

Any Role for Human Rights in the Norwegian Truth and Reconciliation Commission Addressing Forced Assimilation?

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Abstract

Norway's policies regarding Sámi and most national minorities in an historic perspective can be characterized as forced assimilation; except for Jews and Roma, where the historic policy can be termed exclusion. The Norwegian Truth and Reconciliation Commission (TRC) is intended to be a broad-based process, resulting in a report to the Norwegian Parliament in 2022. After identifying various explanations for the relatively strong standing of the (North) Sámi domestically and in international forums, the article identifies various ways that human rights will be important for the TRC's work and final report: (i) self-determination; (ii) participation in political life; (iii) participation in cultural life; (iv) family life; (v) private life; and (vi) human dignity. Some of these rights are relatively wide, but all give relevant guidance to the TRC's work. The right to private life did not prevent the Norwegian Parliament's temporary law to enable the TRC's access to archives

Keywords

Forest Finns – Kven/Norwegian Finns – reconciliation – reparations – Sámi – UN Declaration on the Rights of Indigenous Peoples

1 Introduction

The Norwegian Parliament decided on 14 June 2018 to establish an independent Truth and Reconciliation Commission (TRC) to investigate the

Norwegianization policy and injustice against the Sámi and Kven/Norwegian Finns. The mandate encompasses: (i) historical mapping – from around 1800 until today; (ii) investigate the impacts of the Norwegianization policy today; and (iii) propose measures for continued reconciliation. It was further specified that the TRC shall set up a systematic and close partnership with affected communities and organisations and submit its report by 1 June 2023.¹ The Sámi are recognized as an indigenous people – with provisions in various Acts applying to them – and Kven/Norwegian Finns and Forest Finns are recognized as national minorities. Section 2–7 of the Education Act specifies that education in Kven is to be provided in schools in Troms and Finnmark if at least three pupils ask for it.

Norway's policies regarding Sámi and national minorities in an historic perspective can be characterized as forced assimilation.² Three Sámi languages are spoken in Norway: North, Lule and South – listed in accordance with numerical strength – and there are also persons in Norway identifying as East Sámi and Pite Sámi. The Kven/Norwegian Finns inhabit the same parts of Norway – primarily Troms and Finnmark – that are also the core area of the North Sámi. While gradual shifts happened from the 1980s regarding Sámi policies and somewhat later for policies regarding the five national minorities,³ there are

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- 1 Norwegian Parliament, Innst. 408 S (2017–2018); originally giving 2022 at the deadline; one party; the right-wing Progress Party voted against. On 9 May 2019 the Commission decided that also policies regarding Forest Finns (in the Southeast of Norway) shall be included in its mandate; see Norwegian Government, *Meld. St. 12 (2020–2021) Nasjonale minoriteter i Norge – En helhetlig politikk* [National minorities in Norway – A comprehensive policy] (2020) p. 52 (only available in Norway; the term is 'innfortolket'); this is, however, not reflected in the mandate specified at the TRC's home page, <<https://uit.no/kommisjonen/mandat>>, visited 18 June 2021. The analysis below will not include the Forest Finns, that will receive the first substantial grant to a new museum in 2021 – see <<https://www.skogfinskmuseum.no/aktuelt-og-nyheter/2021/1/bevilgning-til-museumsbygg-pa-statsbudsjettet>>, visited 18 June 2021.
 - 2 For an assessment of the policies against the Sámi and Kven/Norwegian Finns, see H. Minde, 'Assimilation of the Sami – Implementation and Consequences', 2(3) *Gáldu čála – journal of indigenous peoples rights* (2005) pp. 1–33, 20, describing state policies regarding changed language culture and identity among Sámi and Kven as "extensive, long-lasting and determined"; on "efforts at eradicating Sámi culture and language", see G. Ekeløve-Slydal, 'Past Wrongdoing Against Romani and Sami in Norway and the Prism of Modern International Criminal Law', in M. Bergsmo, W. Kaleck and K. Yin Hlaing (eds.), *Colonial Wrongs, Double Standards, and Access to International Law* (Torkel Opsahl Academic EPublisher, Florence, 2020) pp. 525–575, 550. On pp. 570–571 he writes in a nuanced manner about how "versions of Christianity" mobilized against state repression, including efforts to preserve and use Sámi language.
 - 3 For classifications (based on data from 1980–2000), see K. Banting, R. Johnston, W. Kymlicka and S. Soroka, 'Do multiculturalism policies erode the welfare state? An empirical analysis', in K. Banting and W. Kymlicka (eds.), *Multiculturalism and The Welfare State. Recognition and*

still gaps between demands made by representative bodies among Sámi and national minorities, on the one hand, and public policies, on the other hand.⁴

Reconciliation must be understood as a process that must follow a pace decided by those suffering from past injustice themselves, and the main responsibilities for the implementation are with representatives of the majority community. Adequate reparations for past wrong-doing is a precondition for reconciliation, as will become clearer below.

Inspired by the emphasis on human rights in the report of the Canadian TRC and in the implementation of its recommendations,⁵ this article identifies six human rights, asking what they can bring to truth and reconciliation processes addressing forced assimilation: self-determination, participation in political life, participation in cultural life, family life, private life, and human

Redistribution in Contemporary Democracies (Oxford University Press, Oxford, 2006) pp. 49–91, 60–62; see also Appendix 2.1. Norway is not included when presenting policies regarding national minorities, which can be explained by the low number of national minorities in Norway. In addition to the Kven/Norwegian Finns and Forest Finns these are Jews, Romani/Tater and Rom, all characterized by a presence in Norway at least since the mid-19th century.

- 4 For one such gap, the Sámi Parliament's (ongoing) opposition to the Norwegian Minerals Act was expressed by the former President of the Sámi Parliament at the UN Permanent Forum on Indigenous Issues in 2009, see <http://library.arcticportal.org/533/1/President_of_the_Sami_Parliament_Addresses_Indigenous_Issues_in_UN.pdf>, visited 18 June 2021. The most comprehensive overview regarding national minorities is the government's White Paper, see Norwegian Government, *supra* note 1; for reports and assessments on Norwegian implementation of the European Charter for Regional or Minority Languages, see <<https://www.regjeringen.no/no/tema/urfolk-og-minoriteter/nasjonale-minoriteter/midtspalte/minoritetspraktak/id86936>>, visited 18 June 2021; for reports and assessments on Norwegian implementation of the European Framework Convention for the Protection of National Minorities, see <<https://www.regjeringen.no/no/tema/urfolk-og-minoriteter/nasjonale-minoriteter/midtspalte/rapporteringer-pa-rammekonvensjonen/id45136>>, visited 18 June 2021.
- 5 Recommendation 43 from the Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015) p. 244, <http://publications.gc.ca/collections/collection_2015/trc/IR4-7-2015-eng.pdf>, visited 18 June 2021 saying that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is to be implemented “as the framework for reconciliation”; for its mandate, including the indigenous residential schools' impact on human dignity, see <http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf>, visited 18 June 2021; on the Government of Canada's commitment to implement the recommendations; see Government of Canada, *Delivering on Truth and Reconciliation Commission Calls to Action* (2019); see <<https://www.rcaanc-cirnac.gc.ca/eng/1524494530110/1557511412801>>, visited 18 June 2021. One important resource document is International Center for Transitional Justice, *Strengthening Indigenous Rights through Truth Commissions: A Practitioner's Resource* (2012), funded by Canada.

dignity.⁶ Human dignity is included because human rights derive from the inherent dignity of the human person, as expressed in the second joint preambular paragraph of the International Covenant on Economic, Social and Cultural Rights (ICESCR; 171 state parties) and the International Covenant on Civil and Political Rights (ICCPR; 173 state parties). This embedding indicates that human dignity could be listed first, but human dignity is rather applied to bring the analysis together. As will be shown, there are ongoing disagreements between Norwegian authorities and Sámi representatives concerning how the right to self-determination should impact decision-making processes, and this arguably represents the greatest divide among the six rights. The emphasis will be on the Sámi, but examples regarding Kven/Norwegian Finns will be provided under each section. Apologies to the Sámi have been expressed in 1997 (King Harald V) and 1999 (PM Kjell Magne Bondevik). In 2020, Kven/Norwegian Finns asked for an official apology from the King.⁷

Before critically examining these six human rights and how they are observed or ignored in the political processes leading to the establishment of and subsequent specifications regarding the work of the TRC, I will provide a theoretical framework. This will help to understand the overall influence that the indigenous movement has had over the last 15 years, more specifically why this movement – on a global and national level – is more successful as compared to national minorities. The adoption of the United Nations (UN) Declaration on the Rights of Indigenous Peoples (UNDRIP)⁸ can be seen as a culmination of a decades-long mobilisation,⁹ but the momentum was not lost

6 Note that Nordquist emphasizes human dignity in the context of reconciliation, linking to the 1948 UN Declaration of Human Rights, not the UNDRIP; see K.-Å. Nordquist, *Reconciliation as Politics: A Concept and Its Practice* (Pickwick, Eugene OR, 2017) pp. 93–94. For an analysis of the TRC, identifying Sámi and others' acknowledgement of an implementation gap between international norms and Norwegian policies as one important explanation for why the TRC became a reality, see T. Johnsen, 'Negotiating the Meaning of "Truth and Reconciliation Commission" in the Norwegian Context', in S. Gudmarsdottir, P. Regan, & D. Solomons (eds), *Trading Justice for Peace? Critical Perspectives on Truth and Reconciliation Commissions in South Africa, Canada, and Norway* (AOSIS, Cape Town, 2021).

7 L. Lanes, 'På Kvenfolkets dag ber kvener om unnskyldning fra kongen slik samene har fått' [On Kven/Norwegian Finns' Day, they ask for an apology from the King, similar to the apology to the Sámi], *NRK*, 16 March 2020. For an assertion that the Kven should also be termed indigenous and that there is a Sámi ethnocatization, see I. Dervos, *Ivar Dervos 2. brev* (2020), <<https://kvenfinn.no/stikkord/sannhets-og-forsoningskommisjonen>>, visited 18 June 2021; and *Ivar Dervos brev* (2019), <<https://kvenfinn.no/ivar-dervos-apne-brev-til-sannhets-og-forsoningskommisjonen-for-samer-og-kvener>>, visited 18 June 2021.

8 UN General Assembly, A/RES/61/295, *Annex* (2007).

9 Mobilisation is specified by S. Jodoin, *Forest Preservation in a Changing Climate – REDD+ and Indigenous and Community Rights in Indonesia and Tanzania* (Cambridge University

with the adoption of the UNDRIP. National minorities have not experienced a similar influence, as will be shown.

The article investigates how relevant human rights standards can guide the work of the TRC – acknowledging that human rights was not made explicit in the mandate, and that the composition of the TRC has high academic levels, but not necessarily in international human rights law – but the article is not a detailed investigation into relevant human rights. This implies that the emphasis will be on treaty provisions rather than jurisprudence by courts or interpretations by supervisory bodies. In addition to international human rights law, a UNESCO convention and the Rome Statute for the ICC will be referred to.¹⁰ Due to the limited academic sources documenting policies applying to Kven/Norwegian Finns, as well as the lack of academic sources on the TRC's initial process, non-peer reviewed publications will be referred to.

2 The Uniqueness of the Global Indigenous Movement

Sámi representatives have been instrumental in forming and giving strength to the global indigenous movement. By pointing to the influence of this movement it is important to specify that I do not consider it as too powerful, being subject to the overall policies by states, and there are several impediments for gaining real influence, locally, nationally and globally. In most countries, ordinary political processes operate so as to secure some rights and restrict the full enjoyment of other rights.

Mauro Barelli explains both the successes and the lack of successes of indigenous peoples, emphasizing the former.¹¹ First, indigenous peoples were recognized as constituting “peoples”, giving them a right to self-determination,

Press, Cambridge, 2017) p. 21 as one of six ‘causal mechanisms’ of conveying legal norms transnationally.

10 For a more elaborate analysis of international criminal law applied on Norwegian Sámi and Norwegian Romani/Tater, see Ekeløve-Slydal, *supra* note 2.

11 M. Barelli, *Seeking Justice in International Law: The Significance and Implications of the UN Declaration on the Rights of Indigenous Peoples* (Routledge, London, 2016) p. 37, identifying as one example of the lack of success the wording on free, prior and informed consultation in relation to free, prior and informed consent (FPIC) in Article 32 the UNDRIP. I would add that that the lack of explicit FPIC in domestic legislation – for instance in the Norwegian Minerals Act – is another example of non-success. The first time that the consent requirement was introduced was in Article 16(2) of the 1989 ILO Convention 169 on indigenous peoples.

being recognized as substantively distinct from ordinary civil society actors.¹² The formal recognition of indigenous peoples as peoples is found in UNDRIP, where Articles 3, 4 and 5 deal with how their right to self-determination can be exercised.

Second, by building a shared identity as indigenous, connecting across countries, this has enabled representatives to speak on behalf of indigenous peoples everywhere.¹³ By active participation in global processes, always linked with local receptivity, a cohesive and vigorous movement has been created. These processes were embedded in common experiences and demands, particularly regarding self-determination and land rights.

Third, the wide acknowledgement of the injustice faced by indigenous peoples through the various forms of colonisation they were subjected to, provided an unassailable basis for the acceptance of the demands.¹⁴ Reparations is the term that is most applied in human rights forums for doing good for past injustice.¹⁵ Processes of reparations are in many countries inadequate, including whether laws or regulations are repealed or amended.¹⁶ There might be highly diverse views among various actors, indigenous and non-indigenous, what reparations – a most crucial element in any reconciliation process – actually implies. The UN Expert Mechanism on the Rights of Indigenous Peoples (UN EMRIP) has specified that reparations for wrongs against indigenous peoples must take the “perspective of indigenous peoples, taking into account their

¹² *Ibid.*, pp. 96–97.

¹³ *Ibid.*, pp. 116–117.

¹⁴ *Ibid.*, pp. 119–124.

¹⁵ UN Human Rights Committee, *CCPR/C/158, Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights: Restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition* (2016). The UN General Assembly has adopted two declarations on reparations for victims of human rights violations and serious violations of international humanitarian law; see *A/RES/60/147, Annex* (2006), and victims of abuse of power; see *A/RES/40/34, Annex* (1985). Reparations are addressed in Article 75 of the Rome Statute of the International Criminal Court, encompassing restitution (the return of property), monetary compensation and rehabilitation (physical and psychosocial). See also H. M. Haugen, ‘The right to veto – or emphasizing adequate decision-making processes? Clarifying the scope of the free, prior and informed consent (FPIC) requirement’, 44:3 *Netherlands Quarterly of Human Rights* (2016) pp. 250–273, doi: 10.1177/016934411603400305. On reconciliation as conflict reparation, see Nordquist, *supra* note 6, p. 149.

¹⁶ *Ibid.*, para. 13(a), specifying that when faced with laws and regulations that are “at variance with Covenant obligations, the [UN Human Rights] Committee should request their repeal or amendment...”

cultural specificities, their spiritual connection to their lands ... and their right to participate fully and effectively in decision-making.”¹⁷

Fourth, the fact that indigenous traditional ways of living can legitimately be presented as an alternative to the prevailing production and consumption patterns. Such patterns have evidently undermined the ecological pillar that is at the core of the concept of sustainable development – together with the social and economic pillars. There is a growing recognition that indigenous peoples’ traditional ways of living constitute a “custodial and non-materialistic approach to land and natural resources”,¹⁸ that are crucial for enabling sustainable development also for future generations.

In summary, the distinct legal recognition, the shared identity, the historical injustices and the recognition of ecologically embedded alternatives present four convincing arguments for why indigenous peoples stand out as a collective from any other non-state collectives. It differs, however, how this recognition influences decision-making at various levels and in various processes.

A similar account cannot be told for any other human collectives. National minorities are not equally united globally, display more variation historically as some were actually culturally dominant – like Swedish-speaking in Finland – and have a less convincing ecological heritage. A particular difference between indigenous peoples and national minorities is how they utilize international human rights forums. Even if national minorities increasingly engage with these forums, they are less coordinated in international negotiations as compared to indigenous peoples.

3 Self-Determination

Self-determination for Sámi was denied for the first nine decades of the 20th centuries, but the establishment of the Sámi Parliament in 1989 and the ratification of the 1989 ILO Convention on indigenous peoples in 1990 represent important shifts. It is crucial that the 2005 Finnmark Act does not introduce ‘ethnic’ rights, but provide stronger rights to harvest natural resources to persons living in the hamlet, municipality or county, respectively, than to others.

Human rights aspects of truth and reconciliation processes involving indigenous peoples are identified in the 2019 report by UN EMRIP, titled Recognition,

17 UN EMRIP, *A/HRC/EMRIP/2019/3/Rev.1*, para. 11; for an acknowledgement that reparations can be particularly controversial, see *ibid.*, para. 13; for the EMRIP’s mandate; see UN Human Rights Council, *A/HRC/RES/33/25* (2016).

18 Barelli, *supra* note 11, p. 140.

reparations and reconciliation (hereafter: 3R). In addition to five recommendations on recognition and nine recommendations on reparations and reconciliation, three general recommendations are specified: (i) The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)¹⁹ should be the main framework for 3R; and 3R are “essential elements for the effective implementation...” of the UNDRIP; (ii) the work must take an indigenous perspective, including relations to land, traditions of healing, and full and effective participation in decision-making; and (iii) 3R are tools to address colonization, requiring a recognition of all aspects of self-determination, including indigenous juridical systems and customary laws.²⁰ Complying with these three general recommendations will most likely contribute to reconciliation and reparations at a collective level.

The human right to self-determination for indigenous peoples encompasses many dimensions of collective life, and the explicit recognition of this collective right makes indigenous peoples stand out from other collective entities. This applies particularly to indigenous peoples’ rights over land and natural resources, and allegedly the Sámi Parliament is not “given opportunity to real consultations in all issues dealing with exploitation of natural resources in our territories”.²¹ This section will analyse land issues, while culture, participation and various forms of decolonization, as well as healing, will be analysed in subsequent sections.

UNDRIP explicitly recognizes the right to self-determination for indigenous peoples. First, in Article 3 specified as “freely determine their political status and freely pursue their economic, social and cultural development”. Second, in Article 4 specified as “the right to autonomy or self-government in matters relating to their internal and local affairs...”, including financing of these.²²

The human right to self-determination in joint Article 1(2) of the ICCPR and ICESCR (which was not included in UNDRIP Article 3), encompasses a right for all peoples to “freely dispose of their natural wealth and resources... In no case may a people be deprived of its own means of subsistence.”

It is reasonable to understand the term “In no case” as a prohibition. Rights relating to natural resources is recognized in Articles 10 and 25–32 of UNDRIP, but the term “shall not” – as a prohibition – is applied only in Article 10 (forced relocation) and 30 (military activities) of UNDRIP. The term “free, prior and

19 UN General Assembly, *supra* note 8.

20 UN EMRIP, *supra* note 17, paras. 71–73.

21 Former President of the Sámi Parliament, *supra* note 4. Even if this quote is from 2009, there is no evidence that there is a substantial change in the situation.

22 UN General Assembly, *supra* note 8.

informed consent” is applied in Articles 19, 28(1), 29(2) and 32(2) of UNDRIP, but consent does not mean a right to veto – even if political authorities should seriously reconsider its plans if a process for obtaining consent fails.²³

The TRC’s mandate includes to “propose measures for continued reconciliation”, as seen above. Whether these recommendations will include aspects of strengthened self-determination for Sámi – and whether possible recommendations will be accepted by Norwegian political authorities – is an open question. Based on the mandate it is likely that there will be recommendations relating to the social and cultural aspects of self-determination, not so much the political autonomy aspects of self-determination. As concerns the Kven/Norwegian Finns, they should expect too much in this realm, but it is relevant than the majority in the Norwegian Parliament proposed the name Justice Commission in 2017,²⁴ seeing justice as integral to reconciliation. Hence, it would be surprising if the TRC process ends without any form of apology by the PM and/or King, and some new priorities to strengthen the legal standing of Kven/Norwegian Finns.

4 Participation in Political Life

As seen above, the Sámi Parliament was established in 1989, and one approach by the UN EMRIP is the emphasis on full and effective participation. The term “full and effective participation” is found in only one international binding instrument: the UN Convention on the Rights of Persons with Disabilities (182 state parties).²⁵ A better understanding of both of these terms is needed.

The term full participation is not clarified by any UN bodies, but is defined as an affirmative value focused on creating settings that enable people – whatever their identities, backgrounds, or institutional positions – to thrive, realize their capabilities, engage meaningfully in institutional life, and enable others to do the same.²⁶

23 Haugen, *supra* note 15.

24 Control and Constitution Committee of the Norwegian Parliament, *Innst. 493 S (2016–2017)*, p. 5.

25 Preambular para. 5, Article 1 (purpose), Article 3(c) (principles) and 29(a) and 29(b) (political and public life).

26 S. Sturm, ‘Full Participation and the Arts, Culture, and Humanities’, 15 *Diversity and Democracy* (2012), <<https://www.aacu.org/publications-research/periodicals/full-participation-and-arts-culture-and-humanities>>, visited 18 June 2021.

The emphasis is on how public bodies can create these enabling settings where everyone can participate. This is emphasised by the Advisory Committee on the European Framework Convention for the Protection of National Minorities: “A genuinely democratic society is an inclusive society.”²⁷

The Convention specifying the mandate for this Advisory Committee applies the term effective participation in Article 15. Norway’s fifth report to the Advisory Committee in 2020 stood out from the previous reports:

This is the first time Norway reports on Sami affairs under the Framework Convention. It is being done at the request of the Sámediggi [Sámi Parliament] and implies no changes to the rights of the Sami as an indigenous people or to the follow-up of Norway’s obligations towards indigenous peoples, and implies no changes to the rights of the Sami as an indigenous people or to the follow-up of Norway’s obligations towards indigenous peoples.²⁸

The term effective is commonly applied to describe the most appropriate means to reach a goal. Based on this understanding effective participation must be understood as encompassing a decision-making process where one’s concerns and interests are at least taken adequately into account, even if the final decision does not correspond fully to these concerns and interests. In this context it is also relevant that Article 2 of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN Minorities Declaration) specifies that “persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.”²⁹ The term persons must be understood to mean everyone over a given age, where age limits for cultural and religious life tend to be lower than age limits for voting and being eligible for representation in ordinary political bodies.

What are the implications of requiring that the participation shall be both full and effective? The full participation definition above – “creating settings that enable people...” – does not specify who is responsible for creating these settings. In a UN Food and Agricultural Organization (FAO) Guide on free, prior

²⁷ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Twelfth activity report covering the period 1 June 2018 to 31 May 2020* (Strasbourg 2020) p. 12; see also p. 14 on participation to be “meaningful” and p. 15: ‘Only rarely is legislation on effective participation evaluated as to whether it has the desired effect.’

²⁸ Norway, *The Framework Convention for the Protection of National Minorities Fifth Periodic Report* (2020) p. 5.

²⁹ UN General Assembly, *A/RES/47/135* (1992).

and informed consent (FPIC), the term “enabled” is applied so that it is obvious that it is the external actor that is responsible for creating these settings and that indigenous peoples as collectives are the subjects, not individuals.³⁰

Customary decision-making among some indigenous communities might privilege elders and males to the detriment of younger persons and women – which is implicitly acknowledged in Article 8(2) of ILO Convention 169 on indigenous peoples (ILO 169) and Article 34 of UNDRIP.³¹ This might imply that not everyone belonging to indigenous peoples are equally allowed to participate fully and effectively. While the UN Minorities Convention specifies *persons* as rights holders, UNDRIP primarily specifies *peoples* as rights holders – but *individuals* are recognized as rights holders in 11 of the articles.³²

As seen above, in addition to the three elements of mandate, the TRC is to set up a systematic and close partnership with affected communities and organisations. The term affected communities (“berørte miljøer”)³³ must be understood to encompass both place-based and non-place-based communities. The Ministry responsible for indigenous and national minorities in Norway specifies that it primarily relates to organisations.³⁴ As it is important to reach also those who are not members of any organisations, the TRC invites to open meetings in various places in Norwegian Sápmi. Additionally, the homepage of the TRC has “share your story” in the main menu.³⁵ This enables “full” participation

30 FAO, *Free Prior and Informed Consent. An indigenous peoples' right and a good practice for local communities* (2016) p. 46, <<http://www.fao.org/3/I6190E/i6190e.pdf>>, visited 18 June 2021; the phrase reads: “Have the indigenous communities involved been enabled...?” Note also that the FAO Guide takes as a premise that it is the project manager that is responsible for facilitating the process that is intended to lead to FPIC, and that “it is important to involve the authorities...” only in “situation where state institutions do not recognise FPIC”; *ibid.*, p. 17. FAO has been one of the most active promoters of human rights principles, that are to be observed in the decision-making process; see FAO, *A right to food based approach to enhance the contribution of non-wood forest products to food security and nutrition; Background paper 3 for the International Conference on Forests for Food Security and Nutrition* (2013); <<http://www.fao.org/forestry/82456/en>>, visited 18 June 2021; identifying at p 3 seven human rights principles: participation, accountability, non-discrimination, transparency, human dignity, empowerment, and the rule of law.

31 The central requirement of ILO 169 Article 8(2) is “not incompatible with fundamental rights...”; the central requirement of UNDRIP, *supra* note 8, Article 34 is “in accordance with international human rights standards.”

32 UN General Assembly, *supra* note 8, Articles 1–2, 6–9, 14, 17, 24, 33 and 44.

33 Norwegian Parliament, *supra* note 1, p. 4.

34 Norwegian Government, *supra* note 1, p. 56; it applies the term “democratic rules” when justifying this prioritization of regular dialogue with organisations.

35 <https://uit.no/kommissjonen/deldinhistorie>.

in the proceedings of the TRC, but not necessarily “effective” participation, as it is difficult to foresee the actual impact of this participation.

5 Participation in Cultural Life

There are obvious mutual links between indigenous peoples’ cultural life and unspoiled natural resources, as recognized in Article 27 of the ICCPR as applied by the UN Human Rights Committee. The same understanding is a central premise in most of the reports from Norwegian public commissions addressing Sámi rights. This section, however, will emphasize three other dimensions of indigenous peoples’ cultural expressions: (i) their spiritual expressions, including spiritualities relating to their lands; (ii) the decolonization of education systems in indigenous areas; (iii) recognition of indigenous juridical systems and customary laws.³⁶ Each of these will be analysed below. Another aspect of culture identified by UN EMRIP is healing, which will be brought up in a subsequent section on human dignity.

No simple story can accurately be told on the encounter between the Sámi and Kven/Norwegian Finn population and the Lutheran Church of Norway, which formally was a state church until 2016. While Church of Norway was a tool in the forced assimilation of the Sámi and Kven/Norwegian Finns,³⁷ there were also priests who were strong promoters that priest serving in relevant congregations should be required to have Sámi and encouraged to have Kven language skills, as specified in a 1848 regulation.³⁸ Church of Norway was strongly

36 UN EMRIP, *supra* note 17, para. 14, UN EMRIP regard this as “an essential part...” of 3R.

37 Note also that, the Minister for Education 1891–1893 and 1898–1903, Wilhelm A. Wexelsen – who introduced the last and strictest language instruction (1898, gradually softened and repealed in 1963) that prohibited teaching in Sámi and Kven in schools – became bishop of Nidaros in 1905; for further details, see Minde, *supra* note 2.

38 For a background on the regulation of 24 February 1848, see Sámi Church Council in Church of Norway, *Strategiplan for samisk kirkeliv* (2011) p. 39; <https://kirken.no/globalassets/kirken.no/migrering/km_8_1_2_11_forslag_strategiplan_for-samisk_kirkeliv_til-km2011.pdf>, visited 18 June 2021; for additional stories on two priests, Hvoslef and Stockfleth, see H. M. Haugen, ‘Fra statskonform kirke til sosial omformer? Sju teser om Den norske kirkes rolle fra 1800-tallet til i dag’, 4:2 *Teologisk Tidsskrift* (2015) pp. 164–186, 172–174; for an analysis of how the bishop of Hålogaland (1893–1909) opposed the harsh policies to promote Norwegian language – because of the harmful effect on the Sámi and Kven’s religious life, see H. Punsvik Øygard, ‘...Guds Ord meddelt på Modersmaalet’ *Biskop Peter W. K. Bøckman og statens fornorkningspolitikk overfor den samiske befolkningen i Finnmark* [“...Word of God proclaimed in the mother tongue” Bishop Peter W. K. Bøckman and the state’s Norwegianization policy towards the Sámi population in Finnmark] *master thesis* (MF – Norwegian School of Theology, Oslo, 2015).

opposed to expressions of Sámi spirituality, such as the drum (“runebomme”) and song (“joik”), both associated with shamanism and sorcery.³⁹ The Church of Norway’s treatment of the Kven/Norwegian Finns has been characterized in an editorial as “ignored”.⁴⁰ Sámi religion was not the only religion that was suppressed,⁴¹ and the first law that formally accepted non-Lutheran faith communities was adopted in 1845.

Turning to education, the Norwegianization policies were in force for more than a century. Starting in 1851 ‘Finnfondet’ gave higher salaries to teachers whose Norwegian instructions gave results, and a language instruction to teachers was issued four times (1862, 1870, 1880 og 1898), gradually stricter. The 1898 instructions prohibited Sámi and Kven language in school – with the exception of what was strictly required due to the circumstances. The prohibitions were gradually softened in the years leading up to the formal repeal in 1963. Use of other languages than Norwegian was also prohibited in the short breaks during school days. The consequence was as intended, at least in areas that were not dominated by Sámi speaking persons: people who do not speak a language tend to forget it. Losing a language will also bring changes in one’s identity. The schools will be further analysed in the section on family life below.

If the historical accounts of religion and education are challenging to present concisely and precisely, this also applies to laws affecting other aspects of Sámi life and the respect for Sámi customary law. In addition to the Minerals Act – which the Sámi Parliament opposes,⁴² note that its former Director is part of the Evaluation Commission reviewing the Act⁴³ – there are other acts

39 *Ibid.*, p. 38; for an account of a trial against a Sámi man who had used drum, decorated with both the devil and virgin Mary, requiring theological insight to decide the case, see Rune Blix Hagen, *En runebomme på rettens bord* (2020), <<https://www.norgeshistorie.no/enevelde/1238-en-runebomme-pa-rettens-bord.html>>, visited 18 June 2021; Svein Lund, *Kristendommen og fornorskinga av samane* (2014), <<http://sveinlund.info/sami/kristendommen.htm>>, visited 18 June 2021.

40 *Vårt Land*, ‘En glemte minoritet’ (editorial), 17 February 2021, p. 2; the editorial gives two recent examples of negative decisions by Church of Norway; the same issue has an interview with the chairperson of the Norske kvener’s Church of Norway, also using the term ignored (“forbigått”).

41 Ekeløve-Slydal, *supra* note 2, pp. 570–571 acknowledges “versions of Christianity” as important corrections; the most influential and enduring is the conservative form of Christianity that can be traced to Lars Levi Læstadius, whose dissertation *Crapula mundi* (1843) presents a comprehensive criticism of the Norwegian and Swedish churches.

42 Former President of the Sámi Parliament, *supra* note 4.

43 One element in the mandate is to review the relationship between Norwegian international law obligations towards the Sámi and the mechanisms and provisions of the Minerals Act; see Norwegian Ministry of Trade, Industry and Fisheries, *Mandat for evaluering av mineralloven* (2020), <<https://www.regjeringen.no/globalassets/departementene/nfd/dokumenter/mandat/mandat-for-evaluering-av-mineralloven.pdf>>, visited 17 August 2021.

that affect Sámi traditional activities. Fishing will be used as an illustration, notwithstanding the fact that reindeer herding is the activity mostly associated with the Sámi. A specific proposal for a new law to protect the fishing rights of *all* living in Norway's northernmost county were not brought further by the Norwegian Government,⁴⁴ but there were amendments in three existing laws to provide for certain rights for local and Sámi people.⁴⁵ However, there are still challenges. The Office of the Auditor General has issued a highly critical report on Norwegian fishing policies, finding that profits and concentration has increased, while employment and access to fishing quotas has decreased, and consequences of new policies are inadequately assessed.⁴⁶ The responsible Minister acknowledged the need to consider increased owner concentration, the quota system and the regulation of the sizes of boats.⁴⁷

Of these three aspects of cultural life it is education that is most explicitly related to the TRC's mandate on Norwegianization. The experiences with suppression of Kven/Norwegian Finns and Sámi are relatively similar, but due to the larger number of (North) Sámi speaking persons, the recovery of (North) Sámi language in schools has been easier than for the Kven language. Suppression of the Sámi religious heritage and ignorance of the Kven/Norwegian Finns is also a part of Norwegian policies, first when there was a religious monopoly, and then when Church of Norway contributed to upholding Norwegian nationalism and monoculturalism. Use of Sámi was promoted by the Norwegian "Finn Mission", later "Sami Mission" and respect for diversity has characterized the Church of Norway in recent years. There are less obvious links between various forms of economic activity and the TRC's mandate, but the impact of Norwegianization policy today should encompass those policies that impact negatively on the upholding of the Sámi culture and way of living.

44 *NOU 2008: 5 Retten til fiske i havet utenfor Finnmark*, p. 23, repeating the mandate (extract) as "investigate Sámi and others' right to fish in the sea outside Finnmark. The committee will investigate whether there is a legal basis for establishing special rights to fish in the sea outside Finnmark." While Sámi language was recognized, the rights proposed in the 'finnmarksfiskelev' were to be exercised on a non-ethnic basis.

45 Norwegian Government, *Prop. 70 L (2011–2012)* (2012); all the changes proposed by the Government were adopted; see Norwegian Parliament, *Innst. 336 L 2011–2012* (2012); for the vote see <<https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/Voteringsoversikt/?p=52712&dnid=1>>, visited 17 August 2021.

46 Office of the Auditor General, *Undersøkelse av kvotesystemet i kyst- og havfisket* (2018) ch 1; <<https://www.riksrevisjonen.no/undersokelse-av-kvotesystemet-i-kyst-og-havfisket/dokument-3/hovedfunn>>, visited 18 June 2021.

47 Minister of Fisheries and Seafood, *Departementets oppfølging* (2018); <<https://www.riksrevisjonen.no/undersokelse-av-kvotesystemet-i-kyst-og-havfisket/dokument-3/departementets-oppfolging>>, visited 17 August 2021.

This includes both the reindeer herding and the problems to make a living as a fisherman with a relatively small boat. If an adequate standard of living is impossible in traditional sectors among the Sámi, due to various permissions and restrictions, this will make it more difficult to uphold a Sámi culture.

6 Family Life

Boarding schools were built for Sámi and Kven/Norwegian Finn pupils from around 1900, as an element in implementing the language instruction, and in the words of Minde “aiming at isolating the pupils from their original environments[.]”⁴⁸ Approximately 35 per cent of all pupils in Finnmark lived much of the year in the 50 boarding schools.⁴⁹ All the primary schools were public, but one secondary school was established by the “Finn Mission” in 1936, rebuilt after being destroyed in 1944, and reestablished as the Sámi Folk High School from 1949, being relatively open to the use of Sámi language.⁵⁰

In the first half of the 20th century various forms of punishment in class was normal in all Norwegian schools for non-compliance with rules – including violating the prohibition against speaking Sámi. There are, however, no in-depth studies on other forms of mistreatment at the boarding schools for Sámi and Kven/Norwegian Finn children. If such mistreatment had taken place on a systematic scale, this would have been known by the public. However, while children at the Canadian residential schools were victims of “unspeakable abuse and mistreatment”,⁵¹ is not the presence or non-presence of mistreatment that has been central in the two largest truth and reconciliation processes on treatment of indigenous children. Rather, the mere existence and policies behind such boarding schools were central in the truth and reconciliation commissions in Australia and Canada.⁵² In both countries, boarding schools

48 Minde, *supra* note 2, p. 15.

49 Ekeløve-Slydal, *supra* note 2, p. 544.

50 S. Lund, “Folkehøgskolen og samane, in E. Boine, S. Broch Johansen, S. Lund and S. Rasmussen (eds.), *Samisk skolehistorie 6* (Davvi Girji, Karasjok NO, 2013).

51 Truth and Reconciliation Commission of Canada, *supra* note 5; an earlier version included an annex, with presentations, including by Sister Marie Zarowny on behalf of Congregations of Women Religious involved in the Indian Residential Schools of Canada, from where this quote is taken.

52 The Australian Human Rights and Equal Opportunities Commission, *Bringing them Home Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997), <https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>, visited 18 June 2021, asserting on 239 that “raising them separately from and ignorant of their culture and people could properly

or residential schools were identified as a central element in a century-long policy of assimilation.

When the boarding schools were in operation, the Convention on the Rights of the Child (CRC; 196 state parties) had not been adopted and ratified by Norway, but the European Convention on Human Rights and Fundamental Freedoms (ECHR) was ratified by Norway in 1953.⁵³ The separation of families was more systematic and widespread for children in Romani/Tater families. There was no *systematic* permanent separation or transfer of custody from Sámi or Kven/Norwegian Finn families, but the child welfare service has always operated with transfer of custody as an option.

As some Sámi families were nomadic, a stable school environment might not have been possible for some children without the boarding schools. This does not mean that the policies behind and the practices at the boarding schools were seeking to uphold the best interests of the child, in light of present understandings.⁵⁴ Other Sámi families have settled, and lived adjacent to the boarding schools. Despite this, children were installed at the boarding schools from first grade. The boarding schools are referred to eight times in the document presenting the mandate for the TRC.⁵⁵

It is evident that the boarding schools were a tool for Norwegianization of Sámi and Kven/Norwegian Finn children. As Norway was bound by the ECHR from 1953, policies to keep children separate from their parents during parts of the year might raise serious concerns under ECHR Article 8(1) on respect for private and family life. While stronger protection for minority children is

be termed 'genocidal'..."; the phrase "cease to exist as distinct legal, social, cultural, religious, and racial entities..." is applied by the Truth and Reconciliation Commission of Canada, *supra* note 5, p. 1.

53 Neither in 1953 nor during subsequent parliamentary debates on allowing for individual complaints to the European Human Rights Commission in 1955 and the European Court of Human Rights in 1964, were there discussions about whether Norway's practice regarding separating children from their families was in compliance with Article 8 on the right to family and private life; see A. Hareide, *Norge og Den europeiske menneskerettighetsdomstolen Veien fra motstand til tilslutning, 1948–1964* [Norway and the European Court of Human Rights The road from resistance to support, 1948–1964] *master thesis* (University of Oslo 2016).

54 For specific recommendations on – but no outright prohibition of – boarding schools for children of nomadic people, see the UN Committee on the Rights of the Child, Concluding observations on Mongolia's fifth report, CRC/C/MNG/CO/5 (2017) para. 17(c) and 38(c). The best interest of the child is one of four principles in the UN Convention on the Rights of the Child – in addition to non-discrimination, right to survival and development, and respecting the views of the child.

55 Norwegian Parliament, *supra* note 1.

provided by the CRC,⁵⁶ the CRC is not, however, applicable for practices occurring before Norway became a party to the CRC. Even if the mandate does not specify if or how human rights considerations are to be reflected in the TRC's report, the policies behind the boarding schools will have to be addressed in the TRC's work.

It is not evident that family unity was directly affected by the restrictions on border crossing. In certain periods the crossing of borders was considerably more difficult, particularly in the 1930s during Soviet times, but this was due to Soviet policies.⁵⁷ This seems as a less topical concern for the TRC.

7 Private Life

The impacts of telling stories to the TRC and possibly receiving some form of reparations can for most victims be very positive, but within any minority or indigenous people there might be disagreements on strategies. Within the Sámi people, tensions exist between a minority who want to be regarded as Norwegians (and hence not Sámi) and a majority who have no negative perceptions of being a Sámi. One explanation is that older persons having been subjected to forced assimilation are so Norwegianized that this for some has resulted in developing a sense of shame of being Sámi. This applies to a lesser extent to the younger generations.

The fact that various people have various strategies are actually more recognized in conventions on national minorities than in conventions on indigenous peoples. The European Framework Convention for the Protection of National Minorities specifies in Article 3(1):

Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

A similar provision is not found in the UNDRIP or other instruments applying to indigenous peoples. UNDRIP Article 1(2) affirms this freedom to self-identify

56 CRC Article 30 recognizes the right of members of minorities to enjoy their culture, practice their religion and use their language, while CRC Article 8 recognizes the right to preserve one's identity and family relations.

57 M. Jentoft, *De som dro østover. Kola-nordmennenes historie* [Those who went east. The history of the Kola Norwegians] (Gyldendal, Oslo, 2001).

– but only on a collective level. An explanation for this might be that the collective dimension is stronger among indigenous peoples as compared to national minorities.

When analysing how the right to private life can be ensured, the experiences from a previous public commission on policies towards one of the other national minorities: the Romani/Tater. This previous Public commission had as an unintended effect heightened tensions within the Romani/Tater national minority.⁵⁸ One of the measures in the preparation of its well-researched report causing considerable resistance among 300 (non-organised) Romani/Tater persons was the fact that “their and their family’s history was retrieved from the archives without being informed” and “that the committee has seen sensitive information about individuals in archives, without their or their families’ consent.”⁵⁹ The number of persons for whom material from archives was made available is not explicitly revealed in the previous public commission’s report. The previous public commission had access to the Client archive of the previous organisation that worked with the Romani/Tater with a mandate from and annual transfers from Norwegian authorities,⁶⁰ and to medical archives.⁶¹

The TRC made in 2019 a request to the Norwegian Parliament. As a result, in 2020, the Norwegian Parliament unanimously adopted a temporary Act, that in Section 3 reads (extract): “The Commission can process personal data necessary for the purpose of the Commission’s work without the consent of the persons to whom the data relates...”⁶² The Parliament’s Committee preparing

58 *NOU 2015: 7. Assimilering og motstand – Norsk politikk overfor taterne/romanifolket fra 1850 til i dag* [Assimilation and resistance – Norwegian policies towards the Romani people/Tater from 1850 to today]. For an interesting analysis linking the public commission on the Romani/Tater policies and the TRC is done by the rector of the Sámi University of Applied Science, who was also member of the first commission; see L. Susanne Vars, *From Apology to Utopia? A Sámi perspective on recognition, reparations and reconciliation*, presentation at workshop *Enduring Injustices and Truth and Reconciliation Commissions for Indigenous Peoples*, 21-22.10.2019, <<https://cloud.swivl.com/v/dff4a5ce121f2a03a5921c64bafaa3d1>>, visited 18 June 2021.

59 Norwegian Government, *supra* note 1, p. 54; see also p. 59 (author’s translations).

60 *NOU 2015: 7. supra* note 58, p. 14; the Public commission acknowledges that the “work required extensive insight into archives with sensitive information. A methodical challenge for the Public commission’s work has been a balance between considerations of privacy and the need for access to archives.”

61 *Ibid.*, p. 62; specifically patient files from a hospital for psychiatric treatment and the so-called sterilization archive. Among the organisations for Romani/Tater, one of their first demands in the 1990s was access to the archives, see *ibid.*, p. 81; subsequently there was a Research Council Norway funding (1995–2000) for research particularly on child welfare services and sterilization targeting the Romani/Tater, see *ibid.*, p. 10.

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the Act made a rather short assessment of the impacts on the right respect for private and family life, concluding that proportionality implied that the TRC's mandate and societal relevance justify interferences in the private and family life.⁶³ It was specified in the letter from the TRC that the National Archives of Norway were prepared to assist in the TRC's work, and a general permission to access the archives would ease the work.

There are no references to the strong opposition by the (unorganised) Romani/Tater persons during and after the previous public commission regarding the unwarranted access to personal information in various archives. At least the National Archives of Norway would know about this. It would also be expected that some of the Parliamentarians had insight into this opposition. Moreover, no media attention was given and no opposition to the proposal was expressed in the month from the proposal was put forward by the parliamentary committee on 4 February until the second decision was made on 3 March 2020. The first time that the law was mentioned in the local media was one week after the law was adopted,⁶⁴ and it took more than two months before the law could be read at Lovdata.no.⁶⁵

The Romani/Tater tensions are higher than the tensions within both Sámi and Kven/Norwegian Finns. Moreover, the stigmatization that the Romani/Tater persons were and are exposed to is more encompassing than what Sámi and Kven/Norwegian Finns at least *are* exposed to.⁶⁶ Hence, a similar opposition is not likely.

The important issue, in accordance with the article's title, is the human rights compatibility of the Act. It might be correct that general access to the archives for TRC members and secretariat – with a duty of confidentiality for 100 years, in accordance with Section 4 of the Act – can be justified by the TRC's mandate and societal relevance. However, a proportionality assessment shall always include an assessment of whether there are other less interfering measures that can achieve the specified goal in a similarly effective manner. An

63 Innst. 144 L (2019–2020) *Innstilling til Stortinget fra kontroll- og konstitusjonskomiteen* [Recommendation on the Act on access to information, etc. for the Commission to investigate Norwegianization policy and injustice against Sámi and Kvens/Norwegian Finns], p. 6.

64 NRK, 'Ny særlov' [New special act] (10 March 2020); <<https://www.nrk.no/tromsogfinnmark/ny-saerlov-1.14936180>>, visited 18 June 2021

65 For the Act of 12 May 2020, see: <<https://lovdata.no/dokument/NL/lov/2020-05-12-41?q=sannhets-%20og%20forsoningskommisjonen>>, visited 18 June 2021.

66 For former stigmatizations, see L. T. Fredriksen, 'Vi serverer ikke for lapperne' ['We do not serve the Lapps', this was said in Östersund, Sweden], *Khrono* (1 December 2020), <<https://khrono.no/vi-serverer-ikke-for-lapperne/535879>>, visited 18 June 2021.

adequate proportionality test was not done by the Parliamentary Committee. Alternative data collection could be to rely on previous research, initiate new research, engage in conversations and encouraging persons to present documents proving Norwegianization.

An alternative approach is specified in Article 87(4) of Rome Statute of the International Criminal Court (ICC; 123 state parties), which requires the ICC to take measures for the “protection of information, as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families.” ICC’s request of cooperation with specific states is specified in Article 87(2) and 87(3) including that the ICC shall provide “any documents supporting the request.” It is these documents that might contain information that must be protected. How the ICC got access to these documents is not specified. The similarities between the ICC and the TRC are that both are mandated to investigate wrongs committed, but there are several differences between them.

8 Human Dignity

Human dignity is a central characteristics of all human being as members of the human family, irrespective of their physical, intellectual or moral abilities. While autonomy is more commonly in use than dignity in the context of codes of ethics of various professions, not everyone is able to act autonomously. Dignity and autonomy are not in conflict in any manner, but dignity is more encompassing, as it includes also those without abilities to conduct ordinary task, including verbal expressions.

Moreover, dignity has a more explicit embedding in human rights. First, because human rights are derived from human dignity, as specified in the preambles to the ICCPR and the ICESCR. Second, because one of the purposes of education, as specified in Article 13(1) of the ICESCR is to promote respect for everyone’s dignity. Third, because there are mutually reinforcing relationships between respect for dignity and respect for diversity, as recognized in the UN Educational, Scientific and Cultural Organization (UNESCO)’s Universal Declaration on Cultural Diversity, adopted in 2001, ratified by 148 states and the European Union. Article 4 reads:

The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cul-

tural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

The last sentence brings an important correction to the notion that cultures must always be respected. The term “no one” implies that persons cannot legitimate oppressive practices based on allegations that this is part of their culture. There are, however, strong arguments for upholding protection for minority children’s identity, as specified in CRC Article 8, 30 and 29(1)(c), the latter when specifying the aims of education.

Various states recognize human dignity differently.⁶⁷ Notwithstanding these differences, dignity is an inviolable and inherent characteristic of all human beings, but can nevertheless be attacked and violated by inhuman treatment. Acknowledging that wrong treatment – whether it is inhuman or not – would need some form of healing is explicitly recognized by the UN EMRIP. It specifies that any 3R approach must take into account indigenous peoples’ experiences in identifying and healing injuries.⁶⁸ As story telling is so important among Sámi and Kven/Norwegian Finns, it is crucial that there are safe spaces for story telling, with the TRC members and others.

The Chair of the TRC acknowledges that past “Norwegianization can be a traumatic, painful or shameful process.”⁶⁹ Reported psychological problems are higher among Sámi persons, while persons with a Kven/Norwegian Finn background does not differ much from the general population in Nordland, Troms and Finnmark.⁷⁰ Norwegianization has in periods been so comprehensive that many – at least in areas where Sámi and Kven/Norwegian Finns are few – have denied their origin. The TRC Chair informs that the TRC has

67 See Christopher McCrudden, ‘Human Dignity and Judicial Interpretation of Human Rights’, 19:4 *European Journal of International Law* (2008) pp. 655–724, doi: 10.1093/ejil/chn043. On p. 681, he highlights two approaches: human dignity as an enforceable human right; or as a principle.

68 UN EMRIP, *supra* note 17, para. 72.

69 D. Høybråten, ‘Sannhets- og forsoningskommisjonens arbeid mellom tillit og taushet’, *Khrono* (8 May 2020), <<https://khrono.no/sannhets--og-forsoningskommisjonens-arbeid-mellom-tillit-og-taushet/486825>>, visited 18 June 2021.

70 Marita Melhus og Ann Ragnhild Broderstad, *Folkehelseundersøkelsen i Troms og Finnmark. Tilleggsrapport om samisk og kvensk/norskfinsk befolkning* (Senter for samisk helseforskning, UiT Norges arktiske universitet, Tromsø, 2020) p. 59; Marita Melhus og Ann Ragnhild Broderstad, *Folkehelseundersøkelsen i Nordland. Tilleggsrapport om samisk og kvensk/norskfinsk befolkning* (Senter for samisk helseforskning, UiT Norges arktiske universitet, Tromsø, 2020) p. 59. Women among Kven/Norwegian Finns report higher psychological problems than the general population.

a cooperation agreement with the Sami National Center for Mental Health (SANKS), being available for crisis and support interviews.⁷¹

For some, having their experiences acknowledged might itself be a healing experience. Other will never be able to overcome the mental injuries created by the various policies of Norwegianization.

9 Tensions Relating to the Government's White Paper on National Minorities

Approximately half-way into the term of the TRC, the Government submitted a White Paper on Norway's five national minorities,⁷² which generated certain tensions, but the White Paper was well received by the Parliament. The criticism was that the Government ignored the proposal from an evaluation report on administrative strengthening of the unit responsible for Sámi and national minorities policies.⁷³ Despite this criticism, this network of *most* organisations for national minorities did not propose that the White Paper should be rejected. The Norwegian National Institution for Human Rights emphasized strengthened competence on the regional and local levels.⁷⁴

However, a new organisation, termed Skogfinneforeningen, established in the first quarter of 2021, presented a demand that the Norwegian Parliament rejects the Government's White Paper.⁷⁵ This demand was not listed among the formal proposals received by the Committee for Local Government and Public Administration of the Norwegian Parliament. Hence, there are currently two organisations for the smallest of the minorities covered by the TRC, the Forest Finns, living in the southeast of Norway.

The Parliament did not propose any administrative strengthening. It did, however, affirm three objectives: (i) expressing and developing *languages*

⁷¹ Hoybråten, *supra* note 69.

⁷² Norwegian Government, *supra* note 1.

⁷³ Nasjonale Minoriteter i Norge, *Hørings svar til Stortingsmelding om Nasjonale minoriteter – Meld. St. 12 (2020–2021)* [Response to White Paper to the Storting on National Minorities] (2021), <<https://www.stortinget.no/no/Hva-skjer-pa-Stortinget/Horing/visning-av-skriftlig-innspill/?dnid=15157&h=10004247>>, visited 18 June 2021.

⁷⁴ Norwegian National Institution for Human Rights, *Innspill til Kommunal- og forvaltningskomiteen om Meld. St. 12 (2020–2021)* [Proposal to the Parliament's Committee on Local Government and Public Administration on the White Paper on National Minorities] (2021), <https://www.nhri.no/wp-content/uploads/2021/02/NIMs-horingsuttalelse-St.meld_12.pdf>, visited 17 August 2021.

⁷⁵ Bjerke Rune H. and Wenche Blomberg, 'Tonedøvt, Robertsen' [Arrogant, Robertsen], *Klassekampen* (19 March 19, 2021) p. 22.

and cultures, acknowledging a proposed language act that recognizes Kven, Romani and Romanes as official languages in Norway;⁷⁶ (ii) *participation* in public decision-making, with a reference to Target 16.7 under the Sustainable Development Goals ('ensure responsive, inclusive, participatory and representative decision-making at all levels'); and (iii) provide adequate and equal *public services*, requiring enhanced knowledge on national minorities and cultural diversity among public employees.⁷⁷

10 Concluding Discussion

To what extent can the difference in political influence in Norway between the North Sámi and the Kven/Norwegian Finns be explained by the four elements identified⁷⁸ – status as peoples, cohesive movement, historical subordination and ecological heritage – identified in the section highlighting the uniqueness of the global indigenous movement?

The first element provides an obvious distinction: Sámi are recognised as an indigenous people, while Kven/Norwegian Finns are not. The tensions between the Sámi and Kven are partly explained by the fact that the Kven/Norwegian Finns have failed to achieve a recognition as ancient inhabitants of Norway.⁷⁹

What about the second element: does Norway treat the Sámi more preferably not merely due to different international obligations, but also due to different international awareness and international norms being used for mobilisation?⁸⁰ There are also tensions among the North Sámi – regarding attachment to Norwegian or Sámi language and identity; there are also organisations for Lule Sámi and South Sámi interests, but Sámi consider themselves as one people. Hence, the uniting force among Sámi people is strong – also across state boundaries – and the appearance of the Sámi representatives in international forums gives the impression of a strong and united indigenous people.

76 Norwegian Government, *Prop. 108 (2020–2021) Lov om språk* [Language Act] that will enter into force January 2022.

77 Committee for Local Government and Public Administration of the Norwegian Parliament, *Innst. 324 S (2020–2021) Innstilling fra kommunal- og forvaltningskomiteen om Nasjonale minoriteter i Norge – En helhetlig politikk Meld. St. 12 (2020–2021)* [Recommendation on the White Paper: National minorities in Norway – A comprehensive policy]

78 Barelli, *supra* note 11.

79 Dervos, *supra* note 7.

80 Jodoin, *supra* note 9.

There are three relevant comparisons that can be made between Sámi and Kven/Norwegian Finns. First, even if particularly one of the Kven/Norwegian Finns organisations relates to an international body, the World Congress of Finno-Ugric Peoples,⁸¹ it is true that international human rights mobilisation characterises the North Sámi and not the Kven/ Norwegian Finns. Second, Kven/Norwegian Finns formed organisations much later than the Sámi, and the first Kven/Norwegian Finns organisation was formed as late as 1982.⁸²

Third, Norway wants to maintain an international reputation as a human right defender, and the political discussions on Sámi rights have been more substantial than the more narrow political discussions on rights for Kven/Norwegian Finns. Hence, it seems likely that it is the different self-organising efforts within Norway and the differences in international law obligations that explains the various influence of and policies regarding the Sámi and the Kven/Norwegian Finns. Neither influence from Sámi associations in Sweden, Finland or The Russian Federation, nor the global international indigenous movement can in themselves explain the relative stronger influence of Sámi in Norway.

The third and the fourth elements emphasises historical and ecological aspects, respectively. The various historical accounts are beyond the scope of this article, but the realities are that the Norwegianization policies in the relevant period as covered by the TRC's mandate (1800 until today) was relatively similar for the Sámi and Kven/Norwegian Finns, with some differences. For instance, in Church of Norway there was always a stronger emphasis on learning and or using Sámi languages as compared to the Kven language. Knowledge of the existence of the Kven/Norwegian Finns is lower than knowledge about the Sámi,⁸³ and it is likely that this also implies lower awareness about the Norwegianization policies that the Kven/Norwegian Finns were subject to. On the other hand, relevant decision makers should at least be expected to have basic knowledge of the Norwegianization measures targeting the Kven and the fact that the Kven/Norwegian Finns were in a subordinate situation historically.

Finally, the ecological element of Sámi traditional practices is subject to political tensions, between a political narrative about Sámi reindeer herding having led to overgrazing and a counter-narrative that political decisions by

81 Norwegian Government, *supra* note 1, p. 17. This organisation, which is not a member of the network Nasjonale Minoriteter i Norge, is on the home page renamed Kvensk Finsk Riksforbund; see <<https://kvenfinn.no>>, visited 18 June 2021, but the registered name is still Kvenlandsforbundet. Thanks to Birger Nesholen for this information.

82 *Ibid.*, pp. 16–17.

83 Norwegian Government, *supra* note 1, p. 43.

Norwegian authorities having been inappropriate.⁸⁴ As relevant decision makers emphasise the overgrazing narrative, it is not likely that the ecological heritage will have a strong argumentative force that explains the various political influence of the North Sámi and of the Kven/Norwegian Finns.

Hence, it is reasonable that it is the various status and derived rights resulting from the fact that the Sámi are widely recognized as indigenous peoples, unlike the Kven/Norwegian Finns, that explains the various influence. This various influence has led to tensions between the Sámi and some Kven/Norwegian Finns, as the latter perceive that the Sámi are privileged in various ways. This reflects the larger successes that indigenous peoples experience in their emancipation struggles, compared to national minorities. The core of indigenous peoples' mobilisation is about presenting relatively unified demands in relatively diverse contexts, and applying human rights.

The article has demonstrated that even if human rights were not emphasized when the TRC was established, human rights will give important directions to the TRC's work. Six distinct human rights have been analyzed: self-determination, participation in political life, participation in cultural life, family life, private life, and human dignity. How much human rights will appear in the final report is not given. The analysis has shown that human rights provides a normative basis for mobilisation, substantive values for inclusive decision-making, and specific guidance to ensure adequate quality of various aspects of the TRC's work. Hence, even if one shall be cautious in asserting that human rights can transform unjust structures, introducing human rights in reconciliation processes, including the TRC, has empowering and transformative potentials.

84 K. I. Johnsen and T. A. Benjaminsen, "The art of governing and everyday resistance: "rationalization" of Sámi reindeer husbandry in Norway since the 1970s", 34:1 *Acta Borealia. A Nordic Journal of Circumpolar Societies* (2017) pp. 1–25; see also T. A. Benjaminsen, I. M. Gaup and M. N. Sara (eds), *Samisk reindrif, norske myter* (Fagbokforlaget, Bergen, 2016).