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Articles

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বাংলাদেশের সংবিধানে নির্দেশিত ভাষা এবং উচ্চতর আদালতে এর ব্যবহার : একটি আইনগত পর্যালোচনা

বাংলাদেশ সংবিধানের ৫ম সংশোধনী বাতিলের রায় ও প্রভাব : সংবাদপত্রের আলোকে একটি বিশ্লেষণ

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Different Provisions Relating to Aboriginal People's of the Sub-Continental Constitutional Laws: A Study

Dr M Ahsan Kabir*

The Constitution of Bangladesh

The Constitution of Bangladesh is the supreme law of the land in Bangladesh. The founding fathers of our Constitution felt that the inequitable forces in the socio-economic system and political organizations had created an imbalance in society and placed certain people like indigenous in a disadvantageous position. The Constitution of Bangladesh provides to all its citizens social, economic and political justice and equality of status and opportunity. The Constitution of Bangladesh has prescribed measures to remove inequality between "man and man". It aims at ensuring "equitable distribution of wealth among citizens" and at providing opportunities to attain a uniform level of economic development.¹ It defined state ownership as ownership by the state policy include the emancipation of peasants, workers and backward sections from "all the forms" or exploitation,² be it government or private, and the improvement of material and cultural standard of living of the people.³ It is fundamental principle of the state policy to "adopt measures to conserve the cultural traditions and heritage of the people."⁴

The above principle of state policy explicitly enshrines the protection of private rights and tradition from all forms of exploitation and interference. The principles are fundamental to the governance of Bangladesh and are to be taken as a guide to the interpretation of the Constitution and all other laws of

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¹ Article 19(2) *Constitution of Bangladesh*.

² Article 14 *Constitution of Bangladesh*.

³ Article 15 *Constitution of Bangladesh*.

⁴ Article 23 *Constitution of Bangladesh*.

Bangladesh.⁵ The forest laws and the laws governing tenancy are mostly pre-constitutional laws, but these are to be interpreted and applied within the letters and spirit of the Constitution.

Moreover, it is fundamental right of every citizen not to be discriminated against on ground of religion, race, caste, sex or place of birth⁶ rather the government is empowered to adopt special provision for the advancement of any backward section of citizens.⁷ These unspecific and derogatory terms are illustrative of the official position and even of the way in which ethnic and other minorities have later been portrayed in teaching material for public primary schools and the inclusion in one clause of women, children and other backward sections in revealing of an underlying attitude to these categories, denying them full subjectivity and relegating them to a marginal existence as dependants on the margins of the nation and the state.⁸ In fact the government has provided special quota for entrance of aboriginal students in some educational institutions up to the highest level. Property of the citizen cannot be taken by the government except in accordance with law⁹ and such law must provide for compensation for the land taken up by the government.¹⁰

The laws recognizing rights through prescription or adverse possession applies to all tribal and non-tribal people living in or around tribal areas if the nature of their exercise or enjoyment of rights are within the scope of the law. Special legal provisions are also available to protect the cultural integrity and territoriality of tribal population. These rights should not be regarded as inferior to other forms of rights. It is submitted that all regular legal provisions

⁵ Article 8(2) of the Constitution of Bangladesh.

⁶ Article 28(3) of the Constitution of Bangladesh.

⁷ Article 28(4) of the Constitution of Bangladesh.

⁸ Tone Bleie, *Tribal Peoples, Nationalism and the Human Rights Challenge The Adivasis of Bangladesh*, UPL, Dhaka (2005), p, 164.

⁹ Article 31 of the Constitution of Bangladesh.

¹⁰ Article 42 of the Constitution of Bangladesh.

are equally valid for tribal peoples; right in tribal areas and the special laws are specific addition to other existing provisions.

The Constitution of 1971 reflects these hegemonic cultural nationalist ideas as it states in Article 9: "the unity and solidarity of the Bengali nation, which deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis for Bengali nationalism".¹¹ The original Article 6 (Part I), amended in 1972 declared that "all citizens of Bangladesh should be known as Bengalis." In recent times, *Amena Mohsin* argued that these clauses turn all the non-Bengali populations into ethnic and religious minorities,¹² and thus, the amendment of Article 6 completely denied the existence of the Dravidian, Mundari and other indigenous and tribal peoples in the country. It thus, absolves the state from any special protective measures in favour of the country's ethnic groups and legitimizes assimilation policies. It should come as no surprise that government representatives have officially said that Bangladesh has no ethnic or indigenous communities.

The Eight amendments to the Constitution further commented that trend by making Islam the state religion. This amendment clearly abandoned the secular principle on which Bangladesh was founded in 1972. This amendment also built around a polarization between Muslims and non-Muslims, particularly Hindus and also includes those Adivasis who are semi-Hindus.

However, *Article 28(1)* of the Constitution states that:

¹¹ The Constitution of People's Republic of Bangladesh, Dacca: Government of Bangladesh, 1972 and D. Choudury, *Constitutional Development in Bangladesh: Stresses and Strains*, Dhaka: The University Press Limited, 1995.

¹² A. Mohsin. *Rights of Minorities, in Human Rights in Bangladesh*, Dhaka: Ain-O-Salish Kendra, 2000, p.244. Proclamation (Amendment) Order, 1977 changed Bengalis to Bangladeshis; Bangladeshi nationalism emphasizes the religious dimension of the Muslim population, which differentiates it from Bengali nationalism.

"The state shall not discriminate against any citizens on grounds of only religion, race, caste, sex, or place of birth."

Significantly, Bangladeshi government chose not to observe 1994 as the year of the indigenous people as declared by United Nations.

It is very relevant to compare the different provisions of the Constitution of India and Constitution of Pakistan relating to tribal matters because all the tribe people once upon a time were the inhabitants of Indian subcontinent. Indian Constitution has some unique provisions for the welfare of the tribes.

The Constitution of India

The Constitution of India demands legislative or executive measures for the reconstruction of the unequal social order by corrective and distributive justice through rule of law. Distributive justice (Article 46) also connotes the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequal in society. Similarly, Article 39(b) enjoins upon the state to frame its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to serve the common good. Specifically, Article 244 Clause (1) V Schedule, Para 5(2), makes it mandatory for the state to ensure total prohibition of transfer of immovable property to any person other than to a tribe, for peace and proven good management of a aboriginal area and to protect possession, right, title and interests of the Scheduled Tribes (STs) in the land. The provisions under Schedule V of this clause are not only applicable to the administration and control of areas notified by the President of India as 'Scheduled Areas', but also to those notified as 'Scheduled Tribes in any state'. This is to be achieved by suitable legislation as well as by declaration of aboriginal majority areas as a 'Scheduled Area' with provisions for a certain degree of self-governance, according to Panchayat Raj (Extension to the Scheduled Areas) Act 1996. Although no aboriginal area in Kerala has been thus far notified as a 'Scheduled Area', as all the STs of all

the States come under the purview of this Article, the State governments that have no Scheduled Area are also constitutionally bound to enact suitable legislation to protect land rights. Moreover, as early as 1960, the Dhebar Commission recommended that all aboriginal land alienated since January 26, 1950 - the day the Constitution came into force - should be returned to the original Adivasi owners. Consequent to the resolution at the meeting of state ministers on April 1, 1975, to enact suitable legislation to prevent alienation of lands and to restore alienated lands and to implement the same in a time bound manner, the Kerala government unanimously enacted the 'Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, on November 14, 1975. This Act (KST Act 1975) was further included in the ninth schedule of the Constitution to ensure that the Act itself is not challenged in any court of law. But it was only after a decade in 1986, that the rules operationalising the Act were formulated.¹³ Under this Act, all transactions of Adivasi lands during the period 1960 to 1982 became invalid and are to be restored to the original owners. Transfer of lands from aboriginal to non-tribals was also prohibited from 1982. It is estimated that 8,553 applications for restoration of lands totaling some 10,177 hectares were filed till the last date of receipt of applications. The number has since risen to 8,879 by 1979. The Adivasi beneficiaries have to pay a sum which is the total of the amount received, if any, as consideration for the transaction and the amount spent for improvements on the land before the commencement of the Act, as compensation for the restoration of 'their' lands for which the beneficiaries can avail loans from the government. The KST Act, 1975, and other similar acts are the direct result of constitutional obligations.¹⁴ Despite the restriction, however, transfer of lands continued unabated, in violation of

¹³ Bijoy, C.R. *Adivasis Betrayed: Adivasi Land Rights in Kerala*, Economic and Political Weekly, Vol. XXXIV, No.22, May 29 - June 4, 1999, pp.1329-35.

¹⁴ *Report on the Socio-Economic Survey of Tribals in Kerala*. Bureau of Statistics. Trivandrum, 1979, p.124

the Act. The government did not earnestly implement the Act. Consequent to a case filed in 1988, the High Court in its order of 1993, directed the government to "dispose of the applications pending before them within six months". The government argued that the law was unjust to non-tribals, that it caused tension between tribals and non-tribals and that the law needed changing. The government sought repeated extensions of the dead line, which were duly granted. Meanwhile agitation to implement the law began to spread throughout the aboriginal belt. In 1996, the United Democratic Front brought an ordinance to change the law, which was disallowed by the then Governor. Following the ascendancy of the Left Democratic Front in 1996, they too tried to enact an ordinance, which was also rejected by the then Governor. Faced with the deadline of 30 September 1996, set by the High Court, the government unanimously passed 'The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Amendment Act, 1996' on September 23, at a point of time when the bitter agitation by the Adivasis was at its peak. The President, K.R Narayanan, withheld his assent and returned it. Obviously the amendment was in violation of the Constitution. The aborted ordinances, as well as the amendment, were intended to subvert the very intent of the 1975 Act - of restoring alienated lands back to the Adivasis. All these diabolical acts to subvert the KST Act 1975 were taken despite the fact that the KST Act did not address the issue of land alienation in its entirety. Only 4,524 applications were found valid for a claim of a paltry 7,640 acres. The rest were rejected for want of proper records. Imposition of alien laws regulating ownership, an alien concept for Adivasis, insensitive and biased administrative machinery, which did not bother to record the traditional rights of Adivasis, all contributed to a situation where the Adivasis were faced without valid proof of ownership or enjoyment. The government was unwilling to restore even the little that the Adivasis could provide records for. The actual restoration that did take place was insignificant. The court meanwhile declared that the government had "no

will to implement the legislation". Faced with the threat of Contempt of Court for not implementing the KST Act 1975, the government then enacted 'The Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Bill, 1999' under the subject 'agricultural lands', a State Subject, to ensure that the new bill did not have to go to the President of India. The Bill also added a new component of land up to an acre for the landless, which the government reckoned to be 11,000 in number.¹⁵ Like the earlier aborted ordinances and amendment, the key object of this new bill was to provide alternate lands instead of the original lands, besides exempting lands alienated from restoration for an additional period extending from 1982 to 1986, while repealing the KST Act 1975. These attempts of the State are in violation of Articles 3, 13 and 14 of the ILO Convention 107 (ratified by India), that relate to protection of properties, respect of customary procedures of transmission of traditional ownership of lands, prevention of non-tribes from securing ownership or use of lands belonging to tribals and provision of more land when they have not the area necessary for providing the essentials of normal existence. They are also in violation of Section 2 of ILO Convention 169 on Indigenous and Aboriginal Populations (which India is yet to ratify), which explicitly recognises the concept of territoriality of the tribals and the relationship it has with their identity, and their right of ownership and possession over lands traditionally occupied.¹⁶ In addition, they are also in violation of Part VI of the UN draft Universal Declaration of the Rights of Indigenous Peoples, which is being discussed at the level of the UN Commission of Human Rights. In August 2000, the High Court declared the contentious provisions in the new 1999 Act as unconstitutional and pronounced that the State government had willfully disobeyed the direction of the Court to restore alienated lands and was charged with contempt of court.

¹⁵ Kunhaman, K. *The Tribal Economy of Kerala. An Intra-Regional Analysis*, Economic and Political Weekly, Vo; XX, No.11, March 16, 1985, pg. 466-474.

¹⁶ *Indigenous World 2000-2001*. IWGIA, Copenhagen. 2001, p.307-9.

The state government challenged the High Court judgment in the Supreme Court where the matter presently rests.¹⁷

So, the Constitution of India *inter alia* provides for the following provisions in relation to the administration of tribal and scheduled Areas in particular and the development of Scheduled Tribes in General¹⁸:

Article 244 (1)	Provisions as to the administration and control of Scheduled Areas and Scheduled Tribes.
Article 244 (2)	Provisions as to the administration of Tribal Areas.
Article 399	Control of the Union over the administration of Scheduled areas and the welfare of the Scheduled Tribes.
Article 275 (1)	Provisions for payment of grants-in-aid to enable the States to meet the cost of such scheme of development as may be undertaken by the States with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State of raising the level of the administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State.
Article 342	Specifying the tribes or tribal communities as Scheduled Tribes.
Article 330	Reservation of seats for the Scheduled Castes in the State Legislative Assemblies.

¹⁷ Dr.J. N. Pandey, *Constitutional Law of India*, Central Law Agency, Allahabad, 2005, 27th Chapter 'The Union Territories and Tribal Areas', pp., 266-268

¹⁸ P.M. Bakshi, *The Constitution of India*, Universal Law Publishing Co. Pvt. Ltd. Delhi, 1998, pp., 261-267

Article 334	Reservation of seats and special representation to cease after thirty years.
Article 164 (1)	In the State of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition to be in-charge of welfare of the Scheduled Castes and Backward Classes of any other work.
Article 338	There shall be a special officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.
Article 335	Claims of Scheduled Tribes to services and posts.
Article 46	Promotion of educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections.
Article 371 A	Special provisions with reference to Nagaland.
5th Schedule	Provision to the Administration and control of Scheduled Tribes.
6th Schedule	Provision as to the Administration of Tribal Areas.

The framers of the Indian Constitution had the advantage of incorporating the best available experiences up to that time, notably that of the Constitution of the United States of America. Also the United Nations had already adopted the Convention on Human Rights. Taking advantage of these, the founding parents of the nation made special provisions for the weaker sections of the population, including the tribal peoples, in addition to their overall inclusion within the fundamental rights and directive principles. The constitution re-designated the earlier partially excluded areas as Scheduled Areas and wholly

excluded areas as Tribal Areas, and the tribal people in general as Scheduled Tribes after their specification in terms of groups and their geographical location. In Hindi the terms used are *anusuchit kshetra* for Scheduled Areas and *anusuchit janajati* for Scheduled Tribes. Thus avoidance of using the more popular term *Adivasi* (the first settlers) had already begun with the drafting of the constitution.¹⁹

The Constitution of Pakistan

Part XII, Chapter -3 of the Pakistan Constitution discussed in details about tribal matters.²⁰ Article 246 of the Constitution identified different tribal Areas which are located in different part of Pakistan. Article 247 stated the Administration of Tribal Areas which are summarized below—

- (1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federality Administered Tribal Areas, and the executive authority of a province shall extend to the Provincially Administered Tribal Areas therein.
- (2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his function under this Article, comply with such directions. No Act of the Parliament shall apply to any federally Administered Tribal Area, or to any part thereof, unless the President so directs, and no Act of the Parliament or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part

¹⁹ Dr Ram Dayal Munda, India's Protection and Promotion of Tribal Rights: Obligations under ILO Convention On Indigenous and Tribal Peoples, 1957 (No.107, Paper submitted at Indigenous Rights in the Commonwealth Project South & South East Asia Regional Expert Meeting Indian Confederation of Indigenous and Tribal Peoples (ICITP), INDIA, India International Centre New Delhi, India, 11th- 13th, March 2002.

²⁰ Sheikh Ebrahim, 'The Constitution of the Islamic Republic of Pakistan', P.L.D. Publishers, Lahore, 2000, pp., 133-134.

thereof, unless the Governor of the Province in which the Tribal Area is situated, with the approval of the President, so directs.

(3) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area.

(4) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area.

So, if we analyzed all these provisions of the Indian and Pakistan Constitution relating to tribal matters, there are many important and useful rules for the settlement of the tribes. But our Constitution does not make available many rules for the benefit and assistance of the tribal people who are living in different corners of Bangladesh. The aboriginal people of Bangladesh have been claiming their Constitutional recognition for a very long time, but still now Bangladesh government does not constitutionally acknowledge them.

Constitutional Reform is needed to Protect Aboriginal Rights in Bangladesh

The existing politico-administrative arrangement failed to uphold the law by its unwillingness to implement it. The law itself was attempted to be amended and subsequently repealed and replaced quite contrary to the original intentions as well as the Constitutional obligation despite popular struggles opposing the changes; the judicial response has been grossly inadequate as 39 years have gone by without a final decision. The Government of Bangladesh maintains that a section of population cannot be treated as *adivasis* or aboriginal and all are part of the mainstream population. Begum Khaleda Zia, the then Prime Minister of Bangladesh categorically refused to accept the ILO Convention of 169 and the UN Charter of 1994 on Indigenous Peoples saying:

"there are no aboriginal peoples in Bangladesh. There are only indigenous people, and Bengalis are also indigenous to Bangladesh".²¹

The Constitution of Bangladesh is fundamentally a single nation centric instrument. It does not see the existence of indigenous people. This silence is hindering the promotion of a multicultural society, which is in fact a reality. Moreover, this view is giving a sense of non-existence and alienness towards the indigenous community from the apex norm of the country. It also creates some legal restrictions of serious nature for the *adivasis*'. The research term believes that the indigenous communities should be given constitutional recognition. Orthodox nationalists argue that giving such right may create a serious threat to the State integrity of Bangladesh. Constitutional recognition is in essence a kind of theoretical acceptance of an already existing factual reality. It will provide the indigenous communities an identity, accepted by the apex norm of the state. The demand for this recognition is needed showing the interest and affection of the *adivasis*' to belong as recognized citizens of Bangladesh, and nothing more. The question of constitutional recognition has nothing to do with state integrity. The *Chakma* insurrections over the last decade showed us that non-recognition of the indigenous communities has failed to give any substantial protection to state integrity. Moreover, that insurrection was caused by some other economical and political factors. So only giving a constitutional recognition can never be a sufficient threat to state integrity.

The government violated the High Court's order consistently disregarding judicial pronouncements; it required a popular uprising to challenge and force the state to come to terms with the injustice. The parliamentary democracy and the political system failed to ensure that the Constitution is upheld in the case of *adivasis*'; the *adivasis*' recognized that the present system would not

²¹ Karim, L. p. 310 cited in Mankin A, 'Ethnic Minorities in Bangladesh: A Conceptual Construction within Bengali Nationalisms', Dhaka, 1992, p.9

deliver justice and demanded a system that would transfer certain powers and responsibilities of enforcing the law unto themselves, which is also part of the Constitution but not yet applied to the State in the form of demand for 'Scheduled Area' and they always demand for their constitutional recognition, which have been granted by the Constitution of Pakistan and India.

The *adivasis* themselves began evolving their own extra-parliamentary body for self-governance. Even in around forty years, the State, the executive, the political system and the judiciary have failed to ensure the fulfillment of the Constitutional obligations to the *adivasis* – the indigenous peoples. Nor are there indications that these obligations will be fulfilled in the future. Rather, there are indications that the executive and the politico-administrative system are subverting the Constitution. The *adivasis* are adopting political means beyond parliamentary structures to uphold the Constitution itself. Alongside, we would like to mention that simply constitutional recognition will never be able to do any comprehensive good for the *adivasis* unless it is pursued by positive state attitude and political commitment of the concerned parties. The aboriginal customs and traditions remained unchanged in spite of outside contacts with different people, races, customs and so on in great deal. The reasons for continuance of aboriginals' traditions and customs are mainly due to the fact that during the British period, tribal customs and practices were protected by the various acts and laws passed by the British administration in Indian subcontinent.

During the British administration in India, a number of Rules and Regulations were passed. Regulation X of 1822 was passed on 19th September, 1822, with a view to promote the desirable object of reclaiming these tribes to habits of civilized life. It seems necessary that a special plan for the administration of justice, of a kind peculiar to their customs and prejudices, should be arranged

and concerted with the headman. Government of India Act, 1935 were passed in which the interests of the tribes are being protected.²²

After independence there has been a constitutional guarantee given in protecting the tribal customs, traditions and practices and specific provision has been made in the Constitution. Under this provision an autonomous Hill District Council was established for promotion and protection of these customary laws and practices. But unfortunately, there was no special council for Santal people who are living in the *Barind* region of Rajshahi Division. In the Adivasi communities of the Greater Rajshahi Division, the national development, from which they were excluded, was overshadowed by their experience of ostracism as dubious citizens and of intensified oppression by the majority. Insecurity was felt not only by the recent returnees from India but also by those who had remained during the war. A number of them also found their land declared Enemy Property on fake grounds. In a tense atmosphere with a very poor law and order situation, nobody could feel safe from losing the occupation of their homesteads and agricultural lands.²³

At present, most of the *Barind* villages are multi-ethnic in culture. The *Bangalees* and other ethnic groups are living side by side. As a result, conflict and confusion relating to land disputes are very common between the *Bangalees* and *Adivasis*. Besides, in the changing circumstances the *Santals* often reject the verdict of their village headman. The *Bangalees* and the *Adivasi* go to Union Council or to Thana administration to solve disputes. Now-a-days they often keep contact and rely on the Union Parishad. They go to the Union Parishad members and the chairman to settle their disputes and also seek their assistance on different administrative matters, so that they can enjoy their rights and to protect their community from injustice.

²² Dalton. E. T., *Descriptive Ethnology of Bengal*, Calcutta, 1973, pp.,207-209

²³ Tone Bleie, *Tribal Peoples, Nationalism and the Human Rights Challenge The Adivasis of Bangladesh*, UPL, Dhaka (2005), p, 165.

Conclusion

The central issue facing indigenous peoples is their right to ancestral lands and the security of their land ownership. Land ownership is intertwined with the ideal of self-determination of indigenous people, along with their ability to choose the extent of their participation in the lives of the nations that have grown up around them, their ability to preserve their unique cultural heritage without outside interference, and their ability to choose the lifestyles that they desire. Also of persistent concern is the degradation of the physical environment of the territories of indigenous people by outside economic development. In order to foster economic development, developing countries need access to the lands and natural resources that lie within their territories. However, where these resources and lands lie within the territories of indigenous peoples, conflicts arise and governments are confronted with choosing between protecting indigenous land policies and pursuing development.

Reconciling indigenous land rights and the demands of economic development poses serious challenges to the governments of Bangladesh. Pressure for economic development by logging, mining, and government development projects has led to the loss of land by indigenous people in the country and deteriorating social conditions among tribal peoples. In addition, development activities on indigenous land adversely affect the environment, and thereby have serious consequences for both indigenous people and the rest of the population. Since violations of the right of indigenous people to traditional lands are usually perpetrated (or at least encouraged) by the state itself, legal enforcement of the right is an especially sensitive and difficult question for the simple reason that a state will be inclined not to recognize a right that cuts against its own interests. Rather, the state will most likely violate the land rights of indigenous people, and only recognize them if it happens to benefit the state. Looking at the developmental activities in the country after independence, it can be said that there is some tiny 'progress'.

However, the gap between the aboriginal people and the general population, rather than decreasing, is increasing, leaving the Aboriginals far behind.

The most fundamental step toward protecting indigenous people is to guarantee their legal rights to their traditional territory. In order to implement this protection, the government must first genuinely commit its resources and moral will to fulfilling its duties to its indigenous populations. The apathy of governments sounds a death knell for any meaningful recognition and guarantee of those rights. Within the legal context of the country, consideration must be given to the need to reform the relevant portions of the Constitution in order to assure the necessary level of legal protection for aboriginal rights and resources and by the Government.