



Thematic Report 2018

# Violence and Abuse in Sámi Communities



Norwegian National  
Human Rights Institution



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# Foreword

The Norwegian National Human Rights Institution (“NIM”) has a statutory mandate to “promote and protect human rights”.<sup>1</sup> This includes an obligation to “contribute to strengthening the implementation of human rights” in Norway,<sup>2</sup> and to speak out clearly if human rights are being violated. It also means that NIM should point out any deficiencies in legislation, policies or practices that increase the risk of human rights violations occurring in a variety of areas. In other words, a core part of our mandate is to assist in the prevention of human rights violations and to provide specialist advice on the effective implementation of human rights.<sup>3</sup>

Enhancing State authorities’ awareness of their human rights obligations in specific areas is a critical aspect of this work. By identifying strengths and deficiencies in the authorities’ efforts to meet these obligations, we can also shine a light on those areas where the State can do more to secure rights and freedoms to people within its jurisdiction.

In this report, we wish to clarify State authorities’ human rights obligations to prevent, combat and investigate violence and abuse where the person exposed to violence or abuse is Sámi. The report also examines the situation today to better

understand the challenges that prevent Sámi victims of violence from receiving adequate help and the measures implemented by Norwegian authorities to remedy this problem. We point out deficiencies in the State’s compliance with its obligation to secure the rights and freedoms of the people within its jurisdiction and make a number of recommendations for improvement.

With a view to building this report on a sound foundation, we have asked relevant stakeholders, such as Sámi organisations, research communities and governmental agencies working in the field, to offer input on how the State can improve its efforts to prevent violence and abuse.<sup>4</sup> We would like to extend our gratitude to all contributors.

Yours sincerely



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<sup>1</sup> Section 1 of the Act relating to the Norwegian National Human Rights Institution.

<sup>2</sup> Section 3 of the Act relating to the Norwegian National Human Rights Institution.

<sup>3</sup> See our strategy, where we have, inter alia, determined that NIM shall “influence and contribute to stronger protection of human rights,” p. 7 of the strategy.

<sup>4</sup> On 30 October 2017 NIM, in cooperation with the Ombudsman for Equality and Anti-discrimination and the Sámi Parliament’s governing council, organised a consultation meeting in Kautokeino about violence in close relations in Sámi communities with the objective of obtaining the views of Sámi organisations, individuals and public bodies on how Sámi persons exposed to violence in close relations can be offered adapted assistance from the police and other services. For more details on this meeting, please see Chapter 3.1.4. As part of the work on this report, we have also had dedicated meetings with relevant stakeholders, such as the Sámi Parliament and the Sámi Norwegian National Advisory Unit on Mental Health and Substance Use (which goes by the Norwegian acronym SANKS).

“Whenever violence is perpetrated against Sámi women, it is a violation of their individual human rights and opportunities for development. As long as violence occurs against men or women, it hinders the development of Sámi communities and our way of life. We simply cannot accept it.”

**Aili Keskitalo**, President of the Sámi Parliament

# Summary

The Indigenous Sámi people are more likely to experience violence and abuse than non-Indigenous Norwegians.<sup>5</sup> Research also indicates that police and support services lack special expertise in Sámi languages and culture, making it more difficult for them to protect people with a Sámi background.<sup>6</sup> Violence and abuse against Sámi people is a social problem and a serious human rights challenge in Norway.

This report analyses the State's human rights obligations to prevent, combat and investigate violence and abuse against Sámi people. The report also examines the situation today to better understand the challenges that prevent Sámi victims of violence from accessing support services and the measures implemented by Norwegian authorities to remedy this problem.

Human rights obligations apply to States, not individuals, and the State cannot prevent all acts of violence carried out by private persons. Nevertheless, States have human rights obligations to prevent, combat and investigate violence and abuse between individuals. These duties are often described as positive obligations; they do not require states to refrain from acting, but rather impose an obligation on them to act. Under these positive obligations, the police must protect people who are exposed to violence and arrange for effective investigations into any instances of

violence and abuse. The State must also ensure that support services implement preventative measures and responses that are appropriate and effective in protecting people from violence.

These positive obligations arise where State authorities knew or ought to have known that there was a real and immediate risk of violence or abuse. If this is the case, the relevant test is whether the authorities have taken all reasonable measures to prevent the risk from materialising.

The State itself may decide which measures to implement; but they must be evidence-based and afford practical and effective protection. In this regard, the State must adopt measures to raise awareness and disseminate information on violence and abuse, ensure that children are educated about their bodies, sexuality and boundary-setting, and that service providers have the knowledge needed to prevent and identify instances of violence and abuse. In essence, these obligations mean that the State must have an adequate system in place that is able to prevent, combat and investigate violence and abuse against individuals. In relation to Indigenous peoples, State authorities are also obligated to consult the representative bodies of the Sámi people prior to implementing any of the above-mentioned measures.

<sup>5</sup> More Sámi people than non-Sámi people report that they are exposed to violence, see Astrid M.A. Eriksen, *Breaking the silence – Interpersonal violence and health among Sámi and non-Sámi. A populationbased study in Mid- and Northern Norway*, pp. 47 and 49, University of Tromsø, June 2017.

<sup>6</sup> *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn*, NKVTS, report No. 2, 2017.



This Report seeks to examine the State's human rights obligations in a Sámi context, and how Norwegian authorities are meeting these obligations.

The State must ensure that those working in schools, child welfare services, health care provision and the police have cross-cultural competence in Sámi matters where necessary in order to prevent, combat and investigate violence and abuse against Sámi victims. Service providers in need of such competencies include teachers, child welfare officers, health workers, psychologists and police officers. NIM believes that there are clear indications that such expertise is currently lacking in many instances. As a result, State authorities are falling short of their human rights obligations to ensure adequate Sámi language and cultural competency in the provision of public services.

Where required, efforts to raise awareness and disseminate information must be adapted to the specific needs of Sámi people exposed to violence. In some cases, this may mean that information on violence and abuse, such as information about boundary-setting or where to seek help, should be provided in Sámi languages. Such information should also be specifically tailored to Sámi cultural and community contexts. NIM is of the view that the Norwegian State is not adequately meeting these obligations. Support services must be more visible and responsive to the needs of Sámi communities so that victims of violence know where to go. Information, resources and campaigns must also be provided in Sámi languages if they are to be effective.

Where required, children should be taught about their bodies, boundaries and sexuality in a school setting and via other, more informal platforms. Sámi children must also be given an opportunity to learn about these topics in their own language.

NIM believes that existing efforts to implement these obligations are insufficient.

The state must also adopt an evidence-based approach to addressing violence and abuse. This includes investing in data collection and research to ensure that policies and programs are fit for purpose. In particular, the State must have up-to-date information on violence and abuse against Sámi people, as well as proven strategies to protect this particular group. While NIM acknowledges that the State has an evidence-based approach to the problem, data and research is lacking in several key areas. In particular, there is a lack of research on the prevalence of violence and abuse, its causes and consequences, the significance of the Norwegian assimilation policy, and the effectiveness of awareness, prevention and response measures in the Sámi context. NIM believes that the State should fund new research to address these knowledge gaps as soon as possible to continue meeting its duty of care in this regard.

NIM believes that the 'Tysfjord cases' are an example of how several of the weaknesses mentioned above have led to the public support system failing Sámi victims of violence and abuse. In the Municipality of Tysfjord, gross neglect, violence and sexual abuse was committed against several individuals over many years without public authorities intervening. The Tysfjord cases are multifaceted and also include non-Sámi dimensions. However, the Sámi perspective is important in understanding how the State failed to protect victims, particularly where support services lacked expertise in Sámi language and culture. In addition, Sámi communication practices further exacerbated the consequences of the public services' failures in this regard.

NIM recognises the measures adopted by the authorities in the aftermath of the Tysfjord cases, but overall, we believe that efforts to safeguard the human rights of Sámi victims of violence and abuse have not been good enough. In some instances, the State has failed to meet its duty of care, especially where State authorities were aware of the dire situation faced by Sámi victims of violence. More research is also needed to understand the full extent of the problem, especially given the systemic nature of the issues raised in the Tysfjord cases.

NIM recommends that Norwegian authorities strengthen their efforts to prevent, combat and investigate violence and abuse against Sámi victims. In particular, we believe that a new action plan on violence and abuse in Sámi society would be a suitable measure to address the challenges described in this report. This plan could be included in an overarching action plan to address violence and abuse in Norway. There is currently no such plan in place, but one should be prepared as soon as possible.

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## Recommendations

- ▶ The authorities must strengthen their efforts to prevent, combat and investigate violence and abuse against Sámi victims. The authorities should prepare and implement an action plan against violence and abuse in Sámi communities, which should include the following measures:
    - The plan must include a commitment to fund more research on violence and abuse in Sámi communities. The research should be both quantitative and qualitative and cover issues such as the prevalence of violence and abuse, causal relationships, the effectiveness of awareness and education measures, the perpetrators of violence and culturally responsive support services for Sámi victims.
    - The plan must ensure that service providers have the necessary expertise in Sámi language, culture and traditions to enable them to prevent, combat and investigate violence and abuse against Sámi victims.
    - The plan must ensure that adequate information and teaching materials are developed in Sámi languages for use in schools to ensure that children are educated about boundaries, violence and abuse. Sámi children and youth must be involved in this work.
    - The plan must provide for awareness and information campaigns on violence and abuse in Sámi communities that address linguistic and cultural barriers.
    - The plan must be grounded in the Sámi community and be developed in consultation with Sámi people, Sámi organisations and the Sámi Parliament.
  - The plan must be in line with and contribute to the implementation of Norway's human rights obligations, including relevant provisions of the UN Declaration on the Rights of Indigenous Peoples. Recommendations from the UN's three Indigenous mechanisms should also be considered when various measures are implemented, including relevant proposals that aim to strengthen and streamline the international monitoring of the rights of Indigenous women and girls.
  - The plan must be supported by sufficient financial resources and binding deadlines.
  - ▶ The authorities must follow up the Tysfjord cases, with a particular emphasis on the following measures:
    - The authorities must ensure that sufficient resources are still available to enable culturally sensitive preventative measures in the Municipality of Tysfjord, as well as follow-up with particular people at risk of abuse.
    - The authorities should, on their own initiative, review the Tysfjord cases at the individual level in order to assess whether the State has taken care of its positive obligation to protect victims in each case. If this is not the case, authorities should ensure that the victim is given an effective remedy under Article 13 of the ECHR and Section 92 of the Constitution, unless all avenues for redress have already been exhausted.
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# 1. Introduction

Violence and sexual abuse is a significant social problem in Norway. It is estimated that approximately 150,000 people are exposed to violence in close relationships every year.<sup>7</sup> Between 8% and 14% of the female population have experienced violence at the hands of a partner and one in ten 16 to 17 year-olds say that they have experienced violence at the hands of their parents.<sup>8</sup> This means that numerous individuals suffer trauma and injury and that violence and abuse is a serious human rights problem in Norway.

Combating violence and abuse has been a political priority in Norway for several years. Norwegian authorities have implemented a number of action plans and measures to protect and safeguard individuals exposed to violence. However, some groups are more vulnerable than others and therefore less likely to benefit from the protection they need and are entitled to. One such group are the Indigenous Sámi people of Norway. In addition to taking general measures, Norwegian authorities have therefore implemented several measures particularly targeted at protecting Sámi people exposed to violence.<sup>9</sup> Notwithstanding the

authorities' special focus on Sámi people, NIM is of the view that there are special human rights challenges associated with the protection of Sámi people exposed to violence and abuse in Norway.

In a 2015 study, Sámi individuals reported that they are more exposed to violence than non-Sámis.<sup>10</sup> Furthermore, the Norwegian Centre for Violence and Traumatic Stress Studies (abbreviated as NKVTS in Norwegian) in its 2017 report highlighted that the police and other public service providers lack of competency in Sámi languages and cultures often hindered efforts to protect individuals with a Sámi background from violence and abuse.<sup>11</sup> In 2016 and 2017, the so-called Tysfjord cases became the focus of public attention,<sup>12</sup> and in 2015, the UN Special Rapporteur on the Rights of Indigenous Peoples conducted a global study of the human rights situation of Indigenous peoples, in which she concluded that Indigenous peoples are at special risk of violence and abuse.<sup>13</sup>

This report seeks to explain the authorities' human rights obligations to prevent, combat and investigate violence and abuse against Sámi

<sup>7</sup> *Samfunnsøkonomiske kostnader av vold i nære relasjoner*, published by Vista Analyse, Report 2012/41 p. 8. In Norway, the term 'violence in close relationships' refers to violence perpetrated by people who share a close relationship with the victim, where there is often emotional involvement, reciprocal obligations or reliance. This may include previous or current spouses, cohabitants, partners, their immediate and extended families, children, members of the same household or a person who has caring responsibilities for the victim. In other countries, the term 'family violence' is used in a similar manner to encompass a wide range of physical, emotional, sexual, social, spiritual, cultural, psychological and economic abuses that may take place in Indigenous communities within families, kinship networks and community relationships.

<sup>8</sup> NOU 2017: 12 *Svikt og svik*, p. 28.

<sup>9</sup> For further details on general and specific protection measures, see Chapter 3.2.

<sup>10</sup> Astrid M.A. Eriksen, *Breaking the silence – Interpersonal violence and health among Sámi and non-Sámi*.

<sup>11</sup> *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner*. NKVTS, report No. 2, 2017.

<sup>12</sup> *Overgrepene i Tysfjord – erfaringer og funn fra politiets etterforskning*, Nordland politidistrikt (Nordland Police District), 2017.

<sup>13</sup> A/HRC/30/41 Chapter D. The United Nations has three indigenous peoples' mechanisms: the UN Special Rapporteur on the Rights of Indigenous Peoples; the UN Expert Mechanism on the Rights of Indigenous People (EMRIP) and the UN Permanent Forum on Indigenous Issues (PFII).

people (Chapter 2). It aims to describe the actual challenges faced by Sámi people exposed to violence in their search for help and the measures that authorities have taken to remedy this problem (Chapter 3). The report concludes that there are multiple weaknesses in the human rights protection afforded to Sámi people exposed to violence and recommends that the authorities implement a dedicated action plan targeting violence and abuse in Sámi communities. It also makes recommendations on how the authorities should follow up the Tysfjord cases (Chapter 4).

“It is Sámi communities themselves that must acknowledge the problem of abuse and violence. Once this has been achieved, there is a need for human and financial resources. These are cases that require ongoing attention at the local level, and public services offering help to both victims and abusers. Men must step up as good role models.”

**Biret Elle Láilá / Laila Somby Sandvik**  
Sámi Women’s Forum /  
Sámi Nisson Forum (SNF)

# 2. The human rights framework in a Sámi context

## 2.1 Introduction

In principle, human rights are binding on States and not on private individuals. Nevertheless, states have human rights obligations to prevent, combat and investigate violence and abuse among individuals. Under these positive obligations, the police must protect people exposed to violence and ensure that cases of violence and abuse are investigated effectively. Moreover, these obligations mean that the authorities must ensure that public service provision is also delivered by non-law enforcement agencies to put in place effective measures to protect individuals from violence at the hands of others.

The State's positive human rights obligations are derived from the Norwegian Constitution and a number of international human rights conventions. This report will primarily consider four important human rights conventions and will not address the Constitution or other conventions in any detail.<sup>14</sup>

Nevertheless, in order to fully understand the human rights framework we will elaborate on below, one must be cognizant of Article 108 of the Norwegian Constitution and the special protection that this provision affords to the languages and culture of the Sámi people as Indigenous peoples. This provision commits the State to “create conditions enabling the Sámi people to preserve and develop their language, culture and way of life.”<sup>15</sup>

Article 108 of the Constitution builds on, inter alia, Article 27 of the International Covenant on Civil and Political Rights, which provides for the protection of minorities' right to use and develop their own languages and cultures.<sup>16</sup> In addition, there are a number provisions in other human rights conventions which, in different ways, assume that the State shall take into account individuals' cultural and linguistic backgrounds, for instance in health and care services and in the judicial system.<sup>17</sup> This means that the State has an obligation to consider the needs of Sámi people exposed to violence in respect of culturally and

<sup>14</sup> This choice builds on, inter alia, the fact that constitutional provisions should to a large extent be interpreted in the light of their international examples, i.e. that they should – overall – have approximately the same content as the corresponding provisions in the conventions, see the preparatory works to chapter E of the Norwegian Constitution, Document 16 (2011–2012) and case law from the Supreme Court of Norway (e.g. HR-2016-2017-A). Space considerations oblige us to exclude discrimination on the grounds of ethnicity.

<sup>15</sup> The provision is primarily directed at the Government and the Norwegian Parliament (the Storting), but the principle expressed in the provision may be relevant when interpreting acts and when applying common law rules, such as a provision indicating directions for the exercise of discretion in the public administration, see Document 16 (2011–2012) p. 215.

<sup>16</sup> Document 16 (2011–2012), p. 215. See also Supreme Court judgement HR-2017-2247-A para 118. The Convention is incorporated in Norwegian law through Section 3 of the Norwegian Human Rights Act and thus prevails over other legislation.

<sup>17</sup> NOU 2016: 18 *Hjertespråket*, Chapter 5.11.3–5.11.6. The UN International Covenant on Economic, Social and Cultural Rights, the ECHR and the UN Convention on the Rights of the Child all have important provisions protecting language and culture in this context. All three conventions are incorporated in Norwegian law through Section 3 of the Norwegian Human Rights Act and thus take precedence over other Norwegian legislation in the event of a conflict.



linguistically tailored services.<sup>18</sup> In the context of Indigenous peoples', government authorities are also obligated to consult with Sámi representative bodies before implementing measures that fall under any of the categories outlined above.<sup>19</sup>

Secondly, the report also builds on Article 22 (2) of the UN Declaration on the Rights of Indigenous Peoples. This provision affords Indigenous people special protection from violence. The Declaration is not legally binding, but it builds on the interpretation of other legally binding conventions and has been drafted in cooperation with Indigenous peoples. Norway has not yet prepared a national action plan to implement the Declaration in line with the resolution that was adopted in the Outcome Document of the UN World Conference on Indigenous Peoples in 2014.<sup>20</sup>

This report also takes into account the fact that violence and abuse, especially violence in close relationships, is a gender-based problem.<sup>21</sup> Women are affected by this type of violence disproportionately, compared to the number of men who experience such violence. This is also reflected in various international conventions, albeit to varying extents, in obligations targeted specifically at women and their protection. Having said that, it is important not to lose sight of the fact that human rights afford women and men the same protection against violence and abuse.

We will seek to address a number of questions below, including: Do human rights obligations require all schools with Sámi children to have

staff with competencies in Sámi languages and culture to enable them to identify instances of violence and abuse? Do these obligations apply when child welfare officers or health personnel meet with people who have a Sámi background? Should police officers who interview Sámi aggrieved parties be familiar with Sámi family traditions and how these may affect the lives of the people they are interviewing? Is there a requirement to ensure that Indigenous peoples' perspectives are included in other measures, such as research, information and awareness-raising work?

## **2.2 The European Convention on Human Rights**

### **2.2.1 The convention in general**

The European Convention on Human Rights (ECHR) contains a broad catalogue of rights, most of which are civil and political rights. The convention is incorporated into Norwegian law through the Human Rights Act and thus prevails over other Norwegian legislation in the event of a conflict, in accordance with Section 3 of the Act.

The European Court of Human Rights (ECtHR) monitors Member States' implementation of the Convention and has jurisdiction to handle cases brought by individuals against their respective State for violation of the rights set out in the Convention. The ECtHR's case law is thus fundamental to the interpretation of the various provisions in the Convention.<sup>22</sup>

Article 2 (Right to life), Article 3 (Prohibition of torture, inhuman and degrading treatment) and

<sup>18</sup> The scope of the obligation will vary from case to case.

<sup>19</sup> Article 6 of the ILO Convention No. 169.

<sup>20</sup> See our annual report to the Norwegian Parliament for 2017, p. 98 available at [www.nhri.no](http://www.nhri.no).

<sup>21</sup> The report will highlight this from various perspectives when reviewing the various conventions.

<sup>22</sup> When applying the rules in the ECHR, the same method as that employed by the ECtHR shall be used. When interpreting the Convention, the courts must abide by the text of the Convention, have regard to the object and purpose of the Convention, and the case law of the ECtHR. The Convention shall be interpreted in an effective and dynamic manner, but it is an important principle that the ECtHR shall be responsible for interpreting the Convention in the light of present-day conditions; Norwegian courts shall not develop the Convention correspondingly, see Rt. 2005 p. 833.

Article 8 (Right to respect for private and family life) of the ECHR provide protection against interference with individuals' physical and mental integrity. States and those acting on behalf of the State have a negative obligation to refrain from any act which violates the provisions of the Convention. However, the ECHR also imposes positive obligations on States to ensure that private individuals do not violate each other's rights.<sup>23</sup>

The ECtHR has developed extensive case law on the positive obligations that follow from Articles 2, 3 and 8. The positive obligations will vary in scope and content, depending on the specific facts of the case and the article that is invoked. However, there are certain overarching similarities among the various obligations. For the purposes of this report, the provisions will therefore be considered jointly.<sup>24</sup> The ECtHR's case law deals particularly with the duties of the law enforcement apparatus, i.e. the police and prosecution service, and how far the duty to combat and prevent such crimes extends; however, the ECtHR has also heard cases on deficiencies in other areas of public service provision.

In cases involving violence against women, children and other vulnerable groups, States are strongly encouraged to take action and ensure that these groups are afforded real protection.<sup>25</sup>

Pursuant to Article 13 of the ECHR, anybody whose rights are violated under the ECHR is entitled to an effective remedy, be it in the form of compensation, a declaratory judgment, or other appropriate measures.<sup>26</sup> The right to an effective remedy also applies to victims of violence and abuse where State authorities have failed to meet their positive obligations pursuant to articles 2, 3 or 8 of the ECHR.<sup>27</sup>

The ECtHR has not handed down any judgments taking an explicit stand on how to operationalise these obligations in respect of Indigenous peoples, but the Court's general case law allows us to deduce a number of relevant criteria. The Court distinguishes between the obligations on law enforcement agencies and the obligations on other public services. This will be reviewed in greater detail below.

### 2.2.2 Law enforcement

In Rt. (Supreme Court Records) 2013, p. 588, the Norwegian Supreme Court has summarised the legal position regarding States' positive obligations under Articles 3 and 8 of the ECHR in relation to law enforcement.<sup>28</sup> In this case, the Court found that the State breached its positive obligations under Article 8 of the ECHR to protect a woman from abuse and harassment at the hands of a former, violent ex-partner. The Supreme Court summarised the requirements

<sup>23</sup> The ECtHR has for instance provided the following description in relation to Article 3 of the ECHR: "[...] the Court reiterates that the obligation on the High Contracting Parties under article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals [...]", cf. *Opuz v. Turkey* (33401/02), para 159. The ECtHR sets out the legal basis for the right to life directly in the wording in Article 2, see para. 128 of the same judgment.

As regards Article 8 of the ECHR, the positive obligations are based on the right to private life under Article 8 of the ECHR, viewed in conjunction with Article 1 of the ECHR, see *X and Y v. the Netherlands* (8978/80), para 23; also see Rt. 2013 p. 588, para 41–45.

<sup>24</sup> In *Talpis v. Italy* (41237/14) of 18 September 2017, the positive obligations are discussed pursuant to all three provisions in sections 99–101, emphasising Articles 2 and 3 in particular. Also see Rt. 2013 p. 588.

<sup>25</sup> Rt. 2013 p. 588 para 49 with further references to ECtHR case law. Also see *D.M.D. v. Romania* (23022/13), para 41.

<sup>26</sup> See, inter alia, "Erstatning for ikke-økonomisk tap ved krenkelser av EMK", Henrik Vaaler, Lov og rett 05/2017.

<sup>27</sup> The specific content of Article 13 of the ECHR, including what might be an adequate sanction, would of course depend on the specific case.

<sup>28</sup> Rt. 2013 p. 588 para. 45–50.

that can be derived from ECtHR case law in four points: (1) The State must react to any *real and immediate risk* of which the authorities were aware or ought to have been aware, with such measures that one would reasonably expect in light of the situation; (2) the State has a certain margin of appreciation in its deciding which measures to adopt, but they must be *proportionate and adequate*; (3) while also affording *real protection*, and (4) the requirement to take action will depend on the specific case in question.

The State is in other words not responsible for, and can therefore not combat or prevent, all violent acts committed by private individuals. The positive obligations arise if the State *knew*, or *ought to have known*, that there was a *real and immediate risk* of violence. If this requirement – the knowledge requirement – has been met, it must be established whether the authorities have undertaken all *reasonable actions* that could have been expected to prevent the risk; this is the so-called requirement to take measures.<sup>29</sup> The State has a certain margin of appreciation as to what actions to put in place, but the actions must be *appropriate and proportionate* and afford *practical and effective protection*.<sup>30</sup>

However, the measures adopted by the State must not infringe on the potential perpetrator's rights under the Convention.<sup>31</sup>

In terms of *the procedural aspects* of these positive obligations, the State is responsible for ensuring that an independent and effective investigation is undertaken by law enforcement

authorities that serves to establish the facts and to identify and punish those responsible. This is not an obligation of result, but an obligation of means; It addresses available investigative methods, the scope of an investigation, thorough assessment of evidence, etc.<sup>32</sup> An important factor in effective inquiries is that they are undertaken speedily and without undue delay.<sup>33</sup>

### 2.2.3 Other public services

Other public service providers are also subject to positive obligations. In the case *Z et al v. United Kingdom*, local authorities had not intervened in a case where four children had been subjected to serious neglect and ill-treatment in their home.<sup>34</sup>

The school, health services, police and child welfare services were all aware of the conditions the children lived under and different public actors had organised a variety of meetings regarding the case. The authorities, despite being acquainted with the situation over several years, failed to implement accessible and adequate measures to protect the children. The ECtHR thus concluded that the authorities' failure to protect the children from serious neglect and ill-treatment was in breach of Article 3 of the ECHR.

In *O'Keefe v. Ireland*, a pupil had become the victim of sexual abuse by a teacher, i.e. a person outside the home. The teacher had also abused other children at the same school. The ECtHR concluded that States must implement all reasonable measures to prevent such abuse if they have knowledge or ought to have knowledge that a

<sup>29</sup> *Opuz v. Turkey* (33401/02), para 129.

<sup>30</sup> *Opuz v. Turkey* (33401/02), para 165.

<sup>31</sup> *Opuz v. Turkey* (33401/02), para 129.

<sup>32</sup> See *D.M.D. v. Romania* (23022/13), para 40, and Kjelby, *Påtalerett*, p. 126 including further references. *Z and others v. United Kingdom* (29392/95), para 69–75.

<sup>33</sup> *D.M.D. v. Romania* (23022/13), para 40, also see *Opuz v. Turkey* (33401/02), para 150.

<sup>34</sup> *Z and others v. United Kingdom* (29392/95), para 69–75.

child or other vulnerable people are suffering ill-treatment.<sup>35</sup>

The authorities had both a reporting system and inspectors that visited the school to supervise activities. However, neither of these measures included mechanisms to examine the teachers' treatment of the children. The ECtHR was of the view that the mechanisms were not effective enough, and Ireland was found to be in breach of Article 3 of the ECHR. Among other things, the ECtHR commented as follows on the role of the inspectors at the school in question:

*"There was no specific reference, in the instruments on which the Government relied, to an obligation on inspectors to inquire into or to monitor a teacher's treatment of children, to any opportunity for children or parents to complain directly to an inspector, to a requirement to give notice to parents in advance of an inspector's visit or, indeed, to any direct interaction between an inspector and pupils and/or their parents."*<sup>36</sup>

The ECtHR has also emphasised that deficiencies in responding to and coordinating cases may lead to the State being found in breach of its positive obligations pursuant to the ECHR, particularly when different public service providers, including both the police and other public services, have knowledge that a person is exposed to violence, abuse or neglect.<sup>37</sup>

#### 2.2.4 Discrimination

The ECtHR have also on several occasions heard cases about violence against women under

Article 14 of the ECHR, which prohibits discrimination.<sup>38</sup>

In *Opuz v. Turkey*, one of the ECtHR's landmark judgments in this area, the Court referred to multiple reports on domestic violence in Turkey. The reports showed that this type of violence against women, despite protective measures laid down by statute, were in reality tolerated by Turkish authorities. Violence in close relationships primarily affects women, and it was the women who were not afforded the protection they were due. In this specific case, the ECtHR concluded that the violence inflicted on two women by one of their ex-husbands, should be regarded as gender-based violence. The two women were not afforded the help they were entitled to by the Turkish authorities and the authorities' passivity was discriminatory under Article 14 and Article 2 of the ECHR.<sup>39</sup>

#### 2.2.5 The obligations in a Sámi context

The ECtHR has emphasised that the State should take special care in securing their positive obligations in relation to vulnerable groups.<sup>40</sup> In this sense, the particular vulnerabilities of minority ethnic groups and Indigenous peoples are relevant considerations which reinforce the State's obligation to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention.

As noted above, it is only in those instances in which a State has knowledge or ought to have knowledge that a person is exposed to violence or abuse, that the State must respond adequately and effectively to seek to protect the person in question. This requires the State to have a system

<sup>35</sup> *O'Keeffe v. Ireland* (35810/09), para 144.

<sup>36</sup> *O'Keeffe v. Ireland* (35810/09) para 164.

<sup>37</sup> Kjelby, *Påtalerett*, p. 125 (footnote 316); also see *Tagayeva and others v. Russia* (26562/07), para 486.

<sup>38</sup> See the most recent case, *Talpis v. Italy* (41237/14) of 18 September 2017.

<sup>39</sup> *Opuz v. Turkey* (33401/02), para 183–202.

<sup>40</sup> Rt. 2013 p. 588 para 49 ff. References to ECtHR case law. Also see *D.M.D. v. Romania* (23022/13), para 41.

in place that is *suited* to discovering that people are exposed to violence and to protecting them.

If the person exposed to violence is Sámi, this may imply that the service provider should have competencies in Sámi language, culture and traditions in order to prevent, combat and investigate violence or abuse against Sámi people. The absence of such competencies in those acting on behalf of the authorities may be an argument, and potentially even a *decisive* argument, for concluding that the State in a given case failed to take adequate measures to protect the individual against actions outlined in Articles 2, 3 or 8 of the ECHR. A person exposed to violence is likely to come into contact with multiple bodies offering public services. If there is a *series* of deficiencies this may indicate that a violation has taken place in a specific case.

## 2.3 The UN Convention on the Elimination of all Forms of Discrimination Against Women

### 2.3.1 The convention in general

The objective of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is to eliminate all discrimination against women and ensure that women enjoy all human rights on an equal basis with men. The CEDAW commits Member States to adopt policies seeking to abolish all forms of discrimination

against women. The CEDAW has been incorporated in Norwegian law through Section 2 of the Human Rights Act and prevails over other Norwegian legislation according to Section 3 of the Human Rights Act.

The UN Committee on the Elimination of Discrimination against Women (the Committee) monitors the implementation of the Convention by means of State reports and complaints lodged by individuals.<sup>41</sup> In addition, the Committee draws up so-called General Recommendations.

The Committee's recommendations are not legally binding. According to the preparatory works for the Human Rights Act, "great importance" shall be given to them when viewed purely in the context of international law, while their importance in individual cases in Norway "may vary depending on how clear the recommendation is and to what extent a given case is similar to the situation the Committee was probably envisaging when writing [the recommendation]".<sup>42</sup> The Committee has prepared two General Recommendations on gender-based violence, No. 19 and No. 35, with the most recent being from July 2017.<sup>43</sup>

To date, the Committee has not issued any recommendations on Indigenous women and girls,

<sup>41</sup> In 2002, Norway also ratified the Optional Protocol for individual complaints lodged with the Convention. As far as we can see, the Committee has not considered any cases against Norway to date. In connection with the State reports, the Committee issues its recommendations to Norway in the form of "concluding observations", while it states its recommendations on individual cases in the form of "views". The recommendations are not binding on Norway but may become "relevant in connection with interpreting the provisions in the Convention", see Ot.prop. nr. 93 (2008–2009), p. 32 and "Høyesteretts anvendelse av traktatorganers tolkningspraksis", Geir Ulfstein, Lov og Rett 07/2016.

<sup>42</sup> See Ot.prop. nr. 93 (2008–2009), p. 32 and "Høyesteretts anvendelse av traktatorganers tolkningspraksis", Geir Ulfstein, Lov og Rett 07/2016. The importance of the Committee's general recommendations has not yet been considered by Norwegian courts. In the following, it will be indicated in the footnote whether the general recommendation being discussed should be regarded as a statement on how to interpret a convention or as a recommendation on optimal practice in the area. At the same time, it is important to emphasise that there will be nuances that cannot be fully accounted for here, and which may – in any given scenario – mean that the statements in the general recommendations should be attributed greater or less importance.

<sup>43</sup> The General Recommendation No. 35 comments on their interrelationship; in para 8, the recommendation notes "This document complements and updates the guidance to State parties set out in general recommendation No. 19, and should be read in conjunction with it." Also, the ECtHR has in its case law referred to both the Convention and the Committee's various statements in the grounds given in cases concerning violence and abuse against women, see *Opuz v. Turkey* (33401/02), para 147 and 164. The ECtHR's use of committee statements means that this practice shall carry greater weight in Norwegian statute.

but it has been advised to do so by the UN Permanent Forum on Indigenous Issues (PFII).<sup>44</sup>

Under Article 1 of the CEDAW, discrimination against women includes any distinction, exclusion or restriction made on the basis of sex which impairs or prevents women from exercising their human rights on the basis of equality between men and women. In the Committee's General Recommendations on gender-based violence, it is stated that gender-based violence against women, i.e. violence that women are exposed to because they are women, or that women are exposed to disproportionately, constitutes discrimination under Article 1 of the Convention. This includes both psychological, physical and sexual violence.<sup>45</sup>

The State is not only obligated to prevent the State's *own* authorities or personnel from committing violence against women; under the Convention it also has *positive* obligations to prevent such violence between private individuals. That means that the State has an obligation under the Convention to protect women from persons *not* acting on behalf of the State.<sup>46</sup>

The positive obligations therefore require the State to have established adequate mechanisms suited to protecting women from violence and abuse. As under the ECHR, it is only in instances where the authorities knew or ought to have known of the risk of violence and abuse, that these obligations arise.

### 2.3.2 The obligations in a Sámi context

Article 2 of the CEDAW outlines the measures which the State is under an obligation to implement with a view to eliminating discrimination against women. The State is obligated to include the principle of equality between men and women in national legislation and to implement necessary measures to prohibit and prevent discrimination against women. It follows from Article 3 that the State shall adopt appropriate measures in all areas, including legislation, to ensure that women are guaranteed their human rights on a basis of equality with men. In Article 5, States are required to implement measures to eliminate prejudice and practices that build on stereotyped male and female roles or ideas regarding the inferiority or superiority of sexes.

All of these provisions are broadly worded, but they obligate States to introduce appropriate legislation and measures to guarantee that women's human rights are secured. In our context, this means the introduction of legislation and measures to prevent, combat and investigate violence and abuse against Sámi women.

In General Recommendation No. 35, the obligations under the CEDAW to abolish gender-based violence are explained, emphasising three different levels: a *legislative level*, a *judicial level*, and an *executive level*. The first two of these concern, inter alia, the introduction of legislation prohibiting all forms of violence against women and ensuring that the judicial system in no way discriminates in cases of gender-based violence. In our context,

<sup>44</sup> General Discussion on Rural Women, 7 October 2013, PFII.

<sup>45</sup> General Recommendation No. 19, para 6 and 7. The statement should be viewed as a statement on how to interpret the Convention. It comments generally on the understanding of article 1, which is also in line with the wording in the Convention. Moreover, the statement has been included in the chapter "General Comments", rather than in "Recommendations," which follows later. Also, see General Recommendation No. 35.

<sup>46</sup> General Recommendation No. 35, para 24b. The statement should be regarded as a statement on how to interpret the Convention. The statement comments on the scope of the Convention; this also has a basis in the wording of the Convention. Moreover, the statement has been included in the chapter "State party obligations in relation to gender-based violence against women" rather than in other chapters of the recommendation, which are designated "Recommendations".

the obligations at the executive level are particularly relevant:

*States parties should provide accessible, affordable and adequate services to protect women from gender-based violence, prevent its recurrence and provide or ensure funding for reparations to all victims/survivors. States parties must also eliminate the institutional practices and individual conduct and behaviour of public officials that constitute gender-based violence against women, or tolerate such violence, and that provide a context for lack of a response or for a negligent response.*<sup>47</sup>

It goes without saying that measures to prevent violence against women must be culturally and socially sensitive in respect of social structures in the community in question. Otherwise, the measures will not be “adequate” to help the women exposed to violence in that particular community. In our context, that means that both police and the services working to prevent violence and abuse against women must be sensitive to special features of Sámi culture, languages and traditions, if this is required to avoid women being exposed to violence and abuse.

In summary, the CEDAW commits Member States to have in place culturally sensitive measures to prevent, combat and investigate violence and abuse in accordance with the obligations under the Convention. This conclusion is largely

supported by the quote above from General Recommendation No. 35, viewed in conjunction with the wording of Articles 2 and 5 of the Convention. Nevertheless, the scope of these obligations remains unclear and will vary, depending on the specific case in question.

In its General Recommendation, the Committee also issues a number of specific recommendations to Member States on measures that should be implemented to prevent gender-based violence.<sup>48</sup> One key recommendation is to ensure data collection and research on gender-based violence.<sup>49</sup> Another recommendation concerns preventative measures in the form of mandatory training for the public prosecution service, lawyers, police, health personnel, and social services to enable them to prevent and address violence against women adequately.<sup>50</sup> The recommendations are important policy guidance for States on how to frame their systems.

As noted above, the Committee monitors Norway’s compliance with the CEDAW by means of State reports. In November 2017, the Committee examined Norway and provided the following recommendations in their concluding observations:

*Devise an action plan for enhanced prevention, protection and redress of gender-based violence, in particular sexual violence, against Sámi women and girl victims, including with a view to overcoming cultural and linguistic barriers, based on*

<sup>47</sup> General Recommendation No. 35, para 26b. This part of the recommendation should also be regarded as a statement on how to interpret the Convention. It includes general indications on the content of the provisions in the Convention, which also has legal authority in the wording of the Convention. In addition, the statement is situated in the Chapter “General obligations of States parties under the Convention relating to gender-based violence against women” rather than “Recommendations”, which follow later.

<sup>48</sup> This part of the recommendation should be regarded as a recommendation on best practice. The statement is placed under “Recommendations” rather than the other recommendation heading, “General obligations of States parties under the Convention relating to gender-based violence against women”. In principle, Committee recommendations are less relevant for interpreting obligations under the Convention; however, it is interesting that the recommendation builds on a number of decisions relating to the Committee’s own individual cases (see references in the footnote system in the general recommendation). An individual case would, in a Norwegian context, have great importance as a source of law, which would intensify the statement’s importance despite being a “mere” recommendation.

<sup>49</sup> General Recommendation No. 35, para 35.

<sup>50</sup> General Recommendation No. 35, para 35.

*further research into the root causes, and allocate sufficient resources for its implementation.*<sup>51</sup>

According to the preparatory works to the Human Rights Act, such recommendations from the Committee shall “in principle [...] be given great importance”. However, one must distinguish between statements that directly address the relationship between Norwegian statutes and specific provisions in the Convention, and more general recommendations on improving protection against discrimination.<sup>52</sup>

The underlying premise in the recommendation is that Norwegian authorities are not doing enough to protect Sámi people exposed to violence. Great importance should therefore be given to this part of the recommendation, namely that Norway is falling short. The Committee’s proposal to prepare an action plan as a means of meeting the State’s obligations should be regarded as more of a suggestion for how the State can meet its obligations.

This report does not discuss the International Covenant on Civil and Political Rights or the UN Convention against Torture, but for a fuller understanding of the overall picture, it is worth noting that both committees responsible for monitoring States’ compliance with these two conventions issued similar recommendations to Norway following the submission of State party reports. In April 2018, the UN Human Rights Committee recommended that Norway:

*Investigate further the root causes of higher levels of violence against women in the Sámi community. Take effective measures to address these root*

*causes, eliminate cultural and linguistic barriers and build trust between the Sámi community and authorities.*<sup>53</sup>

In May 2018, the UN Committee Against Torture recommended that Norway:

*Investigate the root causes and develop an action plan aimed at prevention of, protection from and addressing violence, including sexual assault in the Sámi community in consultation with the Sámi community and enhance efforts to build up confidence towards public authorities.*<sup>54</sup>

Collecting data and undertaking research are essential factors in developing effective and adequate measures to prevent and combat violence and abuse and protect individuals, and all Committees therefore emphasise that States must ensure high-quality research to better understand the underlying causes. The Committees also stress the importance of designing measures in consultation with the people they are intended for, and in a way that strengthens Sámi communities’ trust in the Norwegian authorities.

## **2.4 The Istanbul Convention**

### **2.4.1 The convention in general**

The Istanbul Convention is a European human rights convention, drawn up by the Council of Europe, which entered into force in Norway on 1 November 2017. The Convention’s primary objective is to prevent and combat all forms of violence against women and domestic violence.

The Istanbul Convention was developed on the basis of case law from the ECtHR, the UN Convention on the Elimination of all Forms of

<sup>51</sup> CEDAW/C/NOR/CO/9, para 25 e.

<sup>52</sup> Cf. Ot.prop. nr. 93 (2008–2009), p. 32 and “Høyesteretts anvendelse av traktatorganers tolkningspraksis,” Geir Ulfstein, Lov og Rett 07/2016. We have not found any instances of this type of recommendation having been considered by Norwegian courts.

<sup>53</sup> CCPR/C/NOR/CO/7, para 15, letter e).

<sup>54</sup> CAT/C/NOR/CO/8, para 24, letter c).

Discrimination against Women and other human rights instruments.<sup>55</sup> At the same time, it is seen as a unique and innovative development in the field, setting much more specific and detailed obligations on States with regard to *actual implementation* of the right to live free from violence and abuse.

The Istanbul Convention is based on some important fundamental principles. These include the principle that States shall secure women's protection from discrimination; ensure effective coordination of services; give priority to the victim's perspective; and have a coherent and evidence-based approach to the issue. Further, States shall take into account the victims' vulnerability and facilitate proactive outreach activities as victims cannot be expected to approach public services themselves.

The Istanbul Convention has a strong emphasis on the prevention of violence perpetrated by private individuals. By virtue of its unique human rights focus on this societal problem, the Convention is seen as an innovative development, reinforcing the human rights protection afforded to people exposed to violence.

The Convention requires States to ensure that certain types of violent acts are defined as criminal offences; provide relevant training of service providers; implement programmes to raise awareness and disseminate information on

violence and abuse; ensure adequate research and data collection; provide treatment programmes for perpetrators; adopt protective measures such as shelters and restraining orders; and ensure effective investigation and prosecution of criminal offences.

The Convention is not incorporated into Norwegian law through the Human Rights Act so it does not prevail over other legislation; the Convention shall therefore be applied in accordance with the so-called 'presumption principle'.<sup>56</sup> The Convention also imposes explicit obligations on States that must be acted on, including that States must establish national monitoring systems. According to Article 10 of the Convention, States shall establish one or more official bodies responsible for the coordination, implementation, monitoring and evaluation of policies and measures being implemented to prevent violence and abuse.<sup>57</sup>

The *Explanatory Report*, prepared by the Council of Europe, is an important aid in understanding the Convention and sets out in greater detail what its obligations mean.<sup>58</sup>

Pursuant to Article 2(1) of the Convention, it is applicable in cases of violence against women.<sup>59</sup> Although the Convention addresses the protection of women and girls, States are urged to apply the Convention to all victims of domestic violence, i.e. also men and boys, see article 2(2).

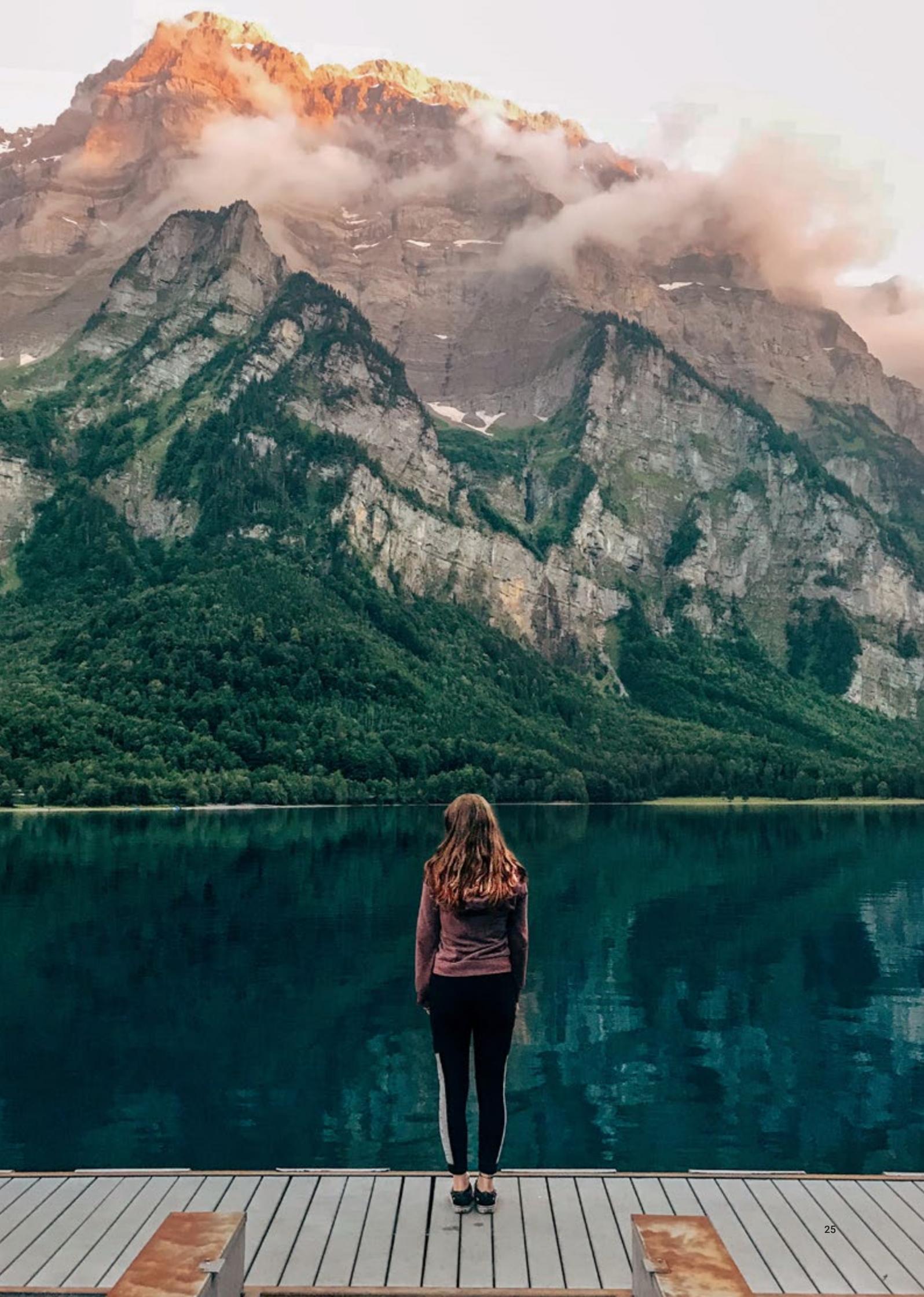
<sup>55</sup> See the Convention's preamble.

<sup>56</sup> The principle concerns the presumption that Norwegian law is in accordance with the Convention. In the event of any conflict between the Convention and the Norwegian statute in question, Norwegian law prevails, e.g. HR-2016-2591-A.

<sup>57</sup> See *Explanatory Report*, para 70–73. The German national institution has examined how Article 10 of the Convention has been given effect in several of the parties to the Convention, including Sweden and Spain, see *Implementing article 10 of the Council of Europe Convention on preventing and combating violence against women and domestic violence – establishing national coordinating bodies*, Rabe and Unsal, November 2016, Council of Europe.

<sup>58</sup> The Convention shall also be monitored by a dedicated monitoring mechanism, GREVIO, which started its first round of country reports and has the authority to issue general comments. To date, no general comments are available and Norway has not yet been examined. It is worth noting that Norwegian authorities have stated that Norwegian law meets the Convention's requirements, cf. Prop. 66 S (2016–2017).

<sup>59</sup> The acts of violence referred to include all types of physical, sexual, psychological and financial violence, cf. Article 3.



As a general rule, it is the State and those acting on behalf of the State that must refrain from actions defined as acts of violence under the Convention, see Article 5(1). However, the Convention also creates positive obligations, which require State parties to ensure that *private individuals* do not expose other individual to acts of violence.<sup>60</sup> These positive obligations are not obligations of result, but rather obligations of conduct, which depend on the State's scope for action and the means objectively available to the State. States must therefore exercise due diligence to prevent, combat and protect against violence and abuse.<sup>61</sup>

#### 2.4.2 The obligations in a Sámi context

In Chapter 2 of the Istanbul Convention, "Integrated policies and data collection", there are provisions on how States shall ensure that they have an evidence-based approach to the issue of violence and abuse.

Article 11 sets out the requirements for data collection and research. Firstly, States shall have statistics on all forms of violence and abuse that are covered by the Convention.<sup>62</sup> Secondly, States shall "support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidence and conviction rates, as well as the efficacy of measures taken to implement this Convention".<sup>63</sup>

Article 11(2) also includes a requirement to "endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by the scope of this Convention." In the *Explanatory Report*, data collection and research are highlighted as an essential element in the development of effective and adequate measures to prevent, combat and protect individuals against violence and abuse.<sup>64</sup>

This means that State measures to prevent, combat and investigate violence against Sámi people must be built on up-to-date knowledge on topics such as the risk of violence, causal factors, and how public service provision operates in a Sámi context. Without a thorough understanding of the problem, it is difficult to implement adequate measures. Sound statistics and research will also facilitate an understanding of whether the measures put in place in fact work over time. According to the last sentence of Article 10(1) of the Convention, it is the body or bodies responsible for the national monitoring system that shall coordinate, analyse and disseminate such knowledge.<sup>65</sup>

Chapter 3 of the Convention, "Prevention", contains a number of provisions on preventative measures. In Article 12 of the Convention, "General Obligations", States are obligated to take all necessary steps, including legislative and other measures, to prevent the occurrence of violence and abuse. The provision includes important guidance on how to understand the rest of the

<sup>60</sup> The state shall "take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence [] that are perpetrated by non-State actors", cf. Article 5(2), also see *Explanatory Report*, para 57–60.

<sup>61</sup> Cf. the wording "due diligence" in article 5 and the *Explanatory Report*, para 59.

<sup>62</sup> Cf. No. 1 a of the provision.

<sup>63</sup> Cf. No. 1 b of the provision.

<sup>64</sup> *Explanatory Report*, para 74–82. The *Explanatory Report* describes in some detail which information the collection of data and research shall provide and what purpose the information should serve.

<sup>65</sup> The Norwegian Ministry of Justice and Public Security is responsible for coordinating the Government's effort to prevent and combat violence in close relations. In addition to acting as coordinator – a function that was created in the Ministry in 2000 – a cross-ministerial working Group has been set up with principal responsibility for coordinating, implementing, monitoring and evaluating policies and measures under the Istanbul Convention, cf. *The Istanbul Convention – The Nordic Way*, p. 55, Stubberud, Hovde and Aarbakke, Forlaget Nora, 2018.

articles in Chapter 3.<sup>66</sup> For our purposes, Article 12(3) is important:

*Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre.*

In the *Explanatory Report*, vulnerable individuals are, inter alia, described as “persons of national or ethnic minority background”.<sup>67</sup>

This means that in developing preventative measures, States must take into account and actively address the special needs of people who are subject to factors which make them especially vulnerable. Being part of an Indigenous group may, in certain circumstances, make a person more vulnerable to violence, and the State must take this into account when preparing and implementing preventative measures.

Article 13 of the Convention, “Awareness-raising”, obligates States to run campaigns or programmes to raise public awareness about how violence can be expressed and its potential impact on everybody involved. This must be done “on a regular basis and at all levels”, see Article 13(1). The purpose of awareness-raising and dissemination efforts is to enable all members of society to recognise violence where it takes place, to speak out against it and support the individuals exposed to it.<sup>68</sup>

Furthermore, Article 14(1) of the Convention, “Education”, obligates States to “take, where appropriate, the necessary steps to include

teaching material on issues such as [...] the right to personal integrity [...] in all formal curricula and at all levels of education”. The provision therefore commits States to facilitating education in school settings about boundaries for one’s own and others’ bodies. According to Article 14(2), this education shall not only take place in a school setting, but also in more informal settings such as leisure and cultural activities.<sup>69</sup>

Viewed in conjunction with Article 12(3), campaigns and programmes to disseminate information and raise awareness and educational programmes in schools must take into account and address special factors that increase the vulnerability of people exposed to violence. In a Sámi context that may mean that measures must be implemented in Sámi and/or directly target linguistic and cultural challenges.

Another important provision in Chapter 3 is Article 15(1), “Training of professionals”, with the following wording:

*Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.*

The training of people involved in public service provision shall, according to the *Explanatory Report*, prepare them to adequately identify and handle violence and abuse, and to implement effective preventative measures. It is also stated

<sup>66</sup> *Explanatory Report*, para 84.

<sup>67</sup> *Explanatory Report*, para 87.

<sup>68</sup> *Explanatory Report*, para 91.

<sup>69</sup> *Explanatory Report*, para 95.

that such training must be supplemented with good guidelines issued to service providers with a view to ensuring sound implementation of this knowledge.<sup>70</sup>

According to the wording in the Convention, there is thus an obligation to ensure that all relevant service providers, i.e. everybody in public service provision who has contact with victims of violence, have the competencies required to identify and respond to incidents of violence and abuse. The wording requires that competencies be “appropriate”. This means that service providers must have an understanding of the special features or risk factors that may affect those subjected to violence, such as gender, ethnicity, language or religion, where directly relevant.<sup>71</sup> The specific knowledge appropriate to facilitate the identification of violence or abuse in any specific situation, will depend on the circumstances of the case.<sup>72</sup>

In other words, the Convention defines which competencies are required by service providers working with people exposed to violence. If the person exposed to violence is Sámi, service providers must, where required, have knowledge of Sámi language, culture and traditions – for the very purpose of preventing and combatting abuse and violence or affording protection. Further, if the person’s situation is distinguished by certain special features, service providers must also have

knowledge about this and how to handle the associated challenges. In addition, the Convention defines clear expectations on States to employ an evidence-based approach and ensure that work to raise awareness and disseminate information is undertaken, and make sure that children are taught appropriately about this topic. All measures must take into account the fact that the victim of violence is Sámi, e.g. by actively using Sámi languages when adopting measures.

## **2.5 The UN Convention on the Rights of the Child**

In terms of children’s rights, it is important to have regard to the UN Convention on the Rights of the Child, which affords all children special protection against violence and abuse. The Convention is incorporated into Norwegian law through Section 2 of the Human Rights Act and prevails over other Norwegian legislation in the event of any conflict of law.

The right to life, survival and development follows from Article 6 of the UN Convention on the Rights of the Child: “State Parties shall ensure to the maximum extent possible the survival and development of the child.” The Committee on the Rights of the Child works on the basis of a holistic understanding of the concept of development, such that this encompasses rights to both physical and social development.<sup>73</sup>

<sup>70</sup> *Explanatory Report*, para 99: “Initial vocational training and inservice training should enable the relevant professionals to acquire the appropriate tools for identifying and managing cases of violence, at an early stage, and to take preventative measures accordingly, by fostering the sensitivity and skills required to respond appropriately and effectively on the job. The drafters felt it best to leave to the Parties how to organise the training of relevant professionals. However, it is important to ensure that relevant training be ongoing and sustained with appropriate follow-up to ensure that newly acquired skills are adequately applied. Finally, it is important that relevant training should be supported and reinforced by clear protocols and guidelines that set the standards staff are expected to follow in their respective fields. The effectiveness of these protocols where relevant, should be regularly monitored, reviewed and, where necessary, improved.”

<sup>71</sup> See Article 12(3).

<sup>72</sup> The statement in the *Explanatory Report* supports this interpretation.

<sup>73</sup> General Comment No. 5 (2003), para 12. Such general comments are not legally binding but are given importance by the Supreme Court of Norway when it interprets the Convention. The importance attached to such comments by the Supreme Court is contingent on several factors, including whether the comment is regarded as a comment on how to interpret a Convention, or a recommendation on best practice. Also see Høstmælingen, Kjørholt, Sandberg (ed.), *Barnekonvensjonen – Barns rettigheter i Norge*, 3rd edition, p. 80.

“We need to understand violence in Sápmi in a historical context, in the social and political context and in an Indigenous context. How have we been affected by generations of Norwegian assimilation policy; how do current experiences with discrimination, both at the structural and personal level, affect the here and now? Powerlessness and violence are often interlinked; we need to identify the factors in the society we are living in today that make violence a major societal problem for us, as indicated by research and statistics on violence.”

**Gunn Heatta**, Leader of The Sámi Norwegian Advisory Unit on Mental Health and Substance Use (SANKS)

In addition to the right to development, the Convention contains two more specific State obligations to protect children against violence and abuse. Article 19 obligates State parties to protect children from violence, abuse and negligent treatment, and Article 34 obligates State parties to protect children from all forms of sexual exploitation and abuse.

Another important provision is Article 12 on children's right to be heard in all actions and decisions affecting them. The UN Committee on the Rights of the Child has highlighted the close relationship between children's right to be heard under Article 12 of the Convention, and the principle that the child's best interest shall be a primary consideration in all actions affecting them under Article 3 of the Convention.<sup>74</sup> Speaking with children is essential in order to be able to prevent, identify and combat violence, abuse and negligent treatment of children.<sup>75</sup>

In addition to the rights we have outlined here, the Convention on the Rights of the Child affords Indigenous children *special* protection by virtue of their status as Indigenous people. In the Convention's Preamble, there is a reference to State parties having to take "due account of the importance and cultural values of each people for the protection and harmonious development of the child."<sup>76</sup> There are also several references to Indigenous children in multiple provisions of the Convention, for example in Article 30 on the right to one's own culture and language.

The Committee on the Rights of the Child monitors Norwegian compliance with the Convention through State reports and issues so-called *concluding observations*. How such recommendations shall be understood in a judicial context varies, depending on whether a recommendation directly addresses the relationship between Norwegian law and a specific provision in the Convention or whether it is more of a general recommendation on how Norwegian authorities can improve children's legal position.<sup>77</sup> In May 2018, Norway was examined by the Committee. The Committee, among other things, recommended that the Norwegian State should:

*Adopt a specific plan of action to combat violence against women and girls, which focuses on the elimination of rape and other forms of sexual violence, including in the Sámi community, and include precise segments on preventing and combating sexual abuse and exploitation occurring or being initiated online, and increase efforts to prevent and combat grooming, sexual extortion and child pornography.*<sup>78</sup>

The underlying premise for the recommendation is that Norwegian authorities are not doing enough to protect Sámi children exposed to violence. This part of the recommendation should therefore be given great weight. The Committee's proposal to prepare an action plan as a means of complying with these obligations should primarily be considered as a suggestion for how the State can meet its obligations.

<sup>74</sup> General Comment No. 12 (2009), para 74.

<sup>75</sup> NOU 2017:12 *Svikt og svik*, p. 106.

<sup>76</sup> Also see General Comment No. 11 (2009), para 1.

<sup>77</sup> "Høyesteretts anvendelse av traktatorganers tolkningspraksis," Geir Ulfstein, *Lov og Rett* 07/2016. There are also examples of the Supreme Court having regard to such recommendations when interpreting provisions in the Convention on the Rights of the Child. Rt. 2009 p. 1261 para 63 ff.

<sup>78</sup> CRC/C/NOR/CO/56, para 18 a.

In our context, this means that the State is obligated to make special allowances in its policies if those exposed to violence are children. The State must also have regard to the child's Indigenous background. The scope of these obligations will depend on the specific circumstances of each case.

## 2.6 Summary of the International Legal Framework

Both the ECHR, the CEDAW, the Istanbul Convention and the UN Convention on the Rights of the Child commit States to ensuring that both law enforcement agencies and other public services are equipped to prevent, combat and investigate violence and abuse. These obligations cover all individuals under Norwegian jurisdiction, including both Sámis and non-Indigenous Norwegians.

The four Conventions have different scopes. Two of them are directed specifically towards women and girls (the CEDAW and the Istanbul Convention), while the ECHR protects both women and men, including children. The UN Convention on the Rights of the Child specifically addresses the rights of children. The human rights of women, men and children are by and large afforded the same protection, but it is important to underline that violence in close relationships is a gender-based problem that disproportionately affects women. All of the Conventions take this into account to varying degrees, given that the obligations often especially concern women and their protection.

States' positive obligations arise where State authorities *knew* or *ought to have known* that there was a real and immediate risk of violence or abuse. If the knowledge criterion has been met, the next question is whether the authorities have taken all *reasonable measures* to prevent such risks; this is the so-called 'requirement to take measures'. States are afforded a certain margin

of appreciation as to *what* measures to implement, but measures must be appropriate and proportionate and offer practical and effective protection. The core of this obligation is that States must have a coherent system in place that is *suited to* preventing, combating and investigating violence and abuse against individuals. In addition, we see that there is a clear *obligation to prevent* such acts; this is particularly clear in the Istanbul Convention. For instance, States must have an evidence-based approach to the problem; they must provide for campaigns that raise awareness and disseminate information on violence and abuse; children must have knowledge on their bodies, sexuality and boundary-setting, and service providers must have the knowledge required to prevent and identify violence and abuse. In respect of the rights of Indigenous peoples, authorities are also obligated to consult Sámi representative bodies before implementing any of the above-mentioned measures.

In Chapters 2.2–2.5 we consider these obligations in a Sámi context.

Overall, we see that Member States have a human rights obligation to ensure that service providers, be it in schools, child welfare services, health care services or the police, have competencies in Sámi languages, culture and traditions where this is necessary to prevent, combat or investigate violence and abuse against Sámi people exposed to violence. Examples of such service providers include teachers, child welfare officers, health workers, psychologists and police officers.

Where required, work to raise awareness and disseminate information must also be adapted to suit the needs of Sámi people exposed to violence. This may mean that information on violence and abuse, such as boundary-setting or where to obtain help, should be offered in Sámi

languages and address linguistic and cultural challenges.

In some cases, these obligations may also entail that children are taught at school, and in other more informal settings, about their bodies, boundaries and sexuality, and that children are given an opportunity to acquire this knowledge in their own language; in this case, in Sámi languages.

In addition, there is an explicit requirement that the State must have an evidence-based approach to the problem. The human rights obligations mean that the State must provide for data collection and research with a view to creating services and measures that are fit for purpose. In other words, the State must have up-to-date knowledge about *Sámi* people exposed to violence and about how the State can prevent violence and abuse and offer protection.

“A comprehensive action plan against violence in close relationships needs to be put in place. This must include measures which ensure that Sámi people exposed to violence are offered sound and well-coordinated services where the entire support chain is cognizant of Sámi culture and history. In addition, linguistic facilitation must be included at all levels, such as prevention, assistance to victims and prosecution.”

**Hanne Bjurstrøm**, The Equality and Anti-discrimination Ombud (LDO)

# 3. Today's challenges – an outline of the current situation

## 3.1 The Situation of People Exposed to Violence

### 3.1.1 Introduction

The 2015 study in which Sámi people reported that they are exposed to more violence than non-Sámis is critical. In this study, 49% of Sámi women reported that they were exposed to violence, compared to 35% of non-Sámi women.<sup>79</sup> In addition, 22% of Sámi women reported that they had been victims of sexual violence, compared to 16% of non-Sámi women. It is worth noting that Sámi men also reported experiencing more violence (40%) than non-Sámi men (23%). It is also important to note that the study does not include data on the ethnicity or cultural background of the perpetrators.<sup>80</sup> However, 80% of the respondents in the study knew the perpetrator. These figures indicate that Sámi ethnicity increases the risk of being subjected to violence.<sup>81</sup>

Preventing, combating and investigating violence and abuse is complex. For instance, research shows that people exposed to violence are reluctant to report their experiences, and an essential factor in under-reporting is whether they are heard, understood and believed by service providers.<sup>82</sup> There is also research to show that some people involved in service provision tasked with raising such issues hesitate to inquire into matters of violence and abuse.<sup>83</sup> These are general challenges that shape the experiences of all people exposed to violence. It is therefore important to be aware of the factors which constitute systemic or widespread challenges in encounters between service providers and people exposed to violence, and which of these are specific to Sámi people exposed to violence.<sup>84</sup>

<sup>79</sup> This includes both psychological, physical and sexual violence.

<sup>80</sup> Little is therefore known about who commits violent acts against Sámi women, children and men. This means that it is unclear whether such acts take place as part of internal relations or whether this also concerns relations between ethnic groups, minorities vs. majorities, traditional vs. modern, etc.

<sup>81</sup> Astrid M. A. Eriksen, *Breaking the silence – Interpersonal violence and health among Sámi and non-Sámi. A population-based study in Mid- and Northern Norway*, p. 47 and 49, University of Tromsø, June 2017.

<sup>82</sup> *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn*, NKVTS, report No. 2, 2017, p. 78 ff. *Overgrepene i Tysfjord – erfaringer og funn fra politiets etterforskning*, Nordland politidistrikt (Nordland Police District), 2017, p. 6.

<sup>83</sup> *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn*, NKVTS, report No. 2, 2017, p. 78 ff.

<sup>84</sup> *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn*, NKVTS, report No. 2, 2017, p. 97.

In this report, we will seek to address the specific challenges in the Sámi context.<sup>85</sup>

Secondly, it is important to note that there is insufficient research on violence and abuse in a Sámi context. NKVTS have pointed out that while research indicates that Sámi people exposed to violence are in need of culturally and linguistically adapted measures, they also conclude that there are few empirical studies about the extent to which these needs are addressed and included in the design of services for people exposed to violence in Sámi communities today.<sup>86</sup> As we will see below, there is still a need for more research and evidence-based knowledge on the matter.<sup>87</sup>

Thirdly, the sources tend to deal with both women and men exposed to violence; all types of violence, be it psychological, physical or sexual violence; in close relationships and in other circumstances, as well as the situation for both adults and children exposed to violence.

We also note that the historical backdrop to this issue is of fundamental importance. Historically, the Sámi people were targeted by a harsh assimilation policy in Norway, and a variety of research communities have proposed that there may be a link between this policy and the frequency of violence and abuse in Sámi communities. A brief account of this research is provided below.

The outline provided is not exhaustive but offers a picture of the situation as it stands in 2017/2018.

### 3.1.2 NKVTS' March 2017 Report – violence in close relationships

In March 2017, NKVTS launched their report “*Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i Samiske samfunn*”. (In English, this translates to “If you dare to ask, people will dare to answer. The experiences of public service providers and the police with violence in close relationships in Sámi communities.”) The report was commissioned by the Ministry of Justice and Public Security and the Sámi Parliament, and examines how service providers engage with Sámi people who have been exposed to violence in close relationships.<sup>88</sup>

The problems discussed in this report include the experiences of service providers in their work with violence in close relationships in Sámi communities and the specific challenges they experienced. The report identifies four principal challenges likely to emerge in service providers' encounters with Sámi people exposed to violence which can complicate their work to combat, prevent and investigate violence in close relationships.<sup>89</sup>

The initial challenge is the need for adequate competencies in Sámi language and culture when service providers meet Sámi people exposed to violence. The report highlights that being able to communicate with service providers in one's

<sup>85</sup> One issue of this conceptual understanding – and which one must be aware of – is that it can be difficult to define general challenges in light of the fact that all humans communicate differently, have different belief systems, upbringing, etc., also resulting in distinct needs. It should therefore be stressed that not all Sámi persons exposed to violence experience the challenges described in this Chapter. Clearly, individual differences also play a role in this context.

<sup>86</sup> *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn*, NKVTS, report No. 2, 2017, p. 63.

<sup>87</sup> *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn*, NKVTS, report No. 2, 2017, p. 104. This was echoed by the persons attending the meeting that was held in Kautokeino on 30 October 2017.

<sup>88</sup> The research methodology used for this report was focus groups; the report is a qualitative study, with respondents coming from different parts of the health services, social services, police and the judicial system and respondents representing both Sámi and non-Sámi persons. In addition, findings from the focus groups are supplemented and supported by a large range of other relevant research findings.

<sup>89</sup> The challenges are explained in some depth in the report's Chapter 5 and a brief, non-exhaustive summary is provided below.

mother tongue – in this case, Sámi languages – is essential in building trust with victims. Sharing a language builds trust; this is critical if one is to detect violence in close relationships. The report also notes that talking about one's body, boundaries and sexuality appears to be taboo in some Sámi communities. As a result, there is no language in which to discuss violence and sexual abuse. If people exposed to violence lack the relevant language, this may make it more difficult for service providers to identify and combat violence and abuse.

The report also points out that it is not only spoken language that is important in the encounter with Sámi people exposed to violence. Service providers should also be able to utilise more culturally specific forms of communication. The report mentions that indirect forms of expression – often relying on metaphors, silence and body language – are typically Sámi forms of communication. Such forms of communication may deepen the silence associated with taboo topics such as violence and abuse. Service providers should therefore have insight into this mechanism, putting them in a position to communicate appropriately with Sámi people exposed to violence.

A further challenge is the fact that Indigenous peoples' lack of trust in public authorities and services may influence encounters between those exposed to violence and service providers. The report observes that the relationship between Sámi people and those providing public services may be coloured by the historical experience of Norwegian assimilation policies and decades of oppression and discriminatory policy against Indigenous peoples in Norway. Non-Sámi people working in support services must therefore be particularly sensitive to their own position of power when meeting Sámi people. There is a risk that the service provider may be associated with an oppressive Norwegian State, making it more

difficult to develop the relationship of trust that is a prerequisite for providing effective support. It is important that the service provider bear this historical aspect in mind when meeting Sámi people exposed to violence, so that it does not interfere with the support they seek to offer.

On the other hand, the report notes that non-Sámi service providers without any local affiliation in some cases tread too cautiously for fear of offending anyone, by not asking people with Sámi background about violence. Research on violence and abuse generally shows that being listened to, being understood and being believed is of decisive importance to people exposed to violence. Paradoxically, the report states that excessive emphasis on the special forms of communication widespread in Sámi communities and the fear of offending anyone can sometimes lead to Sámi people being met with less understanding from the police and public services. Such deficiencies can, in turn, weaken trust in public service provision.

A third challenge is what the report describes as "silence on violence in close-knit communities". It is pointed out that in the experience of service providers, the close relationships and interdependence in Sámi families and kin networks are factors stopping violence in close relationships being brought into the open. If service providers are not aware of this feature of Sámi communities, they may fail to identify instances of violence. A related obstacle is the tradition of keeping problems within the family and remaining silent on private matters. Not only does this tradition hinder Sámi people exposed to violence from speaking out about their experiences outside the family, it can also result in service providers not involving themselves in families with violent behaviour. In such situations, service providers have experienced that Sámi families and local communities "settle matters internally".

A special feature within this context is the role of Laestadianism (a branch of Lutheranism), which has a strong position in some Sámi areas. The report observes that there is a significant overlap between Laestadianism and Sámi traditions, such as the strong role of kin networks, the internal solidarity and loyalty, and the tradition of settling matters internally. The report highlights how certain traditions and maxims can potentially reinforce other barriers to seeking help.

The fourth challenge addressed in the report is the Sámi ideal of the strong, hardy individual that does not display weakness, but is able to weather any struggle without being rocked. There is a tendency to downplay and minimise things; this is another important reason why violence and abuse are not reported. This is the case both for Sámi women and men exposed to violence and is a challenge for service providers in their encounters with people exposed to violence.

Due to these four primary challenges, there are certain requirements on service providers regarding their competencies in Sámi language, culture and traditions. The report stresses that knowledge and experience in this regard is *not* distributed equally across public service provision. In fact, the report states that there is considerable room for improvement in the dissemination of knowledge and experience across all relevant service providers. As it stands today, according to the report, there is a need for upskilling within and among the municipalities, with a view to increasing linguistic and cultural competencies with the service providers, and building trust between public services and Sámi people exposed to

violence.<sup>90</sup> In addition, the report highlights the need for service providers to be more proactive in offering assistance, and not allowing their fear of offending Sámi people exposed to violence or Sámi people in general to stop them.

NKVTS also identified several gaps in the current state of research, concluding that there is a need for: (i) research offering in-depth knowledge on the extent of violence and abuse affecting children, young people, adults and elderly people with Sámi backgrounds; (ii) research focusing on risk factors for committing violence, concentrating on Sámi communities; (iii) research on the interactions between public services, police and Sámi people; and (v) research that investigates whether different cultural and social circumstances can have a capacity-building effect and whether this may have a protective and strengthening impact on people exposed to violence in Sámi communities.<sup>91</sup>

### **3.1.3 The Nordland police district's report of November 2017 – the Tysfjord cases**

In June 2016, the newspaper VG published the stories of eleven people who had come forward, saying that they had suffered serious sexual abuse in the Municipality of Tysfjord. Since then, Nordland Police District has investigated a series of abuse cases. In November 2017, the police published a report on their inquiries.<sup>92</sup>

A total of 151 cases of sexual abuse and 10 cases of family violence, threats and breaches of the obligation to notify the authorities in the Municipality of Tysfjord were identified, involving a total of 82 aggrieved parties and 92 suspects. The

<sup>90</sup> *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn*, NKVTS, report No. 2, 2017, Chapter 6.

<sup>91</sup> *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn*, NKVTS, report No. 2, 2017, Chapter 6.

<sup>92</sup> *Overgrepene i Tysfjord – erfaringer og funn fra politiets etterforskning*, Nordland politidistrikt (Nordland Police District), 2017. The following is based on the report.

population of Tysfjord is currently just under 2000 people. Some of the crimes dated back as far as 1953 with others being as recent as August 2017. The majority of the aggrieved parties were under the age of 16 at the time of suffering violence and abuse. Almost 70% of the aggrieved parties and suspects were part of the Lule Sámi community in Tysfjord. In addition, many also had links with the Laestadian community.

The police report mentions some of the same challenges that were identified in the NKVTS report.<sup>93</sup>

The police inquiries were complicated, among other factors, by the Sámi community's lack of trust in the public authorities. The police attributed this lack of trust to the impact of the historic Norwegian assimilation policy and a need to "work differently" than they would normally have done, in order to build trust, both for the purposes of gathering information, undertaking preventative police work and investigating the crimes.

Further, the police describe how competencies in Sámi language and culture, in particular the Lule Sámi culture, are prerequisites to building trust and understanding when meeting involved parties from a Sámi background. The police realised that they had insufficient knowledge in this field, and sought advice and guidance from a variety of Sámi centres of expertise to help them approach taboo and sensitive issues concerning sexual abuse, incest, religion, questions of human dignity, Shamanism etc.

The police also highlighted the importance of Laestadianism for some of the people who featured in the Tysfjord cases. For some of the actors involved, their connection to Laestadianism

made it difficult to access information about what had happened. The police referred to the practice of congregations forgiving perpetrators for the abuses they had committed. Once forgiveness has been granted by the congregation, the matter is considered to have been settled, making it impossible for the police to obtain information in such cases.

The police described how several of the aggrieved parties were reluctant to report or tell their stories to the police. There is more than one mechanism at play engendering silence about abuse, but in the view of the police, the close family bonds in Lule Sámi communities feature strongly. Loyalty to the family, the extended family, the kin network, as well as the loyalty to one's own ethnic group, is strong, and the aggrieved parties hesitated to involve Norwegian society and public services in their affairs. Having said that, the police also observed a trend towards breaking this silence.

In the report, the police were reluctant to draw any conclusions as to whether the same problems might help explain why instances of abuse were not discovered *earlier*, i.e. before the news broke in VG, leading to the police inquiries being launched.<sup>94</sup> In the report, the police wrote:

*Although many of the crimes go back in time, it is difficult to understand that no one saw anything or intervened. In some families there was extensive alcohol abuse, serious violence, gross sexual abuse and other cases of serious neglect. In addition, a number of cases have been identified where parents failed to protect the children from gross sexual abuse at the hands of others. In several of the cases the lack of care was obvious and evident also to outsiders.*

<sup>93</sup> *Overgrepene i Tysfjord – erfaringer og funn fra politiets etterforskning*, Nordland politidistrikt (Nordland Police District), 2017, Chapter 1.3.

<sup>94</sup> *Overgrepene i Tysfjord – erfaringer og funn fra politiets etterforskning*, Nordland politidistrikt (Nordland Police District), 2017, Chapter 6.

*Based on the stories being told, it is difficult to see why society at large did not do more to take action. In this regard, public service provision, i.e. health-care providers, schools, day care facilities, child welfare services and the police must take their share of the blame for not intervening earlier. Neighbours and family members should also have seen and understood that these children were suffering.*<sup>95</sup>

#### **3.1.4 NIM'S consultation meeting in Kautokeino in October 2017 – violence in close relationships**

On 30 October 2017, NIM, in cooperation with the Equality and Anti-discrimination Ombud and the Sámi Parliament's governing council, organised a meeting in Kautokeino on violence in close relationships in Sámi communities. The backdrop to the meeting was the NKVTS report, mentioned above, and the Government's upcoming examination by the Committee on the Elimination of Discrimination Against Women (the Committee) on 7 November 2017.<sup>96</sup>

NIM, the Equality and Anti-discrimination Ombud and the Sámi Parliament's governing council wished to learn what Sámi organisations, individuals and public bodies themselves thought about how Sámi people experiencing violence in close relationships could be offered adapted help from the police and other services. We wanted to learn how the authorities can help prevent violence in close relationships.<sup>97</sup> The objective was to obtain information directly from the Sámi community, to

be utilised in our recommendations to the Government and to the Committee.

At the meeting, many of the problems set out in the NKVTS report were discussed; however, attendees also raised additional challenges. A number of issues creating real problems for Sámi people exposed to violence in their encounters with service providers were raised. These included a shortage of culturally sensitive competencies in service provision; inadequate linguistic facilitation in meetings with service providers; failures to coordinate and create a coherent approach in the provision of assistance; the need for initiatives to raise awareness and disseminate information; the need to adapt services to the problem of geographical distances; the failure to create appropriately adapted appeal mechanisms and the Sámi population's lack of trust in the public sector.

A number of proposals to improve the situation were suggested.<sup>98</sup>

Multiple parties underlined the need for more research in the field. Both the incidence of violence and abuse and causal factors must be studied; similarly, there was a need to study the capability of both the police and public services in assisting Sámi people exposed to violence. An important premise that was underlined was that research must be conducted in collaboration and cooperation with Indigenous peoples throughout the

<sup>95</sup> *Overgrepene i Tysfjord – erfaringer og funn fra politiets etterforskning*, Nordland politidistrikt (Nordland Police District), 2017, p. 10. The County Governor of Nordland undertook an inspection in the Municipality of Tysfjord in 2017 and found that the municipality lacked adequate systems within some of the municipal services to follow up the obligation to notify the authorities, see the County Governor of Nordland's Supervisory Report: *Tilsynsrapport: Meldeplikten til barnevernet og barnevernets arbeid med meldinger 19. juni 2017*.

<sup>96</sup> The Committee monitors how state parties meet their obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women. In Norway, the Convention has been included in the Human Rights Act. For further details, see Chapter 2.

<sup>97</sup> Three non-governmental organisations, Finnmark Police District, researchers from the University of Tromsø – Norway's Arctic University and several experts from SANKS were represented at the meeting, in addition to representatives from the three organisers. There are also references to the research or contributions to the state of knowledge from several of the attendees in NKVTS' report.

<sup>98</sup> This is a brief outline of some of the measures that were mentioned during the meeting.

entire research process – from framing research questions and on to interpretation and intervention.

The importance of local processes was also emphasised in other ways: in order to be fully realised, measures must have backing in the Sámi community. There is a wish for a Sámi office of equality and anti-discrimination, and for a stronger network of NGOs, so that these can engage more extensively in these efforts; moreover, existing social traditions that are part of Sámi culture must be utilised in order to resolve conflicts.

The majority of those attending the meeting also stressed the need for efforts to raise awareness and disseminate information: children must learn more about what is allowed and what is not allowed in respect of their own bodies and sexuality. There is a need to involve the men; a reference was made to the campaign “Kjernekar” (Good Guy). Public services must become more visible, so that people exposed to violence know where to turn. The fact that work to raise awareness and disseminate information must be undertaken in Sámi was also underlined.

Several representatives also foregrounded the need for upskilling in public services with reference to upskilling in Sámi language, culture and traditions. Specifically, the need for more rigorous competency requirements in the framework plan for health and social care subjects in the professional education programmes was mentioned, with more exacting requirements for competencies in Sámi languages, culture and traditions.

### **3.1.5 The report from the Ombudsman for Children of 2018 – sexual violations**

In 2018, the Ombudsman for Children published their report “*Alle kjenner noen som har opplevd det. Samtaler med ungdom om seksuelle krenkelser*”. (In English, this translates to “Everybody knows somebody who has experienced it. Talks with young people about sexual violations.”) The report is based on a qualitative study with 200 children and young people in four different places in the country. One of these places was Kautokeino. The report springs from the desire to understand the figures that emerged in a report from the Norwegian Institute for Research on Child Development, Welfare and Aging (NOVA). The Ombudsman’s report showed that there was a significant increase in the share of young people that had suffered sexual violations at the hands of a friend – be it male or female, romantic partner or acquaintance – of their own age; however, the report did not explain why this was the case.

The conversations with the Ombudsman for Children showed that young people violate each other’s boundaries and suffer violations from adults in positions of power. Moreover, young people do not have sufficient knowledge about legal protections and the potential consequences of such acts.<sup>99</sup>

Among other things, young people were asked to answer the question “What do you think sexual violations are?” Several young people from Kautokeino expressed that it was a problem that the Norwegian words young people use to describe sexual violations do not exist in Sámi; and that there are words in Sámi that do not exist in Norwegian.<sup>100</sup> Under the heading “Is it ok to tell?”

<sup>99</sup> *Alle kjenner noen som har opplevd det. Samtaler med ungdom om seksuelle krenkelser*, Barneombudet, 2018, p. 5. In using the term sexual violations, the Ombudsman for Children refers to Chapter 9A of the Education Act, and states that this term can encompass everything from sexualised comments to sexual violence, e.g. rape. Sexual violations include digital, verbal, physical and indirect violations, e.g. in the form of spreading rumours and slander.

<sup>100</sup> *Alle kjenner noen som har opplevd det. Samtaler med ungdom om seksuelle krenkelser*, Barneombudet, 2018, p. 11.

the Ombudsman for Children describes the experiences of Sámi young people when they try to report sexual violations:

*Culture was underscored as an important obstacle to telling. Honour is important; so is family. They describe a culture where one seeks to resolve problems with members of the immediate family before approaching others – if one dares approach others at all. The greatest problem arises if a person in one’s own kin network is the person committing the violation. In such cases the sanctity of private life is paramount.*<sup>101</sup>

The Ombudsman for Children also describes a lack of learning resources in Sámi to educate children about positive and negative relationships; boundaries for one’s own and others’ bodies; violence and abuse, and the right to protection.<sup>102</sup> The Ombudsman for Children makes a number of recommendations to the authorities to prevent sexual violations in relation to young people. Among other things, the Sámi Parliament is asked to “ensure that good educational materials are developed in Sámi on boundary-setting and sexual violations for use in schools where teaching takes place in Sámi. Sámi young people must be involved in this work.”<sup>103</sup>

### 3.1.6 The historical backdrop

Several research communities have focused on the harsh Norwegian assimilation policy that targeted the Sámi people and its role in relation to the incidence of violence and abuse in Sámi communities.<sup>104</sup>

From the mid-nineteenth century until just a few decades ago, Norwegian authorities had the explicit objective of assimilating the Sámi and Kven.<sup>105</sup> The primary means employed were educational and language policies, which laid down that the Sámi should learn Norwegian and not speak the Sámi language. Several children’s homes and boarding schools were established to accommodate Sámi children. As a result of this policy, many individuals lost their Sámi language, culture, tradition and identity. After World War II, the authorities’ attitude to the Sámi began to change and eventually the policy came to an end.

NKVTS point out that the after-effects of this policy may endure for a long time and are expressed through discrimination, disparaging attitudes and a failure to recognise Sámi language and culture:

*Historical-collective trauma is a term used to describe the impact of colonisation, cultural subjugation and historical oppression on Indigenous peoples (Kirmayer, Gone and Moses, 2014). The trauma of the Norwegian assimilation policy may – in conjunction with today’s discrimination, stereotypes and negative attitudes from society at large – have affected many Sámi people. Internationally, several researchers have linked violence and abuse among today’s Indigenous people to the historical legacy of colonialism (Kirmayer, Gone and Moses, 2014). Rauna Kuokkanen, a Finnish-Sámi researcher working in Canada believes there is a link between colonisation and different problems in today’s Indigenous societies, such as psychological stress, identity crises, self-hate, drug problems and violence and abuse (Kuokkanen, 2013;*

<sup>101</sup> *Alle kjenner noen som har opplev det. Samtaler med ungdom om seksuelle krenkelser*, Barneombudet, 2018, p. 28.

<sup>102</sup> *Alle kjenner noen som har opplev det. Samtaler med ungdom om seksuelle krenkelser*, Barneombudet, 2018, p. 32.

<sup>103</sup> *Alle kjenner noen som har opplev det. Samtaler med ungdom om seksuelle krenkelser*, Barneombudet, 2018, p. 33.

<sup>104</sup> *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn*, NKVTS, report No. 2 2017 Chapter 2.2.

<sup>105</sup> The following builds on Chapter 2.2. of NKVTS’ report.

*cf. Smith, 2005). To date, there is little research in the Nordic countries on the long-term effects of this type of historical trauma on Sámi people's psychosocial health (Stoor, 2016, pp. 26–27).*

*The way in which children were exposed to violence and abuse in boarding schools is another example of the harm inflicted on Indigenous peoples by society at large. Here, the link between structural violence and interpersonal violence is unambiguous. For many years, the authorities ignored the instances of abuse, and the people exposed to this abuse internalised shame and blamed themselves. Many people believe that this may be a factor in a range of social problems in Indigenous societies, including current levels of violence and abuses (Smith, 2005). The boarding schools in Finnmark and other parts of Sápmi are an important and tragic element in the Nordic countries' history of colonialism; yet there continues to be little research on violence, sexual abuse and other traumatic experiences which Sámi pupils were subjected to in these institutions (however, see Rasmus, 2006).<sup>106</sup>*

### **3.1.7 Summary**

The situation today can be summarised in the following points:

The figures from the 2015 study indicate that Sámi ethnicity is a risk factor for exposure to violence or abuse.

NKVTS confirm that Sámi people exposed to violence are in need of service provision that is linguistically and culturally sensitive. Linguistic and cultural differences may represent a barrier for Sámi people exposed to violence in their encounters with public services, making it more difficult for them to access help.

There are clear indications that there is some unevenness in the extent to which service providers have the Sámi linguistic and cultural competencies required to address these challenges:

In their report, NKVTS underscore that competencies are unevenly distributed among the different levels of public service provision. The report highlights that much can be done to improve the dissemination of knowledge and experience to all relevant actors involved in public service provision.

In their report, Nordland Police District themselves emphasised that, at the time of conducting their inquiries in 2016, they lacked the necessary linguistic and cultural competencies required to investigate the Tysfjord cases.

A number of the attendees at NIM's meeting in Kautokeino also confirmed that these issues were largely not being resolved by relevant service providers in question.

There is a need for more work to disseminate information and raise awareness about violence and sexual abuse affecting Sámi communities, in Sámi, as described by several individuals at the meeting held in Kautokeino on 30 October 2017.

Sámi children and young people need to know more about what defines positive and negative relationships; boundaries for their own and others' bodies; violence and abuse, and the right to protection as described by the Ombudsman for Children.

<sup>106</sup> *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn, NKVTS, report No. 2, 2017, p. 33–34.*

There is a great need to conduct more research on this issue and its various aspects, as outlined both by NKVTS and several of the people attending NIM's meeting in Kautokeino.

- There is a need for both quantitative and qualitative research that addresses the incidence; causal factors; the role of the Norwegian assimilation policy; who perpetrates the violence, and how measures can be adapted to suit the needs of Sámi people exposed to violence.

### 3.2 What are the Authorities Doing?

As mentioned in Chapter 3.1.1, preventing, combating and investigating violence and abuse is complex. Norwegian authorities have put in place a number of measures. Combating violence and abuse has been a policy priority area for several years.

In April 2017, the Norwegian Parliament's Standing Committee on Justice considered the Government's escalation plan to strengthen efforts against violence in close relationships and against violence and abuse against children.<sup>107</sup> The plan covers the period 2017–2021 and, among other things, followed up on the Government's action plan "*Et liv uten vold*" ("A life without violence") (2014–2017). Most of the measures in the plan encompass all people, including Sámi people exposed to violence. Examples of such general measures include health legislation that clarifies the responsibility of health and care services to help prevent, identify and combat

violence and sexual abuse.<sup>108</sup> Another example is the establishment of support centres for victims of crimes in all of the 12 police districts which offer assistance and guidance to aggrieved parties.<sup>109</sup> In addition, a quality study conducted by the Regional Public Prosecution Offices on the problem of rape and abuse in close relationships ("*Statsadvokatenes kvalitetsundersøkelse 2016 – voldtekt og mishandling av nærstående*") provides a good basis to further improve the way the police handle these cases. Needless to say, these general measures will also benefit Sámi people exposed to violence.<sup>110</sup> Below, we will describe measures that specifically target Sámi people.<sup>111</sup>

The above-mentioned plans include some specific references to the Sámi as an Indigenous people. In the action plan against violence in close relationships "*Et liv uten vold*" (2014–2017), the UN Declaration on the Rights of Indigenous Peoples and the ILO Convention o. 169 on the rights of Indigenous peoples are mentioned. In connection with the action plan, the Ministry of Justice and Public Security undertook half-yearly reviews of measures that have been put in place under the action plan. The status report for 2017 has no reference to the Sámi or Indigenous peoples.<sup>112</sup> In the above-mentioned escalation plan to strengthen efforts against violence and abuse, Sámi and Indigenous people are mentioned several times, including in p. 9 (the need for culturally sensitive service provision), p. 36 (parental guidance), p. 38 (bullying), p. 38 (work to disseminate information in schools and day care

<sup>107</sup> Prop. 12 S (2016–2017) and Innst. 247 S (2016–2017).

<sup>108</sup> Section 1-3c of the Act relating to dental health services; section 2-1 f) of the Act relating to specialised health services, section 3-3a of the Act relating to municipal health and care services. See Prop. 71 L (2016–2017).

<sup>109</sup> Formerly the office for victim care.

<sup>110</sup> Also see the report of 2018 produced by the Knowledge centre KUN, funded by the Nordic Council of Ministers on the implementation of the Istanbul Convention in the Nordic countries. This outline a number of the measures in Norway, cf. *The Istanbul Convention – The Nordic Way*, Stubberud, Hovde og Aarbakke, Forlaget Nora, 2018.

<sup>111</sup> Our presentation is not exhaustive, but serves to provide an impression of the work being done in the field.

<sup>112</sup> *Statusrapport for handlingsplan mot vold i nære relasjoner*, July 2017, [www.regjeringen.no](http://www.regjeringen.no)

institutions), pp. 44, 51 and 52 (research), p. 78 (children's houses)<sup>113</sup> and p. 94 (risk factors).<sup>114</sup> When the Standing Committee on Justice considered the escalation plan, the Sámi were mentioned *once* in the Committee's recommendation to the Storting.<sup>115</sup>

Governmental authorities have also encouraged all municipalities to draw up their own action plans against violence in close relationships. In the 11 municipalities in the Sámi administrative area,<sup>116</sup> three of the municipalities have such action plans, and they all specifically mention the Sámi people.<sup>117</sup>

In addition to the above-mentioned plans, we also wish to mention some specific measures designed with special regard to Sámi users. The first such measure is the creation of the Sámi Norwegian National Advisory Unit on Mental Health and Substance Use (SANKS) in 2002.<sup>118</sup> SANKS shall help ensure that the Sámi population receives mental health care and substance abuse services on a par with the rest of the population.

Other measures include the family protection office in Karasjok<sup>119</sup>, the Regional Sámi Centre for Expertise (RESAK)<sup>120</sup>, the Sámi Crisis and Incest Centre in Karasjok and the Regional Resource Centre for Violence, Traumatic Stress and Suicide Prevention in Northern-Norway (RVTS Nord).<sup>121</sup> The Ministry of Local Government and Modernisation has also granted 7.5 million kroner for a follow-up project for the Tysfjord cases; the project will work on measures to prevent violence and abuse in Tysfjord.<sup>122</sup> Nordland Police District has also run its own project to work preventively in parallel with the Tysfjord inquiries.<sup>123</sup>

There is also legislation that seeks to safeguard Sámi languages and culture more generally; this is also significant in preventing, combating and protecting Sámi people exposed to violence. The Sámi people's right to use Sámi language in their contact with the authorities is protected under both the Constitution and the Sámi Act. Sámi and Norwegian are languages of equal status under section 1-5 of the Sámi Act; Chapter 3 sets out a number of rights in respect of using the Sámi

<sup>113</sup> The State Children's Houses have been tasked with conducting interviews in connection with criminal investigations, performed by qualified police personnel specially trained in interviewing children. Other core activities encompass medical examinations; treatment/follow-up/prevention; advice/guidance; professional development; information/education.

<sup>114</sup> Prop. 12 S Opptrappingsplan mot vold og overgrep (2017–2021)

<sup>115</sup> Innst. 247 S (2016–2017).

<sup>116</sup> Karasjok, Kautokeino, Lavangen, Nesseby, Porsanger, Tana, Kåfjord, Tysfjord, Snåsa, Røyrvik and Hattfjelldal, cf. Forskrift om endring av forskrift 17. juni 2005 nr. 657 om forvaltningsområdet for samisk språk.

<sup>117</sup> Based on our informal inquiries with the municipalities and review of the action plans we were sent. One of the municipalities informed us that they would launch their action plan in June 2018.

<sup>118</sup> SANKS is both a national advisory unit and district psychiatric centre with offices all over the country. In addition to clinical activities, SANKS runs extensive dissemination of information and research and teaching activities and has a dedicated R&D unit.

<sup>119</sup> Established in 1991 in order to offer the Sámi population in inner and eastern Finnmark help with family-related problems.

<sup>120</sup> Set up in 2011 with the primary task of undertaking professional development activities in family-related challenges in Sámi communities.

<sup>121</sup> The centre is tasked with disseminating knowledge to public services in a region of Norway with a large Sámi population. A number of initiatives have been described in *Om du tør å spørre, tør folk å svare. Hjelpeapparatets og politiets erfaringer med vold i nære relasjoner i samiske samfunn*, NKVTS, report No. 2 2017, p. 39–40. In NOU 2016:18 *Hjertespråket*, a number of measures in the health and care sector are described targeted at intensifying the preservation of Sámi language and culture and enhancing the procedural rights of patients individually.

<sup>122</sup> *Overgrepene i Tysfjord – erfaringer og funn fra politiets etterforskning*, Nordland politidistrikt (Nordland Police District), 2017 p. 37.

<sup>123</sup> *Overgrepene i Tysfjord – erfaringer og funn fra politiets etterforskning*, Nordland politidistrikt (Nordland Police District), 2017 p. 6. There are also a number of measures that may help Sámi persons exposed to violence indirectly. For instance, the University of Tromsø has, on commission from the Norwegian Directorate for Children, Family and Youth Affairs, authored a review of services including child welfare services for the Sámi People, see *Utredning om barnevern for den samiske befolkningen, innvandrere og nasjonale minoriteter i Norge. Kompetansehevende tiltak, kunnskapsmiljø og samiske barns særlige rettigheter*, Saus, Salamonsen, Douglas, Hansen, Thode, Report 2 2018, University of Tromsø, January 2018

language in contact with the authorities. However, there are certain limitations to this right; for instance, it applies mainly to the municipalities in the administrative area for Sámi languages, and only for a few selected public services. There is a right to use Sámi language in the judicial system and when being interrogated by the police and in a number of settings in the health and care services. In addition, all children have a right to be educated in Sámi in primary and lower secondary school.<sup>124</sup> The Official Norwegian Report NOU 2016: 18 “*Hjertespråket*” (“the Language of the Heart”) identifies a number of areas where Sámi language rights are not safeguarded sufficiently in Norway.

In 2008, the Sámi Parliament adopted a dedicated action plan for equality for 2009–2013. The plan also covers efforts to combat violence in close relationships, with the strategy “Stronger public service provision built on Sámi language and culture against all types of violence in close relationships.”<sup>125</sup> The action plan was discontinued after 2013. Together with the Ministry of Justice and Public Security, the Sámi Parliament initiated the NKVTS report (discussed in chapter 3.1.2.). Pursuant to section 6-4 of the Education Act, the Sámi Parliament has the authority to – within the framework laid down by the Ministry of Education and Research – issue regulations on the content of education concerning the Sámi people and their language, culture and civic life. The Sámi Parliament may also lay down the curricula for the Sámi language in primary and lower secondary education and in upper secondary education and training. On 30 October 2017, the Sámi Parliament also entered into a collaboration agreement with the Equality and Anti-discrimination Ombuds, with

one of the cooperation areas being efforts to combat violence in close relationships.<sup>126</sup>

<sup>124</sup> For further details, see the review in NOU 2016: 18 *Hjertespråket*. Chapters 10, 13 and 14.

<sup>125</sup> Sak 46/08, Sametingets handlingsplan for likestilling 2009–2013, filing reference 07/5348.

<sup>126</sup> Samarbeidsavtale mellom Sametinget og LDO 2017–2022, 30 October 2017.

# 4. Conclusions and NIM's recommendations

## 4.1 Are the Human Rights of Sámi People Exposed to Violence Being Met?

Human rights as described in Chapter 1 obligate States to have a suitable system to prevent, combat and investigate violence and abuse. Human rights set out explicit requirements to secure States' compliance with their obligations; moreover, human rights clearly define how the work of States in this regard shall be conducted systematically.

Combating violence and abuse is a priority area for Norwegian authorities. Several action plans have been implemented and a number of measures put in place to help people exposed to violence. In addition to the general measures affording everyone protection from violence and abuse, Norwegian authorities have also implemented several measures suited to protecting Sámi people exposed to violence in particular (Chapter 3.2). Nevertheless, NIM concludes that there are specific human rights challenges associated with the protection of Sámi people exposed to violence in Norway.<sup>127</sup>

One of the first questions is whether the State complies with the human rights requirement to ensure that service providers have competencies in Sámi language, culture and tradition where this is necessary to prevent, combat or investigate

violence and abuse against Sámi people. As outlined in Chapter 3.2, there are several concrete measures designed specifically for Sámi users, such as SANKS. The escalation plan to strengthen efforts against violence and abuse also mentions the importance of Sámi language and cultural competencies in public services. Despite this, NIM believes that there currently are weaknesses in how the State complies with these obligations.

In Chapters 3.1.2–3.1.4 we describe how a number of challenges associated with the use of Sámi language, culturally specific forms of communication, the role of Laestadianism, Sámi family traditions etc. may act as a barrier for Sámi people exposed to violence when seeking help. There are also clear indications that several service providers largely lack the competencies required to meet these challenges; (i) in their report, NKVTS emphasise that competencies suited to the needs of Sámi people exposed to violence are unevenly distributed at all levels of services provision and that there is considerable room for improvement in disseminating knowledge and experience to all relevant parts of public services, (ii) in their report, Nordland Police District described how the police lacked the linguistic and cultural competencies needed to investigate the Tysfjord cases, and (iii) attendants at the meeting held by NIM in Kautokeino made

<sup>127</sup> Also see Chapter 4, in particular p. 106 ff. in the KUN centre for equality's report *The Istanbul Convention – The Nordic Way*, which supports several of our findings and offers useful perspectives for work going forward to improve the deficiencies (cf. *The Istanbul Convention – The Nordic Way*, Stubberud, Hovde and Aarbakke, Forlaget Nora, 2018.)



multiple statements to confirm that relevant service providers by and large fall short of resolving the existing challenges. NIM is of the view that the authorities are not fully meeting their human rights obligations to ensure Sámi linguistic and cultural competencies in public service provision.

Furthermore, one needs to ask whether the State meets the requirement that children are taught about their bodies, boundaries and sexuality in schools and via other, more informal platforms, and whether the children are being taught in Sámi where this is required.

In its 2018 report, the Ombudsman for Children (see Chapter 3.1.5) describes the need for more knowledge among children and young people, including Sámi children and young people, about positive and negative relationships; boundaries for their own and others' bodies; violence and abuse and the right to protection. The Ombudsman makes a number of recommendations to the authorities, including the Sámi Parliament, about how to meet the challenges. NIM therefore concludes that there are also weaknesses in how the authorities comply with the requirements to ensure Sámi children are provided with knowledge about their bodies, boundaries and sexuality.

A third question raises how the State meets its obligation to adapt work to raise awareness and disseminate information to the needs of Sámi people exposed to violence. NIM is of the view that the State can do more in this regard and cites the input at the meeting in Kautokeino on 13 October 2017 (see Chapter 3.1.4). Among other things, public service provision must become more visible, so that people exposed to violence know where to turn; and the work to raise awareness and disseminate information must be conducted in Sámi languages.

Fourthly, one must ask whether the State has an evidence-based approach to the issue and whether it ensures that sufficient data is collected and research undertaken to ensure that services and measures are fit for purpose. NIM believes that the State does have an evidence-based approach to the issue; this is reflected in the ongoing measures referred to in Chapter 3.2. In addition, the State has also – among other things – initiated research on the issue through the NKVTS report.

However, the NKVTS report identifies several gaps in research. In particular, there is a need for: (i) research giving in-depth knowledge on the extent of violence and abuse that children, young people, adults and elderly people with Sámi backgrounds are subjected to; (ii) research focusing on risk factors for committing violence, emphasising Sámi communities; (iii) research on how public services and the police work with people who have a Sámi background; (iv) research on the phenomenon of violence and abuse in Sámi communities, and (v) research that investigates the extent to which different cultural and social circumstances have a capacity-building effect, and whether this has the potential to serve as a protective and strengthening factor for people exposed to violence in Sámi communities. NIM is of the view that there is also a need to conduct research on how the historical backdrop of the assimilation policy has affected the phenomenon of violence and abuse in Sámi communities. NIM believes that the State should address several of these research needs by financing new research as soon as possible, with a view to ensuring that their human rights obligations are met on this point.

NIM believes that the Tysfjord cases (described in Chapter 3.1.3) are examples of how several of these problems ultimately resulted in public services failing the Sámi people exposed to violence

in Tysfjord. The cases from Tysfjord show how serious neglect, violence and sexual abuse continued over several years, without intervention from public authorities. Needless to say, the cases are multifaceted and also include non-Sámi dimensions; however, the Sámi perspective is critical to fully understanding the nature of these deficiencies. Particularly where public services lacked competencies in Sámi language, culture and traditions and where Sámi forms of communication appear to have further intensified these factors.

Overall, NIM believes that, despite several appropriate measures – set out under Chapter 3.2 – the authorities have fallen short in their work to ensure the human rights of Sámi people exposed to violence. NIM is of the view that there are weaknesses as to how the State complies with their duty to meet their human rights obligations. The State can do more to improve its efforts, including in relation to Sámi linguistic and cultural competencies in public services, work to disseminate information and raise awareness – in particular targeting Sámi children – and research on this issue.

The State is aware of the situation of Sámi people exposed to violence; moreover, the figures from the 2015 study on the incidence of violence and abuse indicate that Sámi ethnicity is a risk factor. In light of this knowledge, the State is subject to more rigorous obligations in regard to securing the rights and needs of Sámi people exposed to violence

#### 4.2 NIM's Recommendations

NIM recommends that Norwegian authorities intensify their efforts to prevent, combat and investigate violence and abuse against Sámi people exposed to violence. NIM is of the view that a new action plan against violence and abuse in Sámi communities would be an appropriate response to tackle the challenges that have been set out in this report.<sup>128</sup>

Such an action plan could also form part of an overarching action plan targeting violence and abuse in Norway. There is currently no such overarching action plan against violence and abuse. NIM believes that there is good reason to question whether the current escalation plan to strengthen efforts is an adequate response to this extensive societal problem. Several stakeholders, including NIM, have criticised the plan because it is not binding enough; noting that the authorities should consider implementing a new, overarching action plan.<sup>129</sup> An action plan targeting violence and abuse in Sámi communities could either be a separate plan, or be an integrated, but clearly defined, part of an overarching action plan.

The Equality and Anti-discrimination Ombuds has asked the authorities to do more, and supports the proposal of a new action plan against violence and abuse in Sámi communities.<sup>130</sup> As noted above, the Ombudsman for Children has made several recommendations,<sup>131</sup> and the Sámi Parliament has itself called for more research and culturally sensitive measures in public service provision.<sup>132</sup>

<sup>128</sup> Several relevant actors consider financially binding, cross-sectoral action plans to be a suitable measure to address complex issues, such as violence and abuse; for further details on why, see *The Istanbul Convention – The Nordic Way*, p. 92–93, Stubberud, Hovde og Aarbakke, Forlaget Nora, 2018.

<sup>129</sup> Årsmelding for 2017, p. 78.

<sup>130</sup> This point of view was presented in a joint opinion piece by the Equality and Anti-discrimination Ombudsman (LDO) and NIM in the newspaper VG in November 2017.

<sup>131</sup> *Alle kjenner noen som har opplevd det. Samtaler med ungdom om seksuelle krenkelser*, Barneombudet, 2018, p. 30 ff.

<sup>132</sup> See the Sámi Parliament's presentation to CEDAW.

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## Recommendations

- ▶ The authorities must strengthen their efforts to prevent, combat and investigate violence and abuse against Sámi victims. The authorities should prepare and implement an action plan against violence and abuse in Sámi communities, which should include the following measures:
    - The plan must include a commitment to fund more research on violence and abuse in Sámi communities. The research should be both quantitative and qualitative and cover issues such as the prevalence of violence and abuse, causal relationships, the effectiveness of awareness and education measures, the perpetrators of violence and culturally responsive support services for Sámi victims.
    - The plan must ensure that service providers have the necessary expertise in Sámi language, culture and traditions to enable them to prevent, combat and investigate violence and abuse against Sámi victims.
    - The plan must ensure that adequate information and teaching materials are developed in Sámi language for use in schools to ensure that children are educated about boundaries, violence and abuse. Sámi children and youth must be involved in this work.
    - The plan must provide for awareness and information campaigns on violence and abuse in Sámi communities that address linguistic and cultural barriers.
    - The plan must be grounded in the Sámi community and be developed in consultation with specialists, Sámi organisations and the Sámi Parliament.
  - The plan must be in line with and contribute to the implementation of Norway's human rights obligations, including relevant provisions of the UN Declaration on the Rights of Indigenous Peoples. Recommendations from the UN's three Indigenous mechanisms should also be considered when various measures are implemented, including relevant proposals that aim to strengthen and streamline the international monitoring of the rights of Indigenous women and girls.
  - The plan must be supported by sufficient financial resources and binding deadlines.
  - ▶ The authorities must follow up the Tysfjord cases, with a particular emphasis on the following measures:
    - The authorities must ensure that sufficient resources are still available to enable culturally sensitive preventative measures in the Municipality of Tysfjord, as well as follow-up with particular people at risk of abuse.
  - ▶ The authorities should, on their own initiative, review the Tysfjord cases at the individual level in order to assess whether the State has taken care of its positive obligation to protect victims in each case. If this is not the case, authorities should ensure that the victim is given an effective remedy under Article 13 of the ECHR and Section 92 of the Constitution, unless all avenues for redress have already been exhausted.
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“In the Tysfjord cases, both the Government and the police stated that public services have failed. The question is where the failure lies, given that the human rights of Sámi people do not appear to be safeguarded adequately in abuse cases. Is it a question of resources and the lack of competencies in Sámi cultures and social conditions?”

**Lars Magne Andreassen**, Director of the Lule Sámi Centre (Árran Julevsáme guovdásj)

# 5. References

## Acts and Regulations

**NIM-loven:** Lov av 1. juli 2015 om Norges nasjonale institusjon for menneskerettigheter. (The Act of 1 July 2015 on the Norwegian National Human Rights Institution.)

**Helse- og omsorgstjenesteloven:** Lov av 24. juni 2011 om kommunale helse- og omsorgstjenester m.m. (The Act of 24 June 2011 relating to Municipal Health and Care Services etc.)

**Spesialisthelsetjenesteloven:** Lov av 2. juli 1999 om spesialisthelsetjenesten m.m. (The Act of 2 July 1999 relating to Specialised Health Services.)

**Menneskerettsloven:** Lov av 21. mai 1999 nr. 30 om styrking av menneskerettighetenes stilling i norsk rett. (The Act of 21 May 1999 relating to the strengthening of human rights in Norwegian law (The Human Rights Act.)

**Opplæringsloven:** Lov av 17. juli 1998 om grunnskolen og den videregående opplæringa. (The Act of 17 July 1998 relating to Primary and Secondary Education.)

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**Prop. 12 S (2016–2017):** Prop. 12 S (2016–2017) Opptrappingsplan mot vold og overgrep (2017–2021). (Proposition 12 S to the Storting (2016–2017) (The escalation plan to strengthen efforts against violence and abuse.))

**Prop. 66 S (2016–2017):** Prop. 66 S (2016–2017) Samtykke til ratifikasjon av Europarådets konvensjon av 11. mai 2011 om forebygging og bekjempelse av vold mot kvinner og vold i nære relasjoner. (Proposition to the Storting 66 (2016–2017) Consent to the ratification of the Council of Europe Convention of 11 May 2011 on preventing and combating violence against women and domestic violence.)

**Prop. 71 L (2016–2017):** Prop. 71 L (2016–2017) Endringer i helselovgivningen (overføring av det offentlige tannhelsetjenesteansvaret, lovfesting av kompetansekrav m.m.). (Proposition to the Storting (2016–2017) Amendments to the health legislation (transfer of the responsibility of the public dental health service; establishing requirements to competencies in law etc.)

**Ot.prp. nr. 93 (2008–2009):** Ot.prp. nr. 93 (2008–2009) Om lov om endringer i menneskerettsloven mv. (inkorporering av kvinnediskrimineringskonvensjonen). (Proposition to the Odelsting No. 93 (2008–2009) On the Act to amend the Human Rights Act etc. (incorporate the Convention on the Elimination of all Forms of Discrimination Against Women.))

**Dokument 16 (2011–2012):** Dokument 16 (2011–2012) Rapport til Stortingets presidentskap fra Menneskerettighetsutvalget om menneskerettigheter i Grunnloven. (Document 16 (2011–2012) Report to the Storting's presidency from the Human Rights Committee on Human Rights in the Constitution).

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The Convention on the Elimination of all Forms of Discrimination against Women of 18 December 1979.

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

The Convention on the Rights of the Child of 20 November 1989.

**The Istanbul Convention:** The Council of Europe Convention of 11 May 2011 on preventing and combating violence against women and domestic violence.

**The ILO Convention:** ILO Convention No. 169 on Indigenous Peoples and Tribal Peoples in Independent Countries.

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**General Recommendation No. 19 –** eleventh session, 1992 violence against women.

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