



Perspectives on Sámi participation shaping a Duty to Consult

– Investigating problem representations and the opportunities to influence policy-making

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Abstract

Sweden has a longstanding reputation internationally for promoting and upholding human rights, however leading up to today the state has repeatedly received critique from international human rights bodies for failing to protect Sámi rights. Therefore the state has initiated the process of developing a duty to consult, which could potentially entail a fundamental change for Sámi rights in Sweden.

The development of a policy to strengthen Sámi rights has engaged a wide range of actors and generated an extensive debate. This thesis has examined the divergence in views on this clearly contested issue, and the factors that have held the government back from a law proposal that more fully respects Sámi rights.

An application of the WPR approach allowed the study to investigate underlying assumptions and understandings of Sámi participation within the government and among involved actors, and further how these understandings shaped the development of the duty to consult.

The findings show that the Swedish state's aspiration to strengthen Sámi rights falls short, as other interests are valued higher, resulting in a proposed duty to consult that does not fully provide the means for the Sámi people to influence decision-making processes regarding matters that concern them.

Keywords: Indigenous rights, duty to consult, participation, FPIC, WPR approach, problem representations

Table of contents

Abbreviations	6
1. Introduction.....	7
1.1. Research problem.....	8
1.2. Research aim, objectives and questions.....	10
2. Background.....	12
2.1. International law on Indigenous rights.....	12
2.2. Sámi rights in Sweden	13
2.2.1. The Policy-making process of the Duty to Consult	15
3. Research design.....	17
3.1. Theory	17
3.1.1. What's the problem represented to be? The WPR approach	17
3.1.2. Analysis of data.....	20
3.2. Methodology.....	21
3.2.1. Data collection	21
3.2.2. Selection of actors and study limitations.....	21
4. Results and analysis	23
4.1. Problem representations – understandings of Sámi participation	23
4.1.1. Identified problem representations.....	23
4.2. The referral bodies' influence on the development of a Duty to Consult.....	27
4.2.1. Who should represent the Sámi people in consultations?	27
4.2.2. How will the duty to consult affect decision-making processes in terms of time, money and resources?	30
4.2.3. How much influence should the Sámi people have in consultations? ...	33
5. Discussion and conclusion	38
References.....	43
Acknowledgements	49
Appendix 1.....	50
Appendix 2.....	51

Abbreviations

CAB	County administrative board
FPIC	Free, prior and informed consent
ILO No. 169	Indigenous and Tribal Peoples Convention
RHC	Reindeer herding communities
SEPA	The Swedish Environmental Protection Agency
SGU	Sveriges Geologiska Undersökning
SSR	Svenska Samernas Riksförbund
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WPR	What's the problem represented to be?

1. Introduction

Sweden has a longstanding reputation internationally for promoting and upholding human rights. However, historically and leading up to today Sweden faces problems with recognizing the Sámi as an indigenous people, with respect to indigenous rights, participation, and consultation, which is something that Sweden has repeatedly been criticized for by international human rights bodies. For instance, the Council of Europe (2003, 2013 and 2017) and the UN's Committee on the Elimination of Racial Discrimination (2013) have all raised critique towards Sweden for insufficient consultation with the Sámi and other national minorities, and for the lack of possibilities for the Sámi people to participate in decision-making processes regarding issues that concern them (Kulturdepartementet 2019).

The Sámi are the only indigenous people in Europe and their customary land Sápmi consists of a geographically large land area that overlaps the borders of northern Sweden, Norway, Finland and the Kola Peninsula of Russia. Reindeer herding, hunting, fishing and handicrafts are all examples of traditional Sámi practices. These are traditions, which in recent years have faced severe consequences due to the rapid development of natural resources exploitations in the Swedish Sápmi. The expanding number of new development projects within wind power, mining, and industrial forestry, hinders the possibilities for the Sámi people to practice traditional land use on territories to which they have constitutional rights to use. In specific it complicates the Sámis' practice of reindeer herding, and scholars have raised awareness that Swedish exploitation of natural resources in Sápmi could potentially have long-lasting negative consequences for the future of reindeer herding (Kløcker Larsen et al., 2017, Österlin & Raitio 2020).

After repeatedly receiving criticism from international human rights bodies for failing to protect Sámi rights, the Swedish government initiated the process of developing a duty to consult. With the purpose to enhance the opportunities for the indigenous Sámi people to influence decision-making processes regarding matters that concern them and traditional Sámi territories. Similar legislations already exist in Norway and Finland. Where in Norway the state has a duty to consult the Norwegian Sámi Parliament, and in Finland the government is obliged

to consult the Finnish Sámi Parliament in accordance with the Sámi Parliament law from 1995 (Kulturdepartementet 2017).

In December 2020 a governmental proposition was presented to the Swedish Parliament, however the proposal was withdrawn in March 2021. The Sámi radio station *Sameradion* (2021) reported that,

The government's proposal lacks a majority in the constitutional committee after the Moderate Party, the Christian Democrats, the Sweden Democrats, and the Left Party rejected the proposal.

The Moderate Party, the Christian Democrats and Sweden Democrats rejected the proposal with the reasoning that consequences of a new legislation have not been thoroughly investigated. On another account the Left Party rejected the proposal as they considered that the law proposal did not provide enough influence for the Sámi people and did not live up to the requirements of international law on indigenous rights (ibid.). The arguments expressed by the Swedish political parties point to widely diverging perspectives on the issue, which is also representative for the actors' perspectives involved in this study.

1.1. Research problem

As discussed above, the process of developing a law to enhance indigenous rights is a response to the critique raised by international review bodies towards Sweden. The critique has shown the state in a bad light and depicts a picture incompatible with Sweden's reputation, as a country that protects and respects human rights. As articulated by the government itself the international pressure to recognize indigenous rights served as the main reason for why the Swedish government began the process of developing a duty to consult. This process was initiated in 2017 when the Ministry of Culture (*Kulturdepartementet in Swedish*) presented the governmental memorandum Ds 2017:43 *Consultation in matters that affect the Sámi people*. The governmental memorandum is the first out of three policy proposal texts leading up to the governmental proposition presented in 2020. Forsgren (2020) argues that a state, which cherishes indigenous rights, should have processes in place to enable effective participation and the free, prior and informed consent (FPIC) for its indigenous people. In Forsgren's thesis, which investigated the governmental memorandum's compatibility with international standards on indigenous rights. The conclusion reads that Ds 2017:43 does not fulfill the means to provide an environment for the Sámi to effectively participate in decision-making processes in accordance to international law on indigenous rights. Stockholm's University (2017) came to the same conclusion in their commentary, where they rejected the proposal:

The proposal does not live up to the requirements set out in international law on indigenous rights. Whereas Sámi rights risks being violated in the future as well. Consequently, Sweden continually risks receiving criticism from international bodies (Stockholms universitet 2017: 1).

This raises the question of how the duty to consult has developed throughout the process leading up to the governmental proposition in 2020. Is the Swedish state's ambition to respond to international critique incentive enough to enhance Sámi rights or are there other reasons or interests that are holding the state back?

If the law would enter into force this would entail far-reaching changes in Swedish decision-making processes. Kløcker Larsen & Raitio (2019) investigated what the current environment looks like among Swedish state actors and their prerequisites to implement a duty to consult. They argue that “implementation gaps linked to practice, sectoral legislation and political discourse” is probable to hinder Swedish state actors possibilities to effectively implement the duty. Their study provides insight to how state agency employees and Sámi communities perceive the possibilities to enhance Sámi participation if the law would enter into force in the near future. This research takes an important approach, as it enables an analysis of whether or not the proposed policy has the means to reach its stated purpose. However, the study's brief reading of the referral bodies' commentaries implies a research-gap waiting to be filled. Since the responsibility to implement a duty to consult in practice will be in the hands of Sámi actors, businesses and state agencies, it is important to understand and take their perspectives on the proposal into account.

In Swedish policy-making processes the stakeholders are invited to comment on law proposals before a decision is made, in so-called referral rounds. The function of a referral round is for the state to map existing attitudes on a matter and to provide engaged actors the opportunity to express their position in regard to the proposed bill (The Swedish Government Offices 2021). By looking at the commentaries from the referral rounds concerning the duty to consult, it is evidently several actors that have an interest in the matter. In addition to Sámi actors and state agencies the policy-process also involves actors from, e.g. the forestry sector, energy production, agriculture and private entrepreneurs. In other words, a wide representation of actors that holds different perspectives on the matter of indigenous participation in land use planning. The first referral round concerning Ds 2017:43 generated an extensive debate among the referral bodies. As Kløcker Larsen & Raitio (2019) observed,

In their commentaries, several corporations and their branch organizations found it overly progressive, creating new regulatory uncertainties and threatening industry interests. Sámi organizations and indigenous rights lawyers, in contrast, found it wanting – amongst other

things, arguing that it lacked proper recognition of Sámi material rights to property and culture and provided insufficient opportunities to meaningfully influence decisions. Although opinions were mixed, several Sámi organizations in fact rejected it altogether (p. 6).

Through their commentaries as referral bodies, these actors are highly involved in the development of a duty to consult, and in turn the process of enhancing the Sámis' ability to influence decision-making. Hence, the focus of this study will be to put attention towards the perspectives of involved actors' from different sectors, and further to explore how they have affected the development of the duty to consult.

1.2. Research aim, objectives and questions

A duty to consult could potentially entail a fundamental change for Sámi rights in Sweden, and as discussed earlier the opinions regarding the establishment of it are extensive. By looking at the debate on the law proposal, this study aims to disclose the involved actors' worldviews and perceptions, which underlie the opinions concerning this specific law proposal. In essence, I discern an opportunity to examine the divergence in views on this clearly contested issue, what factors may have held the government back from a law proposal that more fully respects Sámi rights, and what the contestation may tell us about the underlying interests and politics associated with the struggle over land and resources in the Swedish part of Sápmi.

Further, the study explores how involved actors have managed to influence the development of the duty to consult. This is done by a systematic analysis of the commentaries from the first and second referral round in comparison with the changes that have been made in the law proposal. The objective of the analysis is to shed light on which perspectives have been heard in the law proposal and where there are silences. This is relevant because investigating the actors' level of influence, by looking at which perspectives that 'stick' in the law proposal can disclose the power relations that govern how the state understands indigenous rights. Furthermore, it will highlight the possible implications these understandings have on the development of Sámi rights in Swedish policy-making.

Following the aim and objectives of this study, formulated research questions will be answered:

1. What does the government and the affected actors represent the problem to be in the process of strengthening Sámi rights?
2. How has the actors' problem representations shaped the development of the duty to consult?
3. Why have some problem representations become dominant over others, which problem representations 'stick' leaving others silenced?

2. Background

The aim of this chapter is to provide an overview of existing research on international law on indigenous rights, as well as on Sámi rights in Sweden and to give a background to the process of developing a duty to consult in Sweden.

2.1. International law on Indigenous rights

The recognition of indigenous rights internationally has increased in the last decades, for instance through the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169) a convention that has been specifically instrumental in the development of international law on indigenous rights, and the UN's adoption of the Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, are both important instruments that address the human rights of indigenous peoples. The states duty to consult with indigenous peoples is grounded in international human rights law, and in particular in the overarching right for indigenous peoples right to self-determination, which entails the political power for a people to protect, preserve and develop their societal culture (Lawrence & Mörkenstam 2016).

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (UNDRIP 2007: 4).

Consultation and *effective participation* are central concepts in discussions of how a state can implement the indigenous peoples right to self-determination. Ward (2011) described the purpose of consultation and effective participation as “an exercise in and expression of the right to self-determination” (p. 55). According to international law on indigenous rights consultation should be understood as a political instrument facilitating a dialogue between a state and an indigenous people. In article 19 of UNDRIP (2007) it is stated that consultation should take place in “good faith” and should have the objective to obtain the indigenous peoples free, prior and informed consent (FPIC) on the matter that is the reason for consultation. In other words, a consultation procedure should not have the objective to only inform the indigenous community on a matter, rather the goal is

to reach an agreement or consensus regarding a matter (Anaya 2009). The state should also facilitate a consultation procedure, which enables the effective participation of the indigenous people through all stages of the process (Ward 2011). Meaning, that participation should be understood as having an influence on the outcome of a decision-making process. Furthermore, the indigenous people should be able to influence the form of the consultation, be provided with the possibility to hold consultations in their own spoken language, as well as other adaptations to ensure the exercise of indigenous participation rights.

Consultation and participation are seen as cornerstones in the ILO No. 169, and are perceived as key elements to secure the participatory rights for indigenous peoples. Participatory rights also have a central function in UNDRIP, in particular the principles of FPIC, in relation to development projects within indigenous peoples territories (Allard 2018, Ward 2011). According to Allard (2018) “The basic idea of FPIC is rather straightforward, but legally it is a contested and confused concept” (p. 26). Ward (2011) provides an explanation of the concept.

On a basic level, the concept of FPIC is contained within its phrasing: it is the right of indigenous peoples to make free and informed choices about the development of their lands and resources. The basic principles of FPIC are to ensure that indigenous peoples are not coerced or intimidated, that their consent is sought and freely given prior to the authorisation or start of any activities, that they have full information about the scope and impacts of any proposed developments, and that ultimately their choices to give or withhold consent are respected (p. 54).

In regard to international legal measures that the Swedish state are obliged to follow concerning indigenous rights, Sweden has voted in favor of UNDRIP and has also ratified the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages (Anaya 2011). Sweden has not ratified ILO No. 169, however a state’s duty to consult indigenous peoples should be understood as an obligation under international law (Allard 2018, Ward 2011), which in turn has led to Sweden’s release of the law proposal Consultation in questions affecting the Sámi people.

2.2. Sámi rights in Sweden

In 1977 the Swedish Parliament recognized the Sámi as an indigenous people, but not until 2011 did they receive a constitutional recognition as a people something that had been requested by the Sámi for many years (Anaya 2011). This entails that Sweden consists of two people, the Swedish people and the Sámi people, both with a right to self-determination. Worldwide the Sámi people are known as a reindeer-herding people and in Swedish law it is only through the livelihood of

reindeer herding the Sámi are recognized with practical land-based recognition. The reindeer herding is carried out on the lands of the Sámi reindeer herding communities (*from here on Sámi RHC, sameby in Swedish*) with rights based on prescription from time immemorial, which further entails that Sámi RHC are right-holding subjects (Beach 2007). The Sámi peoples' right to reindeer herding is regulated through the Reindeer Husbandry Act (1971:437) and in the Swedish Constitution (ch. 1, § 2) (Österlin 2020, Anaya 2011).

There exist different institutional approaches to how states implement the indigenous peoples right to self-determination. In the Nordic countries the approach was to create separate institutions to ensure the Sámi's political representation and self-determination. The elected representative body – the Sámi parliament (*or Sámediggi in Sami*) were established in Norway (1989), Finland (1995), and Sweden (1993) (Lawrence & Mörkenstam 2016). The Swedish Sámi parliament is a governmental agency under the Swedish government, but a difference from other agencies is that the Sámi parliament has dual roles – functioning both as a representative body for the Sámi people and an administrative authority (*ibid.*).

One of the main reasons for why a duty to consult is needed in Sweden is the rapid increase of natural resource extraction and other development projects in the Swedish part of Sápmi, which is threatening the Sámi people's societal culture (Anaya 2011, Kløcker Larsen et al. 2020). Numerous stakeholders both governmental and private, appropriate the land in Sápmi for forestry, wind power, hydroelectric power, mining, bioenergy projects, as well as agriculture and urban development. The competing land claims of Sápmi are thus characterized of conflicting interests, most often evolving round economic interests opposed to indigenous rights (*ibid.*). National and international legal measures require the involvement of Sámi actors in processes for land use planning. In Sweden these measures usually take the form of *samråd* with Sámi actors, directly translated into English *samråd* means consultation, however the existing practice of *samråd* does not meet the requirements of consultations as understood in international law on indigenous rights. Current Swedish regulations and the means they have to achieve effective participation for the Sámi people are highly influenced by the government's understanding and application of indigenous rights (Österlin 2020). Despite the role of the Sámi parliament as political representative for the Sámi people and the constitutional recognition of a people in 2011 the Sámis' political power to influence matters concerning their traditional territories and livelihoods have continuously been reduced and are currently very limited, which have been extensively criticized by international human rights bodies.

The limited possibilities to affect decision-making have been the cause for conflicts and protests from Sámi groups, environmental organizations, and the general public. Most recently, Sámi and environmental activists initiated a blockade in Paharova and Juoksuvaara, Norrbotten County against the forestry company Sveaskog. The aim with the blockade was to protect biodiversity and strengthen Sámi activity (Extinction Rebellion 2021). The activists published this statement aimed towards Sveaskog on April 30th,

On the night of Friday 23 April, Sámi and non-Sámi activists from Skogsuppreret, a branch of Extinction Rebellion, established a blockade against Sveaskog's forest machines Juoksuvaara, Norrbotten. They protest against the state forest company Sveaskog clearing natural forest and reindeer grazing land, without consultation or consent from the Sámi reindeer herding communities. They will not voluntarily leave the site until Sveaskog stops the devastation and allows the timber to return to nature and to Sámi activities (ibid.).

Lawrence (2014) argued, that indigenous protests against natural resource projects “are imbedded in a complex history of colonialism” (p. 1037). Meaning that it could be perceived that the Swedish state’s reluctance to enable effective participation for the indigenous Sámi people, comes back to an unwillingness of the State to give up sovereignty and with it the ability to carry out large-scale extraction of natural resources on Sámi traditional lands.

2.2.1. The Policy-making process of the Duty to Consult

Claimed efforts to increase Sámi influence have been done by the Swedish state, such as the transfer of extended responsibilities concerning reindeer herding to the Sámi parliament in 2007. The UN Human Rights Committee (2009) understood this as a step in the right direction in terms of increasing Sámi influence. However, the Committee still questioned the limited possibilities for the Sámi parliament to influence decision-making processes and urged the Swedish state to develop legislation for consultation with the Sámi people. A first attempt to a bill dealing with the issues of lack of Sámi participation was developed in 2009. However the proposal received extensive critique from the Sámi parliament and legal scholars and was therefore withdrawn (Allard 2018). Furthermore, a cross-border initiative to develop a Nordic Sámi Convention was in recent years initiated by the three Sámi parliaments together with the governments’ in Norway, Sweden and Finland. The Nordic Sámi Convention has not been implemented yet, but it has been acknowledged that this is the first time ever an attempt has been made to implement a regional agreement concerning an indigenous people (Anaya 2011). The Swedish government stated that the process of developing a Nordic Sámi convention and the international critique aimed towards Sweden has provided the incentive to once again investigate a legislation that will include consultation duties towards the Sámi people (Kulturdepartementet 2017).

The law proposal for a duty to consult has, as earlier mentioned, engaged a large number of actors, a total of 133 actors participated as referral bodies in the two referral rounds to comment on the government’s law proposal. The process has included the Governmental memorandum (2017), draft to Law Council referral (2019), Law Council referral (2020) and the Governmental Proposition (2020). Furthermore, two referral rounds commenting on the memorandum and the draft to Law Council referral were included in the process. Firstly, the Ministry of Culture presented the governmental memorandum Ds 2017:43 *Consultation in matters that affect the Sámi people*, which was remitted to 144 actors, of which 96 commentaries were submitted (Kulturdepartementet 2020). After processing the commentaries from the referral bodies, the government presented the draft to Law Council referral in 2019. In a second referral round the draft was remitted to 157 referral bodies, whereby 107 commentaries were submitted (ibid.).

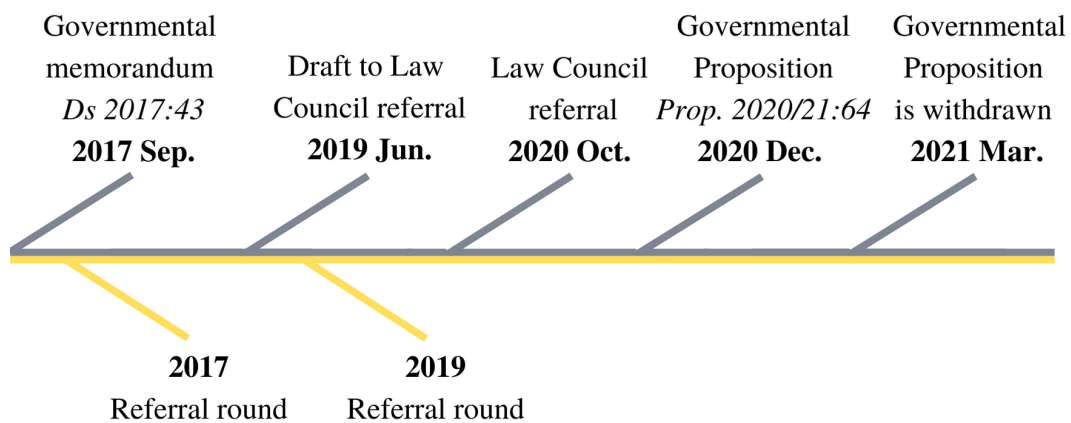


Figure 1. Timeline over the policy-making process of the Duty to Consult

3. Research design

This research is a qualitative study, which will examine the development of the process concerning the law proposal “Consultation in matters affecting the Sámi people” (*En konsultationsordning i frågor som rör det samiska folket, in Swedish*) (Kulturdepartementet 2020). Choosing a qualitative research design provides the possibilities to study how individuals and groups understand social problems and an in-depth understanding of the complexity of an issue (Creswell and Creswell 2018). The research conducted in this study is approached with a constructivist worldview. Typical for research with a constructivist approach is to understand how participants’ give meaning to a situation and how they understand the circumstances in which they live and work (ibid.). A constructivist tends to raise open-ended questions about how actors understand their reality and is interested in how these understandings are constructed (Holstein and Gubrium 2008, see Silverman 2015). A constructivist approach and a qualitative research design has provided the means to investigate the phenomenon of how the involved actors give meaning to the duty to consult.

3.1. Theory

To examine the perspectives and interests involved in the debate over the proposed duty to consult I found guidance in Bacchi’s (2009) ‘What’s the problem represented to be?’ (WPR). Bacchi has further developed established methodologies within discourse theory and draws on Foucault’s notions of discourse and governmentality.

3.1.1. What’s the problem represented to be? The WPR approach

The WPR approach is intended as a tool to critically scrutinize public policy, by examining how problems are represented in different policies. The aim of the approach is to better understand policies and the forms of knowledge and assumptions that underlie proposed solutions in policies (Bacchi 2009).

Key concept – problematisation

Central for the WPR approach is the concept of problematisation, which is defined as how something is presented or put forward as a ‘problem’. In this approach the word ‘problem’ is used to distinguish what is perceived to be in need of change. Policy proposals are filled with suggestions for change, which in turn, according to Bacchi refers to what the government understands as a problem that needs to be solved.

A key premise of the approach is that ‘we are governed through problematisation’ (Bacchi 2009: xxi). Thus, Bacchi argues that to make sense of how we are governed, it is crucial that we critically reflect on problematisations present in policies. Bacchi suggests, “characterization of the ‘problem’ is the place to start in order to understand how an issue is being understood” (ibid., xi), in other words to investigate problematisation in terms of how a problem is made into this specific kind of problem in a policy proposal (Bacchi & Goodwin 2016). When referring to the form of a problematisation at a specific site, for example a particular policy, Bacchi coined the term ‘problem representation’. Bacchi’s definition reads, “a problem representation refers to the understanding of the ‘problem’ implied in any policy or rule” (Bacchi 2009: xii). Furthermore, when an issue is declared as a problem in a policy text, this is invariably an act of reducing the complexity of an issue. Therefore the WPR approach calls attention to critically analyzing problematisations in policy proposals, for the reason to understand the perceptions of an issue, the story it tells, as well as which factors are included and which are left out of the proposal (ibid.).

Social construction of problems

The next step after identifying a problem representation is to unravel how it has been constructed, what assumptions and prerequisites have made it possible to develop a certain understanding of a problem. Bacchi understands problem representations as “elaborated in discourse” (ibid., 35). In a WPR approach the concept of discourse does not only refer to how language is used and is not applied to analyze text in the traditional sense of a discourse analysis. Rather, Bacchi views discourse as a way to analyze the ‘truth status’ of how something is thought about. For instance how actors’ speak about ‘indigenous rights’ is a socially constructed form of knowledge, thus making a certain understanding of ‘indigenous rights’ possible. Furthermore, the social construction of knowledge provides space for many competing constructions of how a problem should be understood. What role these competing knowledges have in terms of governing is a dominant theme in a WPR approach (ibid.) Bacchi makes the case that the government plays a privileged role since their understanding of a problem is in the end the problem representation that counts - since the government’s problem

representation and their solution to a problem is the one that will be constituted in legislation.

Most policy analysis approaches give policy the meaning of *solving* an already existing problem. In contrast, the WPR approach understands policies as *giving shape* to problems. Meaning that problems should not be understood as pre-existing, rather they are created within the policy-process alongside the development of matching solutions. Therefore, it is my interest and goal to understand how the problem of ‘lack of Sámi participation in decision-making processes’ has been shaped in the process of developing a duty to consult.

The WPR approach is a well-established and validated methodology for performing studies such as this one, which focus on critically analyzing public policies. Bacchi’s book ‘Analyzing policy’ (2009) has been extensively used by other scholars, and has been cited over 2000 times on Google Scholar. An earlier application of Bacchi’s theory that has inspired my study is Reimerson (2013) who applied the WPR approach to ‘analyze indigenous peoples’ role in nature conservation’ (p. 992). The study’s application of WPR helped to examine how the way problems are formulated within policies of nature conservation has an effect on the construction of indigenous subject positions, or identities. Furthermore, Reimerson investigated the political implications of discourse and how it governs what can be said about indigenous rights, political agency and nature conservation.

WPR an analytical framework

I have chosen to draw on the analytical framework developed by Bacchi as it provides concrete analytical tools to analyze policy text in relation to my research questions. In sum, the goal of the framework is to identify, reconstruct and interrogate problematisations, in order to understand how policy development works and further, how we are governed (Bacchi 2009). The approach carries a set of six questions, which have guided my reading of the material, and inspired my analytical approach to this study.

1. What’s the ‘problem’ represented to be in the proposed bill on a duty to consult?
2. What presuppositions or assumptions underlie this representation of the ‘problem’?
3. How has this representation of the ‘problem’ come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?

5. What effects are produced by this representation of the ‘problem’?
6. How/where has this representation of the ‘problem’ been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

Questions one and two are applied as proposed by Bacchi (2009). The remaining questions have inspired the development of two analytical questions, which have the purpose to analyze the referral bodies’ suggestions for change in accordance to their problem representations. Moreover to investigate the changes the commentaries bring about in the development of the law proposal. The operationalization of the questions will be elaborated on in the next section.

3.1.2. Analysis of data

In the first part of the analysis, question one and two have been used as a foundation for the analysis. The first question, “*What’s the problem represented to be?*” is straightforward and has the goal to identify problem representations (ibid.), which provides the starting point for the interrogation (Bacchi & Goodwin 2016). The question helps to define what understandings exist regarding Sámi participation in decision-making processes. The second question, “*What presuppositions or assumptions underlie this representation of the ‘problem’?*” will help to examine the actors’ background knowledge and the discourses lodged within the law proposal as well as the referral bodies’ commentaries, with the purpose to understand how meaning of Sámi participation is created. Through a form of discourse analysis the aim is to identify and critically analyze key concepts and binaries in the texts (Bacchi 2009). Bacchi’s second analytical question will provide the means to investigate how discourse shapes and make the actors’ problem representations comprehensible. Further, question two will provide a lens to understand the involved actors worldviews and thus their perspective towards the duty to consult.

The second part of the analysis has as earlier mentioned the purpose to investigate the referral bodies’ possibilities to shape the development of the duty to consult. Additionally, the interest of this study is to examine which problem representations are dominant in the development of the duty to consult. Drawing on Bacchi’s (2009) analytical framework the second part of the analysis asks, “*How is the actors’ problem representations featured in their suggestions for change?*”, and “*What effects do the actors’ understanding of Sámi participation play in the role of developing the duty to consult?*”

3.2. Methodology

3.2.1. Data collection

Adopting the WPR approach allows the researcher to analyze a wide range of materials. What counts as policy documents can include all from interview transcripts, organizational documents, speeches, to budgets, etc. (Bacchi and Goodwin 2016). The empirical data included in this thesis consists of (see also figure 1): the governmental memorandum Ds 2017:43 (Kulturdepartementet 2017), the draft to Law council referral (Kulturdepartementet 2019) and the governmental bill (Kulturdepartementet 2020). Further, I will analyze commentaries submitted by referral bodies in the referral rounds from 2017 and 2019. The data used in this study are all available on the Swedish government's webpage, found under documents and publications.¹

3.2.2. Selection of actors and study limitations

A total of 133 referral bodies participated in the two referral rounds and 203 commentaries were submitted (Kulturdepartementet 2019). When selecting which referral bodies' commentaries I would include in the analysis, I firstly checked which referral bodies participated in both referral rounds, leaving me with a selection of 70 referral bodies. Thereafter I categorized the actors in accordance to which sector they belonged to, resulting in nine categories (see Table 1):

Table 1 Categorization of referral bodies and number of actors in each category

Organization type	Quantity
County administrative boards	6
Municipalities	10
Governmental agencies	25
Industry	9
Sámi	5
Human rights organization	2
Courts	3
Universities	5
Others	5

Out of these nine categories I selected five to include in the research; county administrative boards (CAB), municipalities, governmental agencies, industrial actors and Sámi actors. On the basis of the actors belonging to these categories would be in direct involvement of a possible implementation of a duty to consult.

¹ <https://regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2017/09/ds-201743/>

If the duty to consult becomes legislated, governmental agencies, municipalities and regions would all be obliged to consult Sámi representatives. In addition, matters that would require consultation would often involve industrial actors in the context of permit processes for exploration projects.

In a next step, I selected three referral bodies from each selected category. When I selected which referral bodies to include in my study, the aim was not to claim representativeness in sample. Rather, my goal was to obtain a solid spread of opinions, views and interests present among the referral bodies (see appendix 1 for the selection of referral bodies). When conducting the analysis of the referral bodies' commentaries, the texts were thoroughly read and thereafter their comments were mapped into different themes guided by Bacchi's analytical framework. From there I continued by examining connections between the commentaries from both referral rounds and the development of the law proposal.

Limitations

I have made some strategic research choices in how I have limited and thereby focused my research, due to time constraint and limited resources, as well as knowledge gaps. I have not been able to cover all material that concerns the policy proposal of a duty to consult. Therefore a selection of the referral bodies' commentaries has been made. Further, out of the four governmental policy texts (see figure 1) I decided to not include the Law Council referral in my analysis. After reading through all policy texts I realized that the Law council referral is practically identical to the governmental proposition, which is the policy text that the Parliament based their decision on. Further, I have not analyzed all paragraphs in the policy texts, thus all issues of the proposal of a duty to consult are not covered. The law proposal covers complex juridical issues, and as a master student in environmental communication it is not part of my field to critically reflect and study those juridical issues. Lastly, I am aware that my subjective position can have affected the analysis in this study, as interpretative studies are shaped by the researcher's own understandings and background knowledges.

4. Results and analysis

4.1. Problem representations – understandings of Sámi participation

In the first part of the analysis the objective is to understand which problem representations are present in the governmental memorandum Ds 2017:43, and in the referral bodies' commentaries. To provide an overview of the problem representations identified in this study, these have been gathered in Table 2 (see appendix 2).

4.1.1. Identified problem representations

In this chapter the meaning of the identified problem representations will be presented together with a discussion of the assumptions and background knowledge that have shaped the actors understanding of the problem.

Measures need to be taken to strengthen Sámi influence

Sweden's relations with the Sámi people have, as covered earlier in this thesis, been the cause for international critique from human rights bodies, which in turn has led to the problematisation that lack of Sámi participation, is a problem that needs to be dealt with. The critique aimed towards Sweden doesn't correspond with how the state depicts itself, as a country that "aspires to be a clear voice for human rights around the world – not just in words but also in actions" (Diab 2020). The 'negative image of Sweden's management of indigenous rights' (Table 2, line 5, appendix 2) has been identified as a problem representation in the governmental memorandum. The state cannot simply ignore the critique of not recognizing Sámi rights, therefore the development of a duty to consult is perceived as a solution to counteract this negative image of the state.

A majority of the actors included in this study, share the broader understanding that 'measures need to be taken to strengthen Sámi influence in decision-making processes' (table 2, line 2, appendix 2). The problematisation pinpoints that Sweden needs to recognize Sámi rights in complex land use issues, where the

Sámi people are currently fighting for effective participation. Further, that ‘FPIC must be the basis for indigenous rights legislation in Sweden’ (table 2, line 1, appendix 2) is a problem representation identified in the Sámi referral bodies’ commentaries as well as in Dorotea and Åre municipalities’ commentaries. They perceive that Swedish law concerning indigenous rights is in immediate need of development to be able to meet international standards.

The background knowledge shaping the Sámi actors’ understanding of the issue is grounded in years of experience participating as stakeholders in dialogue with corporate organizations; mining, forestry companies etc. The underlying assumption is that the government does not respect or recognize indigenous peoples rights in current legislations, which is why a duty to consult is needed. In terms of, providing a platform where Sámi representatives can be in direct dialogue with the government, participating as rights-holders, which they are entitled too according to indigenous law. Further, free, prior and informed consent (FPIC) should be the basis when developing a duty to consult to ensure that the Sámi people are provided with a strong instrument to influence decision-making in matters that concern them.

The responsibility of achieving change that recognizes the Sámi people’s rights lies upon the government. The state has a central role in developing decision-making processes that shall foster meaningful collaboration between the involved actors. In Ds 2017:43 the government stated:

The most central (of a duty to consult) is the possibility of influence by allowing the Sámi to develop their views on the matter, which is a way of strengthening the Sámis’ influence on decisions of special importance for them (p. 40).

Additionally, the government argues that a duty to consult is important for the improvement of the governmental bodies understanding of Sámi perspectives. Thus providing the means for governmental bodies to acquire all kinds of knowledge in order to make well-informed decisions, which includes an understanding of the consequences a decision might entail for the Sámi communities.

There is no problem

On the other side of the coin, the study has identified problem representations in the commentaries of LRF, Vattenfall, Kiruna municipality and Bergsstaten, relating to the understanding that ‘current Swedish legislation is enough to ensure effective participation for the Sámi people’ (table 2, line 8, appendix 2). In other words, the ‘problem’ is that there is no problem and thus no need to implement a duty to consult. The underlying assumption of the problem representation is frankly the denial of the problem representation outlined by the government,

based on the international critique – there is no lack of Sámi participation. Rather, some of the actors indicate the understanding that ‘the authorities should be objective in decision-making processes and not give one actor extra consideration’ (table 2, line 9, appendix 2), meaning the Sámi people should not be provided with extended rights to promote their interests.

A central problem representation among several referral bodies as well as in the governmental memorandum is the perception that ‘consensus is hard to reach in decision-making processes concerning land-use issues, due to conflicting interests’ (table 2, line 10, appendix 2). This problem representation is crucial to unravel as the problematisation radically speaks against the purpose of a duty to consult. With the lens of the WPR framework it provides insights of how the government, the industrial actors, SGU & Bergsstaten and the Forest agency display a lack of trust in communication as means for problem solving:

Vattenfall believes that in many cases it’s not realistic to reach agreement with the Sámi Parliament or Sámi RHC on exploitations. For example, Vattenfall has in several cases applied for a permit to build wind farms in northern Sweden. The Sámi Parliament has never approved such an application. The affected Sámi RHC often also opposes the wind farms (Vattenfall 2017: 2).

Working backwards from the problem representation, as suggested by Bacchi, helps to disclose how the actors’ background knowledge has given consultation procedures this meaning. In the example of Vattenfall, their understanding of the issue is shaped by previous experiences where Sámi actors have opposed their permits (similar examples can also be found in the commentaries by the other industrial actors’). The social construction of knowledge has led to the actors’ rejection of the law proposal and a lack of faith in dialogue. Further, the knowledge of conflicting interests shapes the understanding of consultations depicted as ‘time consuming processes, which can become harmful for businesses in Sweden’ (table 2, line 7, appendix 2).

In contrast, Kiruna Sameförening, the Environmental protection agency and Västerbotten’s CAB recognize that dialogue and knowledge of indigenous rights, plays an important role to manage the complex issues of land use planning on Sámi traditional territories. The identified problem representation understands that ‘fundamental knowledge about indigenous- and Sámi rights is lacking’ (table 2, line 4, appendix 2). For a duty to consult to achieve its purpose there is a need to enhance both competence and knowledge among involved actors. In addition, actors perceive ‘a need to improve the agencies understanding of the Sámi peoples perspectives and vice versa’ (table 2, line 6, appendix 2). For the reason that the dialogue between the actors need to become more constructive, in order to improve the conflict situation.

Going back to the understanding that ‘current legislation is enough’ (table 2, line 8, appendix 2), this problem representation can also be understood as elaborated in the discourse of economic profitability. Within the law proposal and the industries commentaries the importance of industrial development projects are promoted, due to their financial contribution to Swedish infrastructure. Thus, judging by the economic value of various activities, the value of resource extraction is compared against the profitability of reindeer husbandry and other Sámi livelihoods. The problematisation shaped by economic interests, leads to the assumption that extended rights for the Sámi people would entail set backs for the industry. Since, if Sweden would implement a duty to consult in accordance to international law, this would require the Sámis’ consent in order to initiate an exploration project on Sámi traditional territories. Which in turn shapes the understanding that solving the problem of lack of Sámi participation would become a ‘threat to the industries access to land’ (table 2, line 12, appendix 2).

The mining industry is dependent on access to land to be able to operate and develop both existing and new mining projects. This in turn is necessary to provide for society with various metals and minerals that are used and needed daily (Svemin AB 2017: 1).

The possible limitations to the industries access to land further shapes Vattenfall and LRF’s perspective that ‘Sweden needs to prioritize the implementation of environmental goals’. Österlin & Raitio (2020) have observed a ‘strong policy push’ to extract resources in the northern areas for in particular wind energy. “As a renewable energy source (wind energy), it is considered as a key part of the solution for national environmental objectives concerning reduced greenhouse gas emissions” (p. 9). As argued by the actors, the territories of northern Sweden are crucial for the development of green energy.

The government expressed similar concerns in Ds 2017:43, in terms of land planning management and the possible consequences enhanced Sámi influence could have on Swedish infrastructure:

If consent would be required for the validity of a decision, it could lead to far-reaching socio-economic consequences in regard to larger projects. Such projects can often be detrimental to reindeer husbandry or other Sámi interests (Kulturdepartementet 2017: 74).

Lastly, a number of referral bodies have expressed that the possible implementation of a duty to consult, would be problematic due to ‘underfunding and difficulties to cope with an increased workload’ (table 2, line 3, appendix 2). The numbers of permit processes are steadily increasing and the Sámis’ have limited resources to participate in all processes that might affect them. Previous research has shown that Sámi communities face a ‘tyranny of participation’ (Österlin & Raitio 2020). As these authors argue the Sámi peoples’ low level of

influence forces them to participate in as many permit processes as possible, since that serves as the only option to influence decision-making processes. If a duty to consult would be implemented this would entail a large increase of consultations for the Sámi. Thus, shaping the Sámi actors understanding of the problem that more resources are needed to be able to participate and enhance their influence. Furthermore, as presented in Table 2 the CABs, the majority of the municipalities as well as the Environmental protection agency share the understanding that lack of resources is an underlying issue of enhancing Sámi participation.

4.2. The referral bodies' influence on the development of a Duty to Consult

The second part of the analysis will have the objective to answer these two analytical questions: “How is the actors’ problem representations featured in their suggestions for change?”, and “What effects to the actors’ understanding of Sámi participation play in the role of developing a duty to consult?”

I have selected three paragraphs from the governmental memorandum Ds 2017:43 that I will investigate to determine how these parts of the proposal have developed throughout the process. I selected the paragraphs by looking at which matters that were mainly discussed by the referral bodies, the selection was a result of a thorough reading of the referral bodies’ commentaries. Where I, with help of the identified problem representations compiled in Table 2, coded the referral bodies’ suggestions for change in accordance to identified problem representations. Each problem representation in Table 2 was given a color, which I then used to color code the commentaries. Resulting in an overview of which issues that was discussed by the referral bodies. Further, the aim of my selection was to cover different types of issues at stake, as well as different perspectives regarding the issues covered within the chosen paragraphs.

I will now proceed by approaching one paragraph at a time with the aim to answer the analytical questions presented above.

4.2.1. Who should represent the Sámi people in consultations?

The state’s focus in § 2 was to introduce which actor or actors that should be understood as representatives for the Sámi people, to which consultations should be implemented with.

Ds 2017:43, § 2

When the government, a state administrative authority, a county administrative board or a municipality handles a matter that may have special significance for the Sámi people, consultation with the Sámi Parliament as a representative of the Sámi people shall take place before a decision in the matter.

When the matter may have special significance for an Sámi organization or an Sámi reindeer herding community, these must also be consulted, if there are reasons for it (Kulturdepartementet 2017: 5).

The state proposed that the Sámi parliament should primarily take on the role as representative. For the reason that the Sámi parliament is an organ elected by the Sámi people and has great experience dealing and managing Sámi matters (Kulturdepartementet 2017). Furthermore, the state declared that there would be no obligations to consult all Sámi actors' that have an interest in a certain matter, since this would entail a far too complex and time-consuming system. Therefore, § 2 includes the phrase that Sámi RHC or an Sámi organization should be consulted *if there are reasons for it* (ibid.).

All Sámi referral bodies opposed this part of the proposal. It was questioned why the state suggests a higher threshold to consult Sámi RHC in relation to the Sámi parliament. SSR and Kiruna Sameförening (2017) claimed that the state does not recognize the Sámi RHC legal status as rights holders, since the proposal does not promote the Sámi RHC to exercise their right to self-determination. The referral bodies' reaction towards the state's proposal derives from the assumption 'that measures need to be taken to strengthen Sámi influence in decision-making processes' (table 2, line 2, appendix 2). Accordingly, the Sámi parliament's (2017) understanding of the issue led to their motion that the phrase *if there is reason for it* needs to be cut from the proposal.

In comparison, a number of referral bodies found that the state's suggestion that consultations might be implemented with other Sámi actors apart from the Sámi parliament, was too extensive and implied that consultations should only be implemented with the Sámi parliament (LRF 2017, Västerbotten CAB 2017, Bergsstaten 2017, the Forest Agency 2017). LRF stated, "that consultation should take place with more organizations than the Sámi parliament is clearly inappropriate" (LRF 2017: 7). Further, LRF considered that Sámi RHC and Sámi organizations should not receive the status as representatives of the Sámi people, since arguably they cannot be considered to represent the Sámi people interests in a broader perspective.

Developments after the referral rounds

In the government's draft to Law Council referral (2019) the matter of who should represent the Sámi people in consultations is covered in § 2 and § 7. When comparing the paragraphs with § 2 in Ds 2017:43, it becomes clear that the government has listened and incorporated the commentaries from the Sámi referral bodies (2017).

The Sámi parliament's (2017) suggestion to exclude *if there are reasons for it* from the policy text was adhered to by the government. This is an important alteration as it provides Sámi RHC and Sámi organizations an independent right to consultation with governmental bodies. Further, this shows that in this matter the problem representation that 'measures need to be taken' was instrumental in the development of who should represent the Sámi people in consultations. The government's alteration entails that there may be occasions where consultations need to be carried out with multiple Sámi representatives (Kulturdepartementet 2019). This development goes against the commentaries of LRF, Bergsstaten, the Forest Agency and Västerbottens' CAB from 2017. In the second referral round only Västerbotten's CAB and LRF expressed a maintained position that consultations should exclusively take place with the Sámi parliament. Underlying assumptions of that there is no problem of lack of Sámi participation has arguably shaped these actors positioning towards the matter of Sámi representatives. For instance, Västerbotten's CAB (2019) pointed to already existing forums where Sámi RHC are provided the opportunity to express their opinions, thus in their opinion making it unnecessary to include Sámi RHC and Sámi organizations in a duty to consult.

In the governmental proposition (2020) the wording concerning this matter is to a great extent identical to the Draft to Law Council referral (2019). The only exception is the addition of the requirement towards Sámi organizations to register their interest to participate in consultations. If an organization has registered their interest and the matter has significance when considering its purpose under statutes, an Sámi organization shall also be consulted (Kulturdepartementet 2020).

4.2.2. How will the duty to consult affect decision-making processes in terms of time, money and resources?

Ds 2017:43, § 5

A consultation shall take place in the form desired by the Sámi Parliament. The consultation may, however, take place in another form if the desired form entails significant inconvenience in the handling of the case or if the purpose of the consultation can still be achieved. (...) The Sámi Parliament shall be given a reasonable time to gather the necessary information about local conditions and to otherwise prepare a consultation (Kulturdepartementet 2017: 6).

In § 5 of the proposal we can find two important segments, which are crucial for the possibility to enhance Sámi influence in decision-making processes. Firstly, a Sámi representative should be provided with reasonable time before a decision-making process to be able to make an informed decision, which is one of the basic principles of FPIC. Secondly, § 5 proposes that the Sámi parliament should decide the form of the consultation, by reason of distinguishing consultation from *samråd*. However, exceptions can be made if the Sámi parliament's desired form would cause inconveniences *or even* if it wouldn't cause inconvenience in the handling of a case.

The general administrative interest in a time-efficient handling of cases must also be taken into account in this context. The consultation shall therefore be allowed to take place in a form other than the form desired by the Sámi Parliament.

Even if the Sámi Parliament's proposal for a form of consultation does not entail inconvenience of significance for the processing of the case, the consultation can therefore take place in another form if the purpose of the consultation can still be achieved (Kulturdepartementet 2017: 67).

In other words, the state's effort of providing the Sámi representatives the opportunity to influence the form of the consultation is very restricted, due to the state's prioritization of implementing time-efficient consultations.

The duty to consult would increase the workload for all

In terms of resources needed to implement a duty to consult, the state estimated that there wouldn't be any need to increase resources for the involved actors (Kulturdepartementet 2017). An estimation based on the assumption that CABs', municipalities and governmental agencies already have established, and achieved well functioning working routines for consultations (*samråd*) with the Sámi people. The state's estimation is more or less criticized by all referral bodies, pointing to that an implementation of a duty to consult would cause prolonged decision-making processes, extended costs, and an increase in workload.

However, the perspectives on this issue are developed from a diverse set of problem representations.

In the case of the industrial actors and SGU & Bergsstaten (2017), the issue is understood in terms of ‘complex and time consuming decision-making processes are harmful to Swedish infrastructure’ (table 2, line 7, appendix 2). Vattenfall (2017) argued, that a duty to consult could entail severe consequences for Vattenfall’s business and in the long run also for Swedish infrastructure, due to the risk of delayed and costly permit processes. In accordance with the problem representation, SGU & Bergsstaten (2017) argue that the Sámi parliament should not be provided with the means to decide on the format of the consultations. Instead, they suggest that written consultation procedures should be standard and oral consultations should only be granted in special cases. Lastly, Svemin (2017) urges that the proposal should be supplemented with time limits for how long a consultation can proceed and a deadline for Sámi actors to respond to whether consultation is desired or not.

Another understanding of the issue is that, ‘underfunding would complicate the implementation of a duty to consult’ (table 2, line 3, appendix 2). Norrbotten’s CAB (2017) problematized the Sámi parliament’s proposed mandate to decide on the format of consultations, pointing to the risk of increased costs and resources. For instance, they raise the consequences of higher costs if consultations would take place at the Sámi Parliament’s offices in Kiruna. Or the need for more resources if it is decided that consultations should be conducted in Sami, leading to an increase of translation or interpreting efforts. Furthermore, referral bodies expressed concerns related to the implementation of time-efficient consultations referring to the Sámi parliament’s limited amount of resources (Norrbotten CAB 2017, Västerbotten CAB 2017, Vattenfall 2017). Followed by the suggestion that the Sámi parliament should be strengthened with more personnel to be able to manage the increased workload a duty to consult would entail.

SSR’s (2017) underlying assumption that ‘FPIC must be the basis for indigenous rights in Sweden’ (table 2, line 1, appendix 2) shapes their understanding that monetary resources and time is crucial to ensure effective participation, in accordance to indigenous law. The Sámi referral bodies advocate that the state needs to provide more resources to Sámi actors, for them to be able to meet the aim of the law proposal (Sámi parliament 2017, Kiruna Sameförening 2017, SSR 2017).

Measures to ensure efficiency

In the government's draft to Law Council referral (2019) the matter of how a duty to consult would affect the decision-making process is covered in § 8 and § 9.

After the referral round in 2017 one major difference can be found in the Draft to Law Council referral (2019).

Draft to Law Council referral, § 9

The authority liable for consultation decides on what form the consultation shall be implemented but shall as far as possible satisfy the Sámi Parliament's wishes for form of consultation (Kulturdepartementet 2019: 6).

No longer will the Sámi parliament decide the format of the consultation. This is a result from the negative response expressed (according to the state) by SGU & Bergsstaten, Norrbotten CAB, Svemin AB, and Kiruna Sameförening (2017). The first three actors have indeed opposed the suggestion, however the government wrongfully states that Kiruna Sameförening has opposed the suggestion. Nowhere in their commentary have they expressed that an Sámi representative should not decide on the format of the consultation.

The state's alteration is in disagreement with the problem representation that 'measures need to be taken to strengthen Sámi influence'. The Sámi parliament (2019) opposed the state's decision, which deprives the Sámi representatives the right to decide the format for consultations. They implied that deciding the format could be an important instrument to ensure effective participation for the Sámi people. Further, they call attention to the negative attitudes towards the proposed duty to consult, which became apparent after the first referral round. The Sámi parliament highlighted that if Sámi representatives aren't provided with the means to secure the circumstances for Sámi participation in consultations, they fear that actors who do not share their understanding of what effective participation means could exploit the situation of deciding the format.

In regard to the critique raised about prolonged decision-making processes, the state agrees with the understanding that 'complex and time consuming decision-making processes are harmful to Swedish infrastructure' (table 2, line 7, appendix 2). Therefore, Svemin's (2017) request for time limits to ensure time-efficiency is incorporated in the development of the duty to consult. Furthermore, the state has developed the proposal by suggesting an implementation of simultaneous consultations with Sámi actors, with the purpose to make the processes more time-efficient. With the lens of the WPR approach, I argue that the state's suggestion on how to solve the problem is an act of reducing the complexity of the issue. The state does not critically reflect upon how this would affect the Sámi actors' possibilities to influence the decision-making process. For instance, if Sámi actors have differentiating perspectives on a matter, one consultation involving several Sámi actors could rather complicate the consultation process than making it time-efficient.

What about resources?

Despite the extensive amount of commentaries problematizing the lack of resources to implement a duty to consult, the government maintains their position from Ds 2017:43 that financial consequences will be at a minimum (Kulturdepartementet 2019). Several referral bodies oppose the government's conclusion to not provide resources to involved actors, and in particular that resources won't be provided to Sámi actors (Sámi parliament 2019, SSR 2019, Jämtland's CAB 2019, and SEPA 2019). The understanding expressed by the referral bodies is that effective Sámi participation will be difficult to achieve if they aren't provided with the necessary resources. It would especially limit the possibilities for Sámi RHC and Sámi organizations to participate in consultations (Sámi parliament 2019, SSR 2019, Jämtland's CAB 2019, and SEPA 2019). Furthermore, Vattenfall (2019) once again stress that lack of resources for Sámi actors would inhibit the possibility for time-efficient decision-making processes.

In the governmental proposition (2020), the state has still not changed their position about resources. As a response to the commentaries, which urged the state to supplement resources to Sámi RHC and Sámi organizations, the government states:

The proposal entails a right for Sámi RHC, not a duty to participate in consultations, and the Sámi RHC can be expected to request consultation only in matters that have special significance for them (Kulturdepartementet 2020: 137).

Sámi RHC are recognized as rights-holders by Swedish law, it is therefore very problematic that the state does not take the measures to provide resources to enable their effective participation.

4.2.3. How much influence should the Sámi people have in consultations?

In this selected paragraph, the state frames how much influence the Sámi people will be given in consultations. Further, the state gives meaning to consensus and consent, which are important concepts within indigenous international law.

Ds 2017:43, § 6

The consultation shall take place in good spirit and consensus or consent in the matter that prompted the consultation shall be sought. At the consultation, both parties shall state their reasoned position on the matter and comment on the other party's position. The consultation shall then continue until consensus or consent has been reached or until the authority or the Sámi Parliament declares that consensus or consent cannot be reached in the matter. However, the consultation must always be concluded in good time before the matter must be decided by the consulting authority in accordance with provisions of law or regulation (Kulturdepartementet 2017: 6).

In the governmental memorandum the state declared their understanding of *consensus* as reaching agreement on how a matter should be dealt with. Whereas, *consent* is understood by the state as reaching a compromise, a solution that the Sámi representative might not agree with, but they can accept it. In § 6 it is declared that consultations should sought consensus or consent, which is in line with the international development of indigenous law (Ward 2011). However, § 6 also includes the disclaimer, if one of the participating actors declares that consent or consensus can't be reached in a matter, the consultation can be concluded. Furthermore, a consultation that doesn't reach consensus or consent would have no implications for the decision-making process. As the proposed duty to consult would not require an Sámi representative's consent for a decision to be considered as valid (Kulturdepartementet 2017).

The state's understanding of how to deal with the issue of lack of Sámi participation, results in a proposal that claims enhanced influence is achieved when the Sámi are provided with the means to express their perspective on a matter. As the state puts it themselves,

The purpose of the proposed duty to consult is above all to get an idea of the Sámi's perspective on the matter in question, which the authority can take into account in its decision; the Sámi will have a co-influence (ibid., 40-41).

The problem representation that there is 'a need to improve the agencies' understanding of the Sámi peoples perspectives and vice versa' (table 2, line 6, appendix 2), I argue has only partly shaped the state's understanding of what the purpose of enhancing Sámi influence entails. The state's underlying assumption is that enhanced dialogue in the form of consultations with Sámi representatives will improve the management of complex land use issues. Therefore, the state does not see the need to follow the principles of FPIC, where indigenous communities should be provided the right to withhold consent.

"The proposal does not meet international law on indigenous rights"

A number of suggestions for change from the first referral round is shaped by the understanding that 'measures need to be taken to strengthen Sámi influence in decision-making processes' (table 2, line 2, appendix 2) and that 'FPIC must be the basis for indigenous rights in Sweden'. Firstly, SSR and the Sámi parliament opposed that Sámi actors aren't provided the opportunity to initiate consultations, which in Ds 2017:43 only governmental bodies had the means to do. The Sámi parliament (2017) states that they will not endorse a law proposal that doesn't provide Sámi actors the right to initiate consultations. In terms of indigenous peoples right to self-determination, SSR and the Sámi parliament argued that the

Sámi people should have an influence in determining which matters that has special significance for them.

Secondly, the matter of consent and the state's understanding that there is no need to obtain consent from an Sámi representative before making a decision. Is strongly opposed by all Sámi actors together with Åre and Dorotea's municipality. The critique is centered round the state's poor understanding and application of indigenous law. Kiruna Sameförening (2017) questioned the government's understanding of FPIC,

The government's view is that the principle (FPIC) in no way constitutes a right of veto, but that it is an important one method/principle in order to ensure real consultation and dialogue (Kulturdepartementet 2017: 17).

Kiruna Sameförening stress that the government understanding of FPIC is inadequate, stating that the meaning of *free, prior and informed consent* implies far more than a way to ensure constructive dialogues.

"The proposal goes against the principle of equality before the law"

Only one referral body, the Forest agency (2017), expressed their agreement with the government on this matter. Moreover, they suggested a supplement to the policy text that clarifies that an Sámi representative's consent is not necessary to validate a decision. Vattenfall and LRF (2017) also argue in line with the government's suggestion to not require the Sámi peoples consent in decision-making processes, grounded in the problem representation that 'authorities should be objective in decision-making and take all interests into account' (table 2, line 9, appendix 2). Although, Vattenfall and LRF took it a step further and advocated that consensus or consent should not be sought at all in consultations. Their reactions towards the proposal concern questions of equality, and in what ways a duty to consult would affect other non-Sámi actors' opportunities to influence decision-making processes. They questioned if the authorities could uphold impartiality if they were required to seek consensus or consent with Sámi actors who represent a particular interest. Both Vattenfall (2017) and LRF (2017) perceive the government's proposed consultation procedure as unacceptable, and argued that it would go against the principle of equality before the law.

The current proposal means that Sámi interests are given such extended rights influence over a large number of decision-making processes that others lack. The proposal goes a long way in addition to what is reasonable, appropriate and necessary (LRF 2019: 3).

The positioning of these actors represents a contradiction to the very idea of a duty to consult. In order to address issues of inequality it is substantial to provide

a platform where issues of inequality can be addressed. A space where marginalized groups, in this case the Sámi people, are recognized and heard.

Developments of the proposal in the draft to Law Council referral

In line with the commentaries written by SSR, the Sámi parliament, Åre and Dorotea municipality (2017), the proposal developed and included the right for Sámi representatives to initiate consultations. The state agreed with the reasoning that Sámi actors are the ones with most knowledge of which matters that would have special significance for them. Further, it is understood that the right to initiate consultation will provide more influence to the Sámi people in a duty to consult (Kulturdepartementet 2019).

The problem representation that ‘authorities should be objective in decision-making’ (table 2, line 9, appendix 2) resulted in an alteration in the proposed policy text. After receiving the critique from LRF, the Forest agency and Vattenfall (2017), the state recognized that the suggestion that consultations should sought consensus or consent with the Sámi representatives is incompatible with the Instrument of Government and the principle of equality before the law (Kulturdepartementet 2019). Therefore, the draft to Law council referral does no longer include that consultations should sought consensus or consent with Sámi representatives. In the second referral round Vattenfall, SGU, and the Forest Agency (2019) all communicated their content towards the state’s alteration. In particular Vattenfall were positive that it had become even clearer in the proposal that consultations can be terminated if a participating actor declares that consensus or consent cannot be reached.

In contrast to the actors that understand that a duty to consult could lead to inequalities. SSR (2019) opposed the state’s development of the policy text, in accordance to their problem representation that ‘measures need to be taken to strengthen Sámi influence’ (table 2, line 2, appendix 2). SSR perceives seeking consensus or consent as a crucial part of a duty to consult, as it serves as an instrument to ensure influence for the Sámi people. However, SSR’s commentary did not have the power to achieve change in this matter, the suggestion to retract the alteration was disregarded by the state (Kulturdepartementet 2020).

In the governmental proposition (2020), the state presented an alternative solution of how to ensure the Sámi peoples’ effective participation in decision-making processes. By declaring that with a fluid approach the Sámi perspective will be given great importance in decision-making processes.

Meaning that the Sámi perspective should be weighed in, in accordance to the assessment of how much they will be affected by a decision. The greater the consequences are for the Sámi people the more attention should be given to their interests in relation to other actors' interests (Kulturdepartementet 2020).

5. Discussion and conclusion

In the following chapter, I will discuss the results and answer the three research questions of the study: “What does the government and the affected actors represent the problem to be in the process of strengthening Sámi rights?”, “How has the actors’ problem representations shaped the development of the duty to consult?”, and lastly “Why have some problem representations become dominant over others, which problem representations ‘stick’ leaving others silenced?”

Looking at the first question, “*What does the government and the affected actors represent the problem to be in the process of strengthening Sámi rights?*”, the findings show a number of issues that were perceived as problematic concerning Sámi participation and a duty to consult. These identified problem representations have provided insights in why a duty to consult is needed and what factors have held the government back from developing a law proposal that more fully respects Sámi rights. The problem representations that I found most central in the development of the duty to consult are presented below.

Firstly, the state’s aspiration to repair the negative image of how Sweden governs indigenous rights has been instrumental in developing a duty to consult. Having started from a shared understanding with a majority of the referral bodies, that ‘measures needed to be taken to strengthen Sámi influence in decision-making processes’ (table 2, line 2, appendix 2). The process of developing a duty to consult has however discerned conflicting perspectives among the referral bodies, which in turn have influenced the state’s understanding of Sámi participation and has come to hold back the government in the pursuit of strengthening Sámi rights.

An application of the WPR approach allowed the study to disclose how actors are clustered in accordance to their underlying assumptions about Sámi participation. As shown in Table 2 (see appendix 2), there are some clear correlations between: the actors, the category they belong to, and identified problem representations. For instance, the Sámi parliament, SSR and Kiruna Sameförening have to a great extent a common understanding of what they perceive as problems in regard to Sámi participation. Central for these actors’ problematisation of a duty to consult, is the understanding that ‘FPIC must be the basis for indigenous rights in Sweden’ (table 2, line 1, appendix 2), FPIC is recognized as a strong instrument for

indigenous peoples' opportunity to influence decision-making processes and to provide the means to ensure effective participation.

Furthermore, by looking at how the actors are clustered conflicting perspectives regarding Sámi participation become apparent, with a clear contrast between the perspectives of Sámi and industrial actors. The remaining groups, municipalities, CABs and governmental agencies are more scattered, sharing the understandings of both Sámi and industrial actors.

When scrutinizing the identified problem representations within the group of Sámi actors, the same can be said as with the industrial actors' in regard to the correlation between category belonging and problem representations. The results show that Vattenfall, Svemin and LRF's understandings of Sámi participation in decision-making processes are coupled with negative connotations. Central for these actors' problematisation of a duty to consult is the understanding that 'current legislation is enough to ensure influence for the Sámi people' (table 2, line 8, appendix 2), or in other words 'there is no problem'. Throughout their commentaries they communicate reasons for why a duty to consult would bring about negative consequences for the Swedish state. For instance, that Sámi participation would entail: limited possibilities to reach environmental goals, a threat to the industries access to land, and harmful time-consuming decision-making processes. The industrial actors' perception of that a duty to consult would entail delays and costly permit processes is interesting, since a key argument for early consultation is the reverse. Where early consultations are perceived as preferable to foster direct involvement, and thus obtain effective decision-making as well as avoiding complaints (Boyd & Lorefice 2018).

The problem representation I have found most problematic in relation to the possibility of successfully implementing a duty to consult that would strengthen Sámi rights is the assumption that 'consensus is hard to reach in decision-making processes dealing with land-use issues' (table 2, line 10, appendix 2). It is alarming that the state, Vattenfall, LRF, Svemin, SGU & Bergsstaten and the Forest agency share this understanding, which indicates a mistrust in that communication can be used as a tool to improve conflict situations. Admittedly processes dealing with complex land use issues, are characterized by multiple actors that often have conflicting interests. However, that this becomes a reason for why Sámi rights should be limited in decision-making processes I argue is unjustifiable. According to Hallgren (2016) it is fundamental for involved actors to have trust in communication to be able to improve a destructive conflict and turn it into a constructive one. Thus, leading to the conclusion that to be able to develop a duty to consult that respects Sámi rights, it is crucial that measures are taken to reconstruct these actors' assumptions of communication with Sámi

representatives. This could for instance be achieved by adopting meta-communicative methods and strategies to improve the conflict situation, opening up for an understanding of disagreements and how to manage them (ibid.).

The second question asks, *“How has the actors’ problem representations shaped the development of the duty to consult?”* The results from the second part of the analysis show how the suggestions for change put forward by the referral bodies were shaped by their underlying assumptions – their problem representations. Further, the study’s results show that several suggestions for change were incorporated in the law proposal. Thus, concluding that the referral bodies’ problem representations did have an influence on the state’s understanding of Sámi participation.

Here follows a short summary of the suggestions for change that became incorporated in the law proposal:

- The Sámi parliament, a Sámi RHC and Sámi organization should all be viewed as Sámi representatives and shall have an independent right to consultation – a result from the Sámi actors’ commentaries
- A Sámi representative shall have the right to initiate consultations – a result from the Sámi actors’ commentaries
- The authorities will decide on the form for consultations, not the Sámi representative – a result from SGU & Bergsstaten, Norrbotten CAB and Svemin’s commentaries
- That consultation should seek consensus or consent is excluded from the proposal – a result from LRF, the Forest agency and Vattenfall’s commentaries

The conflicting perspectives found in the commentaries on how much influence the Sámi people should have in decision-making processes, have also been recognized in the government’s policy texts. According to Bacchi (2009), “a good deal of public debate rests on binaries and dichotomies” (p. 7). Moreover, an identified binary usually implicates a hierarchy, meaning that one side is considered more important than the other. The binary, or conflicting perspectives, that I have identified in the law proposal is in regard to, either strengthening Sámi rights, or to optimize the prospects of natural resource extraction in Sápmi. Further, it is my reflection that these diverging views have become more distinct throughout the development of the duty to consult. Meaning, that the referral bodies problem representations have influenced the state’s perspective on the issue. How these binaries shape the government’s understanding of Sámi participation is crucial for the level of influence granted the Sámi people in a duty

to consult. It is my understanding that the side valued higher by the state, is the one that favors the prospects of natural resource extraction and economic growth.

Answering the third question of the study, *“Why have some problem representations become dominant over others, which problem representations ‘stick’ leaving others silenced?”* The problem representations that have become dominant, which Bacchi (2009) describes as ‘sticking’ to the law proposal, are principally those understandings that relate to that lack of Sámi participation is not a problem. This thesis shows, that there exists a strong relationship between the state and the industrial actors’ understanding of the issues, which I argue is holding back the state’s incentive to enhance Sámi participation in Swedish policy-making. For instance, the state’s decision to exclude the requirement of seeking consensus or consent in consultations, due to incompatibilities with the principle of equality before the law. I interpreted this decision as a clear positioning of the state, and as a result the Sámi perspective of how important consensus and consent is for Sámi influence was left silenced. The results presented in this study supports the claim of previous research which have stated that the Swedish government holds assumptions that extractive industries and Sámi practices can generally co-exist, arguably there is a discourse of co-existence within Swedish permit processes (Kløcker Larsen et al. 2021, Raitio et al. 2020).

Considering the development of land use in Swedish Sápmi, and the industrial pressure that keeps on rising (Österlin & Raitio 2020), it becomes evident that the power relations in Swedish land planning is in favor of the extractive industries and that the state tends to agree with the interests of industrial actors. For example, the state recently took a number of actions to facilitate the extraction of minerals in Swedish Sápmi, to support the growth of the mining sector (Raitio et al. 2020). According to Saarikoski et al. (2013) actors who hold a superior position in land use planning will not freely come to a negotiation table if they are not required to participate. For this reason it can be assumed that the presuppositions that underpin the understanding that ‘current Swedish legislation is enough to ensure effective participation for the Sámi people’ (table 2, line 8, appendix 2), is grounded in the notion that they have nothing to gain from an implementation of a duty to consult. Further, the authors argued that the act of changing power relations is crucial to achieve change. Thus, if the power relations in Swedish land planning do not change from how they look today, it can be assumed that an implementation of a duty to consult would hardly provide the means for the Sámi peoples’ effective participation.

In conclusion, through the initiative of developing a duty to consult, the state has shown incentives to strengthen Sámi participation. However, after an analysis of

underlying assumptions imbedded in the law proposal it can be questioned if the aspiration to strengthen Sámi rights has enough influence to generate actual change and improvements for the Sámi people. The analysis shows that the state values other interests higher than Sámi participation, such as economic gains from extraction of natural resources in Swedish Sápmi. Further, the state's decisions in the policy process display an unwillingness to withstand power in decision-making processes. The development of the duty to consult has so far resulted in a policy proposal that sets out to enhance the Sámi peoples' influence. However, the state's choice to not incorporate the perspectives found most important by the Sámi actors demonstrates the state's ambiguity. Since, arguably it is the Sámi people who have the knowledge of what is needed to enhance their influence in decisions that will affect their traditional territories and livelihoods.

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Appendix 1

Selection of referral bodies

Category	Actor	Description
County administrative board	Jämtland (J CAB)	Manages the rights of use in large parts of Sweden's protected mountain areas together with Västerbotten & Norrbotten region. The region has a Reindeer husbandry delegation, which has the purpose to promote the development of the reindeer husbandry industry, by supporting development projects and monitoring the reindeer husbandry industry's interests in community and environmental planning (Länsstyrelsen Jämtlands län 2021)
	Västerbotten (V CAB)	Manages the rights of use in protected mountain areas, and has a Reindeer husbandry delegation (Länsstyrelsen Västerbotten 2021).
	Norrbotten (N CAB)	Manages the rights of use in protected mountain areas, and has a Reindeer husbandry delegation (Länsstyrelsen Norrbotten 2021).
Municipalities	Åre (Å)	Municipality in Jämtland's region, five Sámi reindeer herding communities operate in the region. An administrative area for Sámi, meaning that Sámis' have the right to use their language in contacts with the municipality and authorities in the area (Åre kommun 2021).
	Dorotea (D)	Municipality in Västerbotten's region, two Sámi reindeer herding communities operate in the region, administrative area for Sámi (Dorotea kommun 2021).
	Kiruna (K)	Municipality in Norrbotten's region. The Sámi parliament's headquarters is located in the municipality, administrative area for Sámi (Sametinget 2021a).
Governmental agencies	Swedish Environmental Protection agency (SEPA)	Responsible for issues related to climate, biodiversity, pollution, environmental monitoring, hunting and environmental research (Naturvårdsverket 2021).
	Swedish Forest agency (FA)	Authority for issues concerning forests, a supervisory authority, checks that laws and regulations regarding forests are followed, makes decisions and provides permits (Skogsstyrelsen 2021).
	Sweden's Geological Survey & Bergsstaten (SGU & B)	Sweden's Geological Survey wrote their commentary together with Bergsstaten. Are responsible for issues concerning mountain, soil and groundwater in Sweden and decides on issues according to the Reindeer Husbandry Act and the Minerals Act (Sveriges Geologiska Undersökning 2021). Bergsstaten is a special decision-making body that organizationally belongs to SGU and handles matters concerning exploration and extraction of minerals (Bergsstaten 2021).
Industry	Vattenfall AB (V)	Owned by the Swedish state and is one of Europe's largest producers and resellers of electricity and heat (Vattenfall AB 2021).
	Svemin AB (SVE)	Trade association for mines, mineral and metal producers in Sweden (Svemin AB 2021).
	Lantbrukarnas Riksförbund & LRF Skogsägarna (LRF)	Lantbrukarnas Riksförbund (LRF) is a politically independent organization for people and companies within rural green industries, working with the development of companies within soil, forest and garden (Lantbrukarnas Riksförbund 2021). LRF Skogsägarna is a department within LRF with responsibility for forestry issues (LRF Skogsägarna 2021).
Sámi	Sámi Parliament (SP)	The Sámi peoples elected body and a state authority, which was inaugurated in 1993 with the to improve the Swedish Sámi peoples opportunities as an indigenous peoples to preserve and develop their culture (Sametinget 2021b).
	Svenska Samernas Riksförbund (SSR)	Politically independent interest organization with the aim to promote reindeer husbandry, Sámi business and social issues (Svenska Samernas Riksförbund 2021).
	Kiruna Sameförening (KS)	One of about 30 local Sámi associations in Sweden (Skielta 2021).

Appendix 2

Table 2 overview of the actors' problem representations

Problem representations	Sweden	Sámi			Municipalities			Industry			Governmental agencies			County Admin. Boards		
	GOV	SP	KS	SSR	D	Å	K	V	LRF	SVE	SGU&B	FA	SEPA	N CAB	V CAB	J CAB
1 FPIC must be the basis for indigenous rights in Sweden.																
2 Measures need to be taken to strengthen Sámi influence in decision-making processes.											SGU					
3 Underfunding would complicate the implementation of the duty to consult.																
4 Fundamental knowledge about indigenous- and Sámi rights is lacking.																
5 International critique has created a negative image of Sweden's management of indigenous rights.																
6 A need to improve the agencies' understanding of the Sámi peoples perspectives and vice versa.																
7 Complex and time consuming decision-making processes are harmful to Swedish infrastructure.																
8 Current legislation is enough to ensure influence for the Sámi people.											Bergs- staten					
9 Authorities should be objective in decision-making and take all interests into account.																
10 Consensus is hard to reach in decision-making processes dealing with land-use issues.																
11 There is a need to swiftly implement environmental goals.																
12 Enhanced Sámi influence could threaten the industries access to land.																