

# State sovereignty, Human Rights and Peoples' Participation

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## Introduction

The right to participation that we are discussing here takes both general and specific forms. It is both an individual right and a collective right of peoples. In other words we are not limiting ourselves to only individual citizens in the strict liberal and legal sense. The Declaration makes reference to external decision making processes, which the report of the Expert Mechanism understands to mean both state and non-state institutions "affecting" indigenous peoples (HRC/EMRIP/2010/2, p.3).

These terms suggest that such internal central and local institutions are intact (from outside encroachment) in contrast to alien institutions. The internal institutions are interpreted in the report as linked to the right to autonomy and to self-government. As you may recognise, these are not only legal distinctions, they (external versus internal) build one of humanity's most basic conceptual bodily metaphors (inside-outside). I will attempt to highlight how these terms coexist somewhat uneasily with political science theories of the citizen, the state, sovereignty and the nation-state- modelled on European history.

I will also briefly outline recent social science policy-relevant research on globalization and how it poses immense pressure on nation-states. I will lift up one particular argument: the importance of contributing to well-functioning hybrid local and national institutions that are dynamic intermediary institutions. I use the term hybrid for these mechanisms and institutions as they are a mix of "external" (i.e. Western state-centric/Eastern empire-centric) and "internal" traits. By "internal" I mean elements of indigenous morality, legal systems, notions of self in relation to other living beings, individual and collective agency and non-state and state forms of participation and governance. Such institutions work as "bridges" between the state and the society. They promote peoples' sovereignty, reconciliation and progressive realisation of the right to participation. Such institutions are briefly addressed in the Expert Mechanism's Report under the heading "Transformation and Challenges of Indigenous Governance"(p.15).

In this presentation I first outline these important theoretical concepts. I also want to briefly address if they are helpful for understanding the evolving notions of state, nation and democracy in Asia, at a time of rapid globalization. The human rights regime, including indigenous rights, is part and parcel of this globalization from above and below. My reasons for a certain focus on Asia is not only an interest in presenting my own research that may 'speak directly' to the presentations here in this conference focusing on the Philippines, Nepal and China. I have two more reasons;

(1) The recognition in Asia of indigenous rights in terms of ratification of key instruments is quite weak. Only one country in the region, Nepal, has ratified ILO-169. A statement by Forum Asia recently stated that none of the nation-states in South East Asia have an ethos

that celebrates and promotes this diversity, or empower and protects the rights of its national, ethnic, religious and linguistic nationalities.

(2) The phrase “the 21<sup>st</sup> Century is Asia’s century”, is mostly likely a correct prediction. This region is not only going to be the world’s “power house” in an economic sense, but also in terms of challenging current Euro-centric models for democracy and the nation-state.

So, how can I briefly characterise the ideals behind different political regimes in Asia? They vary from democratic centralism in China, to India’s hybrid model, having elements of Soviet socialist centralism, Western liberal democracy and home grown civil-secular, cultural plural democracy. Bangladesh is based on a more liberal model, which is in certain respects ill-liberal, since its constitution discriminates against the country’s many indigenous groups. Until twenty years ago, Nepal was an ill-liberal state, based on sacred Hindu monarchy. After democracy was won, policies (both economic and social), become liberal. Then in 1996 the Maoists declared “a people’s war”, which lasted a decade. What about post-war Nepal? Do we see a transition from a young liberal democracy to a different kind of democracy, one which reflects Maoist ideology and the ethnic movements’ demands for recognition, including self-determination? I like to come back to our hopes regarding the type of democracy that emerges in Nepal.

Take for example China and India, are they nation states? Or are they multi-national states, or rather multi-ethnic nation-states? Both these giant countries are products of diverse old civilizations that have gone through a succession of empires, with political identities larger than ethnic groups (see fg. Mukerji 2010). Cultures have coexisted, conflicted, adapted, integrated and assimilated over large timescales. Let me now dwell however briefly on how China’s unitary state system addresses the nationality question.

### Unitary state systems, the problem of nationality and participation through autonomy

Autonomy is the central tenet of China’s ethnic policy, designed to ensure harmonious relations between ethnic and religious minorities and between minorities and the Han majority. The regions in question are border regions. Their political and cultural integration is seen as crucial for ensuring stability in South East Asia, South Asia and Central Asia - and ultimately to ensure the sovereignty of Greater China.

The Chinese understanding of nationality (*minzu*) is an adaption of Stalin’s definitions of nationality; “a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture”. Later, for a short period in the early 1930s, Lenin’s more radical definition of self-determination as a right to independence for minority areas, based on the Soviet model of federalism, was adopted.

This was detracted after the Long March, which made Mao Zedong the foremost leader of the communist movement. Those ethnic minorities, who joined the war against the invading Japanese (the Great China-Japan War), had demonstrated a patriotic spirit and were accorded a right to handle their own affairs within a unitary state model. This strong link

between patriotic contribution to defend state sovereignty and regional autonomy was reconfirmed in 2005 in the government's White Paper on ethnic issues.

Importantly, China's current 56 nationalities (including Han) are based on a scientific project of ethnic classification in the 1950s. Originally around 400 self-identified groups wanted such official recognition. A policy of integration and cooption of ethnic elites into the communist party and into government at prefectural and country levels was pursued. The Cultural Revolution (1966-1976) brought destruction of culture and assimilation. These excesses were excused in the 1980s by CCP General Secretary Hu Yaobang, and a period of certain liberalization followed with so called "preferential policies". Unrest in Tibet and Xinjiang in the 1990s and recently, has shown the emergence of a harder approach, where modernization is seen as the cure against ethno-nationalism.

This state, a unitary multinational state, based on communist ideology (Marxism-Leninism and Mao Zedong Thought), recognise limited group rights: in particular cultural rights and the right to participation and to development based on regional autonomy. Commitments to minority rights do however not translate into any guarantees. Research (see eg. Yash et. Al 2010) indicates that ethnic tensions are exacerbated by unequal economic growth. Unequal political and bureaucratic representation in the government (in autonomous regions) and at local levels, difficulties in perusing an indigenous lifestyle, in using native languages and freely exercising religion, also fuel tensions. In a nutshell, the overriding priorities on sovereignty, stability, unity, weak democratic institutions and an ideology of integrating nationalities, make aspirations and demands for genuine autonomy and participation difficult indeed.

## Democracy and Sovereignty in General

How can we, who are concerned with ethnic minority rights and indigenous rights, best characterise democracy in general? Democracy is characterized by its ability to ensure rights to participation, to distribute political power and make leaders accountable for their actions. Through its constitution, any democracy creates the government's rational authority. This must be modern and secular, anti-discriminatory, recognise diversities, including recognition of different ethnic groups and peoples.

Democracies need to seriously change their decision making processes and institutions if they have "second class citizens" or groups with no citizen rights, for example ethnic and religious minorities, indigenous groups, smuggled or trafficked persons, asylum seekers etc. In addition, constitutions should be limitation-setting and nourish broader representative structures for participation.

A well-ordered democracy puts constitutional checks against any tyranny of any majority, defined on ethnic, religious, territorial, caste, gender or demographic basis. We can not afford to overlook "worst cases", the misuse of ethnicity and race for establishing deeply discriminatory states (i.e. apartheid in South-Africa on the occupied West Bank etc.) with exclusionist territorial politics and unequal citizen laws.

A democracy provides citizens with two kinds of rights. Firstly, *negative rights* against the encroachment of government, as well as non-interference and certain constraints to

individual liberty. Secondly, *positive rights* related to citizens wellbeing, dignity, identity and capacity to exercise one's own legitimate interests. These two sets of rights are mutually related. Democracies to varying degree (also in Europe) grant negative and positive rights to illegal migrants, asylum seekers and discriminated minorities: the recent controversial forced move of Romani people in France is such a case. In many Asian countries, negative rights are quite often violated, as interference by the state is often exercised widely, on grounds of threats towards the unitary state (separatism etc.) Positive rights are selectively promoted and protected. In China for example, economic and social rights are progressively sought and realised. The respect for civil and political rights is less– but the picture is variable.

Any government is only fully legitimate if it is representative of all citizens. It should not deny the existence of social hierarchies or disregard aspirations for recognition. Instead it should develop measures to overcome entrenched hierarchies and discrimination.

Popular sovereignty is measured by the existence of public policies that are fully decided by citizens, partly through their direct participation, and partly through their representatives. Popular sovereignty in a multiethnic state is not fulfilled if one or a few of many indigenous groups is allowed participation at the expense of others who are less educated or have less political clout or demographic weight. There might be other non-ethnic groups who suffer similar or worse exclusion and whose rights to development are violated. If indigenous movements have “tunnel visions” promoting only their right to participation, they risk not contributing to consensus-building publicly, and might unintentionally exacerbate instability and strife in already fragmented, conflict- ridden political systems. Such conflicts may tear apart the state institutions they seek concessions from.

Tomorrow we will hear about Nepal's indigenous (Janajati) movement. This movement expresses a quest for popular sovereignty, which will result in the demolition of the caste hierarchy. It works for a fundamental change – that Nepalese citizens should gradually discard caste as a pre-modern basis of solidarity and actively engage on equal terms in the process of law making for the new constitution. As a scholar on South Asia I have to warn of the risk that caste as a pre-modern basis for solidarity and identity is now being substituted by primordial ethnic identities or ethno-nationalist identities – restricting the needed development of overlapping identities. Of course, if Nepalese leaders from the indigenous movement and other social movements and political parties are to succeed in democratic nation-building, they have to be able to reconcile the mushrooming of ethnic and regional identities with a new understanding of common (supra)nationality. Only then can the current crisis of national identity, which used to be based on the Hindu monarchy and the Nepali language, be overcome. This means that peoples have to balance group rights and individual citizen rights in order to contribute to a shared sovereignty, conformity to law and a wish for collective life. These are the main features of a national political community and a vibrant representative political system. Such a state can progressively realise the “right to development... the right of all individuals in a country exercised collectively” (Bleie, 2005: 65).

So what is a theory of sovereignty? Sovereignty is the just use of political power in a state and a society. Popular sovereignty and state sovereignty are distinct, but interwoven. In the current state-centric world, each one of us can only become sovereign citizens in a sovereign state. Such a state has the ability to protect national borders. It possesses legitimate

monopoly on power, and the ability to institutionalize our citizenship rights and open a wide range of opportunities based on them. Otherwise, the state can not remake pre-existing and unequal ties between citizens and peoples. It cannot redistribute power among all social classes and peoples, and become a neutral mediator that creates civic solidarity— that is necessary “to glue” the society together. Regardless of whether indigenous demands for participation or self-rule pose objective threats to state sovereignty or not, indigenous movements and organizations are often criticised for doing so. However, there are critical phases of societal transformation, often in the wake of civil wars or regional conflicts, when misjudging the nation-state’s capacity to deliver justice can have very serious and long-standing consequences (Bleie and Dahal, 2010).

So far I have briefly discussed the notions of democracy and peoples and state sovereignty. I would like to conclude this section with some remarks on the notion of the nation-state. The defining features of the nation-state are a people with certain unique features, whose territorial distribution defines the outer borders. This model notion has a European origin (the so-called Westphalian system). The model defines democracy and the nation in the singular: within the nation-state. The imposition of this European model by expansionist colonial powers leaves the many peoples within post-colonial states with a bitter legacy, a fatal mismatch between the model or “map” and their multiethnic “terrain”. Such realities form much of the background for recent decades’ struggles for self-determination and challenging the nation-state to find new modes to accommodate participation, demands for autonomy and integration.

The experiences of huge civilizations like India and China suggest that “nation” and “state” are separate, yet congruent. Both ethno-nationalism and civic nationalism preceded the formation of post-colonial sovereign states. Every nation-building project is a process of developing a more inclusive and respectful culture and institutions. This means the inclusion of ethnicity and indigenesness, but also of gender, class, environmental justice etc. Nation-states that fail to integrate through such pluralistic modes of participation will be vulnerable to ethno-nationalism, even secessionism.

### Beneath and beyond the nation-state: globalisation and the translocal

Market-driven globalization of capital, technology, ideology and communication mark a radical shift from the welfare state-oriented constitutional democracy to the competitive market-driven state and the constitutionalization of international norms, agreements, laws and institutions. This is making the state-centric definition of democracy increasingly problematic. Modern democracy has moved beyond the nation-state. There is an increasing imbalance between social transactions of the national society that cross state borders and the regulative capacity of territorial state. Instant communications and rapid travel reduce and remove the distance of time and space. All over the world societies are pulling states into expanded territories—through diasporas, migrant workers, refugee movements, participation in peace keeping, new social movements, foreign investment and foreign policy issues. All of these tendencies reshape the rights to representation in state, non-state and intergovernmental institutions, and the meanings of representation and of state-society

relations. Dynamic movements, including the global indigenous movement, mark the structural transformation of peoples' power versus state-power. Over-nationality is actively used to hold states accountable and to reform laws, institutions and decision-making processes. The subordination of states to plural authority structures of the United Nations, the World Trade Organization, the World Bank, regional trade and security organizations are also questioned and actively resisted.

While some states (such as China) have the capacity to collect resources (tax) to sustain welfare programs and rule of law, others do not that this capacity. This undermines the authority and capability to cope with internal and external challenges and to realize governance goals—be that security, rule of law, voice, civic participation, service delivery and resolution of political conflict. National territories of buffer states are vulnerable to regional and global geopolitics. Globalization of ideas (including human rights) and regionalization of political economy erode the state's autonomous institutional capacity across its territory. Also, the historically evolved state-centric nationalism and the concept of state-defined citizenship are undermined.

Global indigenous movements have appropriated and expanded the human rights regime. The movement spread of new ways (discourse) to act and speak of indigenes, new forms of leadership and networks, makes effective use of a mix of the new electronic media, global travel and governance. There is a growing body of research on global indigenism, including what is termed transnational activism. The argument about a “boomerang effect”, that local movements go global as a result of state oppression and lacking recognition, in order to expose and shame from above (by the global civil society and the intergovernmental institutions) and launch new pressures from within, has been criticised (Keck/Sikkink 1998:13), Stewart (2004). Stewart, for example, has said the boomerang effect argument is too general to explain the Guatemalan indigenous rights movement national and global nature.

The pathways of indigenous activism between local, national, regional and global levels vary significantly, as does indigenous peoples' ability to mobilise and participate in decision-making locally, nationally and globally, and how grievances are defined and strategic alliances at these different levels of scale are forged. Today's presentations as well as those tomorrow give us new valuable insights about the Sami Parliament and background for the Finnmark Law, the Janajatis in Nepal, the peoples of Mindoro Island, the Massai in Kenya which are illustrative of the ongoing transformations of the concepts I have underlined above.

### The need to redefine and expand the meaning of democracy

Scarcity and economic insecurity in developing countries have not hindered guaranteed individual and group-based freedoms and autonomy, nor have made democracy a healthy polity. Indigenous women and children continue to face cruel gender and age-based discriminations in spite of international commitments and reform laws. The spirit of liberation expressed by new social movements of women, Dalits, youths, indigenous peoples and workers is a calling to all concerned activists, policymakers and scholars that true meaning of democracy is still in the making. Only an inclusive democracy can realize distributive justice and full rights to participation in both state and non-state institutions.

The promise of the so-called post-liberal democracy is, therefore, based on the expansion of personal rights matched with group rights. The vision of a post-liberal democracy breaks sharply with the liberal tradition in certain respects. It represents the individual as an intrinsically social being, therefore collective capacities, sentiments and attachments can be given due recognition. The primary of private control over productive property such as indigenous lands, and plundering of resource, becomes unacceptable, not only as an obstacle to popular sovereignty (Bleie and Dahal op.cit.).

Post-liberal democracy recognises that the ideals of democracy and human rights in no way can be achieved for all citizens under conditions of social and economic inequality and poverty. It therefore stresses that the state has to fulfil not only civil and political rights but also social, economic and cultural rights. In order to create democratic conditions for active citizenships, differentiated targeted policies are required for equitable and just distribution of resources through a thriving public sector, full employment and a support to the welfare state. In this context, the helpless and downtrodden require not only protection, but also additional opportunities so that democracy creates a level playing field for all- for life chances and equal participation- in public life rather than creating winners and losers.

Nepal is an illustrative example of a segmented political culture, where power sharing is needed in order to escape the current political deadlock of confrontation. The new political dispensation of Nepal, which we hope to see emerging, bears many elements of inclusive democracy and accommodation to the indigenous movement as well as other social movements. These elements are: recognition of group identity and autonomy, multi-party polity, grand coalition government, proportional sharing of executive and legislative powers, interest in strong bi-cameral legislature, federalism, proportional election system and a culture of compromise.

The prospective democracy in the making is quite close to the ideal of con-sociational democracy (see cf. Arndt Lijphart) that is meant to accommodate segmented societies along ethnic and territorial lines. There are of course critics that argue that ethnic-based federalism can deepen uncompromising attitudes, which in turn will make power-sharing arrangements unstable and short-lived (see cf. Hueglin, 2003:69).

## Conclusion

I have attempted to highlight how the defining terms of indigenous rights as group rights coexist somewhat uneasily with political science theories of individual citizenship, state, of sovereignty and the nation-state – all of which have so far been modelled on European political history.

I have briefly characterised the ideals behind different political regimes of Asia. They vary from democratic centralism in China, to India's hybrid model, having elements of Soviet socialist centralism, Western liberal democracy and home grown civil-secular and cultural plural democracy. I have made use of my characterizations of these important countries, which have many nationalities - for establishing a more general argument.

The argument is that we need to be acutely aware of these concepts and to develop them, in order to grasp better the evolving notions of citizenship, state, nation and democracy, not only in Asia, but in all continents at a time of rapid globalization. The human rights regime, including indigenous rights, is part and parcel of this globalization from above and below.

This globalization of ideas, including those regarding indigenous rights, and regionalization of political economy, erode the state's autonomous institutional capacity across its territory. Additionally, historically evolved state-centric nationalism and the concept of state-defined citizenship are increasingly undermined. Let us as academicians and practitioners take responsibility, in alliance with other collective actors around our periled planet who work for a humane and just world, in striking the balance between group rights and individual rights.

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