

Briefing Note

Swedish Sámi reindeer herders seek Indigenous rights

Robert P. Wheelersburg

I journey on the sea of time
follow the tracks of the wind
-Nils-Aslak Valkeapää (1994) *Trekways of the Wind*

In 1973, Swedish Prime Minister Olof Palme compared the American “Christmas Bombings” of Hanoi to Nazi atrocities during the Holocaust (New York Times, 1973). By taking similar positions against other countries, Sweden attempted to become the world’s human-rights conscience. Yet for several centuries, Sweden systematically eroded the Indigenous rights of Sámi reindeer herders through royal decrees, laws, border treaties, and social programs (e.g., Nomad Schools). Despite signing the Arctic Council’s 2021 Reykjavik Declaration affirming Indigenous rights, Sweden has failed to do so for its own Indigenous people. In fact, Sweden continues to actively fight against Sámi Indigenous rights in parliament and with legal action. Thus, despite what some Arctic Council (AC) members say publicly, states like Sweden are violating treaties they signed and need to be sanctioned to force them to uphold those treaties. Without enforcement, it may be only a matter of time before Arctic Indigenous peoples lose their cultures, and in the words of former Sámi reindeer herder and artist Nils-Aslak Valkeapää’s (1994), “follow the tracks of the wind”.

Although there is no universally accepted definition of what cultural traits constitute an Indigenous people, the United Nations (2004) provided a working definition of Indigenous peoples, with the most important trait being self-identification as Indigenous. However, Indigenous status does not matter unless the state in which it resides recognizes and protects the rights that go with it. In the Arctic and elsewhere, some Indigenous peoples transcend state borders, resulting in a situation where some parts of Indigenous communities are supported by states and some are not. One of those cases is the Sámi whose ancestral homeland, Sápmi, crosses four nation-states today: Finland, Norway, Russia, and Sweden. The first two states are supportive of the Sámi Indigenous status. Russia and Sweden are somewhat supportive, but Sweden is hesitantly so, using legislation and judicial action to restrict Sámi Indigenous rights

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As evidence of that statement, in the 1990s, the European Union (EU) ruled that Sweden failed to provide Sámi reindeer herders with Indigenous protection by restricting access to their exclusive rights to land and water in the face of encroaching non-Sámi industries. Subsequently, in 1999 the Swedish government appointed an investigator to determine whether it followed the EU's International Labour Organization (ILO) Convention 169 protecting Indigenous rights. The investigator declared Sweden not in compliance because the country failed to establish precise territorial boundaries that reflected the difference between Indigenous (Sámi) and traditional (non-Sámi) economic activities. Consequently, there was no distinction between exclusive and shared access to land and natural resources based on those differences (Wheelersburg 2008).

In order to meet the minimum standards of ILO Convention 169, Sweden had to establish Indigenous and traditional boundaries. Parliament created a border delineation commission reporting to the Agricultural Ministry that regulated reindeer herding in the country. The commission used historic sources, especially maps, to create the two boundaries required to bring Sweden into compliance. The commission determined that the Sámi winter pasturage shared with non-Sámi industries comprised traditional territory, while the Sámi Indigenous territory consisted of summer reindeer pasturage they used almost exclusively. Those designations correlated with the historical boundaries of *lappmarkgräns* [Lapland Border] from the 1750s and *odlingsgräns* [Limit of Cultivation] established in 1890. Both boundaries were created by the Crown supposedly to reduce conflicts between the Sámi and Swedish/Finnish settlers who continued colonizing Sweden's north (Norrland). The Crown did not vigorously enforce those borders and Swedes and ethnic Finns living in Norrland ignored them widely (Wheelersburg, 2008; Norstedt, 2019).

The commission found that the Lapland Border formed an "outer" boundary on reindeer winter pasturage. Sámi herders had *access* to outer boundary lands and natural resources and could use them in cooperation with resident settler groups who practiced their own traditional industries like farming and forestry. The second border, the Limit of Cultivation, was designated the "inner" boundary, within which Sámi had *occupied* lands almost exclusively over the centuries, using them for reindeer herding and associated industries like fishing and raw material acquisition. Those inner boundary territories, many of which were former Crown lands (today, national parks), form the basis of Sámi Indigenous use rights that Sweden should protect. By designating and protecting Indigenous use rights through Sámi reindeer herding villages regulating their own territories, Sweden considered itself in compliance with ILO 169 (Wheelersburg, 2008).

Yet the result of Sweden establishing the Indigenous and the traditional boundaries was to strengthen non-Sámi industries in the traditional zone – for a time. A 1994 parliamentary decision allowed the public to hunt small game and fish on Sámi winter pasturage (within the outer boundary) without paying a fee to the herding village that controlled the territory. A long court battle with the Swedish government ensued to restore those Indigenous rights (during which government lawyers officially used the racist term "Lapp") (Swedish Government, 1993: 32). It took twenty years for the Swedish Supreme Court to reach a decision restoring Sámi Indigenous rights. In 2020, the supreme court ruled in favor of Sámi controlling small-game licensing on winter reindeer pasturage by siding with Girjas' Sámi reindeer herding village's right to regulate access for hunting and fishing on its *traditional* (i.e., winter) territory (Library of Congress, 2020).

While not citing Indigenous protection, the court affirmed that the Sámi had established their exclusive control over natural resources in their reindeer herding districts during the mid-17th

century, which was codified in the Reindeer Grazing Act of 1886. The courts used historic records as evidence to rule that the Sámi reindeer villages controlled the natural resources in their respective areas based upon their traditional, not Indigenous, status. Although the court cited the legal concept of “time immemorial” (i.e., a period in time before recorded history not requiring evidence to prove use rights), the ruling was based on behaviors that established the hunting and fishing (and grazing) rights, that were only a few hundred years old (Orange 2020; Black 2021).

Despite Sweden’s earlier claims to be the world’s conscience for human rights, as well as being a member and signatory to the Arctic Council’s 2021 Reykjavik Declaration where the Council “Recogniz[ed] the rights and the special circumstances of Indigenous Peoples and the unique role of the Permanent Participants within the Arctic Council” (Arctic Council 2021: 1), the country continues fighting to prevent Sámi from attaining full Indigenous rights. Sweden’s refusal to recognize and protect the rights of its own Indigenous people may be related to the competition over resources that form the basis of both Sámi and non-Sámi economies in northern Sweden.

Today, there are two categories of Arctic residents: Indigenous and settler (i.e. traditional). The stakes are high for which category designates a people, since the Indigenous category often imparts a legal status that allows special access to land, waters, and other natural resources, that the category of traditional does not. An example is whaling. Inuit have Indigenous rights to hunt whales, while at the same time, Icelandic whaling, a traditional cultural practice lasting several hundred years, is considered illegal by the global community (NOAA, n.d.). The current practice of reindeer herding in Sweden is several hundred years old as well; however, it is regarded as an Indigenous enterprise. As such, reindeer herding is somewhat protected at least within the inner boundary lands. Therefore, there are tangible benefits for an Arctic group considered Indigenous; benefits that are unavailable to other Arctic residents no matter how long they lived in the region or how long they have practiced a particular economic behavior.

The definitions that apply to various Arctic peoples do not provide much guidance for policy makers and officials navigating the complex process of managing the use of territories (land and waters) and their natural resources in a cooperative and fair manner. Part of the reason for the definitions’ inadequacy is that they attempt to qualify peoples who today represent a blend of Indigenous, traditional, and modern cultural behaviors. In addition, there are other identities that are applicable to Arctic peoples that intermingle the two primary categories, creating confusion and conflict between competing groups. For example, only Swedish Sámi who are members of officially recognized reindeer herding villages are considered Indigenous by the Swedish government, even if others speak Sámi as a first language or practice traditional Sámi enterprises like handicraft production. The only exception is that the Swedish Sámi Parliament, recognized by the government as an advisory body, has members who are not reindeer herders.

Although the term Indigenous is used frequently in discussions about the Arctic, as mentioned above, no specific definition of Indigenous peoples has been officially adopted by any global or regional body such as the U.N. or the E.U. (United Nations, 2004). The U.N.’s working definition is not considered absolute, believing that it is more appropriate to recognize Indigenous peoples based upon their own self-identification rather than to use a confining, all-encompassing category. Still, the working definition includes characteristics that policy makers may use to assign people to

the Indigenous category, like speaking a minority language or having a long-term association with a particular homeland. The EU also has a non-binding definition of Indigenous people.

People whose ancestors inhabited a place or country when persons from another culture or ethnic background arrived on the scene and dominated them through conquest, settlement, or other means and who today live more in conformity with their own social, economic, and cultural customs and traditions than with those of the country of which they now form a part (European Environmental Agency, 2021).

While the lack of an accepted definition with specific traits is a problem, the main issue with formal recognition of Indigenous peoples is that there are no consequences for an individual government that does not respect that status. Regional organizations such as the European Union (EU) or global entities like the United Nations (UN) seek only voluntary compliance, including the ILO 169 (International Labour Organization, 2017) for the former and Declaration on the Rights of Indigenous Peoples for the latter (United Nations 2004). With no globally accepted definition of Indigenous status nor any international means to enforce Indigenous rights, such peoples are dependent upon the good will of their governing states to recognize and provide them with cultural and economic protection. In Sweden's case, that good will is often lacking, particularly when Sámi Indigenous protection interferes with the majority society.

Although a country may want to protect its majority society's traditional rights as well the minority people's Indigenous ones, it is difficult to do so because of a lack of objective agreement on what constitutes traditional cultural or economic behaviors. A standard definition of "traditional" is even more elusive because there are only scholarly examples, which generally describe the concept as the opposite of modern. For example, consider the following:

The concept of tradition outlines a type of society defined by traits placed in opposition to other traits characterizing industrial society. [...] Tradition is oriented towards a legitimate reference to the past while modernization is oriented toward the mastery of the future. [...] Tradition is a transmitted, and often transformed, heritage which survives and orients contemporary actions (Langlois, 2001: 15829).

For policy purposes, it is possible to make a distinction between exploiting reindeer as a way of life since time immemorial (Indigenous) and reindeer herding as a business enterprise using both traditional and modern methods developed over the past 150 years (Ruong, 1937). That is to say, the Sámi have utilized reindeer, wild, tame, or herded, for most if not all of their time in the Nordic Arctic region. That use of reindeer for the entirety of their occupation in the Swedish Arctic, despite archaeological evidence that the Sámi were not the original inhabitants there, makes up the basis for their Indigenous territorial and natural resource use rights. Yet due to changing circumstances related to influences by the Swedish government, in combination with economic and technological evolution, Sámi reindeer herding today is a modern, rational business enterprise using some traditional methods (e.g., lassoing) that retains hardly any Indigenous behaviors.

A key point related to that dual status is that some traditional behaviors were retained in the face of influences from a majority (i.e., state-level) society using governmental tools like legislation to control both Sámi and non-Sámi industries. The result is that Sámi reindeer herding in Sweden as a whole receives enough Indigenous protection to survive as a way of life, while herding's traditional behaviors (e.g., ear marks as brands) and rational business practices do not (although

they are regulated). Conversely, Swedish/Finnish traditional industries like Baltic seal hunting [*själen*] and slash-and-burn farming [*svedjebruk*], both of which began in the Middle Ages and lasted into the 20th century, did not receive protection as traditional behaviors and ultimately died out.

Except for the Crown and the Foreign Ministry, Sweden has never considered itself an Arctic country, although it proclaimed itself so officially when it took the Arctic Council Chair in 2011 (Sörlin, 2014). Today, however, Sweden signs Arctic Council documents to protect the Indigenous rights of Arctic peoples in the abstract, but fails to protect its own Indigenous people in practice. Thus, the Arctic Council should consider sanctioning member nations who refuse to honor their own people's Indigenous rights. For example, the council could refuse to pass the AC chair to a member who receives international or council-level condemnation, or to states who lose judicial cases over failing to honor their own indigenous people's rights. Regardless of the sanction imposed, the Council needs to act forcibly when members do not adhere to declarations they signed.

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