PROTECTION OF THE IDENTITY OF INDIGENOUS TERRITORIES AND PEOPLES (urfolk)

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In 1328 the highest judge in Sweden, “Riksdrotten”, proclaimed protection for Sami hunting rights.

There was a tradition for treating the Sami within the scope of Law and judges, and this tradition was confirmed by the king Gustavus Vasa in 1526 when he told the Sami in a letter that the Swedish judge should keep them according to Swedish Law and (their own) old good customs.

In 1543 Gustavus Vasa spoke about the Lapp border line and Sami hunting rights, and in 1551 he issued two very important letters, confirming Sami land rights for several Sami villages close to the Ice Sea. The purpose of these letters was to make room for Sweden and Swedish territory between Denmark-Norway in the west and Russia in the east. The Sami land rights were necessary for this purpose, especially res immobiliis (orðrølt gods – land).

Gustavus Vasa's letters have long been published in 29 printed volumes, so it is easy to work with them. In spite of that, the men who have worked with Sami history have not stressed the importance of these royal letters. The men who edited Dokument vedrørende flyttlapperne (Documents concerning the migratory Lapps), K. B. Wiklund and Just Qvigstad, were strongly biased. They were a Swedish patriot and a Norwegian patriot and their task was to fight each other and put forth pro-Swedish or pro-Norwegian documents as a base for nationalistic arguments. This can be proven with Wiklund's letters in the Royal Archives (RA), Stockholm. The same bias goes for Oscar Albert Johnsen and Nils Ene walld. Another kind of bias has Birger Steckzen. His are is the birkarls, farmers who profited from the Sami trade like the traders in USA and Canada. The birkarls were forced into new cities around 1620 in the Swedish north by Gustavus Adolphus.

So – and this is very important – not until now effort is made to write Sami history from an entirely Sami point of view. One very competent author must be mentioned, however, and that is Axel Klockhoff. Around 1914 Axel Klockhoff wrote his “The Claim for Swedish Sami Free Migration”, which was not published until I took it into the White Book series V:2 1979, during Skattefjällsmälet, NJA 1981, p. 1.

Even Waldemar Lindholm should be mentioned for Dat lae mien situd of 1920 (with Karin Stenberg), White Book VII:1, 1980.

This research situation must be taken into account when we try now to write a Sami history wie es eigentlich gewesen. That means that you cannot rely on anything made before. Even the editing of documents is biased and false. You must, now, go back to the original sources in the archives and re-do it from the beginning. Very important is to keep in mind the perspective from Eriksen-Niemi: Den finske fare. These authors show that Norway had a concealed policy in the North. They quote a minister in Finland who said “always think about it, never speak about it”. In their book they prove that this was true in the Norwegian policy versus Finland in the 1920:ies. We have no incitement to believe that the nation-states ever since 1880 – in their Sami policy – deviated from the Talleyrand
maxim “The words are made to conceal the thoughts”. It has been a cynical policy in Sweden (ex. the cultivation border line) and in Norway (ex. the interpretation of the Codicil 1751). The presumption must be concealed illegitimate purposes, concealed because they are illegitimate and cannot bear the light of public opinion (cf Gandhi and Martin Luther King).

Important data are the 1584 proclamation of Sami rights from time immemorial by Gustavus Vasa’s son John III and the royal judgement in 1615 by his grandson Gustavus Adolphus on Sami land rights, where the letters of 1551 and 1584 are mentioned. Even land maps are referred to in 1615, and Andreas Bureus had made the first map in 1611 (Ymer 1901) under GA:s father Charles IX.

In 1638 the Sami were considered Christian men, able to take the oath, by high commissioners of Denmark and Sweden (Nasa silver mine).

In 1645 Swedish Law was introduced in Jämtland-Härjedalen by Axel Oxenstierna (vide L. M. Aubert and J. E. Almquist) and Hans Strijck issued a patent for the Sami in 1646 in the same way as the farmers and clergy got favourable patents. The interesting question about the introduction of Swedish Law in the conquered provinces Jämtland-Härjedalen, Gotland and (1658) Skåne has been treated by K. A. Modeer in Christian V Danske lov 1983. The peace treaty of 1645 gave no guaranties for keeping the old (“Danish”) Law in Jämtland-Härjedalen and Gotland whereas Skåne got these guaranties in 1658. This is an important question for Kautokeino-Karasjokk-Tana, which were under Swedish Law and Swedish judges before 1751. They passed over to Norway in 1751 without being conquered in war. As terra transit cum onere suo and the Codicil protects Sami customary rights, they can profit from the letters quoted in the 1615 judgement and from the judgement itself, which concerns the neighbour Sami village, Suontavare, and its fixed border line, Songamuotka, which is still the point where the Lapmark border of Gustavus Vasa 1543 and the Cultivation border of 1873 meet the border river of 1809 (1526-1809 this river was entirely within Sweden, Swedish Vasterbotten and Swedish Torne Lapmark).

Count Douglas and the Court of second instance judge lagman Bure were appointed in 1693 as commissioners to consider the Sami tax system. I have found now in the royal library (K. B. Stockholm) their long lost report of 1695 (appendix A). Together with the documents printed by Isak Fellman it shows a pro-Sami mood in the Swedish authorities. The king Charles XI told his commissaries to keep the Lap in good mood (vid gott humor).

We have a good chain of data to back up the pro-Sami Codicil of 1751, which was approved by the Swedish Parliament in 1752 and transformed to Swedish Law by two royal letters. There was no war and no quarrels over Sami issues behind the Codicil, so Denmark and Sweden could afford to take Sami land rights into friendly and appreciating consideration. The Dane Henrik Stampe quoted Samuel Pufendorf for Sami ownership by occupatio per universitatem, (not per fundos) made by coetus hominum over stagna et montes asperi. Stampe’s view was approved in Sweden.

We know that in Sweden this high appreciation of Sami land rights prevailed around 1870 (Carleson 1868, Nordström 1871).

Then came the peripeti or paradigm shift, the malign racism of Darwin’s German bulldog Ernst Haeckel. Haeckel was made a member of the Swedish Academy of Science in 1882. His thinking penetrated the Swedish lawyers and judges, as we can see from Knut Olivecrona 1884 and Ivar Aflzelius 1912.

The only possibility now to reach what was going on in the minds of lawyers is to exam-