

CHAPTER 4

Human Rights

Reetta Toivanen and Dorotheé Cambou

University of Helsinki and Helsinki Institute
of Sustainability Science

Abstract

Human rights are among the key concepts of sustainability science because they constitute the basis for sustainable well-being in any given society. Human rights form an understanding of a world in which individuals and peoples can trust in justice and claim rights by virtue of being human. The idea of an international human rights law is that it is not up to a specific government to decide how it treats individuals and peoples living in its territory. Thus, human rights form a discourse of emancipation with a universal outreach. They are essential to achieve sustainable development as specified in the 2030 Agenda for Sustainable Development, which indicates that the implementation of the Sustainable Development Goals (SDGs) is based on human rights. However,

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there are some tensions that continue to oppose SDGs to human rights. This is partly the case in relation to the rights of Indigenous peoples, an issue that will be further explicated in this contribution with regard to the situation of the Indigenous Sámi people.

This chapter elaborates on the concept of human rights from the perspective of sustainability sciences. It explores human rights as a concept of law and as a concept of global politics, and it analyzes its differing functions depending on the contexts in which it is applied. This contribution considers the recent interconnections of human rights with the issues raised by sustainable development and the rights of Indigenous peoples.

Human Rights as Politics and Law

Human rights form an understanding of a world in which individual people, wherever they may reside, can always trust in justice—to which they are entitled by the simple virtue of their humanity (Gibney 2016: 3). The core idea of international human rights law is that it is not up to a specific state or government to decide how it treats its citizens or peoples living in its territory (Gibney 2016: 1). Consequently, states assume obligations to act in a certain way in order to protect, respect, and fulfil human rights. The Universal Declaration of Human Rights—adopted in 1948 by the United Nations General Assembly—the two legally binding UN Covenants on Human Rights,¹ and the numerous legal instruments that have followed further codify and specify these rights and obligations. They form the legal basis of international human rights law. Jarna Petman (2012) writes that human rights seem to stand both inside and outside politics. On the one hand, they are firmly rooted in everyday practices of politics in conventions that the governments have ratified and transposed to national legislations. On the other, ‘they hold a promise of the universally

¹ UN International Covenant on Political and Civil Rights, 1966 and UN International Covenant on Economic, Social and Cultural Rights, 1966.

good that is not reducible to time and place: rights offer *hope* for brighter future, of a better and more just world' (Petman 2012: 2).

Conceptually, human rights form a discourse of emancipation that has a universal outreach. The discourse is ever-expanding and inclusive, meaning that new concerns can be addressed in the language of human rights. One prime example of this expansion is to include the concerns of Indigenous peoples in human rights issues. Ronald Niezen (2003) discusses in detail the emergence of the rights of Indigenous peoples at the United Nations. According to him:

the indigenous peoples' movement has arisen out of shared experiences of marginalized groups and economic modernization Indigenous identity has also grown largely out of the institutions of successful nationalisms themselves; the international legislative bodies of states – the United Nations and its satellite agencies – have provided the conceptual origins and practical focus of indigenous identity ... an international movement has led to the creation of an important new 'ism'.

(Niezen 2003: 9)

The human rights discourse has proven to be flexible and adaptable to new concerns and emerging societal issues, which have also helped to strengthen its 'inclusive universality' while embracing diversity (Brems, 2001).

However, for critical legal theorists and social scientists, the human rights discourse also contains some interesting paradoxes (Koskenniemi 2005: 604). One of these is the paradox between the emancipatory and constraining sides of human rights. In order to have the right to claim human rights, people must adapt to the normative framework of identity, which is often constructed in accordance with mainstream epistemologies (Toivanen 2004). Thus, in order to make claims, the subject of human rights (i.e. an Indigenous person) must act in accordance with the dominant presentation of indigeneity, which is how their claim and identity are conceptualized by others. It may thus be argued that human rights can favour dominant discourses and ideologies to the detriment of the voice of marginalized groups (Toivanen 2020).

For the same reason, another critique of human rights is linked to its relationship with the market society. In her work, Jessica Whyte (2019) uncovers how neoliberals have historically intended to co-opt the discourse of human rights to develop a moral framework for a market society that privileges market interests at the expense of economic, social and cultural rights. This work is aligned with other critics of human rights who have, for instance, denounced its imperialistic logics (Anghie 2004). According to its critics, some parts of the discourse of human rights therefore converge in legitimizing imperialists and neoliberal development ideologies. This convergence is, however, increasingly denounced and also reinforces the need to call into question whether human rights principles are adequately protected under the auspices of the sustainable development agenda.

Sustainability and Human Rights

It is generally recognized that human rights are essential to achieve sustainable development. This development was confirmed by the document *Transforming our World: The 2030 Agenda for Sustainable Development*, adopted by the United Nations General Assembly on 21 October 2015 (A/RES/70/1). The Agenda's main thrust is that all the policies and processes targeting the implementation of the Sustainable Development Goals (SDG) should be based on human rights. Agenda 2030 reaffirms several significant human rights commitments. In the section on 'Our shared principles and commitments', paragraph 10 states:

The new Agenda is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome. It is informed by other instruments such as the Declaration on the Right to Development.

(UN 2015: 4)

Thus, the Agenda is explicitly anchored in international human rights standards and affirms realizing human rights for all as its goal.

The development of understanding the importance of human rights in envisioning sustainability is closely connected to the new tendency to present environmental claims using human rights terminology. For instance, Heta Heiskanen (2018: 15) has, in her doctoral dissertation, studied the development of *green jurisprudence* at the European Court of Human Rights, pointing out a well-established case continuum that provides protection both for individuals and for the environment. This suggests there is confidence in the compatibility of the human rights and environmental agendas.

However, new policies and actions are necessary to shift the trajectory of global development onto a just, sustainable path for all that also realizes human rights. Additionally, there is a need to ensure that sustainable development objectives do not contradict human rights. As Kerri Woods (2010) notes, human rights and development do not always go hand in hand. This is more particularly the case in relation to the rights of Indigenous peoples. It is striking that the SDGs have little to offer to the agency of Indigenous peoples. Rather, in several development goals (2010: 23, 25, 79), everything that is said about Indigenous peoples is framed by the perspective of their vulnerability. In opposition to this approach, Estelle Ferrarese (2016) writes that the concept of vulnerability is often used in a framework of 'good feelings'. This leads to a situation in which, when something or somebody is defined as being vulnerable, it is impossible to see it as an independent political subject with its own powers to act (Ferrarese 2016). Approaching the rights of Indigenous peoples through the lens of their vulnerability therefore contradicts the emancipatory discourse of human rights that underlines the right to self-determination, including their rights to freely determine their development and to dispose of their land and natural resources. In this regard, the UN Permanent Forum on Indigenous Issues (2015) warns that 'the 2030 Agenda ... involves serious risks for Indigenous peoples, such as clean energy projects that encroach on their lands and territories'. In practice, this includes the development of renewable energy projects and conservationist policies that champion the cause of 'sustainable development' in line with the protection of the environment yet

encroach on the lands and territories of Indigenous peoples, violating their human rights.

Hence, the discourse of human rights and sustainability is fraught with tension. Nevertheless, opportunities also exist to replace tensions with a common understanding that aligns both agendas. For this purpose, the UN Permanent Forum on Indigenous Issues argues that:

to avoid negative impacts, the implementation of the Sustainable Development Goals needs to take place in conformity with the United Nations Declaration on the Rights of Indigenous Peoples It is also important that programs to implement the 2030 Agenda are culturally sensitive and respect Indigenous Peoples' self-determination as well as collective rights in terms of land, health, education, culture, and ways of living.

(2015)

In practice, this requires the states to engage communities and other concerned parties, including international organizations and business. This also requires an inclusive approach to sustainable development: an approach that does not prioritize economic growth or focus solely on the protection of the environment, but that encompasses the economic, environmental and social aspects of sustainability in order to ensure its coherent operationalization (Purvis et al. 2018) at all governance levels.

Context: Human Rights and Sustainable Futures for Sámi Peoples

If human rights is one of the key concepts of sustainability, it means that whenever a government strives to implement sustainable policies (whether sustainable development, growth, or well-being), it must take into consideration the human rights of all human beings on an equal basis. Considering that different groups of peoples—majority, minorities, and indigenous—often live in the same state, providing sustainable policies that will account for all equally may

therefore become a daunting task. In this contribution, we have decided to illustrate this issue with an example from the Arctic Indigenous peoples in Finland, namely the Sámi people.

The Sámi people are the Indigenous people of Finland and the only Indigenous people of the European Union. Traditionally, the territory of the Sámi people, Sápmi, spans the borders of the states of Finland, Norway, Sweden, and the Kola Peninsula in Russia. While the majority of Sámi today live in Norway, approximately 10,000 Sámi live in Finland (Sámediggi 2020). From a legal perspective, the status of the Sámi was acknowledged in the Constitution of Finland in 1995 (Section 14). Since 1996, the Sámi have also obtained constitutional self-government in the Sámi Homeland in the spheres of language and culture. Additionally, the Act on the Sámi Parliament (974/1995) establishes the Finnish Sámi Parliament, which is elected by the Sámi and has the mandate to protect the Sámi language and culture and matters relating to their status as an Indigenous people. This legislation also affirms that state authorities should negotiate with the Sámi Parliament 'all far-reaching and important measures that may directly or indirectly affect the Sámi's status as an Indigenous people' (1995: Section 9). This includes matters relating to the management, use, and leasing of state lands as well as conservation areas and wilderness areas. Other legislations also mention the right of the Sámi to protect their culture and livelihoods, including the Mineral and Forestry Acts.

Despite the strong regulations affirming the rights of the Sámi people in Finland, their rights continue to be neglected and severely hampered in practice (Heinämäki and Cambou 2018; Mörkenstam 2019; Toivanen 2013). As noted by the UN Special Rapporteur on the Right of Indigenous Peoples, the Sámi people 'have limited decision-making power, in particular with respect to land and resource rights' and 'the legal status of the lands that the Sámi people have traditionally used and occupied in Finland remains unresolved' (UN 2016). Although some legislation, such as the Mineral or Forestry Acts, recognizes their rights, concerns continue to be raised regarding the implementation and efficacy of these laws in protecting

Sámi traditional livelihoods. In the absence of an adequate regulatory framework, the maintenance of the traditional Sámi people is thus continuously challenged.

The prejudices and concerns raised by the lack of adequate protection of the rights of the Sámi people stand in stark contrast to the commitments of Finland to sustainable development and human rights. Finland is one of the countries to have enacted a national strategy to implement Agenda 2030, with the goal of being the leading country to combat climate change. Thus, it is perhaps not surprising but disappointing that the national document *Government Report on the 2030 Agenda for Sustainable Development—Sustainable Development in Finland* does not mention the Sámi Indigenous peoples living in Finland at all. Neither does the document *Opportunities for Finland* (a joint outlook of the Permanent Secretaries of the ministries on the key questions for the upcoming 2019–2023 government term) (Finnish Government 2019).

In relation to sustainable development, there is also evidence that policies and legislations targeting the protection of the environment can hamper or hinder the rights of the Sámi to land and natural resources (Cambou and Poelzer 2022). In Finland, four Sámi anglers received criminal charges in 2017 for fishing on their traditional territory without a licence in an alleged violation of the Fishing Act. The Sámi anglers argued that the Fishing Act has been interpreted in a way that is contradictory to the Constitution and the Sámi right to exercise their culture. Judges had therefore to balance two constitutional issues: responsibility for the environment, which here mainly concerns the protection of Atlantic salmon, and the right of the Sámi to practice their culture. In 2019, the District Court of Finnish Lapland overturned all charges of illicit fishing against the four Sámi, while also asserting their rights as an Indigenous people. Even though the case is still ongoing, it clearly epitomizes how the lack of adequate regulatory framework provided at the state level for protecting the culture of the Sámi can challenge the content of sustainable development policies and legislations.

Furthermore, it is also interesting to note that states are not the only entity subject to criticism. Non-governmental organizations advocating for sustainable and environmental policies have

also been opposed for their lack of adequate concern for the rights of Indigenous peoples. The Sámi interviewed in a recent human rights research project² were, for instance, often quite sceptical toward human rights organizations such as Greenpeace. One person indicated in an interview that:

... the activists are often anyway somebody else than Northern people; of course, there are also Sámi members. But often ... they maintain a highly stereotypical understanding of Sámi culture, or who Sámi are and what Sámi do and what belongs to the culture, so I think they could as well keep away from these questions which they do not understand.³

This interviewee pointed out that organizations committed to human rights and sustainable development do not always understand the local needs of Indigenous peoples and instead try to treat everybody the same. A survey⁴ connected to the same research project also revealed that a significant proportion of people (30% (n= 86)) believed that they would be better off without international human rights treaties. More particularly, local people in Inari municipality, in northern Finland, expressed a great deal of anxiety about ILO Convention No. 169, Concerning Indigenous and Tribal Peoples. Even though

² Finnish Academy Fellow. Project on 'Glocal' Governance: On the Meanings and Consequences of the 'Vernacularization' of Human Rights Concepts, Grant number 256143.

³ This is the original citation in the interview carried out in the above-mentioned project. Glocal_inari_15female_6.2013. 'Mutta en mä sitte oikein tiää, mun mielestä ihmisoikeusjärjestöt, mitkään tämmöset nyt ei oo, tää on niinku niin silleen, itse asiassa mää vähän sanoisin, et jos on joku tämmönen iso järjestö, jonka aktiivijäsenet ovat sitten kuitenkin joitakin muita kuin pohjoisen ihmisiä tai totta kai myös saamelaisia, niin niillä on luultavasti ihan henkilötasolla erittäin stereotyyppinen käsitys saamelaiskulttuurista ja siitä ketä saamelaiset ovat ja mitä he tekevät ja mitä niitten kulttuuriin sisältyy, et ne, mää oikeastaan oisin melkein sitä mieltä et ne vois pysyä kokonaan eri, niin kun poissa niistä kysymyksistä, että kö ei ne niitä ymmärrä.'

⁴ The survey was carried out in the municipality of Inari in 2013; 297 persons responded to it.

the Convention has not been ratified by Finland, the fear expressed among local communities was that Sámi reindeer herders would be the only ‘winners’, and other local populations, including Sámi fisherfolk, would lose their current rights if the treaty were to be implemented. These interviews, therefore, illustrated not only a deep distrust toward NGOs and state agencies but also a disbelief in the discourses supported by human rights and its implementation.

In the light of these issues and paradoxes, it appears that making sustainable development for all and ‘leaving no one behind’ in accordance with human rights remains challenging. Important discrepancies remain between human rights discourses and the goal of achieving sustainable development for all. This chapter has illustrated both the theoretical tensions and practical challenges of human rights both as a concept of law and as a concept of global politics relating to the rights of Indigenous peoples in Finland.

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