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The Sámi Parliament in Norway: a "breaking in" perspective

Eva Josefsen [a] and Jo Saglie [b]

[a]Department of Child Welfare and Social Work, UiT The Arctic University of Norway, Alta, Norway; [b]Institute for Social Research, Oslo, Norway

ABSTRACT

The *Sámediggi* (Sámi Parliament) in Norway was established in 1989 after the critical juncture of the Alta conflict. As the Indigenous Sámi people are dispersed, a self-determination body with political autonomy was chosen, neither fitting into a territorial nor a non-territorial model of autonomy. We examine how the *Sámediggi* has developed as an institution for Sámi self-determination, the kind of self-determination being developed and the features it has, and why the model of self-determination is not founded on territorial autonomy and self-rule but still has a territorial basis. Having neither an exclusive Sámi territory nor lawmaking or fiscal powers, the *Sámediggi* depends on cooperation with Norwegian institutions. Rather than *breaking out* from the state, the *Sámediggi*'s strategy is *breaking in* – indigenising national, regional and local governments from the inside through consultations and formal agreements, thereby extending Indigenous perspectives and participation into non-Indigenous affairs. Sámi self-determination can thus be described as relational, resulting in a process marked by both setbacks and advances.

KEYWORDS

Autonomy; Norway; Sámi; Parliament; self-determination

Introduction

Many academic contributions on Indigenous self-determination take defined Indigenous territories or exclusive Indigenous territorial claims as their points of departure. This is not the case for the Indigenous Sámi in Northern Europe, who constitute a majority only in a small part of their traditional settlement area. The Sámi live in Northern Europe, divided between Finland, Norway, Russia and Sweden. Except for those in border municipalities in the northernmost parts of Norway and Finland, most Sámi live as minorities among the larger majority populations. Sámi and non-Sámi have always co-existed in the southern part of the traditional Sámi settlement area. In the northernmost part, non-Sámi have immigrated and settled for several hundred years. The general features of this co-existence, whether short or long, have included state-driven racism and assimilation policies towards the Sámi up until the last part of the 20th century. In addition, there is no official registration of ethnicity in the Nordic countries and thus no numerical data about the size and geographical distribution of the Sámi people, except for

CONTACT Eva Josefsen eva.josefsen@uit.no Department of Child Welfare and Social Work, UiT The Arctic University of Norway, Follums vei 39, Alta 9510, Norway

unreliable estimates.[1] The lack of an exclusive Sámi 'homeland' raises the question of how Sámi self-determination claims are defined. Still, the Sámi have claimed recognition of Sámi rights, including land rights, in order to maintain and develop their culture, language, way of life and self-determination as an Indigenous people.

Russian policies towards minorities and Indigenous peoples have worsened, making it impossible to speak about self-determination. In Finland, Norway and Sweden, however, the states have established publicly elected Sámi Parliaments – *Sámediggis* – in which a collective Sámi voice can be heard within the state.[2] In Finland, the state established an advisory Sámi Delegation as early as 1973. *Sámediggi*s were opened in Norway, Sweden and Finland in 1989, 1993 and 1996, respectively. The *Sámediggis* are elected by and among the Sámi in each country.

However, the three *Sámediggis* are not alike. The legal and economic frameworks given by the states separate these institutions in terms of the premises for Sámi self-determination.[3] The general situation differ in terms of the recognition of Sámi rights and how these are adopted into national laws. Norway has been at the forefront, ratifying the International Labour Organization Convention on the Rights of Indigenous and Tribal Peoples (ILO Convention 169) as the first state to do so in 1989, while Finland and Sweden have yet to ratify the convention.

In this article, we focus on the Norwegian *Sámediggi*. We examine how the *Sámediggi* in Norway has developed as an institution for Sámi self-determination, the kind of self-determination being developed and the features it has, and why the model of self-determination is not founded on territorial autonomy and self-rule but still has a territorial basis. Our point of departure is that the Norwegian authorities acknowledged the significance of Indigenous Sámi rights, including their territorial dimensions, symbolically expressed in King Harald's speech to the *Sámediggi* in 1997. Here, the King said that 'the Norwegian State is built on the territory of two peoples – the Norwegians and the Sámi'.[4] Thereby, the Norwegian authorities had accepted the arguments that Sámi activists promoted during the Alta Conflict 15–20 years earlier, at least at the symbolic level, although not always honoured in practice. The *Sámediggi* has worked, though, to convert this symbolic statement into concrete policy since day one.

The Sámi Parliament in Norway – the *Sámediggi* – was established by the Norwegian Parliament's passing of the Sámi Act in 1987. The official opening took place in 1989.[5] As a popularly elected body, the *Sámediggi* has a parliamentary government system, in which a president is elected by the plenary assembly. The 39 representatives are elected from seven multimember constituencies that cover the entire country. The number of seats in each constituency depends on the number of registered voters. All Sámi who have reached voting age can register in the electoral roll if they fulfil two criteria.[6] First, they must declare that they regard themselves as Sámi. Second, they or one of their parents,

[1]Pettersen, "The Sámediggi Electoral Roll."
[2]See Josefsen, "Sámi Political Shifts," for a historical overview of state policies and Sámi political resistance in these three countries.
[3]Josefsen, Mörkenstam, and Saglie, "Different Institutions within Similar States;" Mörkenstam, Josefsen, and Nilsson, "The Nordic Sámediggis."
[4]Royal House of Norway, "Sametinget 1997: Åpningstale,"our translation.
[5]See, e.g. Josefsen, Mörkenstam, and Saglie, "Different Institutions within Similar States;" Falch, Selle, and Strømsnes, "The Sámi."
[6]Pettersen, "The Sámediggi Electoral Roll."

grandparents or great-grandparents must have used Sámi as a home language. Alternatively, one of their parents must be or have been a registered voter. This solution clearly recognises that Sámi live both inside and outside the traditional Sámi settlement area, not limited to any specific Sámi territory.

As an administrative body, the *Sámediggi* has no independent sources of income and depends on transfers from the Norwegian state. However, the *Sámediggi* is a politically autonomous body and is not part of the state's hierarchical steering system. Within the Norwegian central government, the Ministry of Local Government and Regional Development is responsible for Sámi affairs, but the *Sámediggi* is not a subordinate agency of the ministry and is therefore not subject to instruction from the government. According to the Sámi Act, the scope of business of the *Sámediggi* is any matter that affects the Sámi people. Nevertheless, the *Sámediggi*'s actual decision-making power is quite limited. Neither does it engage in public service provision to Sámi citizens, but it manages different grant schemes and may have regulatory authority under legislation, as it has regarding curricula in Sámi-specific subjects. Its influence lies mainly in its legal right to be consulted, its legal rights in specific acts and in its symbolic power. Influence through these legal rights rests on the Norwegian authorities respecting and enforcing acts and Supreme Court decisions that are in favour of Sámi rights, but the symbolic power is not limited by and goes beyond the Norwegian authorities.

In terms of Trinn and Schulte's two dimensions of self-governance,[7] the *Sámediggi*'s scope of competencies is narrow, while its independence is strong. However, their typology was developed to measure territorial self-rule. This is less relevant for the *Sámediggi*, whose aim has been to indigenise national, regional and local governments, extending Indigenous perspectives and participation into the revision of laws and policy-making that concern the Sámi – and even the non-Sámi.[8]

We argue that the development of Indigenous self-determination in Norway should be understood as a product of two factors. The first is ethnogeography in Norway, as the Sámi people are dispersed. The second factor is the *critical juncture* of the Alta conflict in the late 1970s and early 1980s, which resulted in a paradigm shift in the Norwegian state's Sámi policy, concretised by the establishment of the Sámi Culture Commission and the Sámi Rights Commission. The latter proposed several institutional changes in the Norwegian political system in 1984, including the *Sámediggi*. A land management regime in the northernmost county of Finnmark, proposed in 1997, led to the passing of the Finnmark Act in 2005, in which Sámi land rights were written into law. Finally, a 2007 report dealt with the right to and use of land and water in Sámi areas south of Finnmark County. However, the suggestions from the 2007 report have not been followed up systematically. These land rights developments were the results of the solution chosen in the 1980s, which allowed the *Sámediggi* in Norway to expand its political room for manoeuvre in the following decades, rather than setting limits for its political role, thereby making it a significant political player.

Following Josefsen, we argue that the Sámi approach to self-determination should be described as *breaking in*, rather than territorial or functional *breaking out* of the

[7]Trinn and Schulte, "Untangling Territorial Self-governance," 10.
[8]Broderstad, "Implementing Indigenous Self-Determination;" Josefsen, "Sámi Political Shifts."

Norwegian state.[9] Moreover, we present and discuss breaking in as an alternative road to Indigenous self-determination, exemplified by the Norwegian case. In this study, the term 'self-determination' will be used as a concept involving both autonomy in internal Sámi affairs and external cooperation with the state in order to indigenise state structures and functions.

In the following section, we discuss different institutions and strategies for self-determination and the extent to which they are suitable for Indigenous peoples. Next, we discuss the historical development of Norwegian policies towards the Sámi. Drawing on historical institutionalism, we use the concept of critical junctures to characterise the Alta conflict and explain the subsequent development of arrangements for Sámi self-determination in terms of the Sámi breaking into the state. This can be described as a form of Sámi self-determination by indigenising Norwegian policy and politics in all issues relevant to the Sámi people, including laws and regulations concerning health and welfare services, education on all levels, land and resource management and traditional industries, to mention a few. Here, we ask why this approach was chosen and the consequences of this choice. In the final discussion, we assess the approach to Sámi self-determination in Norway: what are its strengths and weaknesses?

Territorial autonomy and its alternatives

Territorial autonomy, self-determination and Indigenous peoples

The core of the Sámi resistance was to fight the Norwegian assimilation policy – which aimed at substituting Sámi identity with a shared Norwegian identity – and replace it with a policy of bringing Sámi aspects into state policy. Williams used the two lenses of citizenship, *shared identity* and *shared fate*, to discuss citizenship and identity within a federal state context, [10] but they can also be useful within a unitary state.

Williams argued that the lens of citizenship as shared national identity 'is tied to the history of nationalism and nation-building',[11] i.e. assimilation. Shared identity, however, can also be understood as shared values instead of shared culture. In the Norwegian context, King Harald's above-mentioned statement – that the Norwegian state is founded on the territory of two peoples – can be seen as an example of building shared values within the Norwegian state. However, such value statements need to be followed up in both societal norm changes and concrete policy changes, i.e. reversing the assimilation policy. Without such changes, shared values remain an insecure foundation for inclusive, value-based citizenship, as the state and the majority remain to have the upper hand in the content of policies and societal norms.

However, the King's statement can also be understood through Williams's other lens – citizenship as shared fate – which recognises the existence of different cultural groups within a state. There is interdependency, not necessarily based on shared cultural values but on a mutual agreement that there is a common need for legitimacy and justification of action. In Norway, the recognition of the concept of shared fate rests on political group autonomy and internal Sámi political self-determination.

[9]Josefsen, "Selvbestemmelse og samstyring."
[10]Williams, "Sharing the River."
[11]Ibid., 40.

A line can be drawn from Williams's shared fate to Iris Young's two concepts of self-determination as *self-rule* and *shared rule*.[12] Young developed the two concepts in a context in which Indigenous peoples' rights are built on Indigenous communities that have been separated territorially from the larger society by the state. In her article, Young introduced the relational dimension, in which Indigenous peoples' claims for self-determination should be understood as 'a quest for an institutional context of nondomination'.[13] This may also apply in contexts in which Indigenous people live among the majority population and self-rule cannot be territorially exclusive. Depending on the context, this will manifest in different ways for different Indigenous peoples and states. Broderstad's relational approach to self-determination contains two separate spaces – Indigenous self-government on the one hand and the state system on the other – and an additional shared space of 'political, legal, economic and ethical concerns'.[14] In the Sámi political context in Norway, this shared space 'can extend political influence beyond the traditional domain of Sámi politics (. . .) by incorporating their perspectives into mainstream decision-making bodies at local, regional, and national levels'. This article examines how the *Sámediggi* utilises this shared space.

For the *Sámediggi*, self-rule implies that the body is free from interference from others. Nevertheless, the *Sámediggi* needs to relate to the state in order to be part of state decisions that affect the Sámi, even though the power balance is asymmetric. The *Sámediggi* has therefore claimed a formalised people-to-people relationship with the state and pushed for legal, political and systemic changes. In other words, shared rule is an important element of Sámi self-determination.

In the Norwegian context, the joint Norwegian–Sámi territory calls for specific political solutions that include not only outcomes but also political processes. From a Swedish Sámi perspective and based on traditional Sámi thinking, Nilsson argued that Sámi autonomy cannot be separated from territory; rather, it is the relationship with the land that constitutes both the Sámi as a people and Sámi self-determination.[15] The same applies to Sámi rights in Norway. The concepts of shared fate and shared rule do not require a body that manages a territory. Nor are they limited to a non-territorial body that controls specific and limited management tasks transferred from the state. The *Sámediggi* does not fall into either of these two categories, which we will return to later. Still, the legitimacy of the *Sámediggi* lies in the historical presence of the Sámi people within the Sámi traditional living area. Their status as an Indigenous people is based on this historical presence and hence their right to traditional land, as confirmed by the Norwegian state's ratification of ILO Convention 169.

Academic debates on territory and autonomy

Although most institutions for self-rule are based on a territory, systems for non-territorial autonomy (NTA) have been presented as attractive solutions for cases in which a minority is spatially dispersed, making it impossible to draw geographical borders that correspond to the minority population. Coakley pointed out three

[12]Young, "Two Concepts of Self-determination."
[13]Ibid., 50.
[14]Broderstad, "Implementing Indigenous Self-Determination."
[15]Nilsson, "Att bearkadidh," 212–3.

features that show whether a territorial arrangement is suitable.[16] First is *inclusiveness*: does the territory incorporate as many members of the group as possible? Second is *homogeneity*: does the territory exclude as many non-members as possible? Third is *compactness*: is a coherent territory delineated by efficient boundary lines? The less inclusive, homogeneous and compact a territory is, the more problematic territorial autonomy will be.

Non-territorial autonomy is a broad term that covers quite different political arrangements. Osipov, for example, argued that NTA is a diffuse and normative concept with a variety of meanings and terminology and that the concept has limited analytical value.[17] Nevertheless, the basic idea is that an institution exercises authority over and is accountable to a group that is not territorially defined but, for example, linguistically or religiously bound. Non-territorial autonomy is about self-administration and self-management regarding specific issues and may comprise matters such as education and culture. The concepts of territorial and non-territorial autonomy are presented as dichotomous and mutually exclusive; either the state manages language and culture, or the minority does so in separate and autonomous minority management arrangements. The state's exclusive power position and the dominance of majority values in public policy are not challenged outside of those policy areas controlled by minority institutions.

Territorial self-determination schemes are ways of breaking out of the state, either through secession or other forms of autonomy claims that do not challenge the existence of the state. Non-territorial autonomy can also be described as a kind of breaking out, in this case a functional breaking out in which minorities are granted exclusive jurisdiction of specific matters.[18]

Several academics have described the Nordic *Sámediggis* as examples of NTA.[19] On the one hand, this is understandable: the *Sámediggi*s are clearly not cases of territorial autonomy. Moreover, the *Sámediggis* fit into the NTA model with regard to elections and representation. On the other hand, the *Sámediggis* do not fit well into the NTA category when we look at policy implementation and service provision. The original idea of NTA, as proposed by Renner and Bauer, was that ethnic organisations should run the cultural and educational affairs of their respective groups.[20] Therefore, an archetypical NTA arrangement has some responsibility for providing public services to the members of a cultural community but has no authority over lands. The *Sámediggi* in Norway, however, does not provide any public welfare services but has some indirect authority over land through the Plan and Building Act, the consultation provisions in the Sámi Act regulating the Norwegian authorities' obligations to consult on Sámi-related issues and the Finnmark Act regulating the right to appoint members to the Finnmark Estate board. Therefore, there is a need to develop new conceptual categories for self-determination based on shared rule rather than self-rule.

[16]Coakley, "Introduction," 7.
[17]Osipov, "Can 'Non-Territorial Autonomy' Serve;" Osipov, "Mapping Non-Territorial Autonomy."
[18]Semb, "From 'Norwegian Citizens'," 1666.
[19]See, e.g. Spitzer and Selle, "Is Nonterritorial Autonomy Wrong;" Osipov, 'Mapping Non-Territorial Autonomy'; Coakley, "Introduction;" Coakley, "Conclusion."
[20]Osipov, "Can 'Non-Territorial Autonomy' Serve," 632.

A "breaking in" perspective

Following Josefsen, we argue that breaking in is an alternative to functional breaking out and to the concept of NTA.[21] In the breaking in approach, Indigenous self-determination takes a shared territory as its starting point and is developed within the framework of the state. In this approach it is not necessarily a contradiction between, on the one hand, self-governing arrangements and, on the other hand, cooperating with the state government and even extending Indigenous perspectives and participation into non-Indigenous affairs.[22] We argue that Indigenous self-determination can be developed in relation to other governing bodies, aiming to make Indigenous considerations an integrated part of the state. This implies an obligation for the state not only to create conditions for the Indigenous people to develop on their own terms but also to ensure that Indigenous considerations are significant parts of the national legal framework implemented into public management and services.

We suggest that three factors are essential for a successful breaking in approach. First, a *legal framework* within the state must lay down Indigenous rights in all aspects of society. Broderstad discussed how Indigenous peoples' self-determination can be handled by fair state procedures.[23] She understood political integration as developing some common standards, rules and mechanisms for conflict solving that regulate and coordinate cooperation between the Indigenous people and the state. This means that Indigenous perspectives and participation will affect matters of non-Indigenous significance.

Second, an *autonomous Indigenous political collective voice, i.e. a self-government body*, must exist. Political cooperation between the state and the Indigenous institution is not to be understood as vertical state steering and hierarchy but as a result of interaction between autonomous bodies. These bodies do not have to be equal or symmetrical in terms of formal status, power foundation or competence. However, a prerequisite for a breaking in approach when entering into agreements is that the Indigenous people must have representatives who function autonomously from the state authorities. This autonomy is twofold, as laid down in the United Nations (UN) Declaration on the Rights of Indigenous Peoples: an internal right to free political and administrative decisions and the freedom to participate in the larger society. Of course, the latter includes Indigenous individuals, but we believe that it also includes a collective dimension – Indigenous representatives taking independent external initiatives on behalf of their people in order to make Indigenous considerations parts of state structures at all levels. This means freedom to impose requirements, forward input and engage in dialogue with the various steering levels in a way that would not have been possible if it was a subordinate government agency, in which case it is subject to government instructions. In the Norwegian case, Broderstad underlined the significance of the *Sámediggi* in accordance with, among others, Kingsbury and Young,[24] i.e. the importance of a representative body to identify and promote Sámi interests both internally among the Sámi and externally towards the state and the majority society.

[21] Josefsen, "Selvbestemmelse og samstyring."
[22] Broderstad, "Implementing Indigenous Self-Determination," 5.
[23] Broderstad, "The Bridge-building Role."
[24] Ibid.; Kingsbury, "Reconciling Five Competing Conceptual Structures;" Young, "Two Concepts of Self-Determination."

The third factor is a *governance approach*.[25] This is the opposite of a superior national government delegating responsibility and authority to lower levels in the hierarchy, but the cooperation is still within the framework of the state authorities or what can be labelled in the shadow of hierarchy.[26] In a governmental approach, the borders between the homogeneous state and society are well defined.[27] The governance approach is, however, a more suitable tool when institutions need to handle challenges and tasks of high complexity,[28] as the implementation of Indigenous claims into a majority society will be. In practical terms, Indigenous representatives and the state must cooperate, not within the state hierarchy but as equal partners who define and concretise Indigenous rights.

In contrast to the two other factors, the governance approach is not primarily focused on the end result but is oriented towards the political process. It is a dynamic aspect of the breaking in approach. Kingsbury argued that Indigenous institutions, alongside state institutions, require complex governance networks anchored in legal agreements or legislation.[29] According to Kingsbury, self-determination will involve the joint development of legal principles and instruments for regulating the relationship between the state and Indigenous peoples concerning all aspects of Indigenous rights, both territorially and non-territorially.

Development of the Sámediggi in Norway: a case of "breaking in"?

In this section, we discuss the case of the Sámi in Norway as a case of a breaking in approach to Indigenous self-determination. Why did the development take this path in Norway, and how successful has this strategy been?

Historical background

The starting point was the situation in which the Sámi people were exposed to the Norwegian state's harsh policy of assimilation – or Norwegianisation – initiated in the mid-19th century. Although Sámi as individuals were included, the Sámi *as a people* were excluded. Despite Sámi political opposition from the start of the 20th century, the assimilation policy was not abandoned until roughly 1980.[30] This state policy left its mark on both formal and informal structures still in operation today.

This situation was not unlike the experiences of other Indigenous peoples globally, who were alienated and more or less culturally disconnected from society at large. The state legal framework was taken for granted by the dominant ethnic group. Its culture, language and way of living communicated accepted norms for being an equal member of the state,[31] leaving the Sámi invisible in public policy. Norwegian nationalism was heavily promoted in constitutional discourse through the state-building process, and it was laid down in public law, public management systems and public value systems. The school

[25]Pierre and Peters, *Governance, Politics and the State*.
[26]Rhodes, *Understanding Governance*.
[27]Peters and Pierre, "Multi-Level Governance and Democracy."
[28]Pierre and Peters, *Governance, Politics and the State*.
[29]Kingsbury, "Reconciling Five Competing Conceptual Structures," 225.
[30]Minde, "Assimilation of the Sami."
[31]Levinson, "Rights Essentialism."

system was one of the primary nationalisation agents, but the Norwegianisation policy included all aspects of life and was also embodied in a doctrine of state ownership of traditional Sámi land. Until immigration from other parts of the world began in the 1960s, the dominant understanding of Norway was that it was a Norwegian monocultural country. The Indigenous Sámi (and other minorities) were not included in this image.

The severe assimilation policy, however, also implied the absence of a segregation policy. This distinguishes Norway from Sweden, which pursued a dual policy of both segregation and assimilation towards the Sámi.[32] This aspect also constitutes a difference between the Sámi in Norway and the Indigenous peoples in settler states. The Sámi were never given the opportunity to sign any treaties as a people.[33]

The Alta conflict: a critical juncture

The critical juncture in the Norwegian state's Sámi policy came with the conflict around the damming of the Alta-Kautokeino River in the 1970s and early 1980s. The Alta conflict put Sámi rights on the national political agenda, with considerable national and international media attention. The original plans (which were somewhat modified) were to flood a Sámi village and huge reindeer grazing areas. There were also concerns about the environmental impact, including the consequences for the famous Alta River salmon. It was met with strong resistance from an alliance between the Sámi movement, the environmental movement and locally organised groups. The protests included civil disobedience actions in Alta, Sámi hunger strikers and Sámi women occupying the prime minister's office in Oslo. Although not all Sámi approved of these actions, it was an unprecedented Sámi political mobilisation.

The government perceived hydroelectric power development as necessary for providing electricity and achieving economic growth. Although the government reached its policy objective – the river was eventually dammed – its reputation suffered. The conflict with its own Indigenous population was difficult to reconcile with Norway's international image as a human rights defender. Thus, the government and the political establishment responded to demands of dialogue from Sámi organisations instead of rejecting their claims and furthering a conflict that could have expanded. Before their first meeting with the Norwegian government, Sámi organisations had already prepared their claims, which included a Sámi democratically elected body and the investigation of Sámi rights, including land rights.[34]

In response to demands, the government agreed with Sámi organisations to investigate Sámi rights. In 1980, the Sámi Rights Commission and the Sámi Culture Commission were appointed by the Norwegian government. These commissions included representatives of many Sámi and non-Sámi interests, as well as municipalities and government ministries. Thus, the Sámi participated in laying down the premises for state policy. The work within the two commissions provided networks and built competence among the Sámi participants, as well as led to increased knowledge on Sámi issues among the Norwegian politicians and bureaucrats who participated. These processes led

[32]Josefsen, Mörkenstam, and Saglie, "Different Institutions within Similar States."
[33]The Lapp Codicil from 1751, an addendum to the border agreement between Sweden and Norway, is the only "treaty like" document regarding Sámi rights to land and resources.
[34]Broderstad and Eskonsipo, "Ole Henrik Magga."

to a paradigm shift in the state policy towards the Sámi in which the state confronted its own assimilation history, while it motivated Sámi organisations and activists to continue and strengthen their claims for Sámi rights. Initiatives and proposals from these commissions resulted in, among others, the Sámi Act (1987) and the establishment of the *Sámediggi* (1989), a specific Sámi article in the Constitution (1988) and the subsequent passing of a whole range of act revisions, including Sámi cultural and land rights and new acts, such as the Finnmark Act (2005) on land rights. Norway also ratified ILO Convention 169 on Indigenous and Tribal Peoples in 1990.

The Sámediggi: not territorially limited

One of the results of the work of the Sámi Rights Commission[35] was a Sámi assembly, elected by and among the Sámi people. The Alta conflict can explain why the *Sámediggi* was established at that specific point in time. Together with the wider context, it can also contribute to explaining why the *Sámediggi*'s scope of business is not limited to non-territorial tasks. The importance of land rights for Indigenous peoples certainly applies to the Sámi case, with its traditional land use and traditional industries, such as reindeer husbandry, agriculture, fjord fishing and outfield industry. Reindeer husbandry requires access to large land areas, and this industry plays an important role in maintaining Sámi culture, even though most Sámi today are not reindeer herders.

Settlement patterns, on the other hand, can explain why the *Sámediggi* is not limited to a specific territory. Although Sámi land claims build on a defined traditional settlement area, the Sámi constitute a minority in most of this area. This context challenges an understanding of Indigenous self-determination that includes territorial integrity and exclusive enjoyment of their own land and resources. It is nevertheless on this foundation that Sámi Indigenous rights are built. Except for a minor region in the northernmost part of the country, the Sámi are more or less outnumbered by non-Sámi, making it impossible to claim exclusive rights in all traditional Sámi settlement areas.

There is no official registration of ethnicity in Norway, and describing ethnic settlement patterns precisely is difficult. Coakley's above-mentioned criteria[36] for territorial autonomy nevertheless illustrate why a territorial approach has been ruled out. A Sámi territory limited to areas with an undisputed Sámi majority would be homogeneous and compact but would have excluded a majority of the Sámi. A more inclusive territory would lose its homogeneity and compactness and include large areas with a non-Sámi majority. This would probably lead to protests from the non-Sámi population and potentially make the Sámi a minority in their own territory. Thus, the Sámi cannot get their own territory that covers all, or at least most, traditional Sámi land without violating the rights of others. The *Sámediggi* is established within this context, and Sámi self-determination in Norway must be discussed based on a shared territory and – using Williams's terms[37] – a shared fate.

[35]NOU 1984:18, "Om samenes rettsstilling."
[36]Coakley, "Introduction."
[37]Williams, "Sharing the River."

Developments after 1989: increasingly breaking in?

The Sámi have chosen a representative and politically autonomous *Sámediggi*, with a mandate to act on behalf of the Sámi people. A democratically elected institution is, however, no guarantee of autonomy along all dimensions. The legal basis, the economic latitude and the degree of formal and informal influence can both limit and widen the political leeway.

On the one hand, the *Sámediggi* does not have any legislative or fiscal powers. Combined with a lack of territorial jurisdiction, its formal basis seems weak. Territorial institutions for Indigenous autonomy often have strong formal positions. On the other hand, the legal basis for the *Sámediggi* in Norway does not limit or restrict its work. The *Sámediggi* is free to work for any matter that affects the Sámi people. Accordingly, when the *Sámediggi* was established in 1989, it had considerable autonomy to decide its future development, although it is economically dependent on the state.

Anne Julie Semb discussed a potential 'functional breaking out' strategy for the *Sámediggi* and even a kind of 'territorial breaking out'.[38] However, this was not the road chosen.[39] In 2002, the then President of the *Sámediggi*, Sven-Roald Nystø, said that

> . . . we won't negotiate ourselves *out* of Norway, but on the contrary, *into* Norway. Into the country's governance, so that we can take more responsibility for our own future and future Sámi generations.[40]

In more concrete terms, Falch and Selle pointed out that the *Sámediggi* has strived to achieve the inclusion and recognition of Sámi perspectives within Norwegian institutions, rather than governing such institutions and delivering public services themselves.[41] For example, the *Sámediggi* does not want to run its own schools but to include Sámi perspectives in schools run by the municipalities. Another example is the new Child Welfare Act of 2023, which states that public child welfare services have a responsibility to safeguard Sámi children's linguistic and cultural rights at all stages of a child protection case. In consultations with the Ministry of Children and Families, the *Sámediggi* aimed for Sámi children's Indigenous rights to be included in the general part of the Act. An agreement was reached between the *Sámediggi* and the ministry.[42]

The *Sámediggi* demanded a significant position within the state by confronting state policy and insisting on dialogue and cooperation to secure and strengthen state–Sámi relations. This was not done overnight. In the first periods of the *Sámediggi*, the state, to a large extent, saw it as an advisory body.[43] The central government had to be constantly reminded of taking Sámi considerations into account. In these early years, the *Sámediggi* prioritised to take over administrative tasks from the state, mostly funding and grants for different Sámi purposes and the management of Sámi cultural heritage. However, the political aspects of Sámi rights were on the agenda from the beginning. For example, a Sámi language act, military encroachment in a reindeer husbandry area and the

[38]Semb, "From 'Norwegian Citizens'," 1666–8.
[39]See, for example, Sámediggi, "Sametingsplan 1998–2001," 74, on the Sámediggi's constitutional role and negotiations with the State.
[40]Quoted from Falch, Selle, and Strømsnes, "The Sámi," 136.
[41]Falch and Selle, "Et rettighetsfellesskap," 55.
[42]Prop.133 L(2020–2021), "Lov om barnevern," 34.
[43]The notion of the Sámediggi as an advisory body has no support in the Sámi act or the draft legislation.

consequences of Norwegian fishery policy on Sea Sámi fisheries were discussed at the *Sámediggi*'s first plenary meeting in 1989.[44] Only five years later, the *Sámediggi* had managed to stop almost all mineral searches in Finnmark County for many years.[45] This underlines that, although the *Sámediggi* took on administrative tasks delegated by the government in its initial phase, it has not sought extended authority unless it has been delegated by the Norwegian Parliament by law. Examples of such delegated administrative tasks include designing curricula in reindeer husbandry, duodji (Sámi handicraft) and Sámi language education. This underlines that the *Sámediggi* is not part of the state hierarchical steering system. Parallel to this, the Sámediggi was building up its position in terms of competencies, knowledge and networking, also mirrored in a yearly increase in state funding. However, in practice, the government influences *Sámediggi* positions in consultations and cooperation, if nothing else, because the state oversees financing and general management.

The significance of trust building and cooperation procedures to the *Sámediggi*–state relationship is indisputable. Broderstad discussed how the principle of Sámi self-determination has been implemented through the revision of procedures relevant to the municipal, regional and national levels by studying how the Sámediggi managed to influence and even become part of decision structures that were initially beyond Sámi control.[46] Norwegian legislation has included Sámi rights into, for example, the Place Name Act, the Planning and Building Act, the Mineral Act, the Education Act and the Marine Resources Act. Below, we focus on the institutionalisation of procedures for consultation between the *Sámediggi* and Norwegian authorities.

The consultation agreement and legislation

Consultation is institutionalised through legislation and formal agreements between the *Sámediggi* and individual counties and municipalities. This institutional framework forms the basis for individual consultation cases. In 2021, the legal basis for consultations between government authorities and the *Sámediggi* were upgraded from an agreement to legislation. Through an amendment to the Sámi Act, the procedures of the Consultation Agreement of 2005 became law. Moreover, the duty to enter consultations was expanded to include the municipal and regional levels, in addition to the central government.

Formalised consultations, however, started earlier. The process that led to the passing of the Finnmark Act in 2005 can be seen as a forerunner to present consultation procedures. The Finnmark Act was the result of a 25-year-long dispute over Sámi land rights in Finnmark County (the northernmost county in Norway, with a relatively large Sámi population). This legislation stated that through the prolonged use of land and water areas, the Sámi have collectively and individually acquired rights to land in Finnmark. For the first time, the Sámi way of using land was recognised by the state as constituting user and ownership rights. The Act did not hand over former crown land to the Sámi; instead, it was transferred back to the citizens of the county. However, the Act established a commission to investigate rights to land and water in Finnmark and to

[44]https://sametinget.no/politikk/historikk/sametingets-vedtak-1989–2004/
[45]Koivurova et al., "Legal Protection of Sámi Traditional Livelihoods," 31.
[46]Broderstad, "The Bridge-building Role."

identify established land rights, in addition to a special court to settle disputes concerning such rights. The commission is still at work, and at present, its conclusion of the mapping of land rights in the municipality of Karasjok will be heard in the Supreme Court. Meanwhile, the management of the land is attended to by the Finnmark Estate and its board, which consists of six members: three appointed by the Finnmark County Council and three appointed by the *Sámediggi*. The identification process is, however, not limited to any specific ethnicity.

The passing of the Finnmark Act was a direct result of consultations between the *Sámediggi* and the Norwegian Parliament's Standing Committee on Justice.[47] The Norwegian government's initial draft of the Finnmark Act had been criticised for its insufficient consideration of Sámi rights. The Standing Committee on Justice decided to consult the *Sámediggi*, thus leading to substantial changes in the Act.

Several factors contribute to the *Sámediggi*'s influence in this process.[48] First, Norway's ratification of ILO Convention 169 in 1990 turned out to be important for the changes from the draft to the final version of the Finnmark Act. Both the *Sámediggi* and Norwegian law scholars argued that the draft Finnmark Act was incompatible with Norway's international legal commitments. Second, Norway had a minority government. This gave the Parliament – and thus the opposition – the opportunity to change the Act. Third, the different parties within *Sámediggi* stood together as unitary actors and did not display any disagreements. Fourth, the *Sámediggi* had a professional staff capable of producing documents with alternative perspectives to those provided by the government.

These experiences led to the formalisation and further regulation of the government–*Sámediggi* relationship in 2005. The Finnmark Act process thus set off further development along the same path. The Consultation Agreement comprised procedures for consultations, signed by the president of the *Sámediggi* and the Minister of Local Government and Regional Development. This right to consultations is based on ILO Convention 169, which states that Indigenous peoples are entitled to be consulted on matters affecting them. The purpose of the agreement was to contribute to a practical implementation of the state's obligations under international law to consult the Sámi, reach agreement on acts and measures that may affect the Sámi directly and facilitate the development of government–*Sámediggi* partnership. The consultation agreement was thus significant for all administrative bodies dealing with Sámi issues.

The agreement stated that consultations should go on as long as there was a possibility of reaching a consensus. Such consultations could cover new or revised acts or other public regulations that may affect the Sámi people. The relevance of the consultation provisions in the Sámi Act depends on both parties honouring it. Here, the state holds the upper hand. An overview of consultations in the period 2016–2020 shows that consultations have been made over several issues.[49] Full or partial agreement was reached in a majority of the cases concerning language, culture, media and welfare rights, such as education, health and social services. Natural resource extraction and exploitation, i.e. establishing mining and wind power plants and other encroachments contested by the *Sámediggi* in terms of Sámi land rights, are much more controversial, and the parties do

[47]Josefsen, "Stat, region og urfolk;" Josefsen, "The Norwegian Sámi Parliament."
[48]Josefsen, "The Norwegian Sámi Parliament."
[49]Sámediggi, *Sametingets årsmelding* 2016; 2017; 2018; 2019; 2020.

not necessarily reach an agreement. There is still a gap between international conventions and national law, and between national law and concrete implementation. As Broderstad pointed out, there is 'vagueness in the state's assessment of the protection of Article 27'[50] in the UN Convention on Civil and Political Rights regarding final decisions on licences for wind power development, in which some projects are rejected, and some are improved.

The Fosen case is an example of an unsuccessful consultation on wind power. Two wind turbine power plants at the Fosen peninsula were established without the consent of neither the affected reindeer herders nor the *Sámediggi*, and despite arguments concerning Sámi land rights according to international law. The case was taken to court, and in 2021, the Norwegian Supreme Court ruled that the wind turbine plant at Fosen was in breach of the UN Convention on Civil and Political Rights, Article 27, and that the established wind turbine power plant was a violation of Sámi land rights and of Sámi reindeer herders' right to enjoy their own culture. The licence for wind power development was ruled invalid.[51] After the Supreme Court ruling in 2021 and protests in which activists blocked access to government ministries in February, June and October 2023, the government's only action to follow up the ruling was to initiate negotiations between the reindeer herders and the wind power companies. Consultations between the *Sámediggi* and the government did not solve the conflict. The reindeer herder groups eventually reached agreements with the power companies, leaving the wind turbines in place with some mitigating measures.

Developing, concretising and implementing Sámi rights do not only take place at the national level. The regional (i.e. county) and especially the municipal level are important in implementing Sámi rights in welfare services, planning and other community services.[52] However, contact between the *Sámediggi* and local political institutions was established long before the extension of the consultation procedures in 2021. In 2002, the *Sámediggi* entered into the first cooperation agreement with a county, and there are now agreements with all counties covering the traditional Sámi living area. The first agreement with a municipality came into place in 2013, and there are six such agreements at the time of writing. While the county agreements turned out to become mainly a regulation of already established cooperation on specific issues,[53] they have potential for becoming more dynamic and build stronger relationships both institutionally and individually.

Moreover, the *Sámediggi* also enters more informal governance networks at the local level and facilitates cooperation between Sámi nongovernment organisations and the municipalities. For example, the *Sámediggi* supports local initiatives, facilitates contact between actors and occasionally participates directly in the governance of Sámi spaces (e.g. Sámi culture houses, language centres and museums).[54]

[50]Broderstad, "International Law, State Power," 23–24.
[51]Supreme Court of Norway, "Licenses for wind power development;" Ravna, "The Fosen Case."
[52]Josefsen, "Samepolitikken og kommunene."
[53]Josefsen, "Samepolitikk – en innfallsvinkel."
[54]Berg-Nordlie, "Governance of Urban Indigenous Spaces."

"Breaking in" Sámi rights: conflict and resistance

Indigenous rights trigger conflicts and disagreements, as the history of Sámi land rights investigation in Norway highlights. From the Alta case to the present, Sámi rights have been met with both support and resistance from Norwegian authorities and interests. However, the Norwegian state is not a unitary actor. Broderstad, Hernes and Jenssen analysed how two government ministries chose different paths in terms of honouring the consultation agreement with the *Sámediggi*. The Ministry of Agriculture decided on the organisation of reindeer husbandry management structures before any consultations were held.[55] The *Sámediggi* was not informed early on, as it was argued by the ministry that the state organisation of reindeer husbandry is a sector in which the ministry decides unilaterally. The Ministry of the Environment, on the other hand, included the *Sámediggi* in an early stage of the revision of the Planning and Building Act, providing information on the propositions and entering into dialogue.

The general experiences over the last decade or so concerning land rights show, however, that achievements can be followed by setbacks. Under the 'green industry' rhetoric, the Sámi experienced the seizure of extensive areas by the wind power industry and Sámi reindeer herders being forced out of their traditional way of living. The Sámi label this 'green colonialism'.[56]

Demanding Indigenous rights within a society in which the idea of ethnic homogeneity has been dominant until quite recently and in which the population has been brought up to regard Norwegian culture as supreme will cause counter-reactions in the public. In addition, the ideology of individual equality is considered threatened by collective Sámi rights. This appears to be the main reason for the rejection of Sámi land rights, even among the Sámi themselves,[57] and whenever Sámi rights have been improved, a media debate disregarding Sámi rights arises.[58] Therefore, the features of a settler state can also be found in Norwegian–Sámi relations.[59]

Discussion and conclusion

We have argued that the existence of the *Sámediggi* has made it possible to politically break into the Norwegian political system. This is a processual and dynamic understanding of self-determination, in which both political aims and means are constantly developing. Furthermore, as discussed previously, three factors seem important for a successful breaking in: Sámi rights laid down in national legislation, the *Sámediggi*'s autonomy and right to make independent decisions, and collaboration with the national political system at large. While the two first factors have become stable features in the Norwegian political system, the results for the third factor are mixed.

[55]Broderstad, Hernes, and Jenssen, "Konsultasjoner," 108.
[56]Saami Council, "Tråante Declaration," 4.
[57]Broderstad et al., "Local Support."
[58]Eira, "'Herrer i eget hus'."
[59]Olsen, "Stat, urfolk og 'settlere'."

Beyond territorial and non-territorial autonomy

Whereas the Alta conflict can explain the timing of the process, the settlement pattern – a dispersed minority, resulting in a notion of shared fate – can explain why a model of shared rule was chosen. Territorial self-determination was not an available option, and neither was a functional break-out or non-territorial model. The Sámi had to find their own model of self-determination that included both non-territorial and territorial aspects. The solution was developed for a Norwegian–Sámi joint territory, which invited shared rule in Sámi-related issues. The solution was a dynamic breaking in strategy with the aim of indigenising the Norwegian political and administrative system.

Earlier studies have included the *Sámediggi* in Norway as one of the few existing empirical examples of NTA.[60] Furthermore, Spitzer and Selle analysed the Norwegian *Sámediggi* as an example of NTA, arguing that the 'Sámi were initially empowered in a way that decoupled people and place'.[61] This position is justified in claiming that the *Sámediggi*'s core tasks are functionally defined, including political participation and the management of language, economic development and cultural heritage. However, they argued that the *Sámediggi* has recently taken a 'territorial turn'.[62]

Although we agree that territoriality is important for the *Sámediggi*, we believe that this case should not be conceptualised as a territorialisation of NTA. In this article, we have shown that the territorial aspect of Sámi policy has been a core part of Sámi self-determination efforts long before and since day one of the establishment of the *Sámediggi*. The *Sámediggi* has prioritised the inclusion of Sámi rights into the Norwegian legal framework and into public management and services regarding a broad range of political issues, including land rights.

Thus, the concept of NTA, marked by sole responsibility and formal authority over issues defined to be functional rather than territorial, does not fit the *Sámediggi* case in Norway, despite the low inclusiveness, homogeneity and compactness of the territory.[63] The chosen breaking in strategy of indigenising the Norwegian political system is the opposite of functional breaking out.

Nevertheless, combining a breaking in strategy with functional or territorial breaking out may be possible. For example, the Greenlandic government has attempted to break into policy areas that are beyond its formal competencies, such as foreign policy. Comparative studies of breaking in strategies in different countries, including cases of territorial autonomy, would therefore be useful.

Breaking in: strengths and weaknesses

The role of the *Sámediggi* has developed substantially since it was established in 1989. On the one hand, it has a weaker position than that of many institutions for territorial autonomy, such as the Greenlandic self-government. The relational dimension of self-determination makes the *Sámediggi* dependent on trust, dialogue and a willingness to cooperate from both parties. This informal nature may make self-determination

[60] e.g., Coakley, "Conclusion;" Osipov, "Mapping Non-Territorial Autonomy."
[61] Spitzer and Selle, "Is Nonterritorial Autonomy Wrong," 557.
[62] Ibid., 546.
[63] Cf. Coakley, "Introduction."

vulnerable. Nevertheless, the results of such cooperation processes are enshrined in legislation and formal agreements with state, counties and municipalities, ensuring that the rights negotiated cannot be changed with a stroke of the pen by shifting political constellations.

The position of the *Sámediggi* in Norway seems stronger than its counterparts in Sweden and Finland.[64] A closer look at our three essential factors for a successful breaking in strategy may illuminate the differences between these countries.

First, while all three countries have established *Sámediggis* and, to some extent, have implemented Indigenous rights in their legal systems, only Norway has ratified ILO Convention 169. This international commitment has influenced the national legal framework in Norway and has been crucial for the development of consultation procedures.

Second, the autonomy of the three *Sámediggis* varies. The *Sámediggi* in Sweden is an administrative authority under the Swedish state, in addition to being an elected representative body. This places the Swedish *Sámediggi* in a difficult – and far less autonomous – position.[65] The *Sámediggi* in Finland has a stronger legal position, but its political position and economic resources are weaker. The Norwegian *Sámediggi*, by contrast, has sufficient autonomy and resources to enter into cooperation with the Norwegian state.

Third, the conditions for a governance approach are thus more favourable in Norway than in its neighbours. The consultation procedures exemplify how a governance approach, building mutual trust and relationships between the Sámi and the government, developed. We may discern a path of cooperation starting with the two Sámi commissions after the Alta case, moving on to the Finnmark Act process and continuing with the consultation agreement and legislation, perhaps as a self-reinforcing path dependency. Such mutual trust may be less crucial when autonomy is territorial, and it may be more difficult to achieve with a less autonomous institution. Moreover, the role of governance makes it easy to underestimate Sámi influence. Seen from a formal perspective, the *Sámediggi* model seems to be chosen unilaterally by the state. While it is true that the institutional arrangements were established by the Norwegian Parliament, this formal perspective overlooks the role of Sámi activism, Sámi organisations and Sámi participation in joint commissions in which solutions were found in a dialogue between Norwegian and Sámi representatives.

Nevertheless, the content and extension of Sámi self-determination in Norway is debatable. A breaking in approach signals interdependency, but the shadow of hierarchy is certainly present. When there are negotiations and consultations, there will be a risk of state co-optation. However, during the over three decades of *Sámediggi*–state relations, there are no consistent features of co-optation in which the state should have tried to define or dictate the *Sámediggi*'s policy. The *Sámediggi* aims for Norwegian acts to include international Indigenous law commitments at all levels of the state system. This is the opposite of co-optation. As a result of *Sámediggi* pressure for Sámi rights nationally and locally, there will be pressure for the implementation of these rights in concrete action and via increased cooperation.

In the Norwegian political system, there is some resistance when considering Sámi rights, claims and arguments, especially in natural resource conflicts and economic development cases, whereas granting self-determination in language and

[64]Josefsen, Mörkenstam, and Saglie, "Different Institutions within Similar States;" Josefsen, "Sámi Political Shifts."
[65]Lawrence and Mörkenstam, "Indigenous Self-determination."

culture issues is 'harmless'. Mining and wind power development in Sámi traditional areas have shown that the state authorities are not necessarily willing to take Sámi rights and arguments into account when making decisions on land encroachment, although this has been confirmed by the Norwegian Supreme Court as in breach of human rights. In August 2023, the government presented an energy development plan that involved major encroachment in traditional Sami areas, a policy that the *Sámediggi* claimed the government had not consulted upon. The question now is whether the government will use the rhetoric of 'the green shift' to disregard Sámi land rights or honour its international and national legal obligations. This is a basic limitation of the Norwegian model – consultations are required, but there are no sanctions when these are not honoured; therefore, they rest on the condition that the state respects Indigenous human rights, Supreme Court rulings and its own consultation rules.

To conclude, Sámi self-determination in Norway is not decided once and for all. The role of governance processes makes it dynamic and fluid. It is not a linear development with a formal decision as an endpoint, but it may have its ebbs and flows, and it is marked by setbacks and advances. The question is whether what we see now is an ebb or whether the state policy of the green shift will turn out to be a new critical juncture in the state's policy towards the Indigenous Sámi in Norway.

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ORCID

Eva Josefsen http://orcid.org/0000-0002-6613-9246
Jo Saglie http://orcid.org/0000-0003-0437-2103

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