

Monday, 4 March 2009

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Dear Sir,

The representative of The Council of Europe Advisory Committee, Mister Rainer Hofmann has made a visit to Sweden, in February, in order to monitor the implementation of the Framework Convention for the Protection of National Minorities in Sweden. At this occasion he made an utterance about the legal right of access to private land (right of common). For that reason, we want to make clear what the legal right of access to private land actually means.

The legal right of access to private land is the right that concerns all private Swedish citizens and people who are visiting the country, to use land belonging to others for temporarily purposes, for example wandering, gathering berries, sleeping accommodation etc.

Whereas the reindeer husbandry rights (renskötselrätten) are a usufruct of economic value (bruksrätt) founded on prescription from time immemorial. This right can only be used within the area where the reindeer breeding are allowed. That area is called Sámi Country (lappmarken) and is situated in the north part of Sweden.

The conflicts between the right of possession and the reindeer breeding right, at least above the limit of cultivation (odlingsgräns) in the counties of Västerbotten and Norrbotten and also within the reindeer grazing mountains (renbetesfjällen) in the county of Jämtland, is derived from Swedish policy in the Sámi issue, or rather lack of policy.

About 83 % of the owners of real estates, above the limit of cultivation, are Sámi. The reindeer breeding right is valid on those real estates and in addition those lands are a prerequisite to make it possible to carry on reindeer breeding in the current mode and they also delivering pasture to the reindeer.

Those owners mentioned above feel that they are ignored, being used and denied as members of the indigenous people Sámi, recognized as an indivisible group.

We agree with Mr. Rainer Hofmann that to reduce and solve the existing conflicts a compromise is a necessity. In a solution of this problem all landowners above the limit of cultivation and within the reindeer grazing mountains must be involved, even them who are not Sámi, because we cannot treat people differently.

Since, we are almost sure that the only information you have been given by the Swedish authorities, the representatives of the Sámi Parliament and the Sámi Parliamentary Council, is about the group who carry on reindeer herding.

Therefore, we want to take the opportunity to give you further information about the current situation about the Sámi issue in Sweden and about the existents of a group of Sámi who the Swedish government has made invisible ever since the Reindeer Grazing Act went into force 1928. The number of persons who, from then on, should be regarded as Sámi was definitely cut down and the “Lappish shall remain Lappish” policy was introduced. The Swedish government and even the Sámi parliament have had and still have a great reluctance to talk about this subject.

The “Lappish shall remain Lappish” policy is a policy pursued toward the reindeer industry, regarding them who are reindeer herdsman as Sámi in an occupational point of view and at the same time deny the existence of 90% of the Sámi people.

We will also give you a better knowledge and understanding about the impact the Swedish “Lappish shall remain Lappish” policy have had and still have for the Indigenous People Sámi in general. Finally, we want to give you the present living conditions and situations about the Indigenous People Sámi in general that are living in Sweden.

There are about 70 000 – 80 000 members of The Indigenous Population called Sámi who are living in the north parts of Norway, Sweden, Finland and Russia, of whom there are about 20 000 members, living in Sweden.

Among the Indigenous People Sámi in Sweden, about 2 000 (10 per cent) carry on reindeer husbandry and have the exclusive right to exercise and utilize the reindeer husbandry rights, (Renskötselfrätten) according to the present Reindeer Husbandry Act of 1971 (Rennäringslagen 1971:437). The reindeer husbandry rights are a usufruct of economic value (bruksrätt) founded on prescription from time immemorial.

The ancestors of the Indigenous People Sámi in general have all taken part to uphold the reindeer husbandry rights.

History

As far back as the middle of the 16th century, the reindeer-herding region was divided into different geographic areas by the Swedish government. They were called Lappish Tax land “Lappskatteland”. (Hereafter: Tax Land). Each of those Tax lands was given to a Sámi with full ownership. The boundaries were marked with mounded stones, provided with certificate of registration of title (försedd med lagfartsbevis), taxed and officially registered in cadastre as landed property (införda i jordebok).

Thus, the owner had the right to sell the whole or parts of the Tax Land and buy another, if he wanted. He was the only one who had the right to reindeer grazing on the land. Everyone who carry on reindeer-herding or were fishing and hunting on a specific land had to pay charges to the owner

That was the first time Sweden transferred reindeer grazing land belonging to the indigenous people Sámi, as an indivisible group, to private persons with ownership.

The owner was also the manager of the Tax Land and had to collect taxes, for the state, from members of his own household and from them who carried on reindeer - herding, or were fishing and hunting on his land.

In connection with the establishment of the borderline between Denmark – Norway and Sweden in 1751 the Border Treaty was provided with an appendage called The Lappish Codicil (Lappkodicillen).

In additions to that those real properties were officially registered in Swedish cadastres as landed property (införda i svenska jordeböcker), confirmed by academic research, The Codicil confirms the existents of Tax Lands and Byxel Lands (Norwegian) and that those were private. The Codicil also regulated not only the rights but also the reindeer grazing issue between the two countries.

In the Codicil there also stats “Lappmännen beträffande”, that means the Indigenous People Sámi was mentioned in general. As the Codicil is an appendage to the Border Treaty of 1751 it cannot be cancelled by either of the stats without cancelling the Border Treaty itself.

On 3 February 1995 the Swedish government made the decision that the Border Treaty inclusive the Lappish Codicil was still in force between Norway and Sweden. (Skr. 2004/05:79).

Land accesses such as Lappish Tax Lands were, according to the ordinance of 21 February 1789 by Gustav the third, the king of Sweden at that time, equal to the nobilities land possessions.

Those conditions, above mentioned, lasted until 1886 when the first Reindeer Grazing Act went into force. Through this law, the Tax Lands were confiscated and ceased to exist without any compensations to the owners.

The former Tax Lands were put together into suitable geographic areas called Lappbyar and the reindeer grazing right that once were private changed over to be collective. Instead of peaceful enjoyment of possession, from now on, the Sámi were treated as nomads without land property.

The third Reindeer Grazing Act went into force 1928 divided the Indigenous People Sámi into two different groups. Sweden made then the decision that only the Sámi who carried on reindeer husbandry should be members of the Sámi Village and be regarded as Sámi, whereas the greater part were put into the assimilation box covered and provided with seal. In that box, Sweden’s main thought was that those who were locked out should forget their history, culture, background and the rights belonging to the Sámi in general.

In another words, the Swedish authorities denies the existence of 90 percent of the indigenous people Sámi.

In this way, the Swedish Sámi policy is only addressed towards the reindeer-herding group, not to the Indigenous People Sámi in general.

In addition, there is not the duty of the Swedish authority to decide who will be regarded as Sámi. That right belongs to the Indigenous People Sámi themselves to decide through self-identification and recognition according to the international rights set down and sanctioned by the system of the United Nations.

This lifelong deception and optical illusion is very difficult to brake through, especially as the main reason for the Swedish decision was, as they say, to protect a vulnerable group. Even more difficult to see through the bluff is it when the group who is regarded, by the Swedish government, as vulnerable (the Sámi villages) defend the system by referring to their exposed situation. They, then, cover in the system with a seductive clothing of human rights, protection of indigenous population and now also the United Nations Declaration on the Rights of Indigenous people. But, human rights cannot be applied on an industry activity; it can only be applied on human beings.

Consequently, when Sweden mentions Sámi, among other things in the Swedish European Union Treaty, Protocol 3, the target group is the reindeer industry, not the indigenous people themselves.

In reality, the Indigenous People Sámi is currently divided into three different groups: the reindeer herdsman, the non-reindeer herding members of the Sámi villages and the non-reindeer herding group outside. Sweden regards the two groups inside the villages as Sámi whereas the group outside the villages does not exist from a Swedish point of view. Besides, the non-reindeer herding group is the greater part with about 18000 people (90 per cent).

There exist five different peoples in Sweden who are recognized as national minorities. They are the Gipsy, The Jews, The Finnish of the Tornewally (Tornedalingar), The Swedish Finnish and The Indigenous People Sámi.

None of the national minorities are divided into any different groups except for the Indigenous People Sámi who is split into three different groups. That circumstances itself is a reason enough to change the policy from the “Lappish shall remain Lappish” to a policy turned to the Indigenous People Sámi in general.

The Sámi, regard themselves as a population without divisions in any specific group.

Sweden has made and still makes great efforts to integrate and assimilate the non-reindeer herding group into the Swedish society and officially deny the existence of the group. Nevertheless, they do are Sámi even though they are not practicing reindeer keeping.

The Indigenous People Sámi has, through history, carried on not only reindeer herding but also other kinds of businesses and occupations. Therefore, there is a fact that not all Sámi are reindeer herders but are to be found in most kinds of branches and in Sámi related occupations also.

The Reindeer-Herding Act, which entered into force on 1 January 1971 states that the reindeer husbandry rights belong to the Indigenous People Sámi in general and are based on immemorial tradition. The Act also states that, if you want to carry on reindeer keeping and utilize the reindeer husbandry rights you must be a member of a Sámi Village (Sameby), (hereafter: Village)

A Village is an organisation similar to a common economic association. Each village consists of a geographical grazing area as well as an administrative entity through which the daily work of reindeer herding is organized. The reindeer husbandry is the only activity that is permitted in a Village. If a member decides to leave a Village for other employments or businesses, the member concerned has no right to remain as a member anymore.

As the Reindeer Husbandry Act admit that the village itself can choose their own members has resulted in the defence of “the Lappish shall remain Lappish” policy is still running.

It is possible to become a member in two different ways; first, you will be member by birth, secondly you may apply for a membership. If the Village find you, your qualification all right, and your relationship is close enough, they possibly choose you as a member.

This restriction has led to that a limited number of persons have the right to utilize the reindeer husbandry rights. The same restriction has simultaneously caused that the non-herding group-which is the greatest part with many women, totally lost all there rights in favour of the reindeer-herding group.

As there is difficult to become a member of a Sámi Village unless you are a member by birth, therefore the non-reindeer herding Sámi without any relationship are practically prohibited to practise the reindeer herding occupation.

Besides, to prohibit population to practice employments, businesses or carry on companies is not allowed by the Swedish legislation. That means that Sweden has an occupational related view of who would be regarded as Sámi.

Manny official reports have been made about the Sámi but only the reindeer-herding group is the target group. The official reports are (SOU: 2005:116, SOU 2005:17, 2005:79 and SOU 2006:14)

Those official reports pay no attention to the Sámi in general but to the reindeer-herding group only.

The Chancellor of Justice (JK) has been noticed about the situation and has sent an additional consideration to the government where he call attention to those official reports pay altogether too high degree emphasize the significance of the reindeer husbandry at the cost of the Indigenous People Sámi in general.

According to the Chancellor of Justice judgement, further consideration is necessary about the official reports with respect to what he has said in his additional consideration. The Chancellor of Justice additional consideration (Dnr 2081-06-80) will be sent as an enclosure to this document.

Declaration on the rights of Indigenous People

In addition to the information given above there are especially two articles we want to refer to in order to give you a better knowledge and explanation of the situation. They are Article 9 and article 26:1 mentioned below.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

The Reindeer Husbandry Act (Rennäringslagen 1971) violates article 9 since the only members that are allowed to participate in the local Sámi community are active reindeer-herders

Article 26: 1

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

There are many different Sámi individuals that have either, traditionally owned, traditionally occupied or by historical event acquired a specific land area. In 1928, the Reindeer Grazing Act stated that only reindeer-herders may carry this right, and all other Sámi were expelled from the Sámi villages at that time. Although the Reindeer Husbandry Act were updated 1971, it still violates this important article.

We would also like to emphasize that the Reindeer Husbandry Act does not fulfil the UN Declaration of Indigenous People by far. In that way, the reindeer-herders cannot fully exercise their indigenous rights. But all other Sámi people have no rights at all on their traditionally lands.

ILO Convention No. 169 on Indigenous and Tribal Populations in Independent Countries

The Swedish official report on the ILO Convention No. 169 (SOU 1999:25) (hereafter: Convention) states that the Swedish regulation of persons (Reindeer Herdsmen) who have the right to exercise and utilize the reindeer husbandry rights, in capacity as members of the Sámi villages, does not conflict with the Convention.

According to the Convention, Sweden has to, within the frame of the definition of indigenous population given in article 1, and in consultation with them, decides the group of persons whom the Convention will be ratified on.

From Sweden's conventional view of who are Sámi (Reindeer Herdsmen) and from the policy pursued in the issue, the group of persons will be recognized as the reindeer-herding group.

In our opinion, the Convention concerns all members of an indigenous population in a country not only parts of the population.

Accordingly, there is fully possible that Sweden decides to ratify the Convention, only on the members of Sámi villages (10 per cent of the Indigenous People Sámi) and leave out the non-reindeer herding Sámi who also has the same rights but are prohibited to exercise and utilize them.

Before a decision, in our opinion, Sweden finally has to decide who the Sámi is in reality. Are the Sámi identified as an industry or as a population? If they are identified as an industry, there is important in political, economic, cultural, juridical and in convention contexts accentuate that there is not about an indigenous population and ethnicity but just about an industry.

If there is all about an industry, the thought about a ratification of the Convention should be annulled, because, in that case there would be nothing to ratify.

The United Nations is a political and religious independent organisation and, in case, the Swedish ratification will be accepted in this restricted form already mentioned, the United Nations, in our opinion, will make a political decision in favour for an occupational related group and a special business and not to the Indigenous People Sámi in general.

Presume that Sweden decides to ratify the Convention after all, with the reindeer herding group as the target and the Convention incorporates into the Swedish legislation.

What will happen to the Indigenous People Sámi after such a decision? Will the population cease to exist and only an occupational group being left?

An interesting question arises also, whether such legislation conflicts against the European Convention on Human Rights, Protocol 1 about possession of property, where 90% of the indigenous population Sámi lose their property in shape of the reindeer husbandry rights.

The European Convention on Human rights is incorporated into the Swedish legislation (RF 2:23)

The draft of the Nordic Sámi Convention

In this issue, there are the same conditions as in the ILO Convention itself. As the Swedish official policy is pursued towards the reindeer-herding group, the Indigenous People Sámi in general is not included in the draft. Among other things, the protection of Sámi industries is mentioned in the draft. The most important industry is already protected by Swedish legislation (The Reindeer Husbandry Act) that is the reindeer herding industry.

The draft is based on the optical illusion that the reindeer herding constitute the people, which is preposterous.

We urge Sweden to recognize the Indigenous People Sámi as an indivisible people and change the policy, from the present, pursued towards the reindeer-herding group to the Indigenous People Sámi in general, and make that group of persons to be the one whom the Nordic Convention will be ratified on.

The Sámi parliament (Sametinget)

The Sámi parliament (hereafter: Parliament) is a democratic institution which was established 1993. Its main task is to decide what is best for the Indigenous People Sámi in general and from that point of view put forward the issues that need to be discussed with the authorities concerned.

Yet, during the sixteen years the Parliament has existed, no progress has been made in favour for the Sámi who have been put out through the Swedish legislation except for the right to participate in the parliament election, every four year.

Every motion proposed by, the only non-reindeer herding party Jakt -och Fiskesamerna in the parliament, has been denied. The present majority who supports the reindeer-herding group has the advantage of the Swedish “Lappish shall remain Lappish” policy through which

they have access to Sámi rights and want to keep it all to themselves. Therefore, they do everything possible to keep the policy running.

The reason for this specific situation is the result of the historical treatment of the non-reindeer herding The Indigenous People Sámi ever since the Reindeer Grazing Act of 1886.

We appreciate the recommendation, of The Council of Europe Advisory Committee who monitor the implementation of the Framework Convention for the protection of National Minorities, to consider increasing the role of the Sámi Parliament in areas other than reindeer industry.

We do hope that will help to put forward the issue of a change to a new Swedish policy towards the Indigenous People Sámi in general and the “Lappish shall remain Lappish” policy will be put out forever.

Many people have said and still say that the members of the parliament cannot work together, they disagree about most the things. That is almost true. The current situation is derived from 1928 when the Reindeer Grazing Act went into force. At that time the Swedish authorities introduced “Lappish shall remain Lappish” policy, the result of which is mentioned above.

Sweden is responsible to correct obviously incorrect policy towards the indigenes people Sámi. Sweden has to take that responsibility irrespective of current or coming parliamentary situations in the parliament Sametinget.

Sametinget has not the authority or possibility and even not the responsibility to correct the policy that Sweden introduced 65 years before the Sámi Parliament was established.

That responsibility and authority have only the one who has the power and possibility to change the circumstances for all Swedish citizens, The Swedish Parliament, Riksdagen.

Conclusions

This report is meant to inform the Secretariat of the Permanent Forum on Indigenous Issues about the present state of circumstances for the Indigenous People Sámi in general in Sweden. In our opinion, there is important for you to know about this side of the Sámi issue that Sweden is not very inclined to talk about.

We hope that the Secretariat will add to consider this specific issue concerning the non-reindeer herding group in this document mentioned, with future contacts with the Swedish authorities and the Sámi Parliament as well

The issue is complicated with three groups, where two have the practical right to exercise and utilize the Sámi rights while the biggest one has no rights at all caused by Swedish legislation, but before the time of the restriction according to the Swedish legislation, the Sámi was regarded as one united and indivisible population.

As soon as Sweden has solved their conditions to the Indigenous People Sámi in general, officially recognized them as an indivisible indigenous people and basically change their policy to the original population by ending the “Lappish shall remain Lappish” policy and a

paradigmatic shift takes place, the prerequisite for an accede to both of the Conventions ought to be better.

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On behalf of Almut- Folket (The people)

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Enclosure: The additional consideration of the Chancellor of Justice (Dnr 2081-06-80)

Almut – Almetjh – Almasj – Folket is a political organisation. On the ideological platform there is a humanistic and social liberal basic outlook on the history of the Indigenous People Sámi, the Sámi in general and the Sámi society.



KOMPLETTERANDE
REMISSYTTRANDE

Datum
2007-01-08

Dnr
2081-06-80

Regeringskansliet
Jordbruksdepartementet
Naturresurs- och sameenheten
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**Fyra samerättsliga betänkanden (SOU 2005:116, SOU 2005:17,
SOU 2005:79 och SOU 2006:14)**

Justitiekanslern har den 27 oktober 2006 yttrat sig över de rubricerade betänkandena. Därefter har Justitiekanslern genom samtal med representanter för Jakt- och fiskesamerna uppmärksamats på vissa frågor som enligt dem har blivit otillräckligt beaktade i betänkandena.

Efter förnyade studier av betänkandena och visst annat material bedömer Justitiekanslern numera att det finns en viktig brist i utredningsarbetet. Denna kan kort sammanfattas så att utredningarna inte har tagit tillräcklig hänsyn till de icke renägande samernas och vissa andra gruppers intressen och rättigheter.

Det finns en risk att ett genomförande av betänkandenas förslag, inkl. en svensk anslutning till ILO-konvention 169, förstärker de orättvisor som synes finnas i dag när det gäller medlemskap i samebyarna och rättigheterna för de samer och vissa andra grupper som står utanför samebyarna. Det förefaller också som om hittillsvarande samerättsliga överväganden i landet har i alltför hög grad betonat renskötselns betydelse för samernas rättigheter.

Enligt Justitiekanslerns bedömning fordras ytterligare överväganden, där hänsyn tas till det som nu har sagts.

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