THE RIGHT TO BE A PART OF NATURE – INDIGENOUS PEOPLES AND THE ENVIRONMENT. Leena Heinämäki. 2010. Rovaniemi: Lapland University Press. 380 p, softcover. ISBN 978-952-484-367-5. €43

In the anthroposophic world *homo lupidus* are competitors exploiting treasures from mother earth. The comprehensive and challenging dissertation of Leena Heinämäki, focusing on international law, repudiates this position: do human rights install indigenous peoples with collective rights 'in relation to their environment' (page 6)? The answer is rather depressing. While human rights address individuals and do not protect native groups, environmental conventions address national states, and lack direct applicability to such groups; that is there is no supranational adjudication in the strict sense. The bulk of the texts are *de lege lata* (the law as it exists) and *de sententia ferenda* (the law as it should be) analyses, with the primary emphasis on the latter. The main tasks are (page 6):

- To study the normative potential as well as the deficiencies of human rights law and international environmental law related to indigenous peoples and the environment
- To look at the future with suggestions for measures to provide adequate protection of the indigenous peoples' rights, specifically in relation to environmental matters.

The questions raised are (page 6–7);

1. Do 'human rights norms . . .recognize and protect the right to a traditional way of life against environmental interference'?
2. Do 'the recognition that indigenous peoples have gained in international instruments [qualify] as "guardians of nature"'?
3. What is 'the legal status of indigenous peoples'?

The study sheds light on the protection of the environment and the common pools upon which native peoples rely. It also documents that we have still got a long way ahead. While the ILO convention 169 (22 members), the North American Agreement on Environmental Cooperation (NAAEC) and UN Declaration on Indigenous Peoples are central in that respect, most environmental and sustainability declarations and conventions address all humans. Indigenous peoples have no particular participatory rights in the decision-making leading to, for instance, climate change. See the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998 Aarhus Convention) in this context. But perhaps ILO-convention 169 may lead to better protection (see Heinämäki page 34).

The work's main, intriguing question is how to define 'indigenous'? Since no universal definition exists, Heinämäki supports the following: 'It is, in the end, the traditional, nature-based culture that makes indigenous peoples a special group benefiting from environmental rights intended to protect their traditional cultural practices' (page 1). I agree that a subsistence way of life qualifies. However, what happens to this classification when the traditional way of living ceases to exist? Are these peoples no longer indigenous? Heinämäki's answer is that the 'term indigenous peoples is usually used in reference to those individuals and groups who are descendants of the original populations residing in a country'. This position is problematic. Since descendants are clarified by pedigree, the key point is who qualifies as 'original population'. This triggers the difficult time priority. Perhaps tribal groups arrived subsequent to the main population? But regardless: why two neighbours, both sustainable exploiters, of an identical resource should enjoy different protection due to ethnicity, is difficult to accept.

Heinämäki highlights environmental conventions and declarations, several of which address humans in general. I have no objection to this method if the purpose is to produce insight into protection-gaps between humans in general and indigenous peoples in particular. Studies in general environmental provisions only defend its place if taken as a basis for comparison; that is between indigenous peoples and peoples in general. The author does however not launch such studies.

The Heinämäki conclusion is that indigenous peoples 'achieved greater recognition of their collective rights than minorities and other social groups' (page 58). What exactly are these 'greater' rights (page 59)?

Delimitating the subjects subscribing to the indigenous rights the 1966 UN Covenant on Civil and Political Rights (Article 27) and ILO Convention 169 are of interest. Neither of these entitlements include 'territories of its own or traditional living' as a prerequisite to indigenous' protection. The delimitation criterion promoted in the latter text is the following: 'Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply' (Article 1.2).

A criterion that Heinämäki subscribes to is the 'sustainable way of life and the valuable contribution that indigenous peoples can make due to their traditional knowledge and environmental practices [which] are defining qualities of indigenous peoples in the Rio Declaration on the Environment and Development' (page 5–6). As the Rio Declaration is not legally binding, I find it difficult to concur with the position that viability in harvesting is part of the indigenous definition. Regardless of the definition, while traditional practice may lead to viable exploitation, sometimes dominant native practices results in self-destruction, and is thus the problem, not the solution.

A hard bargain, not sufficiently dealt with, is the division between indigenous peoples and minorities, due to the fact that groups may transform during the years from indigenous or native peoples into minorities, the latter of which is not defined. Why is it so important to qualify as indigenous and not minority groups? I also miss a classification of rights, and the delimitation towards tolerated usage, absence of ban or freedom of action? If advantages are really *legal* rights are these public, common or perhaps private property rights?

This reader is short of a study of the procedural protection of legal rights. Heinämäki in several places is referring to the importance of 'effective legal remedies' (page 29) but does not evolve how to defend these rights: how should indigenous peoples justify these precious rights? The Anglo-American *class action suits*, the *klassesøksmål* (2006) or *grupprättegång (2002)* of Norway and Sweden may enforce these acknowledged group rights. As Heinämäki states, the NAAEC 'Citizen Submissions Process' is nothing but an information mechanism, and cannot compare to a lawsuit.

Is indigenous protection terminated if ancient practices disappear, that is the case of adapting to modern technology? All in all: my general impression is that despite that Heinämäki places great effort in clarifying the indigenous concept, this

question is still open. If descendants qualify, ethnicity is all that counts, despite members of this group using modern harvesting practices?

Some detailed comments; the anticipated lack of prosperity with regard to indigenous peoples finding shelter under the ECHR First Additional Protocol Article 1, should not only rely on Article 8 (page 35) but also on the First Additional Protocol Article 1 (Ørebech 2009: 74–75). It would turn out a little more optimistic than stated by Heinämäki with reference to Kate Cook (Cook 2002: 206).

Focusing on customary laws of indigenous peoples; the important issue is not international-, but domestic law. Often Anglo-American- and Scandinavian laws allocate to indigenous peoples protection, beyond international law obligations (Ørebech and others 2005).

All in all: the book challenges traditional thinking, legal understanding and structures. It is a great contribution to the rethinking of the traditional division between the tribes, aboriginal- indigenous peoples on the one hand and the other peoples, of civilized nations, on the other, which opens up for an ordinary status of self-governing nation to these first groups. Further the book contributes, indirectly, to the elimination of legally protected private and common properties and the non-protected public properties, among which environmental rights play a considerable part. The book promotes arguments for a further development of supranational instruments to the benefit of indigenous peoples; by extending the human rights protection to the environment as part of the protection of cultural integrity (page 76), which perhaps is coming (page 32–38)? If this should happen we need to attribute 'human rights' to groups of peoples, tribes, minorities etc. This is still a challenge, but the Heinämäki book is a strong appeal for enhanced group rights, and for not for reliance on individual rights solely. Let the book be the first step in the right direction, but let it not become the last (Peter Thomas Ørebech, University of Tromsø (BFE), Norway (peter.orebech@uit.no)).

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