

Land Rights as Cultural Rights: The Case of the Sámi People

Summary

The distinctiveness of indigenous peoples comes not only from their being collectivities but also from their culture of sharing all aspects of life in accordance with the special relationship that they have historically maintained with their lands and natural resources. They therefore need not only a special legal regime that transcends the universal human rights regime but also a broad interpretation of cultural rights.

Although no disaggregated data are available that can give a clear and accurate description of indigenous peoples' situation (United Nations, 2008), a report by the Special Rapporteur on the rights of Indigenous Peoples, Victoria Tauli-Corpuz (2016), concluded that Sweden, Norway and Finland are not fulfilling their stated objectives of guaranteeing the Sámi people's rights. The report highlighted the negative impacts of extractive industry operations on Sámi livelihoods and culture and raised concerns regarding their land rights.



Recommendations

- ▶ Indigenous peoples need mechanisms that address their specific situation. There is therefore a need to establish well-designed systems that recognise their cultural rights in line with the following goals:
 - drawing on their own knowledge, experience and environmental demands as the driving forces for improvement;
 - respecting their traditional knowledge, practices and skills, which value the integrity of the ecosystem itself, not merely human needs;
 - promoting innovative, nature-based solutions that can underpin the growth of local nature-based industries;
 - involving relevant self-governing bodies in exploring and allocating natural resources.
- ▶ This possibly requires legal and administrative amendments to the current provisions, or new provisions to allow indigenous peoples' cultural recognition and survival.
- ▶ Such a broad normative and operational framework should also be set up using an environmental autonomy approach – including a collectivity-based rights approach and a decolonised perspective – and through a debate on the right to environment with an ecosystem-based approach.

Introduction

In recent times, the legal status of indigenous peoples around the world has noticeably improved through the United Nations (UN) Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly on 13 September 2007. Similarly, for Sámi people specifically,¹ the draft Nordic Sámi Convention was proposed in 2005 by an expert group representing the governments of Norway, Sweden and Finland, and by the Sámi parliaments of these countries. However, even though the negotiations ended in 2017, this has still not entered into force because it is contingent upon the consent of all three countries' Sámi parliaments and the national parliaments.

To result in tangible and appropriate outcomes, these documents need to be implemented in good faith in practice. Many challenges still remain. One of the fields presenting substantial challenges to these documents' enforcement and implementation, among many others, is the cultural rights of indigenous peoples.

To arrive at a more comprehensive understanding of the preservation and flourishing of indigenous peoples' cultural rights, this brief firstly evaluates cultural rights as linked to indigenous peoples' dependence on the environment and natural resources for protecting their culture. Secondly, it presents a case study based on the Sámi people and offers a comparative analysis of the relevant regulations and their implementation in Norway, Finland and Sweden. It concludes with policy implications for promoting indigenous peoples' cultural rights.

Indigenous peoples' cultural rights: the question of land rights

The term 'culture' in itself is both relative and diverse (including all aspects of life, intellectual and material knowledge and practices, diverse forms of livelihoods and so forth). It is not easy to arrive at a specific categorisation or minimum standard to define 'culture', or to determine a specific context in which it applies (for example, to individuals or communities). This uncertainty is one possible reason why the right to culture may not appear to be as strongly expressed as political, civil, social and economic rights. And yet, cultural rights have been part of the international human rights regime since the Universal Declaration of Human Rights (1948), which affirmed that everyone has the cultural rights 'indispensable for

1 The Sámi people, the EU's indigenous people, inhabit not only the area claimed by Norway, Sweden, Finland but also Russia's Kola Peninsula. However, this paper focuses specifically on the Sámi people in three Nordic countries.

his dignity and the free development of his personality' (art. 22) and can freely participate 'in the cultural life of the community' (art. 27(1)). Rights such as the right to education, using one's mother tongue, and freedom of religious belief and of artistic creation can therefore be exercised by individuals in line with these provisions; however, many of these cultural rights can only be exercised by specific groups or collectivities, such as indigenous peoples. As such, the traditional human rights regime gives rise to tension between universality and cultural relativism, making it appear inadequate for resolving the struggles over these problems (American Anthropological Association, 1947; Brauch, 2013, pp. 89, 149; Gitiri, 2015, p. 6).

The collective nature of indigenous peoples separates them from others (the majority or dominant group), sustains them as peoples and creates the need for rights of collectivities not just individuals – hence the need for a special legal regime that transcends the universal human rights regime. The distinctiveness of indigenous peoples also comes from their culture of sharing all aspects of life in accordance with the special relationship that they have traditionally maintained with their lands and natural resources (see Convention on Biological Diversity art. 8, 10, 15, 17; ILO Convention on Indigenous and Tribal Peoples art. 6, 13–14; UNDRIP art. 18–19, 25–26, 32).

The case of the Sámi people: Finland, Norway, and Sweden

We examined three Nordic countries' national regulations and actions in relation to protecting the Sámi people's cultural rights (most relevant to land and natural resources rights and environment autonomy). The results are summarised in the following comparative table.

COMPARATIVE TABLE			
	FINLAND	NORWAY	SWEDEN
GENERAL FEATURES			
Regional Basis	Northern part of Finland	Norway (Finnmark)	North-western part of Sweden (Lapland)
	Northern part of the Scandinavian Peninsula and large parts of the Kola Peninsula		
Population	8,000 0.16% of the total population (at around 5 million)	50,000–65,000 between 1.06% and 1.38% of the total population (at around 5 million)	20,000 0.22% of the total population (at around 9 million)
	Estimated total number: at around 100,000		
Political Representation	Sámi Parliament	Sámi Parliament	Sámi Parliament
	Sámi Parliamentary Council		

	FINLAND	NORWAY	SWEDEN
LEGAL BASIS			
INTERNATIONAL			
Human Rights Covenants (1966) (ICCPR-ICESCR)	<ul style="list-style-type: none"> • Party to two covenants • Have incorporated the covenants as part of their national legal system 	<ul style="list-style-type: none"> • Party to two covenants • Have incorporated the covenants as part of their national legal system 	<ul style="list-style-type: none"> • Party to two covenants
ILO Convention No. 169	No progress so far	Ratified (1990)	No progress so far
UNDRIP	Voted in favour	Voted in favour	Voted in favour
Nordic Sámi Convention	In progress	In progress	In progress
NATIONAL			
Constitutional Basis	Para. 14, 51(a), 121, Constitution (731/1999)	Article 110a, Constitution	<ul style="list-style-type: none"> • Simply a reference to 'ethnic, linguistic and religious minorities' (Article 2(4), Chapter 4) • No clear provision on Sámi people, simply a reference to Sámi reindeer breeding in conjunction with the right to property (Article 20(2))

	FINLAND	NORWAY	SWEDEN
SÁMI PARLIAMENTS			
Sámi Parliament Acts	Duty to negotiate with the Sámi	No provision regarding the duty to negotiate with the Sámi	No provision regarding the duty to negotiate with the Sámi
Definition of a Sámi Person	A person must know the Sámi language.	A person must know the Sámi language.	It is not required that a person know the Sámi language. Having Sámi as a home language is a fundamental feature of defining a Sámi person.
Impact of Sámi Parliament	<ul style="list-style-type: none"> The State is obliged to consult the Sámi Parliament in every case where the Sámi lifestyle can be affected 	<ul style="list-style-type: none"> The State is not obliged to consult the Sámi Parliament in every case where the Sámi lifestyle may be affected Governmental legislative proposal for provisions of consultations in the Sámi Act (no progress so far) 	<ul style="list-style-type: none"> The state is not obliged to consult the Sámi Parliament, even in cases that might directly affect the Sámi people No real functioning arrangement for consultation
Institutional Autonomy of Sámi Parliament	Independent of the governmental bodies	Institutional autonomy co-exists with decision-making in some areas and with consultations on legislation and administrative measures	Independent of the governmental bodies

	FINLAND	NORWAY	SWEDEN
LAND RIGHTS			
Usage-ownership	Right of usage (hunting and fishing freely), but not full ownership of their land	Finnmark Estate <ul style="list-style-type: none"> No measures to identify areas that had traditionally been occupied in order to prevent exploitation and destruction of natural resources and lands The only Sámi group that has a collective ownership of a specific area (Troms County) 	Girjas Case (2020) In the Girjas District, a Sámi reindeer-herding community won their case against the Swedish state on their rights to manage hunting and fishing within traditionally used and occupied lands without the consent of the state
Reindeer Husbandry	<ul style="list-style-type: none"> Anyone can pursue reindeer husbandry Sámi do not have exclusive fishing and hunting rights 	Sámi have exclusive rights to reindeer husbandry	Sámi have exclusive rights to reindeer husbandry

	FINLAND	NORWAY	SWEDEN
SÁMI'S OWN RULES			
Customary Sámi Law	Largely ignored	Largely ignored	Largely ignored
Traditional Sámi Social Structures	Largely ignored	Largely ignored	Largely ignored

Source: Created by the author based on relevant sources.²

² IWGIA (2021); Vars (n.d); Kaukkonen (2017); Constitutions and Parliament Acts of three countries: Finnish SPA Chapter 3; Norwegian SPA Chapter 2.6; Swedish SPA Chapter 1.2; Finnish Sámi Parliament Act (974/1995); Norwegian Sámi Parliament Act (56/1987); Swedish Sámi Parliament Act (1433/1992); Finland Reindeer Husbandry Act (848/1990); Norway Reindeer Husbandry Act (40/2007); Sweden Reindeer Husbandry Act (437/1971); Finnmark Act (85/2005); Girjas Case (2020), Case No. T 853-18.

Policy implications

To effectively protect the culture of indigenous peoples, it is essential to understand and recognise their deep connection to their ancestral lands, territories and resources, from which they get their identity and knowledge system and which they transfer to future generations – thus providing for their survival as distinct communities (United Nations Development Group, 2009).

The negative dimension of the right to participate in culture includes non-interference by the state in ‘the exercise of cultural practices and access to cultural goods and services’, while the positive obligation ensures ‘preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods’.

As the ‘land rights issue’ results in different strategies and legal processes in practice, due to the existence of different categories of land and various types of relevant rights (Shah, 2010), indigenous peoples’ meaningful participation and free, prior and informed consent also become crucial to safeguarding their rights effectively (Claridge and Xanthaki, 2016).

Land should also be treated as cultural property and not just property under the terms of Indigenous Cultural and Intellectual Property (see UNDRIP art. 12, 31) (Brauch, 2013), since land has a key role in shaping the group itself from past to future (Wiersma, 2005).

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