

## Confronting Legacies of Indigenous Injustice: Lessons from Sweden

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*The past decade has brought global efforts by settler colonial states to provide healing and justice for past and ongoing harms against Indigenous communities. Many of these efforts have manifested in the creation of truth commissions, nonjudicial entities which seek to establish a reliable historical record of harm, promote reconciliation, and foster healing by providing harmed parties the opportunities to share their stories and—in some cases—to confront their perpetrators. To date, these commissions have been established by various settler colonial states, including Canada and Greenland. Most recently, however, Scandinavian countries have turned to truth commissions to provide redress for past harms against their Indigenous peoples. In fact, within the last few years, Norway, Finland, and Sweden have all created independent truth commissions to investigate their nations' respective systemic discrimination against the Sami people and provide forms of healing and pathways to reconciliation.*

*This Article specifically examines the creation and operation to date of Sweden's Truth Commission on the Violations of the Sami people by the Swedish state ("Swedish Sami Truth Commission"). Relying on materials issued by the Swedish Sami Truth Commission as well as interviews conducted with representatives of the Swedish Sami Truth Commission, this Article analyzes the events that led to the creation of the Swedish Sami Truth Commission, its mandate and expected goals, and the type of work it intends to engage in to facilitate truth and healing among the Swedish Sami people.*

*Currently, there remains legislation pending in both houses of US Congress for the creation of a truth and healing commission to address the use of Indian boarding schools in the United States, at which thousands of Native American*

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*children were removed from their families, forcibly assimilated into American culture, and often sexually, mentally, and physically abused. Utilizing diffusion theory, this Article seeks to draw lessons from the Swedish Sami Truth Commission that the United States may learn from in creating its own national truth commission to address past harms against Native Americans.*

I. INTRODUCTION .....	642
II. THE ROLE OF TRUTH COMMISSIONS IN CONFRONTING INDIGENOUS INJUSTICE .....	646
A. General Background of Truth Commissions .....	646
B. Truth Commissions in Settler Colonial States .....	650
C. Criticisms of and Proposed Solutions for Indigenous Truth Commissions.....	653
II. THE SWEDISH APPROACH TO TRUTH & JUSTICE.....	655
A. A Brief History of Sami Discrimination .....	656
B. The Church of Sweden's White Paper Project.....	660
C. The Swedish Sami Truth Commission.....	664
1. Creation of a Truth Commission.....	664
2. Truth Commission Mandate.....	667
IV. LESSONS LEARNED FROM THE SWEDISH APPROACH TO TRUTH & JUSTICE .....	669
A. Aspects of the Swedish Sami Truth Commission to be Adopted .....	670
1. Sami Involvement in Truth Commission Design.....	671
2. De-Emphasis on Reconciliation.....	673
3. Psychological & Emotional Support.....	675
B. Aspects of the of the Swedish Sami Truth Commission to be Avoided .....	677
1. Lack of Outreach and Transparency.....	678
2. Overly Broad Mandate .....	681
V. CONCLUSION .....	684

## I. INTRODUCTION

For settler colonial states around the world, the time has come to confront centuries of injustices committed against their Indigenous populations. Unlike under traditional colonial theory, in which colonial administrators sought to profit by exploiting land upon which they personally did not intend to settle permanently, under the concept of settler colonialism, the colonial administrators sought “not only to profit from, but also to live permanently in the land they

occup[ied].”<sup>1</sup> Unsurprisingly, settler colonialism caused the exploitation, displacement, and forced assimilation of the Indigenous peoples residing in these occupied lands.<sup>2</sup> Examples of settler colonial states abound, with nations like the United States, Canada, and Australia immediately springing to mind.<sup>3</sup> Yet, settler colonialism also occurred elsewhere, including in Scandinavian countries such as Sweden, Finland, and Norway.<sup>4</sup>

And while the large brunt of violence inherent in settler colonialism—in the form of slavery, war, and attempted genocide—has ceased, clear vestiges of this colonialism remain today.<sup>5</sup> Settler colonialism remains evident in the form of limited or revoked land, hunting, and fishing rights; overt and more subtle forms of legal and social discrimination; and increased levels of poverty, imprisonment, and violence among Indigenous communities.<sup>6</sup>

In light of the insidiousness of settler colonialism in present-day society, Indigenous communities have recently made significant efforts

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<sup>1</sup> Natsu Taylor Saito, *Tales of Color and Colonialism: Racial Realism and Settler Colonial Theory*, 10 FLA. A & M U. L. REV. 1, 25 (2014); see also Adam J. Barker, *Locating Settler Colonialism*, 13 J. COLONIALISM & COLONIAL HIST. (2012), <https://doi.org/10.1353/cch.2012.0035> (“‘[S]ettler colonialism’ [is] a distinct method of colonising involving the creation and consumption of a whole array of spaces by settler collectives that claim and transform places through the exercise of their sovereign capacity.”).

<sup>2</sup> See generally Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RSCH. 387, 388 (2006), <https://doi.org/10.1080/14623520601056240> (recognizing the true intent of settler colonialism as the elimination of the native and stating that “[s]ettler colonialism destroys [indigeneity in order] to replace”).

<sup>3</sup> Saito, *supra* note 1, at 6 n.23 (“Paradigmatic examples of settler states include Australia, New Zealand, Canada, the United States, Israel, and South Africa.”).

<sup>4</sup> Laura Junka-Aikio, *Whose Settler Colonial State? Arctic Railway, State Transformation and Settler Self-Indigenization in Northern Finland*, 26 POSTCOLONIAL STUD. 279, 281 (2022), <https://doi.org/10.1080/13688790.2022.2096716>.

<sup>5</sup> See Monika Batra Kashyap, *U.S. Settler Colonialism, White Supremacy, and the Racially Disparate Impacts of COVID-19*, 11 CALIF. L. REV. ONLINE 517, 518 (2020) (“[T]he United States is a present-day settler colonial society whose laws, institutions, and systems of governance continue to enact an ongoing ‘structure of invasion’ that persists to this day.”); Junka-Aikio, *supra* note 4, at 279 (“[T]he settler colonial analytic brings attention to the colonial present and to the contemporaneity of the structures, practices, and policies through which Nordic states and societies actively continue to assimilate, erode[,] or eliminate the S[a]mi today.”).

<sup>6</sup> See, e.g., Alicia Cox, *Settler Colonialism*, OXFORD BIBLIOGRAPHIES (July 26, 2017), <https://www.oxfordbibliographies.com/view/document/obo-9780190221911/obo-9780190221911-0029.xml> (“[S]ettler colonialism normalizes the continuous settler occupation, exploiting lands and resources to which [I]ndigenous peoples have genealogical relationships.”).

to work to heal from past and ongoing harms perpetrated against them—or as Joanna Rice of the International Center for Transitional Justice (ICTJ) states, to confront “legacies of injustice.”<sup>7</sup> The tool kit by which such healing is promoted includes, but is not limited to: “[f]inding out the truth, providing acknowledgement, calling attention to and communicating injustices that have taken place, learning from them and providing compensation.”<sup>8</sup> Notably, to achieve such healing, the Indigenous Rights Movement has regularly turned to the use of truth commissions, nonjudicial entities intended to conduct independent investigations into periods of atrocity crimes and human rights violations.<sup>9</sup> To date, these truth commissions have been utilized in countries like Canada, Greenland, at the regional level of the United States,<sup>10</sup> and, most recently, in the Scandinavian nations of Norway, Finland, and Sweden.<sup>11</sup> Moreover, legislation is currently pending in both houses of the US Congress for the creation of a federal truth commission designed to provide redress for harmful boarding school policies implemented against Native Americans throughout the nineteenth and twentieth centuries.<sup>12</sup>

Yet, despite the proliferation of these truth commissions, they are not without criticism. In fact, critics often charge Indigenous truth commissions with resulting in only hollow apologies and no practical change.<sup>13</sup> These commissions have also been decried for falling short

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<sup>7</sup> Joanna Rice, *Indigenous Rights and Truth Commissions*, CULTURAL SURVIVAL (Apr. 9, 2011), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/indigenous-rights-and-truth-commissions>.

<sup>8</sup> Björn Norlin & Daniel Sjögren, *The Scholarly Anthology and White Papers as a Contemporary Phenomenon*, in *THE SAMI AND THE CHURCH OF SWEDEN: RESULTS FROM A WHITE PAPER PROJECT* 23, 24 (Daniel Lindmark & Olle Sundström eds., 2018) (emphasis omitted).

<sup>9</sup> Rice, *supra* note 7.

<sup>10</sup> See generally Sara L. Ochs, *A National Truth Commission for Native Americans*, 36 WIS. J.L. GENDER & SOC'Y 1, 8–11 (2021) (discussing the creation and operation of Indigenous truth commissions in Canada, Greenland, and the United States).

<sup>11</sup> Astri Dankertsen & Malin Arvidsson, *Truth Commissions in the Nordic States: Who Is to Be Reconciled with Whom?*, JUSTICEINFO.NET (Dec. 2, 2021), <https://www.justiceinfo.net/en/85028-truth-commissions-nordic-states-who-is-to-be-reconciled-with-whom.html>.

<sup>12</sup> H.R. 5444, 117th Cong. (2021); S. 1723, 118th Cong. (2023).

<sup>13</sup> See, e.g., Heather Parker, *Truth and Reconciliation Commissions: A Needed Force in Alaska?*, 34 ALASKA L. REV. 27, 33 (2017); Dankertsen & Arvidsson, *supra* note 11 (noting an open question as to whether truth commissions “facilitate the reconciliation process or make it more painful”).

of their stated goals and failing to effectively decolonize the relationships between a state and its Indigenous peoples.<sup>14</sup>

As settler colonial states continue to create truth commissions for past and ongoing harm against Indigenous peoples, it is imperative that changes be made to address these criticisms and cure past failings. To first identify these necessary modifications, this Article utilizes as a case study Sweden's newly created Truth Commission on the Violations of the Sami People by the Swedish State ("Swedish Sami Truth Commission"), which is designed to investigate past and ongoing harms against the Sami people, Sweden's Indigenous population. By exploring the creation, goals, and operation to date of the Swedish Sami Truth Commission, this Article aims to identify both beneficial attributes worthy of replication by future settler colonial states in creating Indigenous truth commissions, as well as features that may unintentionally promote the exact criticisms to which Indigenous truth commissions have previously fallen prey, and which settler states considering the creation of Indigenous truth commissions would be well served in avoiding. Specifically, in using the Swedish Sami Truth Commission as a model, this Article seeks to identify concrete lessons the United States may learn from in creating its first federal truth commission.

Part II of this Article provides a brief overview of truth commissions, including their structure, purpose, and means of promoting truth and healing, and specifically how they have been utilized within the Indigenous rights context. Part III then examines the Swedish Sami Truth Commission by tracing its history and creation and evaluating its governing mandate, terms, and ongoing operations. Finally, Part IV identifies lessons that can be drawn from the Swedish Sami Truth Commission's experiences to date and utilized within the United States' approach to achieving transitional justice for its Native American communities.

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<sup>14</sup> See, e.g., Chelsea Bean, *The Limits of Canada's Truth and Reconciliation Commission*, SPHERES OF INFLUENCE (June 24, 2021), <https://spheresofinfluence.ca/the-limits-of-canadas-truth-and-reconciliation-commission>.

## II. THE ROLE OF TRUTH COMMISSIONS IN CONFRONTING INDIGENOUS INJUSTICE

### A. *General Background of Truth Commissions*

The use of truth commissions is generally considered to fall within the field of transitional justice, which, according to the UN Secretary General refers to “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice[,] and achieve reconciliation.”<sup>15</sup> “Transitional justice [encompasses] both judicial and nonjudicial processes . . . including prosecution initiatives, truth-seeking, reparations programmes, institutional reform[,] or an appropriate combination thereof.”<sup>16</sup> Truth commissions are one of the most common mechanisms used to achieve the goals of transitional justice.

While the definitive definition of a truth commission remains contested,<sup>17</sup> this Article utilizes the general definition furthered by the ICTJ, which frames truth commissions as “official, nonjudicial bodies of a limited duration established to determine the facts, causes, and consequences of past human rights violations.”<sup>18</sup> As anticipated from the many amorphous definitions utilized by scholars, it is difficult to identify one model truth commission. Indeed, “virtually no two compilations of global truth commission experience are the same.”<sup>19</sup> Instead, truth commissions are generally created ad hoc, as needed, in response to a period of human rights violations, political instability, or

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<sup>15</sup> U.N. Secretary-General, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, at 2, U.N. Doc. ST/SG(09)A652 (Mar. 2010), <https://digitallibrary.un.org/record/682111?ln=en>.

<sup>16</sup> *Id.*

<sup>17</sup> Adam Kochanski, *Mandating Truth: Patterns and Trends in Truth Commission Design*, 21 HUM. RTS. REV. 113, 115 (2020), <https://doi.org/10.1007/s12142-020-00586-x>; Johannes Langer, *Are Truth Commissions Just Hot-Air Balloons? A Reality Check on the Impact of Truth Commission Recommendations*, 29 DESAFIOS 177, 182 (2017) (Colom.), <https://doi.org/10.12804/revistas.urosario.edu.co/desafios/a.4866> (“Scholars have disagreed on how to define a truth commission.”).

<sup>18</sup> EDUARDO GONZÁLEZ & HOWARD VARNEY, TRUTH SEEKING: ELEMENTS OF CREATING AN EFFECTIVE TRUTH COMMISSION 9 (2013), <https://www.ictj.org/publication/truth-seeking-elements-creating-effective-truth-commission>.

<sup>19</sup> Eric Brahm, *What Is a Truth Commission and Why Does It Matter?*, 3 PEACE & CONFLICT REV. 1, 2 (2009).

atrocities crimes, and are modeled to conform to the specific needs presented by the circumstances.<sup>20</sup>

But, truth commissions often do share commonalities. Seminal transitional justice scholar Priscilla Hayner recognizes four “primary elements” of a truth commission: (1) the “commission focuses on the past”; (2) it “is not focused on a specific, [isolated] event, but” concerns a period of human rights abuses or other atrocities; (3) it generally “exists temporarily . . . for a pre-defined time period”; and (4) it is vested with some authority by its establishing entity “that allows it greater access to information, greater security or protection to dig into sensitive issues, and a greater impact.”<sup>21</sup>

While truth commissions are generally recognized as independent entities, they are often created by political means, most commonly through legislative or executive action.<sup>22</sup> On certain occasions, however, where there is insufficient governmental will or capacity for a state-sanctioned truth commission, civil society organizations may also create local or regional commissions, although these often lack the same powers and authority as those truth commissions created by governmental action.<sup>23</sup> Regardless of its establishing entity, truth commissions are always established and governed by a legal mandate that sets forth “the commission’s objectives, functions, scope, and powers.”<sup>24</sup>

With regard to commissions’ functions, they are generally tasked with—as set forth in their mandate, or governing document—two primary responsibilities: conducting an investigation and compiling a report.<sup>25</sup> Essentially, “[i]n their simplest form, truth commissions seek

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<sup>20</sup> See Katie Wiese, *Human Rights in Our Backyard: Utilizing a Truth Commission and Principles of Transitional Justice to Address Atrocities Committed Against Asylum Seekers in the United States*, 36 GEO. IMMIGR. L.J. 461, 470 (2021) (“Truth commissions must be tailored to the unique circumstances of each country . . .”).

<sup>21</sup> Priscilla B. Hayner, *Fifteen Truth Commissions—1974 to 1994: A Comparative Study*, 16 HUM. RTS. Q. 597, 604 (1994), <https://doi.org/10.2307/762562>.

<sup>22</sup> GONZÁLEZ & VARNEY, *supra* note 18, at 10. But, it should be noted that the judicial process established the Truth & Reconciliation Commission of Canada, as a result of “court-mediated negotiation” between survivors of Canadian Indian boarding schools and Canadian governmental entities. *Id.*

<sup>23</sup> *Id.* (recognizing examples of civil society-created truth commissions in Guatemala and Brazil).

<sup>24</sup> *Id.* at 23.

<sup>25</sup> See *id.*

to uncover the details of past human rights abuses.”<sup>26</sup> A commission’s mandate prescribes the investigation’s parameters—namely, the types of violations, time period, parties, and territory that should be investigated.<sup>27</sup> In conducting its investigation, the commission may review documentary evidence, archival research, and other data as well as collect personal witness testimony through interviews, meetings, and/or public hearings.<sup>28</sup> The mandate might further delineate the powers a commission holds in conducting its investigation, which may include the authority to compel the production of evidence or to develop cooperative relationships with other entities.<sup>29</sup>

It should be noted that as nonjudicial entities, truth commissions do not hold the power to criminally sanction perpetrators, nor do they conduct trials or impose criminal responsibility.<sup>30</sup> While evidence gathered by a truth commission *may* later be utilized by prosecutors in criminal cases, truth commissions more often complement criminal proceedings against individual perpetrators by “establishing the social and historical context of violations and large-scale patterns behind massive numbers of cases,” and by “helping to establish moral or political responsibility.”<sup>31</sup> Indeed, unlike criminal courts, truth commissions are generally recognized as victim-centered, rather than perpetrator-focused mechanisms.<sup>32</sup>

A commission’s mandate will also task the commission with creating a report compiling its investigatory findings and presenting policy recommendations for survivors, communities, and the nation as a whole to move forward from the harms perpetrated during the

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<sup>26</sup> ERIC WIEBELHAUS-BRAHM, TRUTH COMMISSIONS AND TRANSITIONAL SOCIETIES: THE IMPACT ON HUMAN RIGHTS AND DEMOCRACY 9 (2010).

<sup>27</sup> GONZÁLEZ & VARNEY, *supra* note 18, at 25; WIEBELHAUS-BRAHM, *supra* note 26, at 4.

<sup>28</sup> OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS., RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES: TRUTH COMMISSIONS 17–19 (2006) [hereinafter RULE OF LAW TOOLS], <https://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>; Ochs, *supra* note 10, at 8–9.

<sup>29</sup> GONZÁLEZ & VARNEY, *supra* note 18, at 25.

<sup>30</sup> Rose Weston, Note, *Facing the Past, Facing the Future: Applying the Truth Commission Model to the Historic Treatment of Native Americans in the United States*, 18 ARIZ. J. INT’L & COMPAR. L. 1017, 1023–24 (2001); GONZÁLEZ & VARNEY, *supra* note 18, at 10.

<sup>31</sup> GONZÁLEZ & VARNEY, *supra* note 18, at 10–11.

<sup>32</sup> *Id.* at 11; see also Matt James, *A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission*, INT’L J. TRANSITIONAL JUST. 1, 4–5 (2012) (explaining the difference between victim-centered and perpetrator-focused entities).



investigatory period at issue.<sup>33</sup> Not only does this report “establish an official record [of a period of human rights abuses] that is not subject to revisionism,” but it can also set forth “specific and definite recommendations for reform.”<sup>34</sup> These “recommendations may suggest legal, institutional[,] or legislative reforms to prevent abuses in the future,” as well as potential reparations programs, along with promoting reconciliation or strengthening democratic institutions, educational opportunities, and other follow-up measures.<sup>35</sup>

Through the tasks delineated in their mandate, truth commissions aim to “acknowledge” the truth of a dark period of human rights violations.<sup>36</sup> It is generally hoped that doing so and implementing the recommendations set forth in a commission’s final report will help deter the recurrence of similar human rights abuses in the future.<sup>37</sup> Moreover, truth commissions also seek to “protect, acknowledge, and empower victims and survivors,” such as by giving them opportunities to voice their stories and, in some circumstances, to obtain closure.<sup>38</sup>

Until fairly recently, countries have only utilized truth commissions in the midst of or immediately following a time of political transition, such as during the emergency of democracy following military rule.<sup>39</sup> Even as late as 2014, the creation of a truth commission “in a stable, Western democracy” was viewed as an “unusual occurrence.”<sup>40</sup> Since then, however, it has become more common for so-called stable societies to utilize truth commissions, especially during “periods of fluidity in a country’s history” that provide “opportunities to influence major institutions and even change constitutions.”<sup>41</sup> For instance, in recent years, as the

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<sup>33</sup> Parker, *supra* note 13, at 32.

<sup>34</sup> Weston, *supra* note 30, at 1025–26.

<sup>35</sup> RULE OF LAW TOOLS, *supra* note 28, at 20; Weston, *supra* note 30, at 1026; Hayner, *supra* note 21, at 609.

<sup>36</sup> Weston, *supra* note 30, at 1025; Hayner, *supra* note 21, at 607.

<sup>37</sup> Hayner, *supra* note 21, at 609.

<sup>38</sup> GONZÁLEZ & VARNEY, *supra* note 18, at 9; *Truth and Memory*, ICTJ, <https://www.ictj.org/truth-and-memory> (last visited Nov. 17, 2023).

<sup>39</sup> Hayner, *supra* note 21, at 608.

<sup>40</sup> Rosemary Nagy, *The Truth and Reconciliation Commission of Canada: Genesis and Design*, 29 CAN. J.L. & SOC’Y 199, 200 (2014), <https://doi.org/10.1017/cls.2014.8>.

<sup>41</sup> Rice, *supra* note 7; see also Daniel Posthumus & Kelebogile Zvobgo, *Democratizing Truth: An Analysis of Truth Commissions in the United States*, 15 INT’L J. TRANSITIONAL JUST. 510, 517–519 (2021) (“Truth commissions are a noteworthy export from transitional to nontransitional settings.”).

Indigenous Rights Movement has made significant strides, governments at both the national and regional levels in settler colonial states have created numerous truth commissions to address state-sponsored harms against Indigenous peoples.<sup>42</sup>

B. *Truth Commissions in Settler Colonial States*

In addition to the traditional goals associated with utilizing truth commissions in transitional societies, governments can realize additional benefits from using these mechanisms in colonial states to provide redress and healing for past and ongoing rights against Indigenous communities (referred to hereafter as “Indigenous truth commissions”). For example, scholars recognize that truth commissions designed to remedy Indigenous abuses can “strengthen the recognition of sovereignty, the identity and Indigenous perspectives and respect for their civil, political, economic, social[,] and cultural rights as well as their rights to ancestral lands and natural resources.”<sup>43</sup>

Further, for many Indigenous groups, their legacies of injustice trace generations and even centuries. Many of those perpetrators originally responsible for stripping Indigenous communities of their rights are no longer living, rendering traditional criminal accountability impossible. Truth commissions, however, allow Indigenous victims to identify their historical perpetrators and bestow accountability not simply on individuals but on the institutions and governmental groups that created and perpetuated these injustices.<sup>44</sup> Moreover, as Joanna Rice recognizes, truth commissions can also engage in discussion around the violations of Indigenous rights that may not rise to the de facto criminal level but which have sought to stymy Indigenous survival throughout history, such as issues of “land reform, economic rights[,] and cultural preservation.”<sup>45</sup>

Moreover, these Indigenous truth commissions have the added benefit of bringing greater national and international attention to long-running injustices and creating a more beneficial dialogue

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<sup>42</sup> See, e.g., Ochs, *supra* note 10, at 10–15 (examining various truth commissions within the Indigenous context).

<sup>43</sup> M. Florencia Librizzi, *Challenges of Truth Commissions to Deal with Injustice Against Indigenous Peoples*, in INDIGENOUS PEOPLES’ ACCESS TO JUSTICE, INCLUDING TRUTH AND RECONCILIATION PROCESSES 182, 186 (Wilton Littlechild & Elsa Stamatopoulou eds., 2014).

<sup>44</sup> Rice, *supra* note 7.

<sup>45</sup> *Id.*

around the treatment of native communities.<sup>46</sup> Again, Rice notes that such commissions can utilize their “high visibility” to “challenge[] the national narrative about the relationship of Aboriginal [p]eoples to dominant populations[]”<sup>47</sup> and “help inform non-Indigenous society, which has largely turned its back on the needs and rights of Indigenous [p]eoples.”<sup>48</sup> And indeed, this particular benefit has borne out in practice. For example, as the National Native American Boarding School Coalition has reported, prior to the creation and operation of the Truth and Reconciliation Commission of Canada (“Canadian Commission”) designed to investigate the settler colonial state’s devastating legacy of Indian residential schools, only 30 percent of the Canadian population was aware of Canada’s historical policy of using such schools.<sup>49</sup> After the Canadian Commission completed its work, however, 70 percent of the country knew about the human rights violations.<sup>50</sup>

While reconciliation may be yet another goal in Indigenous truth commissions, that is not always the case, and indeed, the purpose of such a commission is not to pressure survivors to forgive their perpetrators.<sup>51</sup> Notably, with regard to the potential that such Indigenous truth commissions carry, M. Florencia Librizzi, a consultant for the ICTJ, writes the following:

Implemented properly, with strong guarantees of independence, integrity[,] and adequate leadership, as well as considering the rights, perspectives[,] and needs of Indigenous [p]eoples, truth commissions can help strengthen the rights of Indigenous [p]eoples by fulfilling the right to know the truth, recognizing the dignity of Indigenous [p]eoples[,] and proposing policies to prevent further violations.<sup>52</sup>

To date, Indigenous truth commissions have completed their work in Canada and Greenland.<sup>53</sup> Within the last several years,

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<sup>46</sup> *See id.*

<sup>47</sup> *Id.*

<sup>48</sup> Librizzi, *supra* note 43, at 186.

<sup>49</sup> *Healing Voices Movement—Stories*, NAT’L NATIVE AM. BOARDING SCH. HEALING COAL., <https://boardingschoolhealing.org/education/healing-voices-movement-stories> (last visited Nov. 17, 2023).

<sup>50</sup> *Id.*

<sup>51</sup> Rice, *supra* note 7.

<sup>52</sup> Librizzi, *supra* note 43, at 186.

<sup>53</sup> *See Truth and Reconciliation Commission of Canada*, GOV’T OF CAN., <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525> (Sept. 29, 2022); GRØNLANDS FORSONINGSKOMMISSION [GREENLAND’S RECONCILIATION COMM’N],

countries throughout Scandinavia, including Sweden, Norway, and Finland, have created additional truth commissions to investigate long-running harms against the Sami people and other groups native to Scandinavia.<sup>54</sup>

While the United States has utilized Indigenous truth commissions at the state level,<sup>55</sup> it has not yet created a federal truth commission to address past and/or ongoing harms that the government has perpetrated against Native Americans. This, however, could soon change. Currently pending in both houses of Congress are two identical bills calling for the creation of a Truth and Healing Commission on Indian Boarding School Policies in the United States (“Proposed US Truth Commission”).<sup>56</sup> The proposed commission seeks to “formally investigate and document” human rights violations that the United States perpetrated through the use of Indian boarding schools for Native American children throughout the nineteenth and twentieth centuries, as well as the historical and intergenerational trauma these schools have caused Native communities.<sup>57</sup> This legislation was originally introduced in September 2020 and reintroduced in September 2021<sup>58</sup> and May 2023.<sup>59</sup> In June 2023, the Senate’s Indian Affairs Committee passed the Senate version of the bill with unanimous bipartisan support.<sup>60</sup>

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VI FORSTÅR FORTIDEN, VI TAGER ANSVAR FOR NUTIDEN, VI ARBEJDER FOR EN BEDRE FREMTID [WE UNDERSTAND THE PAST, WE TAKE RESPONSIBILITY FOR THE PRESENT, WE WORK FOR A BETTER FUTURE] (2017), <https://truthcommissions.humanities.mcmaster.ca/wp-content/uploads/2020/06/The-Reconciliation-Commission-of-Greenland-Danish.pdf> (Swed.). For further discussion of these truth commissions, see Ochs, *supra* note 10, at 10–13.

<sup>54</sup> Dankertsen & Arvidsson, *supra* note 11.

<sup>55</sup> The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission operated from 2013 to 2015 in Maine to investigate the state’s child-welfare practices against its Indigenous people. *Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission*, WABANAKI REACH, [https://www.wabanakireach.org/maine\\_wabanaki\\_state\\_child\\_welfare\\_truth\\_and\\_reconciliation\\_commission](https://www.wabanakireach.org/maine_wabanaki_state_child_welfare_truth_and_reconciliation_commission) (last visited Nov. 17, 2023); see also Ochs, *supra* note 10, at 15–21 (detailing the creation and work of the Maine-Wabanaki State Child Welfare Truth and Reconciliation Commission).

<sup>56</sup> H.R. 8420, 116th Cong. (2020); S. 4752, 116th Cong. (2020).

<sup>57</sup> H.R. 5444, 117th Cong. §§ 2–3 (2021).

<sup>58</sup> H.R. 5444, 117th Cong. (2021); S. 2907, 117th Cong. (2021).

<sup>59</sup> S. 1723, 118th Cong. (2023).

<sup>60</sup> Jenna Kunze, *Boarding School Legislation Passes Senate Committee on Indian Affairs*, NATIVE NEWS ONLINE (June 7, 2023), <https://nativenewsonline.net/sovereignty/boarding-school-legislation-passes-senate-committee-on-indian-affairs>.

C. *Criticisms of and Proposed Solutions for Indigenous Truth Commissions*

Despite the achievements various Indigenous truth commissions have made to date, these entities certainly do not operate free of criticism. One of the most common critiques leveled at Indigenous truth commissions is that despite their idealistic objectives, they often fail to enact real, structural change.<sup>61</sup> Larry Schooler has recognized that critics often view truth commissions as nothing more than “highly visible way[s] to spend money and time studying an issue and producing a report that might—or might not—prompt change.”<sup>62</sup> Heather Parker has echoed these concerns by noting a growing discourse criticizing truth commissions for “serving only to retraumatize victims without bringing meaningful change.”<sup>63</sup>

And unfortunately, these criticisms are not baseless. The Canadian Commission, referenced above, issued a report at the conclusion of its mandate, which included ninety-four “calls for action,” the majority of which addressed the Canadian government and sought to “redress the legacy of residential [boarding] schools and advance the process of Canadian reconciliation.”<sup>64</sup> But, as of 2023, Canada has only fully implemented thirteen out of the ninety-four calls for action set forth in the Canadian Commission’s report.<sup>65</sup> As a result,

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<sup>61</sup> See, e.g., Matiangai V. S. Sirleaf, *Beyond Truth and Punishment in Transitional Justice*, 54 VA. J. INT’L L. 223, 232 (2014) (“There is misplaced confidence in the ability of truth commissions and trials to contribute towards . . . restorative, retributive, utilitarian, and expressive goals.”); Rice, *supra* note 7; Parker, *supra* note 13, at 33.

<sup>62</sup> Larry Schooler, *Truth and Reconciliation Commissions: A Primer*, 27 DISP. RESOL. MAG. 6, 7 (2021); see also Rice, *supra* note 7 (“Many critics worry that rather than contributing to substantive change, a truth commission actually creates the opportunity for guilty parties to claim that that past is over and dealt with . . .”).

<sup>63</sup> Parker, *supra* note 13, at 33 (alteration in original); Ming Zhu, *Power and Cooperation: Understanding the Road Towards a Truth Commission*, 15 BUFF. HUM. RTS. L. REV. 183, 184 (2009) (recognizing that truth commissions have been criticized as symbolic, “empty gesture[s]” to victims); see also Verlyn F. Francis, *Designing Emotional and Psychological Support into Truth and Reconciliation Commissions*, 23 WILLAMETTE J. INT’L L. & DISP. RESOL. 273, 276 (2016) (“The debate continues as to whether . . . [truth commissions] are promoting healing of the country at the expense of the individual victim.”).

<sup>64</sup> TRUTH & RECONCILIATION COMM’N OF CAN., TRUTH AND RECONCILIATION COMMISSION OF CANADA: CALLS TO ACTION 1–11 (2015), [https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls\\_to\\_Action\\_English2.pdf](https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf).

<sup>65</sup> *Beyond 94: Truth and Reconciliation in Canada*, CBC NEWS, <https://www.cbc.ca/newsinteractives/beyond-94?cta=1> (June 22, 2023).

critics recognize that while the Canadian Commission increased awareness of certain Indigenous issues, “it fail[ed] to meaningfully address the roots of colonization and the oppression of Indigenous peoples entrenched in land dispossession.”<sup>66</sup>

Despite these criticisms and challenges, proponents of Indigenous truth commissions are far from ready to throw in the towel. Indeed, as Parker notes, “[w]hile imperfect,” truth commissions “can provide a step towards social equity for previously victimized populations.”<sup>67</sup> That does not mean, however, that efforts should not be taken to cure these imperfections. As countries continue to create truth commissions to investigate and provide healing for historical human rights violations against their Indigenous communities, significant care needs to be taken to not reproduce the same failings and criticisms that have plagued prior Indigenous truth commissions. To date, there have been a number of significant scholarly and practice-oriented works that address the measures that states and civil organizations should employ to avoid these past challenges and criticisms, and specifically to set up the commissions with everything they need to obtain real, successful change.<sup>68</sup> These include providing “[c]ulturally appropriate mental health support” to witnesses;<sup>69</sup> involving and engaging Indigenous individuals in all phases of the commission’s operations, including the development of its mandate;<sup>70</sup> and conducting public hearings and outreach to both Indigenous and non-Indigenous communities to keep them informed and educated about the commission’s work and operations.<sup>71</sup>

In an effort to evaluate how these features have been incorporated into and the effects thereof on a recently established truth commission, this Article will next examine one of the world’s newest Indigenous truth commissions: the Swedish Sami Truth Commission.

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<sup>66</sup> Bean, *supra* note 14.

<sup>67</sup> Parker, *supra* note 13, at 33–34; *see also* Schooler, *supra* note 62, at 7 (recognizing that supporters of the truth commission model “acknowledge its limitations,” but ultimately point to its greater benefits).

<sup>68</sup> *See generally* Librizzi, *supra* note 43, at 193–194; INT’L CTR. FOR TRANSITIONAL JUST., STRENGTHENING INDIGENOUS RIGHTS THROUGH TRUTH COMMISSIONS: A PRACTITIONER’S RESOURCE 50 (2012) [hereinafter STRENGTHENING INDIGENOUS RIGHTS], <https://www.ictj.org/sites/default/files/ICTJ-Truth-Seeking-Indigenous-Rights-2012-English.pdf>.

<sup>69</sup> Librizzi, *supra* note 43, at 193.

<sup>70</sup> STRENGTHENING INDIGENOUS RIGHTS, *supra* note 68, at 50.

<sup>71</sup> *Id.* at 52.

## II. THE SWEDISH APPROACH TO TRUTH & JUSTICE

“Sweden’s dark history must be brought into the light for real change to be possible.”

— Per-Olof Nutti, Sami politician and former president of Sami Parliament of Sweden<sup>72</sup>

The Sami people live in an area that extends across four countries: Norway, Finland, Sweden, and Russia’s Kola Peninsula.<sup>73</sup> While records estimate the total Sami population across this expanded geographic region totals seventy thousand, only twenty thousand of these individuals live in Sweden.<sup>74</sup> Across Norway, Finland, and Sweden, the Sami people have borne the brunt of assimilatory and discriminatory policies and practices, and human rights abuses.<sup>75</sup> Recently, Norway, Finland, and Sweden have each created their own truth commission to investigate and provide redress for their respective states’ treatments of the Sami people.<sup>76</sup> While these commissions maintain an open dialogue, their work is largely conducted independently of each other.

This Part will focus on Sweden’s efforts at creating a truth commission for its historical treatment of the Sami people. Specifically, it will provide a brief overview of the Swedish state’s discriminatory treatment of the Sami people, prior efforts at providing redress and reconciliation for this discrimination, and the creation and work to date of the Swedish Sami Truth Commission.

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<sup>72</sup> Per-Olof Nutti, President, Sami Parliament, *Statement About the Work for a Truth Commission on Historical Events and Abuse of the Sami People in Sweden*, SAMETINGET (n.d.) [hereinafter Per-Olof Nutti, *Statement*], <https://www.sametinget.se/120809>.

<sup>73</sup> Elisabeth Åsbrink, *The Church of Sweden Seeks Reconciliation with the Sami*, DAGENS NYHETER (Mar. 3, 2016), <https://fokus.dn.se/kyrkan-och-samerna>.

<sup>74</sup> MINISTRY OF AGRIC., FOOD & CONSUMER AFFS., REGERINGSKANSLIET, *THE SAMI: AN INDIGENOUS PEOPLE IN SWEDEN* (2005), <https://www.samer.se/2844>.

<sup>75</sup> Dankertsen & Arvidsson, *supra* note 11 (recognizing that although Finland, Sweden, and Norway all “practiced forced assimilation policies” towards the Sami people, the way in which they gained control over Sami territories and people was “quite different”).

<sup>76</sup> *Id.*

A. *A Brief History of Sami Discrimination*

“In Sami history, we have been bitten from many different sides. . . . [P]eople have been forcibly relocated, they have measured our skulls and photographed us naked [. . .] all in all, it has taken a toll.”

— Katarina Pirak Sikku, Sami artist<sup>77</sup>

The long history of discrimination against the Sami people in Sweden extends over various eras and—as is the case with the history of discrimination against many Indigenous peoples in settler colonial states—is difficult to condense into one brief summary. And indeed, a full discussion examining the extent of Swedish Sami discrimination falls beyond the scope of this Article. Yet, this Part will attempt to provide insight into several specific discriminatory policies enacted and furthered against the Sami people in Sweden.

The historical approach to the Sami people by the Swedish government and the Church of Sweden—two entities that often worked interchangeably in developing approaches towards the treatment of the Sami people<sup>78</sup>—has been “partly segregation policy, partly assimilation policy.”<sup>79</sup> In a policy codesigned by the Swedish state and the Church of Sweden, the country adopted a “Lapp shall be Lapp” approach, whereunder the “nomadic Sami”—or those recognized as reindeer herders—would be isolated from “civilization,” while the remaining Sami population would be assimilated into Swedish society.<sup>80</sup> This policy was grounded in the flawed belief that traditional reindeer-herding Sami people were not physically equipped to survive in Swedish culture.<sup>81</sup>

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<sup>77</sup> Åsbrink, *supra* note 73.

<sup>78</sup> See Per Pettersson, *State and Religion in Sweden: Ambiguity Between Disestablishment and Religious Control*, 24 NORDIC J. RELIGION & SOC'Y 119, 120–21 (2011), <https://doi.org/10.18261/ISSN1890-7008-2011-02-02> (recognizing that historically “state and [c]hurch were almost totally integrated” in Sweden until 2000, when Swedish legislation sought to separate this relationship); see also Daniel Lindmark & Olle Sundström, *The Church of Sweden and the Sami—a White Paper Project*, in THE SAMI AND THE CHURCH OF SWEDEN: RESULTS FROM A WHITE PAPER PROJECT, *supra* note 8, at 9, 11 (summarizing the responsibility of the Church of Sweden with regard to Sami policies as “an established state church”).

<sup>79</sup> MARIE ENOKKSON, PREPARATIONS BEFORE A TRUTH COMMISSION ON THE VIOLATIONS OF THE SAMI PEOPLE BY THE SWEDISH STATE 5 (2021), <https://www.sametinget.se/160524>.

<sup>80</sup> Åsbrink, *supra* note 73.

<sup>81</sup> *Id.*



In practice, this approach translated into different policies and living conditions imposed upon the reindeer-herding or “nomadic” Sami people and those from “residential” or non-nomadic families.<sup>82</sup> The state limited reindeer husbandry, hunting, and fishing rights to those who identified as nomadic or reindeer-herding Sami people.<sup>83</sup> Moreover, children of “nomadic” or reindeer-herding Sami families were sent to nomadic schools, whereas children of “resident families”—or those who were not engaged in reindeer herding—were sent to residential schools.<sup>84</sup> It was clear from early on in the institution of the nomad school policy that the nomad school was substandard and discriminatory.<sup>85</sup> In these nomad schools, children of reindeer-herding Sami families were required to “live in and go to school in huts so as not to be ‘made Swedish,’” while all classes were taught in Swedish, with students under constant threat of punishment should they speak their native language.<sup>86</sup> All in all, these nomad schools “have been [strongly] criticized for separating children from their parents, providing inadequate education, contributing to the loss of S[a]mi culture and language[,] and for allowing students to be used in racially motivated biological studies.”<sup>87</sup>

Moreover, the distinct treatment of Sami children in two clearly delineated groups—nomad families and residential families—sparked fierce divides within Sami communities and “created a hierarchy of Sami.”<sup>88</sup> As Nils-Henrik Sikku, a former student of a nomad school, told journalist Elisabeth Åsbrink, “[w]e [in the nomad schools] did not understand that we received a worse education, but we understood that those in the village [residential] school were our enemies. That [it] was us against them.”<sup>89</sup>

Additionally, the creation of the State Institute for Race Biology in 1921—originally envisioned to “provide medical solutions to social problems,” but which instead engaged in projects “charting the racial traits of the Swedish population and measuring and photographing

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<sup>82</sup> *Id.*

<sup>83</sup> ENOKKSON, *supra* note 79, at 18.

<sup>84</sup> Åsbrink, *supra* note 73.

<sup>85</sup> *See id.*

<sup>86</sup> ENOKKSON, *supra* note 79, at 37.

<sup>87</sup> Kevin McGwin, *Church of Sweden to Apologize for ‘Dark,’ ‘Colonial’ Sámi Mistreatment*, ARCTIC TODAY (June 10, 2021), <https://www.arctictoday.com/church-of-sweden-to-apologize-for-dark-colonial-sami-mistreatment>.

<sup>88</sup> ENOKKSON, *supra* note 79, at 18.

<sup>89</sup> Åsbrink, *supra* note 73.

human bodies”—subjected the Sami people to even further discrimination.<sup>90</sup> The concept of racial biology is often associated with policies that influenced Nazism,<sup>91</sup> and indeed, Sweden’s racial biology efforts were largely undertaken to prevent a mixing of the pure Swedish race with that of the “inferior” Sami people.<sup>92</sup> As part of these racial biology studies, “Sami individuals were more or less forced to allow their bodies to be measured from different angles and were placed in front of the camera without clothes to cover them.”<sup>93</sup>

Despite this extensive history of human rights violations, Sweden’s “majority population’s knowledge of the Sami people, their rights as an [I]ndigenous people[,] and their history and culture is generally low.”<sup>94</sup> Moreover, there is often little discussion among the Sami people who directly experienced these past human rights abuses. As Nils-Henrik Sikku further stated with regard to this dark history, “[t]here was total silence. It still is. People are ashamed.”<sup>95</sup>

This history of discrimination against the Sami people harkens clear analogies to the mistreatment of Indigenous peoples in the United States, Canada, and Australia. Specifically, Sweden’s “Lapp shall be Lapp” policy was inspired by the United States’ use of Native American reservations,<sup>96</sup> while Sweden’s mandated use of nomad schools, which were often rife with abuse, closely mirrors the Indian boarding schools utilized in both Canada and the United States in the nineteenth and twentieth centuries. But, while the consequences of discrimination for the Sami people are similar to those experienced by Native Americans in the United States, the methods utilized by the

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<sup>90</sup> Martin Ericsson, *What Happened to ‘Race’ in Race Biology? The Swedish State Institute for Race Biology, 1936-1960*, 46 SCANDINAVIAN J. HIST. 125, 125 (2021), <https://doi.org/10.1080/03468755.2020.1778520>.

<sup>91</sup> Åsbrink, *supra* note 73 (quoting former Archbishop Antje Jackelén as saying “the Sami experience is an offshoot of the same idea—racial biology—that strongly influenced Nazism”).

<sup>92</sup> David Sjögren, *The Sami and the Church as an Authority*, in THE SAMI AND THE CHURCH OF SWEDEN: RESULTS FROM A WHITE PAPER PROJECT, *supra* note 8, at 59, 74; Daniel Lindmark & Olle Sundström, *The Overall Results of the White Paper Project*, in THE SAMI AND THE CHURCH OF SWEDEN: RESULTS FROM A WHITE PAPER PROJECT, *supra* note 8, at 205, 206.

<sup>93</sup> Sjögren, *supra* note 92, at 76.

<sup>94</sup> TRUTH COMM’N FOR THE SAMI PEOPLE, COMMITTEE TERMS OF REFERENCE: SURVEY AND EXAMINATION OF THE POLICIES PURSUED TOWARDS THE SAMI AND THEIR CONSEQUENCES FOR THE SAMI PEOPLE 5 (Nov. 3, 2021) [hereinafter COMMITTEE TERMS OF REFERENCE].

<sup>95</sup> Åsbrink, *supra* note 73.

<sup>96</sup> Dankertsen & Arvidsson, *supra* note 11.

Swedish state and Church of Sweden were “more invisible [and] more sophisticated,” which permitted these institutional perpetrators to avoid accountability for these abuses.<sup>97</sup>

And indeed, Sami discrimination by the Swedish state continues today.<sup>98</sup> Notably, Sweden has not ratified Convention 169 of the International Labor Organization of 1989 (“Convention”),<sup>99</sup> an international binding treaty that recognizes the vast rights held by Indigenous peoples with “aims [of] overcoming discriminatory practices . . . and enabling them to participate in decision-making that affects their lives.”<sup>100</sup> Moreover, Sweden has repeatedly received criticism from the Committee on the Elimination of Racial Discrimination (CERD) for failing to uphold its responsibilities to prevent discrimination against the Sami people, as it is obligated to do as a state party to the CERD.<sup>101</sup> Specifically, in June 2018, in response to Sweden’s periodic reports on actions it has taken to uphold its obligations under the Convention, the conclusions of the CERD read as follows:

The Committee is concerned about: (a) the insufficient legislation to fully guarantee the right to free, prior[,] and informed consent, while natural resource extraction, industrial[,] and development projects continue; (b) the insufficient legislation to protect the rights of the Sami [p]eople in their traditional lands; (c) some groups within the Sami [p]eople that are engaged in different activities being treated differently before the law; (d) continued reports of hate crimes and discrimination against Sami [p]eople; (e) reports that the predator policy of 2013 on limiting harm to reindeer is not consistently applied and that Sami reindeer

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<sup>97</sup> Åsbrink, *supra* note 73.

<sup>98</sup> See Patrik Lantto & Ulf Mörkenstam, *Sami Rights and Sami Challenges: The Modernization Process and the Swedish Sami Movement, 1886–2006*, 33 SCANDINAVIAN J. HIST. 26, 26 (2008), <https://doi.org/10.1080/03468750701431222> (critiquing “contemporary Swedish Sami policy,” specifically regarding “Sami rights as an [I]ndigenous people,” and their “right to self-determination”).

<sup>99</sup> *Up-to-Date Conventions and Protocols Not Ratified by Sweden*, INT’L LAB. ORG., [https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210\\_COUNTRY\\_ID:102854](https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102854) (last visited Nov. 17, 2023).

<sup>100</sup> BIRGITTE FEIRING, INT’L LAB. ORG., UNDERSTANDING THE INDIGENOUS AND TRIBAL PEOPLES CONVENTION, 1989 (NO. 169): HANDBOOK FOR ILO TRIPARTITE CONSTITUENTS 1 (2013).

<sup>101</sup> See *Ethnic Discrimination*, SAMETINGET (Swed.), <https://www.sametinget.se/10173> (last visited Nov. 17, 2023).

herding communities are facing difficulties in obtaining compensation for damage caused by predators (art. 5).<sup>102</sup>

This long history of discrimination and human rights violations has led to intergenerational trauma and significant consequences for the Sami community as a whole. For example, “[i]n 2016, the Sami Parliament published a report on Sami mental health,” which identified “a high number of suicides among young reindeer[-herding]” Sami people, who felt “they had no future and [were] seeing their land eaten away by industries.”<sup>103</sup> Moreover, recent research indicates that approximately “[h]alf of Sami adults in Sweden suffer from anxiety and depression,” while the rate of young Sami reindeer herders seriously contemplating or attempting suicide is more than double that among their peers in the Swedish majority population.<sup>104</sup>

B. *The Church of Sweden’s White Paper Project*

Throughout the 1990s, the Church of Sweden began to undertake efforts to address past discriminatory conduct against the Sami people and actively worked to provide opportunities to integrate Sami individuals into church services and events.<sup>105</sup> In 2005, the Church Assembly for the Church of Sweden appointed a commission to specifically address Sami issues.<sup>106</sup> This commission identified the Church of Sweden’s role in colonizing the country’s Indigenous population, specifically recognizing that the Church of Sweden bore historical responsibility in undertaking efforts to “prevent the expression of Sami historical characteristics, special traditions[,] and culture.”<sup>107</sup> In 2012, in efforts to address this historical responsibility and proceed with a reconciliation process, the Board of the Church of Sweden implemented an action plan to elucidate the specific harms

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<sup>102</sup> Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Twenty-second and Twenty-third Periodic Reports of Sweden, U.N. Doc. CERD/C/SWE/CO/22-23, at 3 (June 6, 2018).

<sup>103</sup> Olivier Truc, *Swedish Truth Commissions on the Way*, JUSTICEINFO.NET (Aug. 28, 2020), <https://www.justiceinfo.net/en/45184-swedish-truth-commissions-on-the-way.html>.

<sup>104</sup> Melody Schreiber, *In a Land of Thundering Reindeer, Suicide Stalks the Indigenous Sami*, STAT (Dec. 9, 2016), <https://www.statnews.com/2016/12/09/suicide-sweden-sami-mental-health>.

<sup>105</sup> Daniel Lindmark & Olle Sundström, *The Church of Sweden and the Sami—a White Paper Project*, in THE SAMI AND THE CHURCH OF SWEDEN: RESULTS FROM A WHITE PAPER PROJECT, *supra* note 8, at 9, 12.

<sup>106</sup> *Id.* at 12.

<sup>107</sup> *Id.*

the Church of Sweden had committed against the Sami people.<sup>108</sup> That same year, the Church of Sweden embarked on a White Paper Project (“Project”), with the aim of identifying and presenting the Church of Sweden’s historical treatment of and relationship with the Sami people.<sup>109</sup>

The Church of Sweden’s research unit funded the Project, with additional support from Umeå University.<sup>110</sup> The Steering Committee leading the Project was composed of a majority of representatives from the Sami community—upon recognizing the need for the Sami themselves to participate in all stages of the project<sup>111</sup>—along with a minority of representatives from the Church of Sweden and Umeå University.<sup>112</sup> Ultimately, the Project produced two large-scale publications: one anthology of scientific articles, published in April 2016, and one publication that “intended to explain the scientific results in a brief and comprehensible way to the general public,” published in February 2017.<sup>113</sup>

Upon examining the Project’s extensive results, editors Daniel Lindmark and Olle Sundström identify the “most obvious general conclusion” from the research as being “that the relations between the Church and the Sami can be characterised as colonial power relations.”<sup>114</sup> The editors of the Project shed specific light on two particularly dark periods in the history of the Sami-Church of Sweden relationship: the religious trials conducted between 1680 and 1730, in which the Church of Sweden and the Swedish government

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<sup>108</sup> *Id.* at 13; see also Björn Norlin & Daniel Lindmark, *Generating and Popularising Historical Knowledge in a Reconciliation Process: The Case of the Church of Sweden and the Sami*, in HISTORICAL JUSTICE AND HISTORY EDUCATION 131, 137 (Matilda Keynes et al. eds., 2021) [hereinafter Norlin & Lindmark, *Generating and Popularising Historical Knowledge*], [https://doi.org/10.1007/978-3-030-70412-4\\_7](https://doi.org/10.1007/978-3-030-70412-4_7) (“A deeper knowledge of the Church’s injustices against the Sami was seen as a prerequisite for a continued reconciliation process.”).

<sup>109</sup> See Daniel Lindmark & Olle Sundström, *The Church of Sweden and the Sami—a White Paper Project*, in THE SAMI AND THE CHURCH OF SWEDEN: RESULTS FROM A WHITE PAPER PROJECT, *supra* note 8, at 9, 12.

<sup>110</sup> *Id.* at 17.

<sup>111</sup> *Id.* at 15.

<sup>112</sup> *Id.* at 17.

<sup>113</sup> *Id.* at 18. An “extended and updated English version” of the publications was also published in 2018, following the conclusion of the Project. Norlin & Lindmark, *Generating and Popularising Historical Knowledge*, *supra* note 108, at 137.

<sup>114</sup> Daniel Lindmark & Olle Sundström, *The Overall Results of the White Paper Project*, in THE SAMI AND THE CHURCH OF SWEDEN: RESULTS FROM A WHITE PAPER PROJECT, *supra* note 8, at 205, 206.

coordinated to prosecute Sami individuals found to have practiced certain aspects of their Indigenous religion, including the use of ritual drums and the segregating school policies discussed previously in this Article, pursuant to which Sami children were sent to either a nomad school or a residential school depending on their families' classification as "reindeer[-]herding Sami."<sup>115</sup> While the Project provided a clear historical record of these two periods of human rights violations, as well as other discriminatory and racist practices sponsored by the Church of Sweden—such as assisting in removing human remains from Sami graves to further "racial biology"—the editors did not specifically condemn or impose blame on the Church of Sweden for its involvement in these violations.<sup>116</sup>

Instead, the Project made its limitations clear, explaining that it intended to focus only on one stage of reconciliation—namely, the "acknowledgment phase," by "expos[ing] the truth about the past history" between the Church of Sweden and the Sami people.<sup>117</sup> Indeed, it did not seek to propose changes or undertake any further duties with regard to reconciling relationships between the Sami people and the Church of Sweden or the Swedish majority population, noting simply that it "deliberately refrained from proposing an action plan or road map for a continuing process."<sup>118</sup> Instead, the Project set the stage for the Church of Sweden and the Swedish government to take further action to assume responsibility for their past treatment of the Sami people and work towards reconciliation.<sup>119</sup>

And these entities did indeed take further action following the conclusion of the Project. Specifically, in 2019, the Church of Sweden, along with local government and Sami institutions, held a

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<sup>115</sup> Daniel Lindmark & Olle Sundström, *The Overall Results of the White Paper Project*, in *THE SAMI AND THE CHURCH OF SWEDEN: RESULTS FROM A WHITE PAPER PROJECT*, *supra* note 8, at 205, 209–11; *see also* Norlin & Lindmark, *Generating and Popularising Historical Knowledge*, *supra* note 108, at 137.

<sup>116</sup> Daniel Lindmark & Olle Sundström, *The Overall Results of the White Paper Project*, in *THE SAMI AND THE CHURCH OF SWEDEN: RESULTS FROM A WHITE PAPER PROJECT*, *supra* note 8, at 205, 211–12.

<sup>117</sup> Daniel Lindmark & Olle Sundström, *The Church of Sweden and the Sami—a White Paper Project*, in *THE SAMI AND THE CHURCH OF SWEDEN: RESULTS FROM A WHITE PAPER PROJECT*, *supra* note 8, at 9, 16.

<sup>118</sup> *Id.* at 17; Norlin & Lindmark, *Generating and Popularising Historical Knowledge*, *supra* note 108, at 136 ("[N]o restitution claims were raised and no major changes were offered [in the Project].").

<sup>119</sup> Daniel Lindmark & Olle Sundström, *The Church of Sweden and the Sami—a White Paper Project*, in *THE SAMI AND THE CHURCH OF SWEDEN: RESULTS FROM A WHITE PAPER PROJECT*, *supra* note 8, at 9, 16–17.

“repatriation” ceremony, in which the skulls of twenty-five Sami corpses were returned from where they had been held by the Swedish History Museum in Stockholm and reburied at a cemetery in Northern Sweden.<sup>120</sup> More recently, in 2021, the Church of Sweden issued several official public apologies to the Sami people for its historical abuses.<sup>121</sup> It has further allocated strategic development funds that total millions of US dollars to further the reconciliation process between the Church of Sweden and the Sami people.<sup>122</sup> While the extent of the Church of Sweden’s involvement in the Swedish Sami Truth Commission is yet unclear, in its formal apology in November 2021, the Church of Sweden formally committed itself “to working together for justice and righteousness” and “respond[ing] in the same spirit to the knowledge that will emerge from future research and the state-run [t]ruth [c]ommission.”<sup>123</sup>

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<sup>120</sup> *Sweden to Return Remains of 25 Sami People After More than Half a Century*, THE LOCAL (Aug. 5, 2019, 8:10 AM), <https://www.thelocal.se/20190805/sweden-to-return-remains-of-25-sami-people-after-more-than-half-a-century>; Jon Henley, *Swedish Museum to Return Exhumed Skulls of 25 Sami People*, THE GUARDIAN (Aug. 7, 2019, 6:09 AM), [https://www.theguardian.com/world/2019/aug/07/swedish-museum-to-return-exhumed-skulls-of-25-sami-people?CMP=share\\_btn\\_link](https://www.theguardian.com/world/2019/aug/07/swedish-museum-to-return-exhumed-skulls-of-25-sami-people?CMP=share_btn_link).

<sup>121</sup> *Official Apology Will Be Made to the Sami People*, SVENSKA KYRKAN (June 8, 2021, 5:20 PM) (Swed.), <https://www.svenskakyrkan.se/pressmeddelande/official-apology-will-be-made-to-the-sami-people?publisherId=1344892&releaseId=3310866&channels=3240406&webid=1374643> (announcing two formal apologies to be held in November 2021 and October 2022).

<sup>122</sup> *Id.* (recognizing that the Church is allocating SEK 40 million to the reconciliation process); *Convert Swedish Krona to United States Dollar*, FORBES ADVISOR (Nov. 05, 2023, 17:16 UTC), <https://www.forbes.com/advisor/money-transfer/currency-converter/sek-usd/?amount=40000000> (reflecting that SEK 40 million converts to approximately \$3.6 million).

<sup>123</sup> Church of Sweden, *Speech of Apology* (Jan. 20, 2023), <https://www.svenskakyrkan.se/samiska/speech-of-apology>.

C. *The Swedish Sami Truth Commission*

“It’s not an apology [the Sami] are waiting for. It’s . . . concrete measures that will actually lead to something.”

— Jon Dunås, principal secretary of the Swedish Sami Truth Commission<sup>124</sup>

Despite the work done as part of the Project, there remained a widespread feeling among the Swedish Sami communities that further action was needed to address their long history of injustice at the hands of the Swedish state. As Parliamentarian Per-Olof Nutti put it, the Sami people wanted an independent mechanism that would “result in consequences for Sweden’s Sami policy.”<sup>125</sup> Jon Dunås, who currently serves as the principal secretary of the Swedish Sami Truth Commission, echoed this sentiment, who currently serves as the principal secretary of the Swedish Sami Truth Commission, who stated, “[i]t’s not an apology they are waiting for. It’s . . . concrete measures that will actually lead to something.”<sup>126</sup> Moreover, while the Project comprehensively addressed the Church of Sweden’s role in discriminatory practices against the Sami people, it did not address certain other practices, policies, and laws that were enacted exclusively by the Swedish state and the consequences therefore.<sup>127</sup> Accordingly, the Sami people sought further truth and justice through the establishment of a truth commission.

1. Creation of a Truth Commission

After years of discussion surrounding the need for a truth commission to address Sweden’s treatment of the Sami people, in 2014, the Sami Parliament collectively agreed to work towards establishing such a commission.<sup>128</sup> “[T]he great lack of knowledge and cultural understanding of the Sami . . . in school, among authorities[,]

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<sup>124</sup> Zoom Interview with Jon Dunås, Principal Secretary, Truth Commission for the Sami People (Nov. 11, 2022).

<sup>125</sup> Per-Olof Nutti, *Statement*, *supra* note 72.

<sup>126</sup> Zoom Interview with Jon Dunås, *supra* note 124.

<sup>127</sup> *Id.*

<sup>128</sup> Rundabordssamtal om internationella erfarenheter av sanningskommissioner [Roundtable Discussion on International Experiences of Truth Commissions] 31, Diskrimineringsombudsmannen (Oct. 2016) [hereinafter Rundabordssamtal] (Swed.), <https://www.sametinget.se/125416> (“The The Sami Parliament, founded in 1993, and is both a publicly-elected parliament and a state administrative authority under the Swedish government.”).



and the general public in Sweden” partly motivated the Sami Parliament.<sup>129</sup> Years of collective research and work undertaken by the Sami Parliament followed this agreement, often in conjunction with the Swedish Equality Ombudsman, “an independent governmental agency with a mission to combat discrimination and promote equal rights and opportunities.”<sup>130</sup> In 2019, the Sami Parliament, along with other Sami political parties and organizations, submitted a joint petition to the Ministry of Culture and Democracy, calling for the Swedish state to “finance a process to establish, in cooperation with the Sami Parliament, an independent truth commission on the abuses of the Sami by the Swedish [s]tate.”<sup>131</sup>

On June 9, 2020, the Ministry of Culture and Democracy announced that it would grant the Sami Parliament funding to conduct work to “inform and anchor” the creation of a truth commission in dialogue with the Sami community.<sup>132</sup> Thereafter, the Sami Parliament distributed a survey to Sami associations and organizations within Sweden and conducted both in-person and virtual meetings in 2020 and 2021 to solicit Sami input as to the creation, mandate, and operations of the proposed truth commission.<sup>133</sup> The Sami Parliament compiled this input into a preparations report, presented in March 2021, which set forth the diverse views the Sami held with regard to the proposed truth commission and which identified themes present in the survey responses.<sup>134</sup> Specifically, the preparations report identified a universal desire among the Sami people for an independent and impartial commission to achieve accountability, truth, and justice for past and ongoing injustice.<sup>135</sup> Among the injustices for which the Sami respondents sought to achieve truth and justice included: the division sowed by the government amongst different Sami communities as a result of its part-

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<sup>129</sup> ENOKKSON, *supra* note 79, at 7.

<sup>130</sup> Rundabordssamtal, *supra* note 128, at 31; ENOKKSON, *supra* note 79, at 7–8.

<sup>131</sup> ENOKKSON, *supra* note 79, at 9.

<sup>132</sup> *Id.* at 10. These funds totaled SEK 1.2 million (approximately 116,000 USD). *US Dollar to Swedish Krona Spot Exchange Rates for 2020*, EXCHANGERATES (Nov. 5, 2023), <https://www.exchangerates.org.uk/USD-SEK-spot-exchange-rates-history-2020.html> (recognizing the average exchange rate for SEK to USD in 2020 was 9.2071 SEK).

<sup>133</sup> ENOKKSON, *supra* note 79, at 11–13. More than one hundred people (excluding Sami Parliament staff) participated in the meetings, and the Sami Parliament received 407 survey responses. *Id.* at 12–13.

<sup>134</sup> *See generally id.* at 12–13.

<sup>135</sup> *Id.* at 14–15.

segregation, part-assimilation policies;<sup>136</sup> the expropriation of Sami land to the state;<sup>137</sup> the discriminatory Sami education system;<sup>138</sup> racial biology testing conducted on the Sami people;<sup>139</sup> and the loss of Sami language, culture, and identity.<sup>140</sup>

In its preparations report, the Sami Parliament drew knowledge from various other truth commissions, such as the Canadian Commission,<sup>141</sup> as well as those commissions that had already been established within Scandinavia to address past harms against the Sami people.<sup>142</sup> These other Scandinavian commissions include the Norwegian Truth and Reconciliation Commission, approved for establishment by the Norwegian Government in 2017, with a mandate designed to address the history and consequences of the country's Norwegianization policy towards the Sami,<sup>143</sup> as well as Finland's Truth and Reconciliation Commission Concerning the Sami People, which was appointed in 2021 and is in the early stages of its work.<sup>144</sup> Notably, the report also drew inspiration from another truth commission previously established in Sweden: the Truth and Reconciliation Commission for the Tornedaliens, Kvens, Lantalaïsiens, and other Indigenous groups within Sweden who had suffered as a result of Swedish assimilation policies enforced in the nineteenth and twentieth centuries.<sup>145</sup>

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<sup>136</sup> *See id.* at 18.

<sup>137</sup> *See id.* at 29–30.

<sup>138</sup> *See id.* at 37–41.

<sup>139</sup> *See* ENOKKSON, *supra* note 79, at 44–46.

<sup>140</sup> *See id.* at 42–43.

<sup>141</sup> *Id.* at 9.

<sup>142</sup> *Id.* at 47–50.

<sup>143</sup> *Id.* at 47; *see also* *The Truth and Reconciliation Commission*, STORTINGET, <https://www.stortinget.no/en/In-English/About-the-Storting/News-archive/Front-page-news/2022-2023/the-truth-and-reconciliation-commission> (June 1, 2023).

<sup>144</sup> ENOKKSON, *supra* note 79, at 49.

<sup>145</sup> *Id.* at 50; *see also id.* at 13 (explaining that the creators of the preparations report contacted members of these various commissions in conducting the survey and creating the subsequent report). The Tornedalian Commission is appointed by the Swedish government, and its mandate tasks the commission with “map[ping] and examin[ing] the assimilation policies and the consequences for the minority, groups within the minority and to individuals; disseminat[ing] information in order to increase the knowledge about the minority and its historical experiences; and submit[ting] proposals on . . . contributing to reparations.” *About the Assignment*, KVÄNER LANTALAISET TORNEDALINGAR (Swed.) (alteration in original), <https://komisuuni.se/en/about-the-assignment> (last visited Nov. 18, 2023). Through such a mandate—which draws clear similarities to the Swedish Sami Truth

Following the presentation of the preparations report and a government meeting conducted on November 3, 2021, the Swedish Ministry of Culture and Democracy issued a directive enacting terms of reference to govern a truth commission designed to “survey and examine the policies pursued towards the Sami . . . and their consequences for the Sami people.”<sup>146</sup> According to the Sami Parliament website, the government appointed members for the Swedish Sami Truth Commission in spring 2022.<sup>147</sup>

## 2. Truth Commission Mandate

The terms of reference set forth by the Swedish Ministry of Culture and Democracy operate as the Swedish Sami Truth Commission’s mandate, outlining its functions, goals, and planned work.<sup>148</sup> This mandate instructs the Swedish Sami Truth Commission to:

[S]urvey and examine the policies pursued towards the Sami and the actions of relevant actors in the implementation of those policies; highlight the experiences of the Sami; and analyse and shed light on the consequences of the policies pursued towards the Sami with regard to the living conditions, health and social life of the Sami people as a whole and as individuals, and the ability of the Sami people to preserve and develop their own culture and community life.<sup>149</sup>

Upon doing so, the Swedish Sami Truth Commission is further instructed to highlight and disseminate the conclusions it draws from this investigation and to “[p]ropose measures to contribute to redress and promote reconciliation,” which the mandate clarifies may include proposals for legislative—but not constitutional—amendments.<sup>150</sup>

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Commission’s mandate—the Tornedalian Commission seeks to promote reconciliation and “contribute to the collective reparation for the minority,” and also to deter similar assimilation and human rights violations in the future. *Id.* As of May 2022, the commission reported that it had already conducted over 100 witness interviews, and it is currently scheduled to conclude its inquiry period in November 2023. *New Cooperation*, KVÄNER LANTALAISET TORNEDALINGAR (Swed.), <https://komisuuni.se/en/new-cooperation> (last visited Nov. 20, 2023); *Inquiry Period Extended*, KVÄNER LANTALAISET TORNEDALINGAR (Jan. 31, 2023) (Swed.), <https://komisuuni.se/en/inquiry-period-extended>.

<sup>146</sup> See COMMITTEE TERMS OF REFERENCE, *supra* note 94, at 1.

<sup>147</sup> *Truth Commission in Sweden*, SAMETINGET, <https://www.sametinget.se/truth-commission> (Sept. 9, 2022).

<sup>148</sup> See COMMITTEE TERMS OF REFERENCE, *supra* note 94, at 1–3.

<sup>149</sup> *Id.* at 4–5.

<sup>150</sup> *Id.* at 1, 5.

The mandate specifically does not limit the Swedish Sami Truth Commission's investigation to any specific time period or type of human rights violations perpetrated against the Sami people, and instead provides for "[a] comprehensive historical examination of the policies pursued and their consequences for the Sami people up to the present day."<sup>151</sup>

Through the completion of its broad mandate, the Swedish Sami Truth Commission intends for its work to "lead to deeper knowledge and insight among the majority population of the Sami and their conditions, thereby laying the foundations for increased understanding of the Sami's experiences" and "help[ing] to combat racism against Sami people."<sup>152</sup> Moreover, the Swedish Sami Truth Commission hopes "to contribute to collective and individual redress for the [I]ndigenous Sami people, . . . to promote reconciliation[,] . . . [and to] help ensure that nothing like this happens again in the future."<sup>153</sup>

In fulfilling its mandate and seeking to achieve its stated goals, the Swedish Sami Truth Commission is tasked with "consult[ing] with the Sami Parliament and other relevant agencies and organisations," and collecting testimonies from Sami individuals who have been subjected to discrimination by the state.<sup>154</sup> Notably, the Swedish Sami Truth Commission's terms of reference recognize that asking Sami individuals to recount their experiences may cause "individual traumas" to surface and instruct the Swedish Sami Truth Commission to "offer psychosocial support to those providing testimony."<sup>155</sup>

Ultimately, the Swedish Sami Truth Commission's terms of reference impose a deadline of December 1, 2025, as the date by which the Swedish Sami Truth Commission must finish and submit its report to the Swedish government.<sup>156</sup> The Swedish Sami Truth Commission

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<sup>151</sup> *Id.* at 3. But, the terms do clarify that the Swedish Sami Truth Commission's mandate will not include determining which reindeer husbandry and related rights are currently and were previously held by Sami people, and instructs that the commission should not examine violations committed by individuals—such as theft and abuse—which were not performed by that individual in their role as a State representative. *Id.* at 4.

<sup>152</sup> *Id.* at 5.

<sup>153</sup> *Id.* at 3.

<sup>154</sup> COMMITTEE TERMS OF REFERENCE, *supra* note 94, at 6–7.

<sup>155</sup> *Id.* at 7.

<sup>156</sup> *Id.* at 1.

is to be funded by the Swedish government.<sup>157</sup> Although the terms do not provide clear instructions for selecting and appointing commissioners, commissioners were ultimately appointed by the Swedish government in June 2022, following a “close dialogue” with the Sami Parliament.<sup>158</sup> As of this writing, the Swedish Sami Truth Commission’s investigation is already underway.

#### IV. LESSONS LEARNED FROM THE SWEDISH APPROACH TO TRUTH & JUSTICE

As discussed earlier in this Article, given the criticisms often leveled at Indigenous truth commissions—namely, that they fail to enact concrete change and serve only to retraumatize victims—it is imperative that such newly created entities make significant changes moving forward. Notably, these changes should ensure that newly created and future Indigenous truth commissions are structured and operate in ways that seek to both incorporate the voices and wishes of the Indigenous people(s) they are designed to serve and work to deconstruct the vestiges of settler colonialism. Such modifications are especially necessary given that state, regional, and national entities are in the process of negotiating and creating Indigenous truth commissions. For instance, as mentioned earlier, legislation for the creation of the Proposed US Truth Commission is pending before Congress.<sup>159</sup> In the creation of these future truth commissions, it is imperative that creators reflect on previous commissions. Doing so will facilitate analysis of their features to determine which should be replicated, modified, or disregarded in order to ensure that moving forward, Indigenous truth commissions are as effective as possible.

Indeed, the concept of diffusion theory, which recognizes that countries often adopt institutional models used by other states, is practically evident with regard to Indigenous truth commissions.<sup>160</sup> Settler colonial states, like Greenland, have recognized that they have

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<sup>157</sup> Zoom Interview with Jon Dunås, *supra* note 124.

<sup>158</sup> *Id.*

<sup>159</sup> See S. 1723, 118th Cong. (2023); Content Details: S.1723(IS)—Truth and Healing Commission on Indian Boarding School Policies Act, GOVINFO, <https://www.govinfo.gov/app/details/BILLS-118s1723is/related> (last visited Nov. 20, 2023) (detailing the congressional record).

<sup>160</sup> Kochanski, *supra* note 17, at 118 (“Diffusion theory holds that . . . when a watershed moment occurs, such as the South African [Truth and Reconciliation Commission], subsequent transitional states ‘catch’ the new policy or institutional model and seek to imitate it.” (citations omitted)).

relied upon truth commission models utilized in other settler colonial states, like Canada, in structuring their own truth commissions, while molding those models “to [the] specific local context.”<sup>161</sup>

Specifically, from the perspective of the United States, whose lengthy history of discrimination against Native Americans closely mirrors Sweden’s treatment of the Sami,<sup>162</sup> it is especially important for the United States to analyze Sweden’s new truth commission as it works to create its own federal truth commission for Native Americans. Accordingly, the following section will analyze the features of the Swedish Sami Truth Commission that the United States should adopt and avoid in creating its own Indigenous truth commission. While such a discussion may seem premature, given that the Swedish Sami Truth Commission has only recently begun its operations and is not expected to submit its final report until 2025, lessons can already be drawn from Sweden’s choice to create and structure its commission for the Sami, specifically in light of recent criticisms leveled against Indigenous truth commissions.

A. *Aspects of the Swedish Sami Truth Commission to be Adopted*

Throughout its creation, the Swedish Sami Truth Commission actively incorporated the voices and wishes of the Sami people in formulating its mandate, thereby ensuring that the Swedish Sami Truth Commission’s goals reflect what the Sami people, themselves, are hoping to achieve. Specifically, the Swedish Sami Truth Commission has chosen to prioritize those goals important to the Sami over those that may be more important to the state—such as promoting reconciliation between the Sami people and the majority Swedish population. Moreover, the Swedish Sami Truth Commission has vowed to incorporate psychological and mental health support efforts into its work.

Given the significant literature on truth commissions, as well as the experience and results of Indigenous truth commissions, the United States should consider adopting these aspects of the Swedish Sami Truth Commission in developing its own national Indigenous truth commission.

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<sup>161</sup> Astrid Nonbo Andersen, *The Greenland Reconciliation Commission: Moving Away from a Legal Framework*, 11 Y.B. POLAR L. 214, 221 (2019), [https://doi.org/10.1163/22116427\\_011010012](https://doi.org/10.1163/22116427_011010012).

<sup>162</sup> See discussion *infra* Part III.A.

### 1. Sami Involvement in Truth Commission Design

The first, and perhaps most important, laudable feature of the Swedish Sami Truth Commission is its innovative incorporation of Sami voices into its design. Scholarship is well-settled that the group(s) whom a truth commission is intended to serve must play a vital role in its design.<sup>163</sup> As explained by truth commission expert Joanna Rice, “[a] well set-up commission will be established through a long consultation with the groups most keenly affected by the crimes to be investigated.”<sup>164</sup> Through such involvement, the commission can ensure that the terms and goals set forth in its mandate are culturally compatible with the designated group’s approach to truth and healing, while also synchronous with the goals that the group itself is hoping to achieve.

Moreover, participant involvement is even more critical in the context of Indigenous truth commissions. As Rice once again notes, involving the Indigenous individuals for whom a truth commission is created to consult in the commission’s design process, “creates a rare opportunity for Indigenous groups and the state to be equal partners.”<sup>165</sup>

Indeed, the lack of involvement of participants in the design stages has proved a vital problem for past truth commissions such as the Sierra Leone Truth and Reconciliation Commission (SLTRC), which was created in the wake of the Sierra Leonean civil war in the late 1990s.<sup>166</sup> Although civil society organizations and international actors played a significant role in the creation of the SLTRC, public awareness, understanding of, and involvement in the commission at

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<sup>163</sup> See, e.g., Francis, *supra* note 63, at 294 (discussing the shortcomings of the South African Truth and Reconciliation Commission that arose from its failure to incorporate the voices of all stakeholders in the design process); see also Ari M. Levin, *Transitional Justice in Burma: A Survey of Accountability and National Reconciliation Mechanisms After Aung San Suu Kyi’s Release*, 18 HUM. RTS. BRIEF 21, 22 (2011) (“Best practice involves community ownership in the design process and implementation [of truth commissions].”).

<sup>164</sup> Rice, *supra* note 7.

<sup>165</sup> *Id.*

<sup>166</sup> ROSALIND SHAW, U.S. INST. OF PEACE, RETHINKING TRUTH AND RECONCILIATION COMMISSIONS: LESSONS FROM SIERRA LEONE 1, 4 (2005), <https://www.usip.org/sites/default/files/resources/sr130.pdf>; see also Francis, *supra* note 63, at 280–81 (“One of the biggest flaws in the secret negotiations leading to the South Africa [Truth and Reconciliation Commission] is that the most vulnerable and disempowered stakeholders, the African citizens who felt most of the brutality and trauma of apartheid, were not included in the design process.”).

the time of its design was relatively low.<sup>167</sup> As a result, Professor Rosalind Shaw explains, there was a large disconnect between the goals set forth in the SLTRC mandate and Sierra Leonean culture.<sup>168</sup> For instance, many people in Sierra Leone prefer a “forgive and forget approach,” and the SLTRC’s work in seeking to draw attention to past wrongs “often explicitly discount[ed] local understandings of healing and reconciliation in terms of social forgetting.”<sup>169</sup> This contrast in views, which Professor Shaw maintains hampered the success of the SLTRC,<sup>170</sup> could have been avoided with more local input from the start. Thus, it is vitally important not only that the designated group have ownership in the creation of a truth commission but also that the commission’s mandate reflect the survivors’ cultural approaches to justice.

Unlike the SLTRC, the creators of the Swedish Sami Truth Commission went to great lengths to understand and incorporate Sami voices into the formation of the commission, thereby ensuring that the Swedish Sami Truth Commission’s mandate furthers the goals of the Sami people. As noted above, the Sami Parliament both distributed a survey throughout Sami communities and conducted in-person and virtual meetings to understand the desires of the Sami people when it came to the goals and outcomes of the Swedish Sami Truth Commission.<sup>171</sup> This extensive action reflected a significant effort to incorporate Sami involvement in the design process and ensured that the Swedish Sami Truth Commission and its mandate were structured in a way to reflect the intent of the group for which the commission was created. Professor Jamie O’Connell has recognized that “[t]o be effective, transitional justice institutions must listen as well as speak,”<sup>172</sup> and in creating various opportunities for the Sami people to guide the goals set forth in the commission’s mandate, the Swedish Sami Truth Commission did just that.

The Swedish Sami Truth Commission’s incorporation of Sami voices into its design is certainly something that should be adopted by

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<sup>167</sup> Beth K. Dougherty, *Searching for Answers: Sierra Leone’s Truth & Reconciliation Commission*, 8 AFRICAN STUD. Q. 1, 40, 45–46 (2004).

<sup>168</sup> SHAW, *supra* note 166, at 4.

<sup>169</sup> *Id.* at 2.

<sup>170</sup> *Id.* at 7–8.

<sup>171</sup> ENOKKSON, *supra* note 79, at 11–13.

<sup>172</sup> Jamie O’Connell, *Transitional Justice as Communication: Why Truth Commissions and International Criminal Tribunals Need to Persuade and Inform Citizens and Leaders, and How They Can*, 73 S. CAL. L. REV. 101, 111 (2021).



future Indigenous truth commissions, including the Proposed US Truth Commission. It is also important for both the Swedish Sami Truth Commission as well as all future Indigenous truth commissions to continue to incorporate Indigenous voices and input throughout the entirety of the commissions' processes.<sup>173</sup>

## 2. De-Emphasis on Reconciliation

The Swedish Sami Truth Commission's incorporation of Sami input in its design is also evident in its approach to reconciliation. Unlike many other Indigenous truth commissions, including those utilized in Canada and Greenland,<sup>174</sup> the Swedish Sami Truth Commission expressly decided to leave the term "reconciliation" out of its title, choosing instead to prioritize truth and healing over reconciliation.<sup>175</sup>

As Dunås has explained, while the Swedish Sami Truth Commission seeks to lay the groundwork for a potential reconciliation between the Sami people and the Swedish state, including its majority Swedish population, reconciliation itself is not an end goal of the commission.<sup>176</sup> In his words, "[f]irst you should have the truth and maybe in the future reconciliation, but it is nothing that you can take for granted."<sup>177</sup> In speaking of the Swedish Sami Truth Commission's mandate, he recognized that the measures the commission may propose *could* promote reconciliation but clarified that any such reconciliation would be the result of a "very, very long process [that] will take a lot of time and work and efforts."<sup>178</sup>

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<sup>173</sup> STRENGTHENING INDIGENOUS RIGHTS, *supra* note 68, at 3.

<sup>174</sup> The Canadian Commission and the Greenland Reconciliation Commission both include the term "reconciliation" in their titles and list reconciliation as a goal or objective of their work. See *Truth and Reconciliation Commission of Canada*, *supra* note 53; JENS HEINRICH, U.N. DEP'T OF INT'L ECON. & SOC. AFFS., STANDARDS AND POLICIES FOR CONFLICT RESOLUTION, TRUTH, TRANSITIONAL JUSTICE AND RECONCILIATION 2 (2022), <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2022/11/Reconciliation-in-Greenland-and-reconciliation-with-Denmark.pdf>.

<sup>175</sup> *Om kommissionen* [About the Commission], SANNINGSKOMMISSIONEN FÖR DET SAMISKA FOLKET [TRUTH COMMISSION FOR THE SAMI PEOPLE] [hereinafter *About the Commission*] (Swed.), <https://sanningskommissionensamer.se/om-kommissionen> (last visited Nov. 20, 2023); see also Zoom Interview with Jon Dunås, *supra* note 124.

<sup>176</sup> Zoom Interview with Jon Dunås, *supra* note 124.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*; see also *About the Commission*, *supra* note 175 (noting the Sami Parliament has publicly explained that a reconciliation process is expected to follow the Swedish Sami Truth Commission's work).

This approach to reconciliation is one well supported by transitional justice research.<sup>179</sup> Reconciliation is not necessarily an inevitable result of truth commissions, as experience shows, but is instead a very long process in which truth commissions may only play a small role.<sup>180</sup> In fact, the Office of the United Nations High Commissioner for Human Rights recognizes that including reconciliation as a stated goal of a truth commission could impose “undue and unfair expectations among the victims that they, or the country as a whole, will or should feel quickly ‘reconciled’ as a result of knowing the truth about unspeakable past atrocities.”<sup>181</sup> In line with this reasoning, scholars have recognized that imposing reconciliation on Indigenous truth commission participants may even be viewed as a colonialist “threat,” through which Indigenous participants feel forced to reconcile even when the commission fails to address the foundational structures of colonialism.<sup>182</sup> Thus, focusing on reconciliation as a truth commission’s primary or stated goal could further entrench the colonial vestiges the commission is purportedly seeking to dismantle.

Indeed, scholar Rauna Kuokkanen has recognized that this is exactly what is happening in the truth commission Finland created to address its history of abuses against the Finnish Sami people.<sup>183</sup> Kuokkanen further proposes that the Finnish truth commission’s emphasis on reconciliation may be used by the Finnish state as a way to gain Sami approval or to “consolidate its international reputation as a democratic country respecting human and Indigenous rights.”<sup>184</sup>

Not only does the Swedish Sami Truth Commission’s decision to remove focus on reconciliation comport with the preferred approach to Indigenous truth commissions, but it has also been heralded by participants in other truth commissions. For example, Geraldine Shingoose, a survivor of the Canadian residential schools and a

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<sup>179</sup> See, e.g., Rauna Kuokkanen, *Reconciliation as a Threat or Structural Change? The Truth and Reconciliation Process and Settler Colonial Policy Making in Finland*, 21 HUM. RTS. REV. 293, 305–08 (2020), <https://doi.org/10.1007/s12142-020-00594-x>; SIDA, TRANSITIONAL JUSTICE AND RECONCILIATION (n.d.) (Swed.), <https://cdn.sida.se/app/uploads/2020/12/01125338/transitional-justice-and-reconciliation.pdf>.

<sup>180</sup> RULE OF LAW TOOLS, *supra* note 28, at 2.

<sup>181</sup> *Id.*

<sup>182</sup> Kuokkanen, *supra* note 179, at 305–06 (citing CATHERINE LU, JUSTICE AND RECONCILIATION IN WORLD POLITICS 142 (2017)).

<sup>183</sup> *Id.* at 303.

<sup>184</sup> *Id.*

participant in the Canadian Commission, “commended” the Swedish Sami Truth Commission for leaving the term “reconciliation” out of its title, noting that “we can’t have reconciliation until that truth is shared.”<sup>185</sup>

All in all, the Swedish Sami Truth Commission has adopted a unique approach to deprioritizing reconciliation that should be adopted by settler colonial states, like the United States, in creating future Indigenous truth commissions. And indeed, at this stage, the Proposed US Truth Commission appears to be taking a rather similar approach to reconciliation. Like the Swedish Sami Truth Commission, the term “reconciliation” neither appears in its title—the Truth and Healing Commission on Indian Boarding School Policies in the United States—nor in the entire text of the current bill.<sup>186</sup> Of course, this proposed legislation is not entirely predictive of how such a commission would look and function, but at this early stage, it appears that the Proposed US Truth Commission would be well served to follow the Swedish Sami Truth Commission’s approach to reconciliation.

### 3. Psychological & Emotional Support

The Swedish Sami Truth Commission has also taken a significant step towards improving the effectiveness of Indigenous truth commissions by vowing to provide psychological and emotional support to its participants. As noted above, one of the heaviest criticisms that has been leveled at truth commissions is their tendency to do more harm than good by retraumatizing participants without providing the concrete change they promise.<sup>187</sup> And indeed, there is evidence that having individuals share their painful stories of past trauma can cause strong emotions to resurface and culminate in emotional or psychological symptoms, including post-traumatic stress disorder.<sup>188</sup>

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<sup>185</sup> Ozten Shebahkeget, *Residential School Survivor from Manitoba Speaks to Sweden’s Truth Commission About Her Experiences*, CBC NEWS (Oct. 25, 2022, 5:44 PM), <https://www.cbc.ca/news/canada/manitoba/gramma-shingoose-sweden-truth-commission-1.6628685>.

<sup>186</sup> See S. 1723, 118th Cong. (2023).

<sup>187</sup> See Parker, *supra* note 13, at 33.

<sup>188</sup> See Francis, *supra* note 63, at 292; see also Jorge Gutierrez Lucena, *Truth Commissions and the Mental Health of Victims*, E-INT’L RELS. (Aug. 28, 2016), <https://www.e-ir.info/2016/08/28/truth-commissions-and-the-mental-health-of-victims>; Dan J. Stein et al., *The Impact of the Truth and Reconciliation Commission on Psychological Distress and Forgiveness in South Africa*, 43 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 462, 462 (2008), <https://doi.org/10.1007/s00127-008-0350-0>

Such was the case in the South African Truth and Reconciliation Commission (“South African Commission”), which has been repeatedly criticized for failing to provide sufficient psychological and emotional support to its participants.<sup>189</sup> Indeed, a research study involving focus groups of participants in the South African Commission determined that most participants had not been offered much-needed counseling after testifying, even though testifying often “put them under considerable stress and in some cases triggered an emotional breakdown.”<sup>190</sup> The study further identified “[a] significant deterioration of the overall physical and psychological health after testifying,” in part because “[t]raumatizing memories were brought back into the present.”<sup>191</sup>

To cure the faults of the South African Commission and other truth commissions when it comes to participant mental and emotional health, it is well settled that transitional justice mechanisms, such as truth commissions, should provide psychological and emotional support to participants.<sup>192</sup> The specific type and extent of support will vary based on the mechanism at issue and the circumstances in which it was created; however, scholars have recognized that “[p]roviding psychosocial support services is crucial and necessary” in the operation of truth commissions and “[a]ddressing mental health needs must be culturally sensitive and adaptable to each situation and individual.”<sup>193</sup>

While at this point it is still too early to tell the exact type of psychological and emotional support the Swedish Sami Truth Commission intends to provide to its participants, the commission’s

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(discussing the harmful psychological impact on participants of testifying before the South African Commission).

<sup>189</sup> See Francis, *supra* note 63, at 292; see also Marie Soueid et al., *The Survivor-Centered Approach to Transitional Justice: Why a Trauma-Informed Handling of Witness Testimony Is a Necessary Component*, 50 GEO. WASH. INT’L L. REV. 125, 164 (2017) (noting that the South African Commission provided relatively “short engagement” with participants and that many participants felt as though the commission “was no longer interested in them after they testified”).

<sup>190</sup> RUTH PICKER, CTR. FOR STUDY VIOLENCE & RECONCILIATION, VICTIMS’ PERSPECTIVES ABOUT THE HUMAN RIGHTS VIOLATIONS HEARINGS 10 (2005), <http://www.csvr.org.za/docs/humanrights/victimsperspectivshearings.pdf>.

<sup>191</sup> *Id.*

<sup>192</sup> See, e.g., Soueid et al., *supra* note 189, at 178; RULE OF LAW TOOLS, *supra* note 28, at 23; see also EDUARDO GONZÁLEZ, INT’L CTR. FOR TRANSITIONAL JUSTICE, DRAFTING A TRUTH COMMISSION MANDATE: A PRACTICAL TOOL 6 (2013), [https://www.ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013\\_0.pdf](https://www.ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013_0.pdf).

<sup>193</sup> Soueid et al., *supra* note 189, at 178.

terms and references—the equivalent of its mandate—recognize the potential negative impact testifying may have on participants.<sup>194</sup> Specifically, the terms read that “[i]n the contacts with individuals, the commission must take into account the individual traumas that may be brought to the surface. If necessary, the commission shall, in an appropriate manner, offer psychosocial support to those who give evidence.”<sup>195</sup>

While the terms unfortunately do not expand on what this support will encompass, the fact that the importance of mitigating retraumatization is included in the Swedish Sami Truth Commission’s mandate is laudable, and something which the Proposed US Truth Commission should learn from. And indeed, the pending legislation for this Proposed US Truth Commission does make specific reference to ensuring that participants receive emotional and mental health support.<sup>196</sup> For instance, the legislation proposes that the Proposed US Truth Commission’s advisory committee include mental health practitioners and states that in conducting its work, the Proposed US Truth Commission must “take reasonable steps to avoid imposing . . . psychological trauma” on participants.<sup>197</sup> Accordingly, it is heartening that, at this stage, the Proposed US Truth Commission seeks to follow in the footsteps of the Swedish Sami Truth Commission with respect to providing psychological and emotional support to participants.

B. *Aspects of the of the Swedish Sami Truth Commission to be Avoided*

While the Swedish Sami Truth Commission has incorporated innovative and commendable features, there are also aspects in which it has not excelled. For instance, despite incorporating Sami involvement into the design process, the Swedish Sami Truth Commission has failed to keep the public—specifically the Sami population—apprised of its work. Moreover, rather than focusing on a specific type or period of human rights violations, the Swedish Sami Truth Commission’s mandate broadly encompasses the entire long-ranging history of state misconduct against the Sami population. A mandate of this breadth, combined with the relatively short period in which the Swedish Sami Truth Commission’s investigation must be completed, compromises the commission’s potential success.

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<sup>194</sup> COMMITTEE TERMS OF REFERENCE, *supra* note 94, at 7.

<sup>195</sup> *Id.* at 6.

<sup>196</sup> S. 1723, 118th Cong. § 5 (2023).

<sup>197</sup> *Id.*

Accordingly, settler colonial states like the United States should not replicate these aspects in creating future Indigenous truth commissions.

### 1. Lack of Outreach and Transparency

The primary aspect in which the Swedish Sami Truth Commission is currently lacking is in its public outreach and transparency. It is well settled that, for a truth commission to work effectively, its operations must be transparent and conveyed to the group(s) that the truth commission is designed to serve, as well as to the public at large.<sup>198</sup> The ICTJ specifically advises that “[t]ruth commissions should strive for transparency, which requires providing the public with access to all information necessary to understand the goals, structure, and working procedures of the institution, as well as timely updates on its progress.”<sup>199</sup>

In fact, regarding the importance of outreach and transparency of truth commissions, the Office of the United Nations High Commissioner for Human Rights has advised the creators of truth commissions as follows:

The nature and the extent of a commission’s outreach efforts will help to determine its impact. The commission should make an effort to introduce and explain its work to the public, to invite victims or others with relevant information to its offices to give statements, and to be sure that its mission and goals are understood.<sup>200</sup>

The importance of this outreach is two-fold. First, garnering significant public attention of the violations forming a truth commission’s mandate can help society understand the impacts of these violations and even prevent their recurrence.<sup>201</sup> Indeed, when a truth commission fails to share its work with the public, it deprives the groups and the nation the commission is designed to serve “of what should be the most essential benefit of confronting past injustices:

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<sup>198</sup> See, e.g., RULE OF LAW TOOLS, *supra* note 28, at 19; Merryl Lawty-White, *The Reparative Effect of Truth Seeking in Transitional Justice*, 64 INT’L & COMPAR. L.Q. 141, 170 (2015), <https://doi.org/10.1017/S0020589314000645>; GONZÁLEZ & VARNEY, *supra* note 18, at 49.

<sup>199</sup> GONZÁLEZ & VARNEY, *supra* note 18, at 49.

<sup>200</sup> RULE OF LAW TOOLS, *supra* note 28, at 19.

<sup>201</sup> Ochs, *supra* note 10, at 30; PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS 20 (2d ed. 2011) (explaining that truth commissions can draw public recognition to “unsilence” past atrocities or human rights violations).

permanent, public memorialization that inoculates the future against the mistakes of the past.”<sup>202</sup> The second important effect of public outreach and transparency is that it can foster legitimacy and generate public support for the Swedish Sami Truth Commission’s work,<sup>203</sup> something which is often critical when it comes to the commission’s success.<sup>204</sup>

The importance of a truth commission’s transparency and outreach can thus not be overstated. Yet, despite this importance, the Swedish Sami Truth Commission has so far fallen very short in its public outreach efforts and in ensuring that its operations are transparent to both Sami communities and to the general public. The Swedish Sami Truth Commission’s website<sup>205</sup> did not become publicly available until early 2023, years after the commission itself was created, and it is extremely difficult to find information about the commission and its work online. The relatively minimal material the Swedish Sami Truth Commission has made publicly available notably lacks a detailed discussion of how its commissioners were selected.<sup>206</sup> The results of

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<sup>202</sup> Bonny Ibhawoh, *Do Truth and Reconciliation Commissions Heal Divided Nations?*, THE CONVERSATION (Jan. 23, 2019, 3:44 PM), <https://theconversation.com/do-truth-and-reconciliation-commissions-heal-divided-nations-109925> (discussing this lack of transparency and its impacts in regard to the Liberian Truth Commission).

<sup>203</sup> James L. Gibson, *On Legitimacy Theory and the Effectiveness of Truth Commissions*, 72 LAW & CONTEMP. PROBS. 123, 139 (2009) (“The most pressing task of a truth commission is to establish legitimacy with the members of a society. . . . [which] typically requires fair and reasonably transparent procedures.”).

<sup>204</sup> See RULE OF LAW TOOLS, *supra* note 28, at 6 (“The legitimacy and public confidence . . . are essential for a successful truth commission process . . . .”); Tara J. Melish, *Truth Commission Impact: A Participation-Based Implementation Agenda*, 19 BUFF. HUM. RTS. L. REV. 273, 288–89 (2012) (“Using public perception as the relevant measure of effectiveness, a truth commission’s ‘success’ . . . depends on whether the broader public views the body’s work as sociologically legitimate and hence worthy of public adhesion and support.” (footnote omitted)); Gibson, *supra* note 203, at 125 (proposing that one “crucial factor” of a truth commission’s success is “whether the commission is perceived as legitimate among members of the mass public”).

<sup>205</sup> SANNINGSKOMMISSIONEN FÖR DET SAMISKA FOLKET [TRUTH COMMISSION FOR THE SAMI PEOPLE] (Swed.), <https://sanningskommissionensamer.se> (last visited Nov. 20, 2023).

<sup>206</sup> The Commission’s website simply states that the Ministry of Culture appointed the commissioners “after consultation with the Sami Parliament” based on the commissioners’ “merit, trust or representativeness”. *Frågor och svar* [Questions and Answers], SANNINGSKOMMISSIONEN FÖR DET SAMISKA FOLKET [TRUTH COMMISSION FOR THE SAMI PEOPLE] (Swed.), <https://sanningskommissionensamer.se/om-uppdraget/fragor-och-svar> (last visited Nov. 20, 2023).

this lack of transparency have already drawn criticism from the Sami public.<sup>207</sup>

Commencing in February 2023, the Swedish Sami Truth Commission has been conducting “dialogue meetings,” through which it intends to “create dialogue” surrounding its work.<sup>208</sup> These meetings should only represent the starting point of the commission’s outreach. The Swedish Sami Truth Commission has not indicated that it intends to conduct public hearings—despite public hearings having been previously heralded as a means by which to improve truth commission legitimacy and keep the public informed.<sup>209</sup>

And while this lack of transparency and outreach does not appear to have posed significant obstacles to the Swedish Sami Truth Commission’s work at this point, it will very likely undermine its ultimate success. Notably, without significantly more transparency, the Swedish Sami Truth Commission will be precluded from enjoying the two aforementioned benefits intrinsically tied to truth commission outreach: the spread of knowledge and the fostering of legitimacy. As previously noted, garnering public attention and understanding of Indigenous human rights violations is both a benefit and a goal of Indigenous truth commissions, given that much discrimination against Indigenous groups often stems from a lack of understanding or misunderstanding of Indigenous culture and history.<sup>210</sup> This is especially true in Sweden, where “the majority population’s knowledge of the Sami people, their rights as an [I]ndigenous people[,] and their history and culture is generally low.”<sup>211</sup> By failing to conduct outreach both within Sami communities and the Swedish majority population, the Swedish Sami Truth Commission severely undermines its goal of

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<sup>207</sup> See Per Carlsson, *Kritik mot samernas sanningskommission: “Saknar kunskap om rennäringen”* [Criticism of the Sámi Truth Commission: “Lack of Knowledge about Reindeer Herding”], SVT NYHETER (Mar. 27, 2023) (Swed.), <https://www.svt.se/nyheter/sapmi/kritik-mot-samernas-sanningskommission-saknar-samisk-kompetens> (reflecting public criticism that the Sami Truth Commission currently has no commissioner who is knowledgeable about reindeer husbandry, a primary Sami industry).

<sup>208</sup> *Samtalsmöten Sápmi* [Conversation Meetings Sápmi], Sanningskommissionen för det samiska folket [hereinafter *Conversation Meetings Sápmi*] (Swed.), <https://sanningskommissionensamer.se/om-uppdraget/samtalsmoten-sapmi> (last visited Nov. 20, 2023).

<sup>209</sup> *Public Hearings: Platforms of Truth, Dignity, and Catharsis*, ICTJ (Mar. 24, 2017), <https://www.ictj.org/news/public-hearings-platforms-truth-dignity>.

<sup>210</sup> See Rice, *supra* note 7; Librizzi, *supra* note 43, at 186.

<sup>211</sup> COMMITTEE TERMS OF REFERENCE, *supra* note 94, at 5.



“increas[ing] knowledge throughout Sweden of the historical wrongdoings that have been committed [against the Sami people] and the traumas that still live on today.”<sup>212</sup>

Moreover, failing to conduct itself with full transparency and engage in public outreach to the full extent possible could also undermine the Swedish Sami Truth Commission’s legitimacy. It has already struggled to secure support for its work throughout Sami communities, which stems from Sami distrust toward the Swedish state after a long history of injustice.<sup>213</sup> Indeed, many Sami individuals are suspicious of the Swedish Sami Truth Commission’s work and are concerned it will result in only “another report put into the drawer,” as opposed to concrete change in state and public treatment of the Sami.<sup>214</sup> This lack of legitimacy could realistically pose a critical impediment when it comes time for the state to implement any recommendations set forth in the Swedish Sami Truth Commission’s final report—such as legislative amendments<sup>215</sup>—as there will be little public pressure to do so.

Accordingly, to date, the Swedish Sami Truth Commission’s lack of transparency appears to be one of its greatest shortcomings. In moving forward with the creation of the Proposed US Truth Commission, care should be given to learn from this failing by making its creation and operations as transparent as possible and actively engaging in public outreach.

## 2. Overly Broad Mandate

Another aspect which may set up the Swedish Sami Truth Commission for failure is the breadth of its mandate. As discussed above, every truth commission is governed by a mandate, which sets forth the “parameters of its investigation both in terms of the time period covered as well as the type of human rights violations to be

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<sup>212</sup> *Id.* at 2–3.

<sup>213</sup> Pallavi Chatterjee, *Sweden’s Troubled Relationship with the Indigenous Sámi Community*, HUM. RTS. PULSE (Jan. 21, 2021), <https://www.humanrightspulse.com/mastercontentblog/swedens-troubled-relationship-with-the-indigenous-smi-community>.

<sup>214</sup> John Last, *Canadian-Style Reconciliation Commissions Draw Mixed Reaction Across Arctic Europe*, CBC NEWS (July 2, 2020, 10:30 AM), <https://www.cbc.ca/news/canada/north/sami-truth-commissions-1.5633569>.

<sup>215</sup> COMMITTEE TERMS OF REFERENCE, *supra* note 94, at 5.

explored.”<sup>216</sup> The precise terminology of a commission’s mandate is especially important, as a commission’s success is often measured by evaluating how well the commission has achieved the goals set forth therein.<sup>217</sup>

And, while truth commissions are generally encouraged to adopt broad mandates so as to ensure the investigation of all human rights violations at issue,<sup>218</sup> the mandate must be commensurate with the resources at the commission’s disposal as well as the time period in which the commission is tasked with completing its investigation.<sup>219</sup> For instance, a combination of an overly broad mandate and tight timeframe in which to fulfill it have significantly compromised the effectiveness of truth commissions in places like Guatemala and Kenya.<sup>220</sup> As scholar Eric Brahm has postulated, “[o]n the whole, it seems as if in the long run, overwhelming a commission is more problematic than restricting it.”<sup>221</sup>

The mandate of the Swedish Sami Truth Commission is exactly the overly broad and “problematic” mandate Brahm has argued against. The terms of reference specifically task the Swedish Sami Truth Commission with undertaking a “comprehensive survey” of the state’s treatment of the Sami,<sup>222</sup> and specifically notes that this a “broad

<sup>216</sup> Eric Brahm, *Uncovering the Truth: Examining Truth Commission Success and Impact*, 8 INT’L STUD. PERSPS. 16, 16 n.1 (2007), <https://doi.org/10.1111/j.1528-3585.2007.00267.x>.

<sup>217</sup> See *id.* at 17 (“[S]uccess . . . [is] the degree to which a commission fulfilled the duties assigned to it.”).

<sup>218</sup> See, e.g., *id.* at 30 (“Many argue that a commission’s mandate should be sufficiently broad to allow it to cover the full range of human rights abuses that occurred in the past.”); STRENGTHENING INDIGENOUS RIGHTS, *supra* note 68, at 13 (recognizing that an overly narrow mandate “may frame only a slice of the experience” that the truth commission is designed to address).

<sup>219</sup> See Brahm, *supra* note 216, at 30 (discussing the balance between articulating a mandate that is neither too broad nor too narrow).

<sup>220</sup> Andrew N. Keller, *To Name or Not to Name? The Commission for Historical Clarification in Guatemala, Its Mandate, and the Decision Not to Identify Individual Perpetrators*, 13 FLA. J. INT’L L. 289, 300 (2001) (“The combination of a mandate extremely broad in scope and insufficient time in which to fulfill that mandate placed severe restrictions on the [Commission for Historical Clarification in Guatemala].”); Langer, *supra* note 17, at 189–90 (concluding that the Truth, Justice and Reconciliation Commission of Kenya suffered from “too broad of a mandate, with [forty-five] years of history to cover” and an “inability to comply with deadlines”).

<sup>221</sup> Brahm, *supra* note 216, at 30 (recognizing that Chad’s truth commission spread its resources too thin by creating a mandate that encompassed an investigation into both corruption charges and human rights abuses).

<sup>222</sup> COMMITTEE TERMS OF REFERENCE, *supra* note 94, at 2.

mandate” that is “not restricted to a certain time period, but rather can examine any time up to the present day.”<sup>223</sup> Given that the history of the Swedish state’s discriminatory treatment of the Sami extends back centuries,<sup>224</sup> this is not a simple task.

The difficulty posed to the Swedish Sami Truth Commission by the extreme breadth of this mandate is further exacerbated by the short time frame in which it is tasked with completing its investigation. Its deadline to submit its final report is December 1, 2025,<sup>225</sup> and the Swedish Sami Truth Commission only began its work in early 2023.<sup>226</sup> This leaves less than two years in which to conduct and complete an investigation into the full history of Sami discrimination, in addition to providing recommendations for healing and laying the groundwork for reconciliation. This seems impractical at best.

A much more prudent approach would have been for the Swedish Sami Truth Commission to focus on either one period of or one type of human rights violations—for example, racial biology, revocation of land rights, or implementation of nomad and residential schools—enacted by the Swedish state against the Sami people. Doing so, and moving forward with additional future truth commissions based on the success of the first, would have been a much more practical and effective means of achieving its extensive mandate. As Nutti warned prior to the creation of the Swedish Sami Truth Commission, “[t]he work in a future truth commission must have limits. It is impossible to start pulling on every thread at once.”<sup>227</sup>

Like the history of violations against the Sami at the hands of the Swedish state, the legacies of injustice against Native Americans span centuries and various modes of human rights abuses and invasive discrimination. Accordingly, in creating a federal truth commission for Native Americans, the United States would be well served to avoid the type of overly broad mandate implemented by the Swedish Sami Truth Commission and instead utilize a narrow mandate specific to a

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<sup>223</sup> *Id.* at 3.

<sup>224</sup> Chatterjee, *supra* note 213.

<sup>225</sup> COMMITTEE TERMS OF REFERENCE, *supra* note 94, at 1.

<sup>226</sup> See *Conversation Meetings Sápmi*, *supra* note 208 (noting that the Swedish Sami Truth Commission only began conducting dialogue meetings in February 2023); AFP, *Sweden’s ‘Truth Commission’ Delves into Painful Sami Past*, FRANCE 24 (Oct. 5, 2023, 7:52 AM), <https://www.france24.com/en/live-news/20230510-sweden-s-truth-commission-delves-into-painful-sami-past> (explaining that the Swedish Sami Truth Commission began gathering first-hand accounts from Sami participants in February).

<sup>227</sup> Per-Olof Nutti, *Statement*, *supra* note 72.

period or type of human rights violations against Native Americans. At this stage, based on the legislation pending before Congress for the Proposed US Truth Commission, it appears as though the United States plans to move forward with a mandate narrowed into the use of boarding school policies for Native Americans during the nineteenth and twentieth centuries.<sup>228</sup> Such a narrow mandate will help ensure the potential success of a US truth commission and will avoid the potential danger posed by the Swedish Sami Truth Commission's overly broad mandate.

## V. CONCLUSION

The time has certainly come for settler colonial states to confront the legacies of the injustices they have leveled against Indigenous groups, and truth commissions have proven themselves as an effective mechanism through which to do so.<sup>229</sup> The creation and use of Indigenous truth commissions in settler colonial states throughout the world is a strong step towards achieving truth and healing for Indigenous groups. But, the commissions used to date have not been without flaws. Specifically, criticisms have been leveled against these mechanisms for failing to fully eradicate the colonial foundations within settler colonial states and serving to retraumatize Indigenous participants by requiring them to share their traumatic stories without the requisite support.<sup>230</sup> Thus, it is imperative that, as settler colonial states move forward in creating truth commissions modeled on those that came before, changes are made to correct these failings.

One of the most recently created Indigenous truth commissions is the Swedish Sami Truth Commission, which aims to investigate the long history of discrimination against the Sami by the Swedish state and the consequences thereof and increase the knowledge of Sami history throughout the Swedish population.<sup>231</sup> This is an immensely commendable undertaking, and one which will undoubtedly serve as a model for the creation of future Indigenous truth commissions in settler colonial states, such as the United States, which is in the early stages of creating a federal truth commission on Native American boarding school policies.<sup>232</sup> Thus, the United States will be looking to

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<sup>228</sup> S. 1723, 118th Cong. (2023).

<sup>229</sup> See Rice, *supra* note 7.

<sup>230</sup> See discussion *supra* Part II.C.

<sup>231</sup> COMMITTEE TERMS OF REFERENCE, *supra* note 94, at 3–5.

<sup>232</sup> See S. 1723, 118th Cong. (2023).

the Swedish Sami Truth Commission for aspects to adopt and avoid in creating its new federal truth commission.

While the Swedish Sami Truth Commission's work is still in its early days, the United States can already identify successful features of its structure to replicate, including its incorporation of Indigenous voices into the design of the Swedish Sami Truth Commission, minimization of the role of reconciliation in its title and mandate, and vow to provide psychological and emotional support to its participants to limit the trauma associated with testifying. At the same time, however, the United States would do well to avoid certain approaches undertaken by the Swedish Sami Truth Commission—namely, its lack of transparency and outreach and its overly broad mandate, both of which threaten to hamper its legacy and success.

There is no question that Indigenous truth commissions, while doing great work to achieve truth and healing and lay the groundwork for reconciliation, have been flawed. But, this does not mean that settler colonial states should discontinue their use. Rather, each new Indigenous truth commission should learn from those before it, by adopting the aspects that work well and disregarding those that do not. It is through this constant evolution that settler colonial states may finally be able to confront the legacies of the injustices they have leveled against their Indigenous populations.

