalities and **Peoples** of Ethiopia.

Article 88 **Political Objectives**

1. Guided by democratic principles, Government shall promote and support the **People's** self-rule at all levels.

2. Government shall respect the identity of Nations, Nationalities and **Peoples**. Accordingly Government shall have the duty to strengthen ties of equality, unity and fraternity among them.

Article 89 **Economic Objectives**

(...) 4. Government shall provide special assistance to Nations, Nationalities, and **Peoples** least advantaged in economic and social development.

Republique Gabonaise

1991 Constitution (amendments until 2003)

<http://www.wipo.int/wipolex/en/details.jsp?id=7439>

TITRE PRELIMINAIRE

DES PRINCIPES ET DES DROITS FONDAMENTAUX

Article Premier :

La République gabonaise reconnaît et garantit les droits inviolables et imprescriptibles de l'Homme, qui lient obligatoirement les pouvoirs publics :

13° (...)

Tout acte de discrimination raciale, **ethnique** ou religieuse, de même que toute propagande régionaliste pouvant porter atteinte à la sécurité intérieure ou extérieure de l'Etat ou à l'intégrité de la

République sont punis par la loi ;

(...) TITRE PREMIER

DE LA REPUBLIQUE ET DE LA SOUVERAINETE

Article 2

(...)

La République gabonaise adopte le français comme langue officielle de travail. En outre, elle œuvre pour la protection et la promotion des langues nationales.

(...)

Republic of Gambia

1997 Constitution (www.ncce.gm/files/constitution.pdf)

7.

The Laws Of the Gambia

. In addition to this Constitution, the laws of The Gambia consist of

(...)

(e) Customary law so far as concerns members of the communities

to which it applies;

32. Culture. Every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and to the condition that the right protected by this section do not impinge on the rights and freedoms of others or the national interest, especially unity.

33. Protection from Discrimination

(...)

(4) In this section, the expression “discrimination” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, gender, language, religion, political or other opinion, **national** or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privilege or advantages which are not accorded to persons of another such description.

National Integration

and Unity 212.

(...)

(3) All the people of The Gambia shall be entitled to their ethnic, religious and cultural values which do not disturb the unity or cohesion of the State.

(...)

Cultural objectives 218 The state and all the people of The Gambia shall strive to protect, preserve and foster the languages, historic sites, cultural, natural and artistic heritage of The

Gambia.

Ghana

1992 Constitution

(www.politicsresources.net/docs/ghanaconst.pdf)

CHAPTER FOUR

THE LAWS OF GHANA

11.

(1) The laws of Ghana shall comprise-

(...)

(e) the common law.

(...)

2) The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature.

(3) For the purposes of this article, "customary law" means the rules of law, which by custom are applicable to particular communities in Ghana.

CHAPTER SIX

THE DIRECTIVE PRINCIPLES OF STATE POLICY

35.

(...)

(5) The State shall actively promote the integration of the **peoples of Ghana** and prohibit discrimination and prejudice on the grounds of place of origin, circumstances of birth, **ethnic** origin, gender or religion, creed or other beliefs.

6) Towards the achievement of the objectives stated in clause (5) of this article, the State shall take appropriate measures to -

(a) foster a spirit of loyalty to Ghana that overrides sectional, ethnic and other loyalties;

(...)

39.

(1) Subject to clause (2) of this article, the State shall take steps to encourage the integration of appropriate **customary values** into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning.

(2) The State shall ensure that appropriate **customary and cultural values** are adapted and developed as an integral part of the growing needs of the society as a whole; and in particular that **traditional practices which are injurious to the health and well-being of the person** of the person are abolished.

(3) The State shall foster the development of **Ghanaian languages** and pride in Ghanaian culture.

Political Parties

55.

(...)

(4) Every political party shall have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions.

Stool and Skin Lands and Property

(Customary ownership in Ghana)

267.

(1) All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage.

(2) There shall be established the Office of the Administrator of Stool Lands which shall be responsible for -

(a) the establishment of a stool land account for each stool into which shall be paid all rents, dues, royalties, revenues or other payments whether in the nature of income or capital from the stool lands;

(b) the collection of all such rents, dues, royalties, revenues or other payments whether in the nature of income or capital, and to account for them to the beneficiaries specified in clause (6) of this article; and

(c) the disbursement of such revenues as may be determined in accordance with clause (6) of this article.

(3) There shall be no disposition or development of any stool land unless the Regional Lands Commission of the region in which the land is situated has certified that the disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area concerned.

(4) Where the Regional Lands Commission fails or refuses to give the consent and concurrence under clause (3) of this article, a person aggrieved by the failure or refusal may appeal to the High Court.

(5) Subject to the provisions of this Constitution, no interest in, or right over, any stool land in Ghana shall be created which vests in any person or body of persons a freehold interest howsoever described.

(6) Ten percent of the revenue accruing from stool lands shall be paid to the office of the Administrator of Stool Lands to cover administrative expenses; and the remaining revenue shall be disbursed in the following proportions-

(a) twenty-five percent to the stool through the traditional authority for the maintenance of the stool in keeping with its status;

(b) twenty percent to the traditional authority; and

(c) fifty-five percent to the District Assembly, within the area of authority of which the stool lands are situated.

(7) The Administrator of Stool Lands and the Regional Lands Commission shall consult with the stools and other traditional authorities in all matters relating to the administration and development of stool land and shall make available to them all relevant information and data.

(8) The Lands Commission and the Administrator of Stool lands shall co-ordinate with all relevant public agencies and traditional authorities and stools in preparing a policy framework of the rational and productive development and management of stool lands.

(9) Parliament may provide for the establishment of Regional branches of the office of the Administrator of Stool Lands to perform, subject to the directions of the Administrator of Stool Lands, the functions of the Administrator in the region concerned.

CHAPTER TWENTY-TWO

CHIEFTAINCY

270.

(1) The institution of chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed.

(2) Parliament shall have no power to enact any law which-

(a) confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever; or

(b) in any way detracts or derogates from the honour and dignity of the institution of chieftaincy.

(3) Nothing in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, clause (1) or (2) of this article if

the law makes provision for-

(a) the determination, in accordance with the appropriate customary law and usage, by a traditional council, a Regional House of Chiefs or a Chieftaincy Committee of any of them, of the validity of the nomination, election, selection, installation or deposition of a person as a chief;

(b) a traditional council or a Regional House of Chiefs or the National House of Chiefs to establish and operate a procedure for the registration of chiefs and the public notification in the Gazette or otherwise of the status of persons as chiefs in Ghana.

271.

(1) There shall be a National House of Chiefs.

(2) The House of Chiefs of each region shall elect as members of the National House of Chiefs five paramount chiefs from the region.

(3) Where in a region there are fewer than five paramount chiefs, the House of Chiefs of the region shall elect such number of divisional chiefs as shall make up the required representation of chiefs for the region.

272.

The National House of Chiefs shall -

(a) advise any person or authority charged with any responsibility under this Constitution or any other law for any matter relating to or affecting chieftaincy;

(b) undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin;

(c) undertake an evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful;

(d) perform such other functions, not being inconsistent with any function assigned to the House of Chiefs of a region, as Parliament may refer to it.

273.

(1) The National House of Chiefs shall have appellate jurisdiction in any cause or matter affecting chieftaincy which have been determined by the Regional House of Chiefs in a region, from which appellate jurisdiction there shall be an appeal to the Supreme Court, with the leave of the National House of Chiefs or the Supreme Court.

(2) The appellate jurisdiction of the National House of Chiefs shall be exercised by a Judicial Committee of the National House of Chiefs consisting of five persons appointed by that House from among its members.

(3) A Judicial Committee of a National House of Chiefs shall be assisted by a lawyer of not less than ten years' standing appointed by the National House of Chiefs on the recommendation of the Attorney-General.

(4) A member of a Judicial Committee of the National House of Chiefs shall be removed from office on the ground, of proven misbehaviour or of infirmity of mind or body by the votes of not less than two thirds of all the members of the National House of Chiefs.

(5) A Judicial Committee of the National House of Chiefs shall have original jurisdiction in any cause or matter affecting chieftaincy-

(a) which lies within the competence of two or more Regional houses of Chiefs; or

(b) which is not properly within the jurisdiction of a Regional House of Chiefs; or

(c) which cannot otherwise be dealt with by a Regional House of Chiefs.

(6) An appeal shall lie as of right in respect of any cause or matter dealt with by a Judicial Committee of the National House of Chiefs under clause (5) of this article to the Supreme Court.

274.

(1) There shall be established in and for each region of Ghana a Regional House of Chiefs.

(2) A Regional House of Chiefs shall consist of such members as Parliament may, by law, determine.

(3) A Regional House of Chiefs shall -

(a) perform such functions as may be conferred upon it by or under an Act of Parliament;

(b) advise any person or authority charged under this Constitution or any other law with any

responsibility for any matter relating to or affecting chieftaincy in the region;

(c) hear and determine appeals from the traditional councils within the region in respect of the nomination, election, selection, installation or deposition of a person as a chief;

(d) have original jurisdiction in all matters relating to a paramount stool or skin or the occupant of a paramount stool or skin, including a queen mother to a paramount stool or skin;

(e) undertake a study and make such general recommendations as are appropriate for the resolution or expeditious disposition of chieftaincy disputes in the region;

(f) undertake the compilation of the customary laws and lines of succession applicable to each stool or skin in the region.

(4) The original and appellate jurisdiction of a Regional House of Chiefs shall be exercised by a Judicial Committee of the Regional House of Chiefs consisting of three chiefs appointed by the Regional House of Chiefs from among its members.

(5) A Judicial Committee of a Regional Chiefs shall be assisted by a lawyer of not less than five years' standing appointed by the Regional House of Chiefs in the recommendation of the Attorney-General.

(6) A member of a Judicial Committee of a Regional House of Chiefs may be removed from office on the ground of proven misbehaviour or infirmity of mind or body by the votes of not less than two-thirds of all the members of the Regional House of Chiefs.

275.

A person shall not be qualified as a chief if he has been convicted for high treason, treason, high crime or for an offence involving the security of the State, fraud, dishonesty or moral turpitude.

276.

(1) A chief shall not take part in active party politics; and any chief wishing to do so and seeking election to Parliament shall abdicate his stool or skin.

(2) Notwithstanding clause (1) of this article and paragraph (c) of clause

(3) of article 94 of this Constitution, a chief may be appointed to any public office for which he is otherwise qualified.

277.

In this Chapter unless the context otherwise requires, "chief" means a person, who, hailing from

the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage.

295.

(1) In this Constitution, unless the context otherwise requires-

(...)

"paramount chief" means a person who has been nominated elected and installed as a paramount chief in accordance with customary law and usage;

Republic of Guinea-Bissau

1984 Constitution with amendments until 1996 (www.icrc.org/ihl-nat.nsf/.../Constitution%20Guinea%20Bissau.doc)

Article 4

1. In the Republic of Guinea-Bissau, political parties may be freely created according to the terms of the Constitution and law.

(...)

4. It shall be prohibited to create [political] parties that are regional or local in nature, which encourage racism or tribalism, or which support violent means in pursuing their goals.

3. Article 55

(...)

Armed associations are not allowed, nor organisations that promote racism or **tribalism**.

Equatorial Guinea

1991 Constitution (www.constitutionnet.org/.../Equatorial%20Guinea%20Constitution.pdf)

Not mention at all

Kenya

2010 Constitution (www.parliament.go.ke/index.php?option=com_docman...88...)

PREAMBLE

We, the people of Kenya—

(...)

PROUD of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation:

2. (1) This Constitution is the supreme law of the Republic and Supremacy of this binds all persons and all State organs at both levels of government.

(...)

(4) Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.

(...)

7. National, official and other languages. (1) The national language of the Republic is Kiswahili.

(2) The official languages of the Republic are Kiswahili and English.

(3) The State shall—

(a) promote and protect the diversity of language of the people of Kenya; and

(b) promote the development and use of **indigenous languages**, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.

11. Culture. (1) This Constitution recognises **culture** as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.

(2) The State shall—

(a) promote all forms of **national and cultural expression** through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other **cultural heritage**;

(b) recognise the role of science and **indigenous technologies** in the development of the nation; and

(3) Parliament shall enact legislation to—

(a) ensure that communities receive compensation or royalties for the use of their cultures and **cultural heritage**; and

(b) recognise and protect the ownership of **indigenous seeds** and plant varieties, their genetic and diverse characteristics and their use by the communities of Kenya.

21. Implementation of rights and fundamental freedoms.

(1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

(...)

(3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.

(...)

27. Equality and Freedom from discrimination (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(...)

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, **ethnic** or social origin, colour, age, disability, religion, conscience, belief, **culture**, dress, language or birth.

33. Freedom of expression

(...)

(2) The right to freedom of expression does not extend to—

(...)

(d) advocacy of hatred that—

(i) constitutes **ethnic incitement**, vilification of others or incitement to cause harm; or

(ii) is based on any ground of discrimination specified or contemplated in Article 27 (4).

(...)

44. Language and Culture. (1) Every person has the right to use the **language**, and to Language and participate in the **cultural life**, of the person's choice.

(2) A person belonging to a cultural or linguistic community has the right, with other members of that community—

(a) to enjoy the person's culture and use the person's language; or

(b) to form, join and maintain cultural and linguistic associations and other organs of civil society.

(3) A person shall not compel another person to perform, observe or undergo any cultural practice or rite.

CHAPTER FIVE—LAND AND ENVIRONMENT

Part 1—Land

60. Principles of land policy. (1) Land in Kenya shall be held, used and managed in a Principles of land manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—

(...)

f) elimination of gender discrimination in law, **customs and practices related to land and property in land**; and

(g) encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution.

(...)

63. Community land. (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.

(2) Community land consists of—

(a) land lawfully registered in the name of group representatives under the provisions of any law;

(b) land lawfully transferred to a **specific community** by any process of law;

(c) any other land declared to be **community land** by an Act of Parliament; and

(d) land that is—

(i) **lawfully held, managed or used by specific communities** as community forests, grazing areas or shrines;

(ii) **ancestral lands and lands traditionally occupied** by hunter-gatherer communities; or

(iii) lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under Article 62 (2).

(3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.

(4) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

(5) Parliament shall enact legislation to give effect to this Article.

(...)

67. National Land Commission (1) There is established the National Land Commission.

(2) The functions of the National Land Commission are—

(a) to manage public land on behalf of the national and county governments;

(b) to recommend a national land policy to the national government;

(c) to advise the national government on a comprehensive National Land Commission programme for the registration of title in land throughout Kenya;

(d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;

(e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;

(f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;

(g) to assess tax on land and premiums on immovable property in any area designated by law; and

(h) to monitor and have oversight responsibilities over land use planning throughout the country.

(3) The National Land Commission may perform any other functions prescribed by national legislation.

(...)

Part 3—Political Parties

91. (...)

(2) A political party shall not—

(a) be founded on a religious, linguistic, racial, **ethnic**, gender or regional basis or seek to engage in advocacy of hatred on any such basis;

(...)

100. Promotion of representation of marginalised groups. Parliament shall enact legislation to promote the representation in Parliament of—

(...)

(d) ethnic and other minorities; and

(e) marginalised communities.

(...)

130. The National Executive.

(1) The national executive of the Republic comprises the President, the Deputy President and the rest of the Cabinet.

(2) The composition of the national executive shall reflect the regional and **ethnic diversity** of the people of Kenya.

(...)

CHAPTER ELEVEN—DEVOLVED GOVERNMENT

Part 1—Objects and Principles of Devolved Government

174. Objects of devolution. The objects of the devolution of government are—

(a) to promote democratic and accountable exercise of power;

(b) to foster national unity by recognising diversity;

(c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;

(d) to recognise the right of communities to manage their own affairs and to further their development;

(e) to protect and promote the interests and rights of minorities and marginalised communities;

(...)

CHAPTER THIRTEEN—THE PUBLIC SERVICE

Part 1—Values and Principles of Public Service

232. (1) The values and principles of public service include—

(...)

(h) representation of Kenya’s diverse communities; and

(...)

260. Interpretation. In this Constitution, unless the context requires otherwise—

“marginalised community” means—

(a) a **community** that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;

(b) a **traditional community** that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;

(c) an **indigenous community** that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or

(d) pastoral persons and communities, whether they are—

(i) **nomadic**; or

(ii) a **settled community** that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;

Leshoto

1993 Constitution (http://www.wipo.int/wipolex/es/text.jsp?file_id=216171)

No mention at all

Liberia

1986 Constitution

Article 5

The Republic shall:

a) aim at strengthening the national integration and unity of the people of Liberia, regardless of **ethnic**, regional or other differences, into one body politic; and the Legislature shall enact laws promoting national unification and the encouragement of all citizens to participate in government;

(...)

c) take steps, by appropriate legislation and executive orders, to eliminate sectionalism and tribalism, and such abuses of power as the misuse of government resources, nepotism and all other corrupt practices.

(...)

CHAPTER III

FUNDAMENTAL RIGHTS

Article 11

(...)

b) All persons, irrespective of ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedoms of the individual, subject to such qualifications as provided for in this Constitution.

(...)

Article 18

All Liberian citizens shall have equal opportunity for work and employment regardless of sex, creed, religion, ethnic background, place of origin or political affiliation, and all shall be entitled to equal pay for equal work.

(...)

Article 79

(...)

b) the membership of the association or the independent candidate's organization is open to every citizen of Liberia, irrespective of sex, religion or ethnic background, except as otherwise provided in this Constitution.

Libya

1969 Constitution (unpan1.un.org/intradoc/groups/public/.../unpan004643.pdf)

No mention at all

Madagascar

1992 Constitution (<http://www.servat.unibe.ch/icl/ma00000.html>)

Article 14 [Association, Political Parties]

(1) Citizens may organize freely without prior authorization in associations and political parties; however, associations or political parties which preach totalitarianism or **segregation of an ethnic, tribal**, or religious nature are forbidden.

Article 35 [Minority Rights]

(1) The Fokonolona may take appropriate measures to prevent destruction of their environment, loss of their land, seizure of herds of cattle, or loss of their ceremonial heritage, unless these

measures jeopardize the common interest or public order.

(2) The coverage and terms of these provisions shall be determined by law.

Malawi

1994 Constitution (unpan1.un.org/intradoc/groups/public/.../unpan004840.pdf)

CHAPTER III

Fundamental Principles

Constitutional principles

12. This Constitution is founded upon the following underlying principles--

(iv) The inherent dignity and worth of each human being requires that the State and all persons shall recognize and protect fundamental human rights and afford the fullest protection to the rights and views of all individuals, groups and minorities whether or not they are entitled to vote.

Principles of national policy

13. The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals--

(...)

(f) Education

(...)

(iv) promote national goals such as unity and the elimination of political, religious, racial and ethnic intolerance.

(...)

Equality

20.--(1) Discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.

(...)

Culture and language

26. Every person shall have the right to use the language and to participate in the cultural life of his or her choice.

(...)

Jurisdiction of local government authorities

148.

(...)

(2) Any boundaries determining the territorial jurisdiction of any local government authority shall be geographical only, without reference to race, colour, tribe or ethnic origin of the inhabitants of the area.

Mali

1992 Constitution (unpan1.un.org/intradoc/groups/public/.../unpan002746.pdf)

Not mention at all

Republique Islamique de Mauritanie (Mauritania)

1991 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=193704)

Not mention at all

Mauritius

1968 Constitution (Republique Islamique de Mauritanie (Mauritania))

Niger

Seventh Republic Constitution 2010 is not available

Nigeria

1999 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=179202)

15. (1) The motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress.

(2) Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

(3) For the purpose of promoting national integration, it shall be the duty of the State to:

(...)

(c) encourage inter-marriage among persons from different places of origin, or of different religious, ethnic or linguistic association or ties; and

(d) promote or encourage the formation of associations that cut across ethnic, linguistic, religious and or other sectional barriers.

(...)

25. (1) The following persons are citizens of Nigeria by birth-namely-

(a) every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a **community indigenous** to Nigeria;

(...)

42. (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

222. No association by whatever name called shall function as a party, unless -

(...)

(b) the membership of the association is open to every citizen of Nigeria irrespective of his place of origin, circumstance of birth, sex, religion or ethnic grouping;

(...)

229. In this Part of this chapter, unless the context otherwise requires -

"association" means any body of persons corporate or unincorporate who agree to act together for any commission purpose, and includes an association formed for any ethnic, social, cultural, occupational religious purpose; and

(...)

Interpretation, Citation and commencement

318. (1) In this constitution, unless it is otherwise expressly provided or the context otherwise requires-

(...)

"belong to" or its grammatical expression when used with reference to a person in a state refers to a person either

or whose parents or any of whose grand parents was a member of a **community indigenous** to that state;

Rwanda

2003 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=194315)

CHAPTER II : FUNDAMENTAL PRINCIPLES

Article 9

The State of Rwanda commits itself to conform to the following fundamental principles and to promote and enforce the respect thereof:

(...)

2° eradication of ethnic, regional and other divisions and promotion of national unity;

(...)

Article 11

All Rwandans are born and remain free and equal in rights and duties.

Discrimination of whatever kind based on, inter alia, ethnic origin, tribe, clan, colour, sex, region, social origin, religion or faith, opinion, economic status, culture, language, social status, physical or mental disability or any other form of discrimination is prohibited and punishable by law.

(...)

Article 54

Political organizations are prohibited from basing themselves on race, ethnic group, tribe, clan, region, sex, religion or any other division which may give rise to discrimination.

(...)

Sao Tome E Principe

2003 Constitution (<http://www.wipo.int/wipolex/en/details.jsp?id=5830>)

Not mention at all

Senegal

2001 constitution (<http://www.wipo.int/wipolex/es/profile.jsp?code=SN>)

Not mention at all

Seychelles

1996 Constitution (<http://www.wipo.int/wipolex/es/details.jsp?id=9115>)

Not mention at all

Sierra Leona

1991 Constitution (www.sierra-leone.org/Laws/constitution1991.pdf)

9. Educational Objectives. (1) The Government shall direct its policy towards ensuring that there are equal rights and adequate educational

opportunities for all citizens at all levels by—

(...)

(3) The Government shall promote the learning of **indigenous languages** and the study and application of modern

science, foreign languages, technology, commerce and business.

13. Every citizen shall—

b. cultivate a sense of nationalism and patriotism so that loyalty to the State shall override sectional, **ethnic, tribal** or other loyalties;

35.

(...)

(5) No association, by whatever name called, shall be registered or be allowed to operate or to function as a political party if the Political Parties Registration Commission is satisfied that—

a. membership or leadership of the party is restricted to members of any particular **tribal or ethnic group** or religious faith; or

b. the name, symbol, colour or motto of the party has exclusive or particular significance or connotation to members of any particular **tribal or ethnic group** or religious faith; or

c. the party is formed for the sole purpose of securing or advancing the interests and welfare of a particular **tribal or ethnic group**, community, geographical area or religious faith; or

(...)

(8) For the purposes of this section the expression—

"association" includes any body of persons, corporate or incorporate, who agree to act together for any common purpose, or an association formed for any **ethnic**, social, cultural, occupational or religious purpose; and

(...)

Somalia

Constitution Not available

South Africa

1996 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=182082)

6. Languages

(1) The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.

(2) Recognising the historically diminished use and status of the **indigenous languages** of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages

.

Equality

(...)

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, **ethnic** or Copyright Juta & Company Limited social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(...)

16 Freedom of expression

(...)

(2) The right in subsection (1) does not extend to-

(c) advocacy of hatred that is based on race, **ethnicity**, gender or religion, and that constitutes incitement to cause harm.

(...)

26 Local government

(1) Notwithstanding the provisions of sections 151, 155, 156 and 157 of the new Constitution-

(b) a traditional leader of a community observing a system of **indigenous law** and residing on land within the area of a transitional local council, transitional rural council or transitional representative council, referred to in the Local Government Transition Act, 1993, and who has been identified as set out in section 182 of the previous Constitution, is ex officio entitled to be a member of that council until a Municipal Council replacing that council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution.

CHAPTER 12

TRADITIONAL LEADERS (ss 211-212)

211 Recognition

(1) The institution, status and role of traditional leadership, according to **customary law**, are recognised, subject to the Constitution.

(2) A traditional authority that observes a system of **customary law** may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.

(3) The courts must apply **customary law** when that law is applicable, subject to the Constitution and any legislation that specifically deals with **customary law**.

212 Role of traditional leaders

(1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.

(2) To deal with matters relating to traditional leadership, the role of traditional leaders, **customary law** and the customs of communities observing a system of customary law-

(a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and

(b) national legislation may establish a council of traditional leaders.

235 Self-determination

The right of the South African people as a whole to **self-determination**, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation.

Schedule 4

FUNCTIONAL AREAS OF CONCURRENT NATIONAL AND PROVINCIAL

LEGISLATIVE COMPETENCE

PART A

Administration of indigenous forests

(...)

Indigenous law and customary law, subject to Chapter 12 of the Constitution

Sudan

2005 Constitution (www.sudan-embassy.de/c_Sudan.pdf)

PREAMBLE

(...)

Mindful of religious, racial, **ethnic and cultural diversity** in the Sudan,

(...)

Nature of the State

1

(1) The Republic of the Sudan is an independent, sovereign State. It is a democratic, decentralized, **multi-cultural**, multi-lingual, multi-racial, **multi-ethnic**, and multi-religious country where such diversities co-exist.

Language

8 (1) All indigenous languages of the Sudan are national languages and shall be respected, developed and promoted.

Equality before the Law

31 All persons are equal before the law and are entitled without discrimination, as to race, colour, sex, language, religious creed, political opinion, or **ethnic origin**, to the equal protection of the law.

Freedom of Expression and Media

39. (...) (3) All media shall abide by professional ethics, shall refrain from inciting religious, **ethnic, racial or cultural** hatred and shall not agitate for violence or war.

Freedom of Assembly and Association

40 (...)

No association shall function as a political party at national, Southern Sudan or state level unless it has:-

(a) its membership open to any Sudanese irrespective of religion, **ethnic origin** or place of birth,

(...)

Right to Education

44

(1) Education is a right for every citizen and the State shall provide access to education without discrimination as to religion, race, **ethnicity**, gender or disability.

(...)

Ethnic and Cultural Communities

47 Ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures; members of such communities shall have the right to practice their beliefs, use their languages, observe their religions and raise their children within the framework of their respective cultures and customs.

(...)

Duties of the Government of National Unity

82 The Government of National Unity shall undertake the following duties:-

(...)

(b) establishment of a decentralized democratic system of governance taking into account the **cultural, ethnic**, racial, religious, and linguistic diversity and gender equality,

(...)

Guidelines for Inclusiveness in the National Civil Service

136 The National Civil Service, notably at the senior and middle-levels, shall be representative of the people of the Sudan; to ensure this, the following principles and guidelines shall be recognized and observed:-

(...)

(c) no level of government shall discriminate against any qualified Sudanese citizen on the basis of religion, **ethnicity**, region or gender,

(...)

Southern Sudan Council of Ministers

165 (1) There shall be established a Southern Sudan Council of Ministers to be appointed by the President of Government of Southern Sudan, in consultation with the Vice President and approved by Southern Sudan Assembly. The Government of Southern Sudan shall be established with due regard to the need for inclusiveness in recognition of **ethnic**, religious diversity and gender.

Swaziland

2005 constitution (<http://www.wipo.int/wipolex/en/details.jsp?id=9146>)

Equality before the law

20.

(2)

For the avoidance of any doubt, a person shall not be discriminated against on the grounds of gender, race, colour, **ethnic origin, tribe**, birth, creed or religion, or social or economic standing, political opinion, age or disability.

(3)

For the purposes of this section, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by gender, race, colour, **ethnic origin**, birth, **tribe**, creed or religion, or social or economic standing, political opinion, age or disability.

(...)

Property rights of spouses

34. (1)

A surviving spouse is entitled to a reasonable provision out of the estate of the other spouse whether the other spouse died having made a valid will or not and whether the spouses were married by civil or **customary rites**.

(...)

Social objectives

60.

(...) (10)

The State shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and shall ensure that **appropriate customary and cultural values** are adapted and developed as an integral part of the growing needs of the society as a whole.

Tanzania

1977 Constitution (www.judiciary.go.tz/downloads/constitution.pdf)

Person's freedom of association

20.

(...)

2) Notwithstanding the provisions of subarticles (1) and (4), it shall not be lawful for any political party to be registered which according to its constitution or policy -

(a)

aims at promoting or furthering the interests of -

(...)

(ii)

any tribal group, place of origin, race or gender;

(...)

Togo

1992 Constitution (<http://www.wipo.int/wipolex/es/details.jsp?id=8112>)

(...)

Art. 7 : Les partis politiques et les regroupements de partis politiques doivent respecter la Constitution.

Ils ne peuvent s'identifier à une région, à une ethnie ou à une religion.

(...)

Tunisia

1959 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=188948)

Not mention at all

Uganda

1995 Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=170004) with ammendments until 2006.

(...)

10. Citizenship by birth.

The following persons shall be citizens of Uganda by birth-

(a)

every person born in Uganda one of whose parents or grandparents is or was a member of any of the **indigenous communities** existing and residing within the borders of Uganda as at the first day of February, 1926, and set out in the Third Schedule to this Constitution; and

(...)

21. Equality and freedom from discrimination.

(...)

(3) For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, **ethnic origin, tribe**, birth, creed or religion, social or economic standing, political opinion or disability.

32. Affirmative action in favour of marginalised groups.

(1) Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by **history, tradition or custom**, for the purpose of redressing imbalances which exist against them.

(2) **Laws, cultures, customs and traditions** which are against the dignity, welfare or interest of women or any other **marginalised group** to which clause (1) relates or which undermine their status, are prohibited by this Constitution.

(3) There shall be a commission called the Equal Opportunities

Commission whose composition and functions shall be determined by an Act of Parliament.

(...)

36. Protection of rights of minorities.

Minorities have a right to participate in decision-making processes, and their views and interests shall be taken into account in the making of national plans and programmes.

37. Right to culture and similar rights. Every person has a right as applicable to belong to, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.

(...)

237. Land ownership.

(...)

(3) Land in Uganda shall be owned in accordance with the following land tenure systems-

(a) customary;

(b) freehold;

(c) mailo; and

(d) leasehold.

(...)

(4) On the coming into force of this Constitution-

(a) all Uganda citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament; and

(b)

land under customary tenure may be converted to freehold land ownership by registration.

(...)

246. Institution of traditional or cultural leaders.

(1) Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the **culture, customs and traditions** or wishes and aspirations of the people to whom it applies.

(2) In any community, where the issue of traditional or cultural leader has not been resolved, the issue shall be resolved by the community concerned using a method prescribed by Parliament.

(3) The following provisions shall apply in relation to traditional leaders or cultural leaders-

(a) the institution of traditional leader or a cultural leader shall be a corporation sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the people concerned;

(b) nothing in paragraph (a) shall be taken to prohibit a traditional leader or cultural leader from holding any asset or property acquired in a personal capacity;

(c) a traditional leader or cultural leader shall enjoy such privileges and benefits as may be conferred by the Government and local government or as that leader may be entitled to under culture, custom and tradition;

(d) subject to paragraph (c) of this clause, no person shall be compelled to pay allegiance or contribute to the cost of maintaining a traditional leader or cultural leader;

(e) a person shall not, while remaining a **traditional leader or cultural leader**, join or participate in partisan politics;

(f) a traditional leader or cultural leader shall not have or exercise any administrative, legislative or executive powers of Government or local government.

(4) The allegiance and privileges accorded to a traditional leader or a cultural leader by virtue of that office shall not be regarded as discriminatory practice prohibited under article 21 of this Constitution; but any custom, practice, usage or tradition relating to a traditional leader or cultural leader which detracts from the rights of any person as guaranteed by this Constitution, shall be taken to be prohibited under that article.

(5) For the avoidance of doubt, the institution of traditional leader or cultural leader existing immediately before the coming into force of this Constitution shall be taken to exist in accordance with the provisions of this Constitution.

(6) For the purposes of this article, "**traditional leader or cultural leader**" means a king or similar traditional leader or cultural leader by whatever name called, who derives allegiance from the fact of birth or descent in accordance with the customs, traditions, usage or consent of the people led by that traditional or cultural leader.

(...)

ThirdSchedule.

article 10(a).

Uganda's indigenous communities as at 1st February, 1926.

1. Acholi
2. Aliba
3. Alur
4. Aringa
5. Baamba
6. Babukusu
7. Babwisi
8. Bafumbira
9. Baganda
10. Bagisu
11. Bagungu
12. Bagwe
13. Bagwere
14. Bahehe
15. Bahororo

16. Bakenyi
17. Bakiga
18. Bakonzo
19. Banyabindi
20. Banyabutumbi
21. Banyankore
22. Banyara
23. Banyaruguru
24. Banyarwanda
25. Banyole
26. Banyoro
27. Baruli
28. Barundi
29. Basamia
30. Basoga
31. Basongora
32. Batagwenda
33. Batoro
34. Batuku
35. Batwa
36. Chope
37. Dodoth
38. Ethur
39. Gimara
40. Ik (Teuso)
41. Iteso
42. Jie
43. Jonam
44. Jopadhola
45. Kakwa
46. Karimojong
47. Kebu (Okebu)
48. Kuku
49. Kumam
50. Langi
51. Lendu
52. Lugbara
53. Madi
54. Mening
55. Mvuba

56. Napore
57. Ngikutio
58. Nubi
59. Nyangia
60. Pokot
61. Reli
62. Sabiny
63. Shana
64. So (Tepeth)
65. Vonom

Zambia

1991 Constitution (<http://www.wipo.int/wipolex/en/details.jsp?id=5394>)

Not mention at all

Zimbabwe

1980 Constitution (<http://www.wipo.int/wipolex/en/details.jsp?id=8853>)

(...)

18. Provisions to secure protection of law

(1) Subject to the provisions of this Constitution, every person is entitled to the protection of the law.

[Subsection as amended by section 3 of Act 4 of 1993 - Amendment No. 12]

(...)

(15) For the purposes of this section, a local court shall not be regarded as not being an independent and impartial court by reason of—

(a) the fact that a member of the court has an interest in the proceedings because of his position in the tribal society; or

(b) the traditional or customary tribal practices and procedures.

(...)

23 Protection from discrimination on the grounds of race, etc.

3) Nothing contained in any law shall be held to be in contravention of subsection (1)(a) to the

extent that the law in question relates to any of the following matters—

(...)

(b) the application of African **customary law** in any case involving Africans or an African and one or more persons who are not Africans where such persons have consented to the application of African **customary law** in that case;

(...)

89 Law to be administered

. Subject to the provisions of any law for the time being in force in Zimbabwe relating to the application of **African customary law**, the law to be administered by the Supreme Court, the High Court and by any courts in Zimbabwe subordinate to the High Court shall be the law in force in the Colony of the Cape of Good Hope on 10th June, 1891, as modified by subsequent legislation having in Zimbabwe the force of law.

[Section as amended by section 13 of Act 25 of 1981 - Amendment No. 2]

111. Chiefs and Councils of Chiefs

(1) There shall be Chiefs to preside over the **tribespeople** in Zimbabwe who shall, subject to the provisions of subsection (2), be appointed by the President in accordance with an Act of Parliament.

(2) An Act of Parliament shall provide that in appointing a Chief the President shall give due consideration to the **customary principles of succession of the tribespeople** over which the Chief will preside and may provide for the appointment of deputy Chiefs and acting Chiefs.

3) There shall be a Council of Chiefs which shall consist of such number of Chiefs elected by the Chiefs from each of the various areas of **Communal Land** in such manner as is prescribed by or under an Act of Parliament, so, however, as to secure as far as is practicable equitable representation for the various areas of **Communal Land** with due regard to the total number of **tribespeople** in each such area:

Provided that an Act of Parliament may provide for the establishment of two or more Councils of Chiefs for separate areas of Communal Land.

[Subsection as amended by section 12 of Act 1 of 1983 - Amendment No. 3]

(4) The qualifications and disqualifications of candidates for election to any Council of Chiefs and the tenure of office of members thereof shall be as prescribed by or under an Act of Parliament.

(...)

. Interpretation.

(1) In this Constitution, unless the context otherwise requires—

(...)

“African customary law” means the **tribal law and custom** of Africans of a particular tribe;

(...)

“law” means—

(...)

(c) any unwritten law in force in Zimbabwe, including African customary law;

LATIN AMERICA

1. Paraguay.

National Constitution:

- **Article 140:** establishes that the official languages are Spanish and Guarani.
- **Article 77:** regulates that the teaching at the beginning of the school process will be realized in the official mother tongue of the pupil. *The knowledge and use of both official languages of the Republic of Paraguay shall be taught. In the case of the ethnic minorities, as their mother tongue language is not the Guarani, they will have the possibility to choose between the two official languages.*
- **Article 62:** Paraguay expressly recognizes the existence of indigenous peoples, defined as cultural groups that predate the formation of the Paraguayan state
- **Article 63:** The right of indigenous peoples to preserve and develop their ethnic identity in their respective habitat; the right to freely apply their system of political, social, economic, cultural and religious organization, and their right to enforce customary indigenous law
- **Article 64:** Indigenous peoples have the right to community ownership in the land, of sufficient extent and quality to preserve and develop their particular ways of life (art. 64); such lands are nonattachable, indivisible, nontransferable and not subject to prescriptive claims.
- **Article 66 and 67:** Indigenous peoples are recognized as having the right to participate in the country's economic, social, political and cultural life and indigenous persons are exempted from social, civil or military service and from the public taxes set by law.

2. Argentina.

National Constitution:

Section 75 (17): Congress is empowered: To recognize the ethnic and cultural pre-existence of indigenous peoples of Argentina. To guarantee respect for the identity and the right to bilingual and intercultural education; to recognize the legal capacity of their communities, and the community possession and ownership of the lands they traditionally occupy; and to regulate the granting of other lands adequate and sufficient for human development; none of them shall be sold, transmitted or subject to liens or attachments. To guarantee their participation in issues related to their natural resources and in other interests affecting them. The provinces may jointly exercise these powers.

3. Bolivia.

National Constitution:

- **Article 5 (I):** 36 indigenous languages as well as Spanish are declared official languages. All departmental governments must use, as official languages, one indigenous language in addition to Spanish.
- **Chapter Four** establishes specifically the rights of indigenous peoples;
- **Article 30(I)** defines nation and indigenous peoples in the following way: a collectivity which shares cultural identity, language, historical tradition, institutions, territory and cosmovision and whose existence are previous of the Spanish colonial invasion.
- **Article 30(II)** establishes that indigenous peoples and *campesinos*² enjoy the following rights:
 1. To exist freely
 2. To enjoy their cultural identity, religious belief, spiritualities, practice, customs and cosmovision.
 3. To the cultural identity of each of their members and if desired, to register with Bolivian citizenship in his/her identity card, passport or other valid identification documents with legal validity.
 4. Their self-determination and territory.
 5. Their collective title of their lands and territory.
 6. The protection of their sacred places.
 7. To create and administrate their own net and communication media.
 8. The respect and promotion of their traditional knowledge, traditional medicine, languages, rituals, symbols and clothing.
 9. To live in a healthy environment.
 10. Their collective intellectual property of their knowledge, science as well as its valoration, promotion and development.
 11. An intracultural, intercultural and multilingual education system.
 12. The universal and healthcare system which respect their cosmovision and traditional practices.
 13. The exercise of their political, legal and economic system taking into account their cosmovision.
 14. The right to prior consultation in issues which can affect them. The prior consultation in this context is compulsory by the State. In addition, it is obligatory also this consultation

² Spanish word which means farmers.

regarding the exploration of their non-renewable natural resources in the territory they inhabit.

15. The right of their participation of the benefits of the natural resources' exploitation in their territories.

- **Article 31** establishes that indigenous peoples' communities in danger of extinction or in voluntary isolation and who were not contacted will be protected and respected in their individual and collective lifestyle.
- The Bolivian Law 3897 of 26 June 2008 which elevates to the status of law the United Nations Declaration on the Rights of Indigenous Peoples.

4. Peru.

Political National Constitution:

- **Article 2(19):** Every person has the right to their ethnic and cultural identity and The State recognizes and protects the ethnic and cultural plurality.
- **Article 89:** The State respects the cultural identity of the native and farmer communities. The farmer and native communities have legal existence and they are juridical persons. They have autonomy in its organization, in the communal work and in the use and freedom of the disposition of their lands; both economically and administratively. The character of their land is inalienable.
- **Article 149:** The authorities of the farmers and native communities can exercise their jurisdictional functions inside their territories with the conformity of the customary law, whenever does not violate the fundamental rights of people.
- **The Procedural Penal Code; Article 18:** The ordinary penal justice is not competent in the cases where the indigenous justice has been intervened before.³
- **The Province of Canas which is located inside the city of Cuzco. Criminal System:** There are four main aspects which are:⁴
 - Acknowledgement and consent
 - Identification of the social facts such as the communal interaction
 - The sociocultural surrounding where the law is operated.
 - Customs: Indigenous peoples take into account their customs to support the proceedings and norms to administrate justice. Thus; it is part of these customs the experiences that

³ *Ibid.*

⁴ *Ibid.*, at 79-80.

are passed from generation to generation such as old ancient history such as myths and legends.

- **The Constitution of Peru: Article 2:** All persons have a right to their ethnic and cultural identity and that the state recognizes and protects the ethnic and cultural plurality of the nation.
- **Article 48:** makes the indigenous languages official.
- **Article 88:** and guarantees the right to communal property in the lands of the peasant and native communities, whose legal existence and capacity it recognizes (**art. 89**).
- **Article 149:** It allows the authorities of the native communities to exercise judicial functions pursuant to their customary law within their territory.

5. Chile.

National Constitution:

- Chile does not have any recognition in its National Political Constitution regarding indigenous peoples' rights.

6. Colombia.

National Constitution:

- **Article 7:** The State recognizes and protects the ethnic and cultural diversity of the Colombian nation.
- **Chapter Five: Article 246** The authorities of the indigenous (Indian) peoples may exercise their jurisdictional functions within their territorial jurisdiction in accordance with their own laws and procedures provided these are not contrary to the Constitution and the laws of the Republic. The law will establish the forms of coordination of this special jurisdiction with the national judicial system.
- **Article 330:** In accordance with the Constitution and the laws, the indigenous (Indian) territories will be governed by councils formed and regulated according to the customs of their communities and will exercise the following functions:⁵

1. Supervise the application of the legal regulations concerning the uses of land and settlement of their territories.

⁵ Fran Semper "Los Derechos de los Pueblos Indigenas de Colombia en la Jurisprudencia de la Corte Constitucional" (2006) Biblioteca Juridica Virtual del Instituto de Investigaciones Juridicas de la UNAM <www.juridicas.unam.mx> at 765.

2. Design the policies, plans, and programs of economic and social development within their territory, in accordance with the National Development Plan.

3. Promote public investments in their territories and supervise their appropriate implementation.

- **Article 171:** The Senate of the Republic will be made up of 100 members elected in one national electoral district
- **Article 176:** The Chamber of Representatives will be elected in territorial electoral districts and special electoral districts. There will be two representatives for each territorial electoral district and one or for every 250,000 inhabitants or for each fraction greater than 125,000 over and above the initial 250,000. For the election of representatives to the chamber, each department and the Capital District of Bogotá will represent one territorial electoral district. The law may establish a special electoral district to ensure the participation in the Chamber of Representatives of ethnic groups and political minorities and Colombians resident abroad. Up to five representatives may be elected for this district.
- **Article 63:** Property in public use, natural parks, communal lands of ethnic groups, security zones, the archaeological resources of the nation, and other property determined by law are inalienable, imprescriptible, and unseizable.
- **Article 329:** The configuration of the indigenous (Indian) territorial entities will be developed subject to the provisions of the Organic Law of Territorial Planning, and their determination will be effected by the national government with the participation of the representatives of the indigenous communities following, the plan of the Commission of Territorial Planning.

7. Brazil.

National Constitution:

- **Article 20 (XI)** establishes that the following are property of the Federal State: those lands traditionally occupied by the Indians.
- **Article 22 (XIV)** establishes that the Federal State has competence to legislate about Indian populations.
- **Article 49 (XVI)** It is exclusively the competence of the National Congress to authorize, in Indian lands, the exploitation and use of hydric resources and the prospecting and mining of mineral resources.
- **Article 129 (V);** The following are institutional functions of the Public Prosecution: to defend judicially the rights and interests of the Indian populations.

- **Article 210** The Minimum curricula shall be established for elementary schools in order to ensure a common basic education and respect for national and regional cultural and artistic values. The teaching of religion is optional and shall be offered during the regular school hours of public elementary schools. Regular elementary education shall be given in the Portuguese language and Indian communities shall also be ensured the use of their native tongues and their own learning methods.
- **Article 215 (1):** The state shall ensure to all the full exercise of the cultural rights and access to the sources of national culture and shall support and foster the appreciation and diffusion of cultural expressions. The State shall protect the expressions of popular, Indian and Afro-Brazilian cultures, as well as those of other groups participating in the national civilization process.
- **Article 231;** Indians shall have their social organization, customs, languages. Creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property.
- **Paragraph 1** Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions.
- **Paragraph 2** The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein.
- **Paragraph 3** Hydric resources, including energetic potentials, may only be exploited, and mineral riches in Indian land may only be prospected and mined with the authorization of the National Congress, after hearing the communities involved, and the participation in the results of such mining shall be ensured to them, as set forth by law.
- **Paragraph 4** The lands referred to in this article are inalienable and indisposable and the rights thereto are not subject to limitation.
- **Paragraph 5** The removal of Indian groups from their lands is forbidden. except ad referendum of the National Congress, in case of a catastrophe or an epidemic which represents a risk to their population, or in the interest of the sovereignty of the country, after decision by the National Congress, it being guaranteed that, under any circumstances, the return shall be immediate as soon as the risk ceases.
- **Paragraph 6** - Acts with a view to occupation, domain and possession of the lands referred to in this article or to the exploitation of the natural riches of the soil, rivers and lakes existing therein, are null and void, producing no legal effects, except in case of relevant public interest of the Union, as provided by a supplementary law and such

nullity and voidness shall not create a right to indemnity or to sue the Union, except in what concerns improvements derived from occupation in good faith, in the manner prescribed by law.

- **Paragraph 7** The provisions of article 174, paragraphs 3 and 4, shall not apply to Indian lands.
- **Article 232:** The Indians, their communities and organizations have standing under the law to sue to defend their rights and interests, the Public Prosecution intervening in all the procedural acts.

8. Venezuela.

National Constitution:

- **The preamble** establishes that The people of Venezuela, exercising their powers of creation and invoking the protection of God, the historic example of our Liberator Simon Bolivar and the heroism and sacrifice of our aboriginal ancestors and the forerunners and founders of a free and sovereign nation; to the supreme end of reshaping the Republic to establish a democratic, participatory and self-reliant, multiethnic and multicultural society in a just, federal and decentralized State that embodies the values of freedom, independence, peace, solidarity, the common good, the nation's territorial integrity, comity and the rule of law for this and future generations; guarantees the right to life, work, learning, education, social justice and equality, without discrimination or subordination of any kind; promotes peaceful cooperation among nations and furthers and strengthens Latin American integration in accordance with the principle of nonintervention and national self-determination of the people, the universal and indivisible guarantee of human rights, the democratization of imitational society, nuclear disarmament, ecological balance and environmental resources as the common and inalienable heritage of humanity; exercising their innate power through their representatives comprising the National Constituent Assembly, by their freely cast vote and in a democratic Referendum.
- **Chapter Eight** which has seven articles which regulates the Rights of Native People:
- **Article 119:** The State recognizes the existence of native peoples and communities, their social, political and economic organization, their cultures, practices and customs, languages and religions, as well as their habitat and original rights to the lands they ancestrally and traditionally occupy, and which are necessary to develop and guarantee their way of life. It shall be the responsibility of the National Executive, with the participation of the native peoples, to demarcate and guarantee the right to collective

ownership of their lands, which shall be inalienable, not subject to the law of limitations or distraint, and non-transferable, in accordance with this Constitution and the law.

- **Article 120:** Exploitation by the State of the natural resources in native habitats shall be carried out without harming the cultural, social and economic integrity of such habitats, and likewise subject to prior information and consultation with the native communities concerned. Profits from such exploitation by the native peoples are subject to the Constitution and the law.
- **Article 121:** Native peoples have the right to maintain and develop their ethnical and cultural entity, world view, values, spirituality and holy places and places of cult. The State shall promote the appreciation and dissemination of the cultural manifestations of the native peoples, who have the right to their own education, and an education system of an intercultural and bilingual nature, taking into account their special social and cultural characteristics, values and traditions.
- **Article 122:** Native peoples have the right to a full health system that takes into consideration their practices and cultures. The State shall recognize their traditional medicine and supplementary forms of therapy, subject to principles of bioethics.
- **Article 123:** Native peoples have the right to maintain and promote their own economic practices based on reciprocity, solidarity and exchange; their traditional productive activities and their participation in the national economy, and to define their priorities. Native peoples have the right to professional training services and to participate in the preparation, implementation and management of specific training programs and technical and financial assistance services to strengthen their economic activities within the framework of sustainable local development. The State shall guarantee to workers belonging to native peoples the enjoyment of the rights granted under labor legislation.
- **Article 124:** Collective intellectual property rights in the knowledge, technologies and innovations of native peoples are guaranteed and protected. Any activity relating to genetic resources and the knowledge associated with the same, shall pursue collective benefits. The registry of patents on this ancestral knowledge and these resources is prohibited.
- **Article 125:** Native peoples have the right to participate in politics. The State shall guarantee native representation in the National Assembly and the deliberating organs of federal and local entities with a native population, in accordance with law.
- **Article 126:** Native peoples, as cultures with ancestral roots, are part of the Nation, the State and the Venezuelan people, which is one, sovereign and indivisible. In accordance with this Constitution, they have the duty of safeguarding the integrity and sovereignty of the nation. The term people in this Constitution shall in no way be interpreted with the implication it is imputed in international law.

9. Panama.

National Constitution:

- Article 84 recognizes indigenous languages and bilingual education;
- Article 104 recognizes the right of indigenous peoples to their own cultural standards
- Art. 120 recognizes the right of indigenous peoples the right to economic, social and political participation in national life
- Article 123 recognizes a guarantee for the indigenous communities of the lands they need for attaining their economic and social well-being, as well as their collective ownership
- Article 14(5) recognizes indigenous electoral districts.

10. Ecuador

National Constitution:

- Art. 1 recognizes indigenous languages as part of the national culture.
- Art. 27 recognizes the education systems in indigenous areas are to use the indigenous languages, Spanish is the language for intercultural relations
- Art. 51 regulates community and cooperative ownership of the land (art. 51).

11. Guatemala

National Constitution:

- Art. 59 establishes the right to cultural identity (art. 59).
- Art. 66 establishes special protection for ethnic groups, recognizing, respecting, and promoting their ways of life, customs, traditions, forms of social organization, use of indigenous attire, languages and dialects.
- Art. 67 and 68 are regulations to protect the lands of indigenous communities, family property and low-cost housing, as well as credit and technical assistance—all necessary to guarantee the possession and development of the land.

12. Nicaragua

National Constitution:

- Art. 8 and Art. 5 recognizes that the country is multi-ethnic and enshrines political, social, and ethnic pluralism
- Art. 89 regulates that The State recognizes the existence of the indigenous peoples, stating that they enjoy the rights, duties and guarantees of the Constitution. It especially recognizes the rights of indigenous peoples to develop their identity and culture, to have

their own forms of social organization, and to administer their local affairs. The Constitution also establishes that the Nicaraguan state should pass a law to adopt an autonomous regime for indigenous peoples and other ethnic minority communities of the Atlantic Coast region.

- **The Law 445** regulates the above Constitutional articles. The name of the Law is Law of the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous regions of the Nicaraguan Atlantic Cost and the Rivers Bocay, Coco, Indio and Maiz. This Law establishes, inter alia, that the communal lands cannot be taxed and that these lands are inalienable and indefeasible. This Law also defines community property in this way; Community Property is the collective property consisting of land, water, forests and other natural resources contained therein, which have traditionally belonged to the community, traditional knowledge, intellectual property and cultural resources, biodiversity and other assets, rights and shares belonging to one or more indigenous or ethnic communities. The same Law also defines indigenous peoples: It is the human community that maintains a historical continuity with pre-colonial societies whose social, cultural and economic conditions distinguish them from other sectors of national society and that are wholly or partially by their own customs and traditions.
- **Chapter Seven of the latter Law in its Article 35** Property rights and historical occupation of the indigenous and ethnic communities prevail on securities issued to third parties. The article 38 regulates that: People who are living in indigenous lands without any title must leave indigenous lands without compensation, but if they intend to stay in them, they have to pay a rental fee to the community.
- **Article 39 of the latter Law** regulates that indigenous and ethnic communities of the autonomous Atlantic regions of the territories by the Rivers Coco, Bocay, Indio and Maiz have the right that The State provides to them communal property titles of those lands and territory that they have been occupied from long time ago. Finally; regarding the demarcation of the lands;
- **Article 62 of the Same Law** regulates that the State, during the process of demarcation and legalization of the lands, will include in the National Budget of the Republic, all the remedies to cover the inversions for works which will be necessary to guarantee the objective of this law.

13. Mexico

National Constitution:

- **Article 4** The Mexican nation is multicultural, originally based on its indigenous peoples and provides that the law shall protect and promote the development of their languages, cultures, uses, customs, resources and specific forms of social organization, and shall guarantee their members effective access to the judiciary
- **Article 4 and 27:** The Mexican Constitution notes that the law shall protect the integrity of the lands of indigenous peoples and that in any agrarian trials or proceedings to which they are a party, their legal practices and customs shall be taken into account in the terms established by law.

14. Cuba

National Constitution:

- **Preamble:** “We, Cuban Citizens, heirs and continuators of the creative work and the traditions of combativity, firmness, heroism and sacrifice fostered by our ancestors; by the Indians who preferred extermination to submission; by the slaves who rebelled against their masters; by the patriots who in 1868 launched the wars of independence against Spanish colonialism and those who in the last drive of 1895 brought them to victory in 1898, a victory usurped by the military intervention and occupation of Yankee imperialism; by the workers, peasants, student and intellectuals who struggled for over fifty years against imperialist domination, political corruption, the absence of people’s rights and liberties, unemployment and exploitation by capitalists and landowners.

NORTH AMERICA

CANADA

The only provision within the original Canadian Constitution [originally called the *British North America Act, 1867* and now called the *Constitution Act, 1867*] is to set out the following head of jurisdiction allocated to the Parliament of Canada:

S. 91(24) Indians, and Lands reserved for the Indians

The Canadian Constitution was extensively overhauled in 1982 through the introduction of a domestic amending formula (previously all amendments required passage by the Parliament of the United Kingdom in response to a Resolution of the House of Commons and Senate of Canada), the creation of a constitutionally entrenched bill of rights inspired in part by the American Bill of Rights in the form of the Canadian Charter of Rights and Freedoms, transferring a few heads of jurisdiction from the federal to the provincial governments, and extending constitutional recognition to Aboriginal and treaty rights for the first time.

Part I of the *Constitution Act, 1982* contains the *Canadian Charter of Rights and Freedoms*, which enshrines certain fundamental human rights and civil liberties as warranting of constitutional paramountcy. Aboriginal and non-Aboriginal Canadians alike may continue to enjoy equally its guaranteed rights and freedoms. The Charter also contains section 25, which states:

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

Part II of the *Constitution Act, 1982*, as amended in 1984, now reads:

35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

35.1. The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of Section 91 of the "Constitution Act, 1867," to Section 25 of this Act or to this Part,

(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.

UNITED STATES

Article I, Section 8, Clause 3:

[The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes;