

Demokratiafoorumi
**Vasudhaiva
Kutumbakam**

SUMMARY OF A DIALOUGE/WORKSHOP
6 September 2006, Tent of Happihuone, Töölönlahti,
Helsinki

European heritage of constitutional rights and non-state structures of the indigenous heritage of life of world's majority

Ville-Veikko Hirvelä from Finland introduced the topic of the discussion:

1. Before the colonisation the nation state structure and the rights and law related to it have not widely prevailed in other parts of the world (than in Europe) but have been brought there forcibly by European colonial power.

The modern democracy - the modern model and understanding of democracy - has been interlinked with modern nation state structure which has been forced upon the majority of world.

The system of rights and constitutions based on this forced structure of organising human society as a nation state, has been very unequal especially against the tribal/ non-state life and cultures, which the majority of the world had before colonisation. Therefore there is a need of dialogue with the other heritages to examine:

How democratic is the European nation state structure of constitutions for non-nation state heritages, for their governance and for that non-nation state life in general, which the majority of the world used to live before they were violently forced to live under nation states and their structures of law?

The majority of people in the South are still inheritants of the tribal and indigenous or non-national/ non-state heritages and are thus not allowed under the European models of constitutions to follow their own will of their cultural heritage of organising the social life through non-national / non-state structures.

The prevailing structure of constitutions have been developed to serve European cultural heritage (of national life and state practices) and its intentions based on European languages and colonial interests of euro-centric structures of significance - not to serve the heritages of the majority. Laws are regulated through such languages, which are made national and official through being made translatable to European grammatic and semantic elements.

The question is, what kind of constitutional rights or laws could authentically reflect the will of the Southern majority of people, who come originally from the indigenous/tribal or non-national/non-state/non-literate/non-commercial traditions of life and will formation?

The commercial forms of production and exchange, from which the modern state gets the gross national product and from which it gets its resources of its functions and administration (through taxation, investments, etc.), are displacing the subsistence of the indigenous forms of life of the non state societies.

The modern administration requires monetarisation of resources as it gets its own resources through the monetarisation (taxes etc.). Thus the modern state and administration are biased to empower the monetary / commercial economy against other non-monetary or less commercial forms of economy.

2. The essence of democracy that legal order should come from people's own understanding of justice is thus degraded through the European structures of constitution and even further by the new EU constitution.

The new EU constitution changes the whole concept of what does it mean to be a 'constitution', changing it further towards even more specifically European (integrated European) interests.

Earlier the major historical function for which the constitutions were established was to control through the law and through elected legislators the whims of rulers, governance and administration. Through the EU and its new constitution the authorities and administration have been given again institutionalised power to change and control legislation according to its administrative and commercial interests:

The legislative initiative and power to bind the laws through globalised commercial commitments is monopolised to officials of the Commission and thus the direction of legislation is determined already before democratically elected legislators can do anything with it.

3. There exists thus a deep civilisational crisis of the role which European constitutionalism and constitutions modelled through it play as basis of 'legal order' in world's cultures of life. There was wide agreement among the seminar participants that governments should recognise the primary rights of non-states communities to use land, water and forest according to their traditional user rights and governance systems. Land, water and forests should thus not be treated/ legalized as 'property' in the first place.

Jennifer Koinante, a representative of Kenyan forest dweller communities, noted that:

Kenyan constitution is inherited from colonial constitution and there is no huntergatherers in the parliament. In district level we have 3 people to participate to preparation of constitution (while there are altogether 56 district and 8 province). Some donors supported the participation of huntergatherers and pastoralists to the constitution building efforts.

Now there is a requirement that there should be selected 30 % women to the parliament. Huntergatherers supported women representation and women supported them but there was no hunter gatherers in the end to lobby for their rights. How can we get to the meetings to represent our voices. The trouble of democracy is the lack of number of participation.

After colonialism everything was declared as government forest, much of it given for big companies from outside. When they come they destroy everything.

You bring 'democracy' through having representatives of the government who come as professionals of forestry and ministers of forestry. After 2 months they are logging and selling with no attachment to the forest and they do not see even the meaning of the forest within as they are persons brought up in the city.

Our forests have been intact but government-managed forests are finished. It is a painful thing if you go to discuss with the elders about the forest somebody can just cry and then goes away. It is so emotional. It is their life and they can not survive without the forest. There is a big

difference between people-managed forest and administration-managed forest. We were hunter gatherers but now we are not anymore allowed to hunt. Hunting is now allowed for hunting companies but not for indigenous people.

In respect to the constitution and laws on forest management and use, there is nobody who has the knowledge of the forest rather than the indigenous people who live there and have kept the forest intact for all those years because of their livelihood relation with the forest from where they get their food like from the bees and the flowers. Bees are to them is like the brother. Honey is the very common food of the Yaaku, who used to live in the caves. They found the life in modern habitation to be polluted life smelling bad and rough and they have gone back to the caves. Up to now our people harvested honey putting honey into the caves for the dry season when there is no flowers. We still pray in the same way. Huntergatherers and pastoralists were earlier to share the same land.

We do not believe that somebody coming from the forest department could save the forest. If they can conserve why they have not conserved but destroyed. We depend on food grown naturally, if that is not there, we are also not there

We must grow the capacity of people to understand their rights through international conventions not to be moved out. We should find out how we can continue our tradition

Lot of people come to learn from us like how to bring life to the forest already killed

A European friend noted on the issue of how can we go back to more sustainable life, that in Brasil thousands of exploited people have gone from cities back to forests.

Guy Fisher from GAIA Foundation noted that now after the industrial take over there is not any more country side where to return. Every thing is occupied and fenced.

Raimotin Markam, indigenous woman from India observed that Adivasis never considered land to be the property. Land should be accessible to everybody without land being a property of a single individual or anybody controlling the area as its super-intendent.

"The laws now are forcing us to domesticate the nature which will certainly destroy the wilderness, the freedom of ourselves as well as the nature" through "this philosophy of owning a thing and privatising and ultimately domesticating the wilds"

Narendra, a researcher from India said that in the indigenous stateless life for example in the wild forests the issue of ownership just does not exist as man is himself a part of the wild forests. The wilds are rather owned by the spirit, the Lingodev. In the wilds there is no dog. Dog stays in the village limits. But in the forest dog walks as commonly as a man. And it was a rare sight to find a bird in the wilds. In their behaviour, even the dogs and birds know the distinction between the wilds and the forests. But the modern civilisation does not seem to know even that

An indigenous representative from Thailand observed that:

Community rights in context of South east Asia forest, water and land. Like other countries people movement try to get the community rights. Know best how to manage their own land. Forestry trying to take away the land. Government tries to say this land belongs to government Government should provide certain security of land use and amount of land

Peter Kuria from Kenya said that when the colonisers came there were the traditional systems demonised and eliminated.

Hannu Virtanen commented that in Finland as well as in Kenya the traditional wisdom was described as witchcraft.

In Nepal when democracy came 17-18 years ago, the difference had meant that there is more fight and money.

Peter commented further that the modern legal systems are in conformity with the modern conditioned thinking. It is therefore very difficult to see the failures of our legal systems since we end up arguing within set boundaries as defined by our environmental upbringing.

The evolution of the legal frameworks has been defined through history and perfected a "tools to protect" what we as individuals own. With time, this has meant that the general economic gains have become our sole point of reference when defining the legality. Legal instruments targeting the poor are still in the embryonic stage and still being discussed, but not at their merit, but in comparison to the existing systems. This has meant that, instead of defining new ways of looking at legality, the debate is on how traditional/natural rights are to be subsumed within the current systems without disrupting the status-quo.

The outcome of this is that the new proposed instruments are very weak in the protection of the poor. This is especially pronounced when it is in reference to minerals/resources.

The current proposals are instead of asserting the rights of communities creating new frameworks that justify and give legal credibility to actions which "take away those resources" for the good of the society and for industrial commercialisation. This has led to mass evictions which technically can be in perpetuity. This is justifiable as long as there has been prior and informed consent, there was some form of consultation, impact assessment, and the promise of compensation etc. This is in total contrast to individual rights, where it is technically impossible to evict an individual who holds a title deed to land.

There is an obvious difference in the "weight of rights" when community rights are compared against individual rights. Therefore my conclusion with regard to this situation is that, "*community rights are not rights, but statements of rights*", these statements of rights can be contextually erased at any time by those in power. There is a need to overhaul our thinking in terms of how we use legal instruments and change that imbalance by converting those statements of rights to indelible rights.

Raimotin noted that in India the government policies regarding indigenous peoples not so bad officially, but all rights exist and are guaranteed only on paper, not in practice. In India the new Forest Bill is hoped to guarantee our access and rights to land, forest and water - but in spite of the possibility of this Forest Bill and other legal provisions there is anxiety because there is a war going on between the police and the Maoist guerrillas: a threat of violence by the police and the Maoist guerrilla. The police think we back the Maoist, the Maoist that we back the police

Narendra said that:

In India the earlier collective relation to land, water, forest, space, etc. is now in the cross fire of the modern state and civil society with oppression in the delivery of everything.

Narendra noted further that in the modern society "even where indigenous people have rights, they do not have choice". And state is a very powerful and armed entity which will not give forests away. In the North East India the indigenous region was given autonomy to decide their modes of governance at the state- and village level, what to do with their forest, trees, water. But then all forest was wiped out, water heavily polluted, economy collapsed. Indian state is a normal modern state. Under it the indigenous people had been given indigenous right but even when you have rights you have no choice except to follow certain business of democracy, liberalism, communism or other such modern structures through which you "are forced to form your self image, world view, your relation with other forms of life".

Indian state is a normal modern state. They had the right, indigenous right... Even when you have rights you have no choice except to follow certain business of democracy, communism, and so on, it is through these wisdoms that you are forced to form your self image, world view, your relation with other forms of life. The issue is not of rights so much as of choices.

The major threat is not only the modern state but also the modern civil society connected to it, because it reinforces those modern notions of democracy, liberalism, socialism, etc. but with no option or position for indigenism, the way what grows up to the soil seeds to your body... emerge from the being located in a spot of the earth.

"The modern civil society which eliminates the space for indigenous life, is not only the big business and maoist guerilla, but also the gandhian activist... and I am a gandhian activist."

What would be indigenous rights to forest, land, water and natural forms ? Who is an indigenous person ? The formal legal definition may consider as indigenous non-indigenous modern life of a person if he is born from indigenous parents. Indigenous people can also add to the prevailing modern destruction when they start to live the modern life. All decisions on forest, land, water within North East India and its formal indigenous autonomy for example have been some kind of restoration of rights but have led to destruction of land and forest. They have no choice left. Rights within nation state system are different from indigenous practices and mindset. Forest which belongs to a state is a different social artifact than the indigenous wild forest where indigenous community has lived. And developing country states of developing countries have no choice except to follow the dictates of the modern west and its globalisation policy.

The threat comes from the western civil society. So much energy is consumed and the modern civil society is the biggest consumer of goods

The Adivasi can not be understood through any modernistic categories, because understanding or knowing the Adivasi community defies all these categories. They just fail to provide the mental and spiritual equipment required to know what is Adivasi.

The tree is growing in the wilds in a family in kin and relationship. And in the plantations, the tree exists outside the family. Now if I am thrown out of my family, you will see some difference in my parents. So that is what the forests are, they are like orphanages where plantations and trees are put. Wilds are self-sustained. Forest needs to be sustained, because it is a social artifact, part of the modern state

While modernity conquers the distances Adivasis have observed distances

In traditional indigenous context of life, Adivasi used to look like a part of the local environment around him. The way he walked was certainly not the way the modern people walk, there was something very different about it. I could see that bush from about 5-10 meters and I could not see that there was a man sitting next to the bush and I was stunted to see him.

Raimotin told that Adivasi life has been inherited from ancestors, "not only from the animated mothers, fathers, etc. but also from the ancestors that are the rivers, the changing seasons, etc. (other surrounding things and beings). We are living in those traditions and do not want to change and mold them in the way the modern world changes"

Dominggas Nari from Papua replied that similarly the Amungme tribe in Papua understand themselves as the descendents of a mother who sacrificed her life to become the forests, mountains and rivers that feed and give shelter to the Papuan people:

"Amungme tribe in Papua perceive the mountain as their mother. In the top is the mother head, in the middle the hands and the breast, heart and the body and down the feet" as Dominggas

told. But now the Freeport company bored a hole to the mountain and took their mother (the mineral-rich soil of the mountain) to Java, destroying their mother's head, hands, breasts, heart and feet. 4 high mountains have now collapsed because gold from them is exported to Indonesia and America.

The indigenous people in Papua, who are the majority of the 2,5 million population used to live by fruit, vegetables, animals that people could freely use. But now corporate ownership has brought monoculture and changed the whole landscapes, by logging and mining the hills. Local indigenous people have lost their right to use their natural environment.

The government says that the land forest and water are government owned as said in constitution.

There are some rules made by the state on how the forests are categorised according to the different functions. Indonesian practices and traditional rights are in contrast with the regulations made by the state. Indigenous groups have their own concept and own rules and their natural resource management, rights to water etc. could be independent. Indigenous groups have claimed their rights to resources. Since 1998 local indigenous groups movement have claimed their right to natural resources and they have got some rights. They have some rights also through decentralisation to rule the natural resources in their areas. Papua has special autonomy for some groups and Papuan parliament addresses the special needs of Papuan people. To confirm the rights of indigenous people in Papua requires to write down and legislate the rights of Papuan people to natural resources by the Indonesian government. Only after that the people can have access to natural resources. The problem is, how could one use modern state system to provide rights for not state-based traditional ways of life?

Septer Manufundu told that in Papua there is about 200 indigenous peoples (tribes). Until now the military has killed 150 000 people in all areas in Papua since 1963. In Freeport area in Papua, there live Kamoro, Amungme tribes, who have land there, Dunga tribe, Dani and Jali tribe. But Freeport company destroyed the land, the 17000 hectare forest, natural resource and polluted the river, one can not take water to drink, one can not fish and it is difficult for the people to access natural resource.