

A Cold Rain on the Parade When the Sámi Celebrate 100th Anniversary

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6 February 2017 marks the centenary of The First Sámi Congress, which is also the reason that we today celebrate the 6th of February as the Sámi National Day. The First Congress will be thoroughly celebrated in Trondheim where it originally took place. Such an anniversary naturally inspires reflection on what the Sámi have achieved in the years since *Elsa Laula Renberg* and other visionary Sámi leaders organized the Trondheim meeting in 1917 to discuss how to safeguard Sámi interests and their future during the most difficult period of the *Norwegianisation* policy. Much has been achieved in these intervening years. The Sámi have obtained a constitutional amendment that protects Sámi language, culture and ways of life, a Sámi Act and a Sámi Parliament. Norway has also ratified ILO Convention no. 169¹ and adopted the Finnmark Act,² thereby recognizing that the Sámi constitute an indigenous people who have the right to own their ancestral lands.

But there are still dark rain clouds hanging over the Sámi horizon. Some of the dark clouds obviously derive from internal Sámi issues, while others undoubtedly must be addressed by the state. One example is the procedure for mapping legal rights framed in Finnmark, which is intended to follow up Norway's obligations under ILO 169. Last summer the UN Special Rapporteur on the rights of indigenous peoples criticised the procedures for failing on several important points.³ Recently, the Uncultivated Land Tribunal for Finnmark confirmed the criticism in a verdict on 23 January 2017 that overruled a conclusion of the Finnmark Commission on land rights.

However, it is with respect to reindeer husbandry law that the biggest need arises for questioning whether Norway's legal commitments to the Sámi are being met. A major reason for the meeting of the Sámi people in Trondheim 6–8 February 1917 were the many problems the Sámi reindeer herders faced as a result of expanding agricultural settlements. In 1883, Norway and Sweden both adopted "Felleslappeloven" ("The Common Lapp Act"), which instituted an objective, joint liability for reindeer damages. In the context of the act, objective responsibility meant that herders could be sentenced to pay compensation, not only for damages on pastures and inlaying

fields, but also in outlying hayfields. The joint liability meant that the farmer could hold the first herder he found liable.

In 1897, “Tilleggsloppen” (“The Additional Lapp Act”) was adopted. It allowed for the introduction of a general ban on reindeer herding at specific sites to protect the interests of the farmers. The authorities considered the agricultural sector to be of such importance for the country that it should be prioritized at the expense of reindeer husbandry, which, *inter alia*, implied that reindeer husbandry in Trollheimen, a mountain range in the counties of Møre og Romsdal and Sør-Trøndelag, was banned.

The 1897 Act also introduced the first regulations on reduction of the number of reindeer. The Lapp Commission of 1894, which prepared the draft legislation, stated that high numbers of reindeer were neither in the interests of the “the Lapps” nor the farmers, who sought rules for reducing the number of reindeer. The Commission assumed that “a Lapp family in general can sustain itself with 200 reindeer”. If cuts were avoided among those who had less than 200 deer, “a percentage reduction would hardly be unfortunate”.⁴ The Ministry of Interior Affairs acknowledged that such a rule “would be of great advantage, and that the administration without such provision, hardly will be able to regulate the Lapp conditions in full”.⁵ However, the Ministry did not submit the provision, as it had “so many misgivings of a different character; one assumes that such a provision should under no circumstances be established unless it is shown that the matter cannot be handled in any more lenient way”.

The Parliamentary Standing Committee of Agriculture did not, however, share these misgivings, as long as families were not deprived of their livelihood.⁶ Thus, the rule of percentage reduction of the number of reindeer in excess of 200 was adopted as a statutory law in 1897.

At the Sámi Congress in Trondheim 20 years later, a discussion of how to respond to the very strict rules of the Reindeer Husbandry Act stood on the programme. Daniel Mortenson, a Sámi leader from the Røros area, elaborated on the topic, which resulted in the Congress appointing a specific Reindeer Husbandry Committee, and in 1919, the Committee submitted an alternative bill for a new reindeer husbandry act. One of the proposals was to establish *pasture zones* for reindeer. The proposal was intended to give the Sámi protection against the expanding agricultural sector. Unobstructed expanses where the Sámi could practice reindeer husbandry were dwindling, as more and more of the “remote mountain valleys were being taken over by the farming population for hay fields and mountain pastures . . . The Lapps have had to give way in these instances, to a degree that threatens their entire livelihood with doom”.⁷

Attorney General *Peder Kjerschow*, who for three decades was the government’s legal advisor in matters pertaining to reindeer herding, rejected the Sámi’s alternative bill, as it had “received a mixed response”. In the draft legislation Kjerschow prepared himself, the rules concerning reduction of reindeer were tightened, as the threshold number for protection from reduction was reduced to 100. However, Kjerschow stated that the number of reindeer “as we know is highly variable from year to year”,

and thus “if the numbers exceed the fixed figures somewhat, one could postpone initiating forcible reduction”.⁸ However, the Ministry of Agriculture did not want to set a lowest threshold on the number of reindeer that could be reduced: “It is believed to be sufficient that the law states reduction shall be made with the same percentage applied to all reindeer owners, although if possible, a threshold could be considered below which a herd cannot be reduced if it prevents a family’s sustainability from the herd.” This led to section 8 of the Reindeer Husbandry Act of 1933. The provision was not extended in the Reindeer Husbandry Act of 1978.

In 2007, a new Reindeer Husbandry Act provided for reducing the number of reindeer, incorporating the percentage methodology introduced in 1897.⁹ The reason for reducing the number of reindeer was, however, no longer justified from the standpoint of agricultural interests, but due to overgrazing and environmental issues concerning the mountainous tundra, thus in regards to the Sámi themselves. I will not go into the substance of the arguments; I would simply point out that there are varying perceptions about the need for reduction.¹⁰ A part of the picture is that the authorities, 10 years after the new law came into force, still have not been able to establish a systematic way of clarifying the grazing rights, which means that the reductions do not necessarily aim precisely. The law does not have a bottom threshold below which the number of reindeer in a family herd cannot be reduced, and it does not give consideration to social issues concerning the herder and his/her family. Thus the 2007 Reindeer Husbandry Act has the most stringent reduction rules ever set.

There was nothing surprising about the strict laws for reindeer husbandry during the hardest ‘Norwegianisation’ period one hundred years ago, nor was it surprising that the Sámi Congress did not succeed with its 1919 bill. But when in 2017 *Jovsset Ánte Sara*, a young Sámi trying to make a living as a reindeer herder, has been in court for the second time to defend his right to practice reindeer husbandry against imposition of forced reduction of his herd,¹¹ there is reason to raise one’s eyebrows.

After World War II, Norway ratified the UN Convention on Civil and Political Rights, the European Convention on Human Rights, ILO Convention no. 169 and the UN Declaration on the Rights of Indigenous Peoples, all of which protect the right of the Sámi to practice their culture and livelihood. In addition, Norway has adopted a constitutional amendment that protects the Sámi culture, language and way of life.

Nevertheless, the international laws and the constitutional amendment do not impede Attorney General Stein Eirik Jahr Dahl, on behalf of the government, from going after the 25-year-old Sámi’s reindeer in a harder way than Attorney General Kjerschow would have done one hundred years ago. Unlike his late colleague, Attorney General Dahl does not seem to have any qualms about claiming nearly 40 percent of Sara’s herd. When the Attorney General argues that Sara can live just as well from 75 reindeer as from 116, it shows nothing but a lack of knowledge. And that the government can spend huge sums, including underwriting several court cases on a dispute over 41 reindeer, while there are around 130,000 reindeer on the tundra of Finnmark, shows that the matter is all out of proportion. Surely this is not

merely a dark storm cloud over the Sámi's celebration of the centenary of The First Sámi Congress, but a cold rain squall.

The Sara case also shows that it is not only time for a new Sámi Congress, but for people to stand up and speak out on behalf of Sámi reindeer herders and other indigenous peoples defending their land, culture and livelihood.

NOTES

1. ILO Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries (Entry into force: 05 Sep 1991) Adoption: Geneva, 76th ILC session (27 Jun 1989).
2. The Finnmark Act: Lov 17 June 2005 no. 85 om rettsforhold og forvaltning av grunn og naturressurser i Finnmark fylke (finnmarksloven).
3. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sámi people in the Sápmi region of Norway, Sweden and Finland, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/175/50/PDF/G1617550.pdf?OpenElement> (accessed 30 Jan 2017), paragraph 23 and 24.
4. Indberetning fra Lappekommissionen (Report from the Lapp Commission) (1894), p. 50.
5. Oth. Prp. No. 32 (1896) Om Udfærdigelse af en Lov indeholdende Tillægsbestemmelser angaaende Lapperne og Rensdyrdriften inden de søndenfor Tromsø Amt liggende Landsdele (The bill of the Government for the Additional Lapp Act) p. 7.
6. Indst. O. II (1897) Indstilling fra Landbrugskomiteen angaaende kongelig Proposition om Udfærdigelse af en Lov indeholdende Tillægsbestemmelser vedkommende Lapperne og Rensdyrdriften inden de søndenfor Tromsø Amt liggende Landsdele, (The bill of the Parliament Government for the Additional Lapp Act) p. 4.
7. Forslag til lov om lapperne og rendriften med kortfattede motiver, utarbeidet av den på lappemøtet i Trondhjem 6.-8. februar 1917 opnævne komité (Bill from Reindeer Husbandry Committee appointed by the Sámi Congress), (1922) p. 48–49.
8. Utkast til lov om rendriften utarbeidet av riksadvokat P. Kjerschow (1922) (Bill for a Reindeer husbandry Act submitted by Attorney General P. Kjerschow), p. 59.
9. The Reindeer husbandry Act: Lov 15. June 2007 no. 40 om reindrif, section 60.
10. Tor A. Benjaminsen, Inger Marie Gaup Eira and Mikkel Nils Sara (eds.), *Samisk reindrif – norske myter*, Fagbokforlaget, 2016.
11. NRK Sápmi, <https://www.nrk.no/sapmi/75-rein-er-tvangsavvikling-og-boten-pa-80-000-kroner-er-saftig-sier-mor-til-ung-reineier.-1.13342964> (accessed 30 January 2017).