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Decolonising Indigenous-state democratic dialogue

An analysis of the Sámi consultation process on the Norwegian Education Act

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Abstract

This thesis examines the consultation process between the Sámediggi and the Norwegian government regarding the Education Act approved in 2023, adopting the Sámediggi's perspective. Consultations are a central mechanism in international law for Indigenous peoples to influence decision-making processes and outcomes on matters that may affect their interests and cultures. However, there is a gap between the legal standards and actual implementation: often, consultations are reduced to a bureaucratic requirement and foster unequal relationships of colonial nature. Previous experiences show that, despite its reputation for advanced protection of Indigenous rights, Norway does not always implement in all respects its obligation to consult the Sámi people. The Education Act's main case documents and interviews with consultation participants describe what led the Sámediggi to withdraw its consent: the disagreement with the legislative proposal because it does not sufficiently strengthen Sámi pupils' rights, and the discontent with how Norwegian authorities carried out the process. This research indicates a divergence between the government's preparatory work on the Sámi Act's consultation provisions and its actions in the Education Act case. This confirms that the implementation of consultations is still not based on shared understandings and substantiates the need for guidelines to integrate the procedure within the authorities' work. Furthermore, this research applies the essential elements of the epistemic and ethical functions of deliberative democracy to the case, revealing a lack of epistemic trust and reciprocity that significantly limits the Sámediggi's influence. Thus, the thesis calls for a decolonial practice-oriented approach to deliberative dialogues to reduce the epistemic and socio-political asymmetries between Indigenous peoples and state authorities. Deliberative democrats must acknowledge colonial logic intrinsic in deliberative theory and practice and reconstruct deliberative spaces based on the experiences of marginalised groups.

Keywords: Consultations – Indigenous rights – Sámi Parliament – Deliberative democracy – Decoloniality – Education Act

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1 Introduction

1.1 Topic

Consultations are an important participatory mechanism that allows Indigenous peoples to practice, at least partially, their right to self-determination in the context of democratic nation states. This mechanism creates spaces of dialogue between Indigenous peoples and governments, providing a means for Indigenous groups to safeguard their culture and interests by influencing decision-making processes that matter to them. During the last decades, international law has recognised the right of Indigenous peoples to be consulted, which later has been integrated into some national legal systems worldwide.

The participation of Indigenous peoples in the socio-political life of the state represents one of the main pillars of international Indigenous law. Consultations are protected by instruments such as the *ILO Convention No. 169 on Indigenous Peoples and Tribal Peoples in Independent Countries*, the *United Nations Declaration on the Rights of Indigenous Peoples*, and Article 27 of the *International Covenant on Civil and Political Rights*. According to international law, the states are obliged to consult Indigenous representatives when discussing any legislative and administrative measures that could directly affect the Indigenous material or immaterial culture. Hence, administrative and legislative bodies have the obligation to establish appropriate procedures to include Indigenous communities in decision-making processes that concern them. The parties in dialogue shall have the shared aim of reaching an agreement or consent.

There are no general and concrete guidelines on how states should actually implement the mechanism at national and local levels. This means that the implementation of consultation tends to be country specific (Allard, 2018). In Norway, the obligation to consult has been gradually introduced and implemented through several steps. First, Norway signed and ratified the aforementioned international instruments and then it incorporated them into the national system with specific legislation. In 2005, the Norwegian government and the *Sámediggi* [Sámi Parliament] signed the Consultation Agreement, which established the state's obligation to consult Sámi people, as enshrined in ILO Convention No. 169 (Ravna, 2020). After that, the government adopted similar agreements in different sectors. In 2021, following a long process, Norway included the obligation to consult into chapter 4 of the Sámi Act. Sámi representatives have the right to be consulted by all Norwegian authorities at local, regional and national levels before deciding on measures that could impact Sámi culture, societal interests and rights.

Despite the increasing importance of consultations and the progress in international and national law, the implementation of such a mechanism presents a number of challenges (Ravna, 2020). Overall, governments are criticised for not giving Indigenous peoples real opportunities to effectively participate in and influence processes (Pirsoul, 2019). Instead, the authorities often regard consultations as mere information meetings or bureaucratic conditions. Also in Norway, criticisms have been expressed in relation to how the government carries out the processes (Fjellheim, 2023a). To mention some examples, studies point out a general lack of inclusion of traditional knowledge, a lack of equal conditions to participate, and a lack of guidance when an agreement is not achieved (Broderstad et al., 2015; NIM, 2019; Fjellheim, 2023a; Pirsoul, 2019; ILO, 2016).

This master's thesis investigates the challenges of consultations in Norway, by analysing an empirical case. The thesis examines the consultation process that took place between the Sámediggi and the *Kunnskapsdepartement* [Norwegian Ministry of Education] regarding the new Education Act. During the process, the Sámediggi had the opportunity to voice its positions about the legislative proposal. However, the Sámi representatives pointed out some shortfalls in the process and expressed their disappointment with the final result (Sámediggi, 2023a; Sámediggi, 2021). The Sámediggi was not satisfied with the proposal because it did not provide enough protection for the Sámi children's language rights in educational contexts (Sámediggi, 2023c). As a result, the Sámediggi did not consent to the new Education Act and the consultation meetings ended with a disagreement among the parties. For consultations in the education field, it is not common to end without consent from the Sámediggi. Thus, the case can offer an undisclosed perspective on the consultation mechanism in Norway.

Consultation procedures generate deliberative spaces and, therefore, the criteria of the obligation to consult defined by international law are associated with the principles of deliberation as conceived in deliberative democratic theories (Broderstad & Hernes, 2014; Schilling-Vacaflor, 2012). Deliberative democracy seeks to improve the participation of citizens within decision-making procedures. The theory emphasises the dialogic exchange between free and equal participants who aim to reach a shared agreement by elaborating on reasoned arguments. (Held, 2006). Moreover, deliberative democracy advances a framework for suggesting criticisms and suggestions to democratic institutions (Chambers, 2003). Thus, such theories offer an appropriate perspective for answering the research questions of this thesis. Deliberative democracy is adopted here as a theoretical approach to investigate the implementation of consultations in the Norwegian context and its main challenges. The

application of the theoretical framework to the research is informed by the discourse of decolonising deliberative democracy.

1.2 Literature review

In recent times, the academic literature about Indigenous consultations has expanded along with the general increase in the development of implementation mechanisms around the world. Among the authors interested in consultations, some have decided to adopt deliberative democratic theories as an analytical framework for their studies. Most of them assess cases based in Latin America, Oceania, and Scandinavia.

Schilling-Vacaflor (2012) assesses several consultation processes in the Bolivian hydrocarbon sector. Firstly, the author describes the international human rights standards of consultation and juxtaposes them with the standards of deliberative democracy. Secondly, he identifies constraining factors for the democratisation of resource management and enabling factors for the implementation of meaningful consultations. As a result of his analysis, Schilling-Vacaflor (2012) argues that further implementing the standards of deliberative democracy would improve consultation procedures and reduce inequalities between states, Indigenous communities, and companies.

Studying the Colombian context, Alejandro Santamaría Ortiz (2016) illustrates how the application of deliberative democracy in consultations can create a space for cultural exchange in good faith. He advances deliberative democracy to redefine consultations with the aim of favouring the expression of the parties' self-interest. One of the case studies researched by Nicolas Pirsoul (2019) is also based in Colombia. In his article, the author analyses some of the main issues in consultation mechanisms in relation to the epistemic, ethical and democratic functions of deliberative democracy. Pirsoul (2019) is convinced that increasing the deliberative dimension of consultations would help to overcome the analysed challenges, by providing a fair and effective procedure for Indigenous groups to influence decision-making. Pirsoul applies the same theoretical approach to the analysis of cases of natural resources co-management governance systems in Aotearoa (New Zealand), which include the mechanism of consultations (Pirsoul & Armoudian, 2019; Pirsoul, 2019).

Broderstad and Hernes (2014) research the consultations that led to the approval of the Finnmark Act by the *Storting* [Norwegian Parliament]. The aim is to comprehend whether the process can be considered an example of successful deliberation and to what extent

consultations based on deliberation can represent a tool for Indigenous self-determination. To do so, the authors analyse the consultations based on four deliberative features: institutional frameworks, process and dialogue, the basis of argumentation, and the outcome (Broderstad & Hernes, 2014). Moreover, Broderstad, Hernes & Jenssen (2015) question whether consultations in Norway are a mere technical procedure or whether they host a partnership in which the Sámi, as the minority party, have a real influence on decision-making processes. The authors do so by analysing two empirical cases: the consultation processes regarding the Reindeer Herding Act (2013) and the Planning and Building Act (2008). They argue that the processes do not always satisfy the requirements for effective participation as outlined by the principle of *good faith*. For instance, in the consultations for the Reindeer Herding Act, some arguments and the outcome were perceived as predetermined by the government (Broderstad et al., 2015).

These authors adopt deliberative democracy as a theoretical framework to analyse Indigenous consultations. They identify challenges in empirical cases and apply the theory to discuss them. By doing so, they substantiate the appropriateness of deliberative democracy in assessing issues related to consultation processes. The chosen literature, therefore, offers precedents and guidance to this master's thesis. The literature lays the basis for my research conducted here to further contribute by adopting a decolonial perspective on the theoretical framework, deliberative democracy, applied to examine the Education Act consultation process.

1.3 Research questions

Consultations are an essential mechanism to safeguard Indigenous interests and rights. This is demonstrated also by its central role in international law instruments concerning Indigenous rights. Still, the implementation of the consultation procedure often presents several shortfalls. Norway is not an exception: even though it is considered at the frontline in defending Indigenous rights, the way the Norwegian government conducts consultations seems to not fully meet the legal standards and the expectations of the Sámi people. To explore what issues characterise consultations between the Norwegian government and the Sámediggi, this thesis analyses an empirical case in which the parties did not reach an agreement: the consultation process regarding the new Education Act. As mentioned, the theoretical framework of deliberative democracy guides the analysis mainly due to its relevance connected to the deliberative dimension of consultation mechanisms. Further, in applying the theory, the thesis advances a discussion on deliberative democracy itself, contributing to the ongoing debate on

how to decolonise dominant theoretical assumptions. Thus, the research aims to answer the following main question:

- What were the main challenges that prevented consent in the Sámi consultation process on the Norwegian Education Act, how can these challenges be interpreted in light of deliberative democratic principles, and how can a decolonial perspective on deliberative democracy improve our understanding of those challenges?

To answer the main question, the thesis investigates three sub-questions:

- What is the Sámediggi's perspective on the consultation process regarding the new Education Act?
- How do the emphasised challenges relate to the Norwegian obligation to consult and to deliberative principles?
- How can a decolonial approach to deliberative democracy shed light on how to deal with the challenges identified in the analysed consultation process?

1.4 Relevance

The research aims to gain an enhanced understanding of the implementation of the obligation to consult in the Norwegian context. It does so by exploring the challenges faced by the Sámediggi during the consultations with the Norwegian authorities regarding the new Education Act, which ended with no agreement. This analysis is intended to lay down the basis for discussing possible suggestions to improve the actualisation of the consultation mechanism. To this end, the thesis points to providing up-to-date reflections that could be instrumental in strengthening the Sámi people's right to participate in decisions that concern them. Through my work, I aspire to advocate for a fair and meaningful implementation of consultations as a central element of the Indigenous right to self-determination in terms of having the opportunity to determine the development of Sámi interests. I wish to contribute with new insights that could strengthen the consultation procedure to secure the protection of Sámi rights.

Especially in the Nordic countries, there is a lack of further research that deploys deliberative democracy to recognise shortfalls in Indigenous consultation processes and to depict possible ways to overcome such deficits. Furthermore, the research could contribute to the emerging debate that explores deliberative democracy with decolonial lenses, focusing on real-world impact and Indigenous claims to work towards decolonising deliberative theory and practice.

1.5 Positionality

I am a master's student at UiT The Arctic University of Norway, but I grew up and spent most of my life in Italy, thus my cultural background presents many differences with the Nordic cultures. I am not a fluent speaker of the Norwegian language and I know even less about the Sámi languages. I have studied Indigenous peoples' issues for some years, but I am not an Indigenous person myself. Such a linguistic and cultural deficit places me as an outsider regarding the context my research focuses on. However, my studies have brightened my knowledge of Indigenous issues and made me aware of the potential contribution I can provide to the field. Of course, there exist some limitations in my research which I have endeavoured to minimise. First, I partially overcome the linguistic barrier by reading and translating original Norwegian texts. Second, I urge myself to be aware of, acknowledge and avoid discriminatory and colonial biases in my writing practice, adopting a critical approach to my study.

As a European scholar, I believe that I am conscious of the responsibility that comes with my position. That is because there are further possible consequences of my research on the studied subjects (Olsen, 2016, p. 28). The research is carried out with respect for the Sámi people's culture and interests and with consideration of the possible impact it may have on them. While the thesis may not directly impact specific Indigenous communities, it could contribute to the debate on strengthening consultation processes and, therefore, Sámi participatory rights.

1.6 Reflections

The analysed case presents the direct relationship between two parties: the Sámediggi and the Norwegian government. However, many other cases also require the involvement of the market (Hernes et al., 2022, p. 2). For example, this occurs in land interference cases such as extractive or green energy development projects, in which companies engage. In such circumstances, specific guidelines and regulations exist to regulate the market's side in case of consultations and negotiations with Indigenous peoples (Wilson, 2016). Since my research does not consider the interaction between market actors and Indigenous peoples, the analytical framework used in this thesis would likely need to be further adapted to examine different cases.

Furthermore, when comparing the Sámi context with other Indigenous peoples around the world, many socio-political differences become visible. One of these are how the Sámi people are integrated within the Nordic societies. The disparities in welfare services between the Indigenous people and the majority populations in Scandinavia are less evident compared to other countries. In addition, the respective Sámi parliaments are considered an advanced

political structure for raising Sámi voices. I do not go in-depth with this discussion. Still, I believe it is important to underline that the present analysis considers one specific Indigenous context: the Sámi people in Norway. Thus, there would be a need for additional research to apply the framework and results of my thesis to cases with different contexts.

To conclude, I am aware my work could sound idealistic when I write that I want to contribute to decolonising efforts with deliberative theoretical frameworks and consultation arrangements because, as some authors argue, "the entrenched nature of colonial system poses a significant obstacle to implementing meaningful change within the existing power structure" (Parsons et al., 2021, p. 302). Moreover, the choice of words may risk being interpreted as superficial, hasty or misused (Bussu & Eseonu, 2022). However, I feel it is significantly important to express the overall goal I believe in – a decolonisation process of Indigenous-state relationships. I agree with Bastet (2022) when claiming that "changing the content of the construct […] may allow for a shift in experience that forces a change in construct over time" (p. 135). Hence, I do not expect an immediate systemic change, but I aspire to promote an evolving shift in the content of the structure. In my master's thesis, I seek to advance different perspectives on the relationships between the Sámi people and the Norwegian government in the context of consultations, with a view of stimulating a future change in concrete practices towards a decolonised approach that respects the Indigenous right to self-determination.

1.7 Thesis overview

The thesis consists of seven chapters. First, the introduction introduces the researched topic, the research questions, and their relevance. The second chapter provides an overview of the topic's background, illustrating how international law and Norwegian legislation refer to and ensure consultations and the obligation to consult. It concludes with a description of the main challenges in the consultation procedure identified by previous research in Norway. The third chapter describes the central elements of deliberative democracy, the emerging discussion on decolonising deliberative theory and practice, and how the deliberative framework can relate to Indigenous consultation mechanisms. Finally, it outlines the deliberative democratic functions which guide the research. The fourth chapter explains what Indigenous research methodologies entail and which methods this research applies to collect and analyse data. The fifth chapter illustrates the Education Act case by reporting what the analysed data communicates about it. The sixth chapter presents a discussion of the empirical case in connection with the statutory consultation provisions and with the central functions of deliberative democracy. It then

discusses how deliberative democracy, adopting a decolonial approach, could endeavour to enhance Indigenous consultations by minimising the implementation gap. The final chapter revisits the research questions, provides possible answers based on the thesis' findings, and suggests areas for future research.

2 Background

2.1 Introduction

In the Nordic countries, the obligation to consult Indigenous communities is seen as an obligation under international law. As this chapter illustrates, a manifestation of that is evident in the Norwegian consultation arrangements, which find their foundation in the principles outlined by international law instruments. The chapter serves as an introductory exploration of the state's responsibility to conduct consultations. It begins by providing an overview of the principles and essential requirements of the Indigenous right to be consulted as defined by international law. Subsequently, it delves into the Norwegian context, describing how international obligations have been adopted and introduced within the national system. Furthermore, it presents the dominant challenges and issues that have emerged in prior analyses of Norwegian consultation processes. By looking into these aspects, the chapter sets the stage for a comprehensive understanding of the dynamics and complexities surrounding the practice of consultations in Norway.

2.2 Indigenous consultations in international law

2.2.1 ICCPR Art. 27

The *UN International Covenant on Civil and Political Rights* contains some of the most important provisions regarding minorities' human rights, including Indigenous peoples. Article 1 highlights the right to self-determination of all peoples, which entails the right to "freely determine their political status and freely pursue their economic, social and cultural development" (ICCPR, 1966). Article 27 of the covenant is the key stipulation regarding the protection of Indigenous cultures.

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The provision therefore protects the right of ethnic, religious or linguistic minorities to practise their own culture. The Human Rights Committee clarifies that the term *culture* indicates the many forms in which it can be expressed, including its material basis. Particularly for Indigenous peoples, this means that land and the use of natural resources are protected by the covenant (Human Rights Council (HRC), 1994). Even if the Article is negatively formulated, according to the Committee, it implies positive actions from the states to safeguard the

aforementioned right and ensure the development of minority cultures (HRC, 1994). It does not explicitly mention consultations, but the Committee has interpreted the Article as a requirement for governments to, through positive measures, "ensure the effective participation of members of minority communities in decisions which affect them" (HRC, 1994, p. 3).

2.2.2 ILO Convention No. 169

Active participation is a fundamental pillar of the democratic theories that informed the provisions of *ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries* (ILO 169, 1989). Consultations, as a mechanism based on direct engagement of Indigenous groups, are considered a cornerstone of ILO 169 and were incorporated to replace the integrationist approach found in the earlier convention No. 107 (ILO, 2016). The convention is legally binding on the ratifying states, and it is their responsibility to ensure effective implementation. Furthermore, governments are required to report every three or five years to the ILO supervisory bodies, which reply with elaborate comments. These often contribute to changes in national legislation and practices (Swepston, 2020).

Articles 6 and 7 of ILO 169 lay the groundwork for the other provisions, aiming to empower Indigenous peoples to determine their own social, cultural, and economic development, and to address conflicting interests through dialogue (International Labour Office, 2009, p. 60). According to the convention, affected communities have the right to participate in and influence the decision-making process regarding matters that concern them. The right to be consulted implies that both the state and the Indigenous representatives sincerely endeavour to reach consent or a mutually reasonable agreement through dialogue (Allard, 2018, p. 26). It is the case in all "legislative or administrative measures […] at all levels of decision-making in […] bodies responsible for policies and programmes which concern them" (Art. 6). Article 7(1) specifies that Indigenous peoples shall "participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly". Thus, the obligation to consult pertains to an extensive variety of domains that can have an impact on both tangible and intangible Indigenous culture; for instance, changes to or adoptions of laws in the legal areas of education, health, constitutional amendments, agriculture, extraction and land management (Ravna, 2020, p. 237).

These two articles delineate the main requirements for consultations. The processes should involve representative institutions established by Indigenous peoples themselves. This must happen early in the process and not when decisions are already actually taken. Consultations

should be carried out "in good faith and in a form appropriate to the circumstances" (Art. 6). That means that governments need to allocate sufficient time to adapt the process to Indigenous communities' social and cultural customary use and to enable them to practice their own decision-making process (ILO, 2016, p. 4). States are also responsible for providing support and resources to develop Indigenous bodies, "establish[ing] means by which these peoples can freely participate" (Art. 6) and ensuring that all relevant information is fully accessible and understandable to all the parties. *Good faith* implies mutual recognition between the government and the Indigenous institutions. The states need to recognise Indigenous representatives as legitimate and vice versa. Moreover, an atmosphere of mutual trust should characterise the dialogue (International Labour Office, 2009, p. 62).

Consultations must be arranged "through appropriate procedures" (Art. 6), by creating the most favourable conditions for reaching the goal of the process: consent on the proposal or an agreement. Thus, it is not sufficient to provide Indigenous peoples with the opportunity to be heard. The state must grant them a real and actual opportunity to influence the process and the final decision (Norwegian National Human Rights Institution (NIM), 2022, p. 39). This reinforced aspect of the right to be consulted that goes beyond public hearings and mere information meetings is particularly emphasised in Article 15 of ILO 169, regarding the participation in land management decision-making processes (Ravna, 2020, p. 238). However, even if Indigenous peoples can have a real impact and withhold consent, this is not a necessary requirement for making decisions. Thus, consultation procedures do not entail a right to veto (ILO, 2016, p. 5). The only exceptional measure appears when it comes to the relocation of Indigenous peoples from their land, as expressed in Article 16 (Swepston, 2020, p. 121).

2.2.3 UNDRIP

In 2007, the United Nations General Assembly adopted the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP). It is the result of a 25-year-long drafting process in which governments and Indigenous representatives negotiated the declaration's content (Eide, 2009). The declaration is categorised as soft law and it is not legally binding for ratifying states. Yet, Allard (2018), among others, refers to its implementation "as a means for transformative change in state-Indigenous relationships" (p. 26). As a tool to practice the Indigenous right to self-determination within these relationships, UNDRIP formally introduced the concept of *free, prior and informed consent* (FPIC). This is considered an expansion of the obligation to consult

as it strengthens the Indigenous right to participate in the decision-making process (Ravna, 2020, p. 241).

The declaration underlines the right to "participate fully […] in the political, economic, social and cultural life of the state" (Art. 5) and "in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures" (Art. 18). While Article 19 recognises the government's responsibility to consult the Indigenous representatives to obtain their FPIC "before adopting and implementing legislative or administrative measures that may affect them". As ILO 169, Article 19 of UNDRIP adopts the formulation 'in good faith', meaning that the parties should act honestly and in respect of each other's interests (Wilson, 2016, p. 6). According to the Expert Mechanism on the Rights of Indigenous Peoples (HRC, 2018), the concept of FPIC aims at revitalising Indigenous cultural identities and providing communities with agency over lands and resources (p. 4). This could be achieved by establishing new partnerships which can potentially redress the power imbalances through mutual respect between states and Indigenous peoples (HRC, 2018, p. 4).

The right to consultation outlined by UNDRIP presents similar features to the standards set in ILO 169. FPIC defines some key principles that states should respect. First, Indigenous peoples must be *free* to decide whether or not to consent. Any kind of harassment, coercion, manipulation, and intimidation must be excluded from the consultation process. Ravna (2020) includes financial pressure and bribing (p. 242). The concept also implies that Indigenous peoples have the right to determine their own way of engagement (HRC, 2018, p. 6). Second, the involvement of Indigenous representatives must be at the conceptualisation stage of the process, *prior* to any decisions. In this way, the affected groups can also have the required time to process the information (HRC, 2018, p. 6). Third, both parties must be *informed* in a way that they can access and understand all the relevant information, implying language translation if needed. Relevant documentation comprehends the proposed measures, including all technical plans, but also Indigenous knowledge about the affected culture and land (Ravna, 2020, p. 242). If the consultation process adheres to these standards, then it is possible to obtain consent.

Even though the issue is highly discussed due to the provisions being unclear, many authors claim that FPIC does not provide Indigenous peoples with a right to veto (Ravna, 2020; Pirsoul, 2019, p. 258; Errico, 2011, p. 366; Wilson, 2016, p. 5). However, states obligations to obtain consent still go beyond mere participation, representing an obstacle to possible colonial

attitudes and human rights violations (Ravna, 2020; Pirsoul, 2019; Errico, 2011). In fact, when a state or a company proceeds with the proposed measures without the consent of the affected Indigenous groups, the process "moves into a legal grey area and exposes itself to judicial review and other types of recourse mechanisms" (HRC, 2018, p. 9).

2.3 Indigenous consultations in the Norwegian context

In Norway, international legislation must be adopted through an act to be fully implemented in the national legal system (Ravna, 2021). Thus, even though international law has acknowledged and defined the Indigenous right to participation and consultation, it does not have as much direct impact as when incorporated into Norwegian national law (NIM, 2022, p. 11). For instance, the adoption of the Human Rights Act in 1999 incorporated Article 27 of ICCPR into Norway's legislation. This means that ICCPR, through the Norwegian Human Rights Act, gained precedence over domestic law (Ravna, 2021). The obligation to consult has been gradually consolidated into the Norwegian legal system. ILO 169 has been partly implemented in sectorial legislation through the consultation provisions. Due to Norway's emphasis on adhering to international standards[1], the ILO Convention represents nevertheless an essential source of law, which Norway is still obliged to implement (Ravna, 2021, p. 150). This section describes how Norway introduced the obligation to consult the Sámi people on matters that affect them.

Norway was the first country to ratify the ILO Convention No. 169, in 1990. Its ratification corresponded to a broader political intention towards the recognition of Sámi rights in Norway (Allard, 2018, p. 27). In 1987, the adoption of the Sámi Act translated into law the institution of a Sámi representative body, through direct election – the Sámediggi. The following year, a new section of the Norwegian Constitution established Norway's obligations to protect and promote the development of several Sámi cultural aspects. It was within this political framework that, years later, the consultation procedures enshrined in the ratified convention entered the national law through the process behind the Finnmark Act (Allard, 2018).

In 2003, the Storting introduced a draft of the Finnmark Act; a bill that aimed at delegating the management of natural resources in Finnmark – a core area for the Sámi people – to a regional

[1] This is expressed in Norwegian domestic law by the *presumption principle*, which requires the Norwegian legislation to comply with international law (Ravna, 2021).

body with both Sámi and Norwegian representatives. The Sámediggi expressed strong criticisms claiming that the bill did not properly recognise Sámi rights, especially pointing out that it did not explicitly conform to the provisions of ILO 169 about participation and consultations (Broderstad & Hernes, 2014). The ILO Committee of Experts also commented, in 2003, questioning the validity of the process and asking the parties to resume the exchange in accordance with the convention (Swepston, 2020). This stimulated a new discussion focusing on the state's obligation to consult Indigenous peoples, which mainly took place in four consultation meetings between the members of the Storting, the Finnmark County Council and the Sámediggi (Centre for Sámi Studies Report, 2016). Although the existing power imbalances, this case is referred to as a successful process based on mutual trust and willingness to build common knowledge, which led to the adoption of a considerably revised version of the Finnmark Act (Broderstad & Hernes, 2014; Centre for Sámi Studies Report, 2016).

A parallel outcome of that discussion was the signing of the *Procedures for consultations between state authorities and the Sámi Parliament* (Consultation Agreement), in 2005, between the Ministry of Local Government and Modernisation and the Sámediggi. The Consultation Agreement is particularly rooted in Article 6 of ILO 169 and it is seen as a practical implementation of the state's obligations defined by the convention applied in the Norwegian context (Centre for Sámi Studies Report, 2016, p. 9). Accordingly, the Sámi people have the right to participate at all stages of decision-making processes that can directly impact their culture and interests, in such cases the state has the obligation to consult them. This responsibility is held by the "government and its ministries, directorates and other state agencies, such as regional governments (i.e., county councils) and state enterprises in as much as they exercise public authority" (Allard, 2018, p. 29). Generally, the Sámediggi is the main consultative body for Sámi interests, but other organisations or groups shall be consulted when the proposed measures can have a local effect, as often happens with reindeer herders. Nevertheless, in such cases, the Consultation Agreement is geographically limited to "traditional Sámi areas", which identifies the lands where reindeer herding is still practised (Allard, 2018, p. 29).

In 2007, the Sámi Rights Committee II presented to the government a draft consultation act, with the aim of establishing a solid foundation for safeguarding Sámi culture in compliance with the state's obligation to consult in international law (Ravna, 2020, p. 245). After more than ten years, the bill was finally adopted as a new chapter of the Sámi Act, in 2021. Again, the ILO Convention is the main source of the text (NIM, 2022). The new provisions recognise the

state's obligation to engage in respectful dialogue with the Sámi people in order to reach an agreement. They require consultations in all cases in which Sámi interests can be affected and expand the responsibility to the local level of municipalities (Prop. 86 L 2020-2021). However, the Norwegian government has been criticised for excluding the Committee's proposal of the requirement of *free, prior and informed consent*, as outlined in UNDRIP, from the final text (Fjellheim, 2023a). Fjellheim (2023a) claims that this omission is "inconsistent with recent developments in Indigenous law" (p. 3) because it does not conform to Articles 19 and 32(2) of the UN declaration (Ravna, 2020, p. 247). The new chapter of the Sámi Act will be further illustrated in this thesis.

2.4 Implementation challenges

International law does not provide comprehensive guidelines on the practical implementation of the state's obligation to consult Indigenous peoples. Thus, the practices can differ significantly between and within countries. This creates some difficulties both in procedural and content terms. Furthermore, the implementation is often challenged by bureaucratic requirements, economic interests, and power imbalances between the parties (Centre for Sámi Studies Report, 2016). Norway has already quite some years of consultation experience and it is perceived as a context of best practices; nonetheless, there still appear to be several issues (Fjellheim, 2023a). In fact, it is not rare that parties do not achieve an agreement, especially in matters concerning land management (NIM, 2022, p. 65).

In 2016, commenting on the Norwegian context, the UN Special Rapporteur on the rights of Indigenous peoples noticed that "there appears to be a lack of common understanding between the government and the Sámi Parliament about how the consultation agreement is to be complied with in practice" (UN, 2016). The parties often find themselves in disagreement on what is meant by meaningful dialogue and how it should be carried out because there is not enough knowledge about procedural practices (NIM, 2019). For example, in the Øyfjellet case, Fjellheim (2023a) reported how as soon as a consultation meeting started several unresolved tensions emerged. Among other things, the government's representative informed the reindeer herders of an inspection on the land happening the following day without having consulted them. An observer from the Sámediggi claimed that the ministry used consultations "as mere information meetings while making decisions behind closed doors" (Fjellheim, 2023a, p. 9). Despite the critique, the government's representative declared that there was no violation of the consultation agreement (Fjellheim, 2023a). Another example can be found in the process of

amending the Reindeer Herding Act, in which the Sámediggi did not consent because they were included late when decisions were already made, and they had less capacity to impact the decision-making (Broderstad et al, 2015). According to the Sámi party, this did not conform to *good faith* consultations. However, the Norwegian government approved the changes to the act (Centre for Sámi Studies Report, 2016). Despite the existence of a human rights framework, it does not always ensure that the state fulfils its responsibility diligently; in fact, the government often tends to give precedence to development projects (Centre for Sámi Studies Report, 2016).

Most of the concerns described by previous studies in Norway, address common experiences of the Sámi part in resource conflicts. Nevertheless, these experiences can provide a comprehensive contextual understanding relevant to analysing the empirical case presented in this thesis. In general, Sámi communities point out the difficulties of obtaining and understanding the documentation related to the case. Reliable information on possible negative effects of development projects is often not easily accessible and unclear to them (NIM, 2019). The Consultation Agreement from 2005 and the new provisions of the Sámi Act require that minutes of all consultation meetings shall written down (NIM, 2022; Prop. 86 L (2020-2021)). However, meetings between the parties are not always documented and this can impact, for instance, on investigating to what extent the process is aligned with legal requirements (NIM, 2022). Moreover, impact assessments are often labelled as inadequate mainly because of their lack of a holistic approach, addressing only the impacts on a specific geographical area and omitting the ones on the society at large. Sámi groups ask for a procedure through which they have the opportunity "to question evaluations, methods and findings of impact assessments" (Broderstad, 2022a, p. 30). The Sámediggi's demands and opinions in the Education Act case examined by the present thesis, attest to the need for a more holistic approach to consultations in general and for opportunities to question and contest the processes' results.

Sámi right-holders also demand the opportunity to document their traditional knowledge in the affected area before the project realization in order to preserve what might be lost after (NIM, 2019). Besides the documentation of the culture, Fjellheim (2023a) criticizes a general lack of Indigenous knowledge. For example, in the Øyfjellet case, the meeting agenda entailed a discussion about construction and mitigation measures, excluding the reindeer herders' viewpoint and knowledge (Fjellheim, 2023a, p. 10). Later, the license was granted before the impact assessment from the Sámi side was finished (Fjellheim, 2023a). Moreover, affected communities generally complain about the parties using different maps of the area chosen for the development project; the companies' maps do not include knowledge from the Sámi

perspective (NIM, 2019). This contributes to complicating the intention of generating a common understanding. Indigenous groups, especially reindeer herders, often have issues with language because the traditional knowledge is expressed by using Sámi terminology and some key concepts become lost in translation (NIM, 2019). Lastly, as Fjellheim (2023a) argues, the legal and political systems themselves are structured without taking into consideration different ontological approaches, such as Sámi worldviews (p. 16). This master's thesis shows how the Education Act case reflects some of the challenges identified by the mentioned authors. These experiences can be particularly relevant as the process regarding the Education Act demonstrates a lack of inclusion of Sámi knowledges and perspectives.

Overall, the relationship between the parties is characterised by power imbalances, which often challenge the fulfilment of meaningful consultation. The Sámi people, as a minority in dialogue with the central government, are in a disadvantaged position. The Centre for Sámi Studies' report (2016) emphasises the need for assistance for Indigenous communities to have a full understanding of the legal documents and technical data related to the cases (p. 26). Consultation processes are often a remarkable burden for the right-holders in terms of time and money, but also collective and individual efforts (NIM, 2019). Without proper support, the Sámi will continue to face unfavorable circumstances, which prevent the parties from being equals. The state sometimes still exploits the disparity to prioritise the majority interests, such as development projects, and to sacrifice Sámi culture (Fjellheim, 2023a). This approach reproduces colonial relationships and therefore undermines the *good faith* dialogue that is required to take place in consultation meetings (Fjellheim, 2023a).

2.5 Conclusion

The state's obligation to consult Indigenous peoples in matters that concern them has been increasingly recognised in several instruments of international law. The states are required to engage in a meaningful dialogue with Indigenous peoples with the sincere aim of reaching an agreement on the proposed measures. Norway has ratified ICCPR, ILO Convention No. 169 and endorsed UNDRIP. Subsequently, the state's obligations outlined in international law were emphasised in the Norwegian national system mainly through the Human Rights Act, Finnmark Act, Consultation Agreement and the newly adopted Chapter 4 of the Sámi Act. The introduction of consultations gave the Sámediggi a stronger political role that can act as a counterpower to state domination, by constraining both public decision-making processes and their content (Falch, Selle, & Strømsnes, 2016). However, the provisions do not provide enough

guidance about how the authorities should carry out the procedure (NIM, 2022, p. 86). This raises many challenges in implementing the obligation to consult, undermining the opportunity for the Sámi people to actually influence decisions that affect them. Due to a lack of common understanding and practices of consultations, the Sámi trust in the Norwegian system is at a breaking point (Fjellheim, 2023a, p. 14).

3 Theory

3.1 Introduction

This chapter describes the theoretical premises on which the research is based. The first sections illustrate the foundational concepts of deliberative democracy. Then, the chapter focuses on explaining the recent academic developments that question and discuss the theory from a decolonial perspective. The last section points out how scholars draw an analogy between the Indigenous consultation procedural requirements and deliberative democratic standards. Moreover, it shows which deliberative principles form the theoretical framework for analysing the consultation process regarding the Norwegian Education Act. The chapter aims to provide the reader with a general understanding of the theory applied in this research, the reasons why and how it is done. Given the choice to contribute to the discussion on decolonising theoretical conceptions within deliberative democracy, the theory holds a central role within the present thesis.

3.2 Focus on dialogue

Influenced by the civil rights and decolonising movements, Indigenous demands for self-determination reached an international context during the second part of the 20th century. At first, these *struggles over recognition* were initially dealt with through a hierarchical monologic approach that did not entail the involvement of the affected communities in the discussion (Tully, 2004). The top-down imposed solutions contributed to exacerbating the conflicts between minorities and governments. Consequent to the inadequacy of that perspective, a widespread shift towards adopting more democratic processes centred around inclusive dialogue emerged (Tully, 2004). This dialogic turn led to the establishment of new international instruments that emphasise Indigenous peoples' equal involvement in political processes to strengthen their right to self-determination. As illustrated in the previous chapter, international law therefore started to recognise key concepts and principles required for Indigenous participation. In this context, consultations became increasingly important as a means for Indigenous peoples to exercise their right to self-determination in terms of shared sovereignty within the border of a nation state (Ravna, 2020). Murphy's (2008) relational approach to self-determination highlights the urgency of Indigenous participation in the majority's political processes since many Indigenous groups do not have the capacity and resources to be fully independent. Hence, they are under the jurisdiction of non-Indigenous governments and often engage in relationships with the majority population. Thus, states' decisions frequently have an

impact on Indigenous peoples' lives and it's important that they have a say in those processes through forms of shared sovereignty (Murphy, 2008, p. 198).

3.3 Deliberative democracy: a brief overview

Deliberative democracy is the main democratic theory that informed the dialogic approach to Indigenous-state relationships, including consultation practices. This thesis adopts deliberative democracy as a theoretical framework because it represents "a tool for giving voice to minorities" by providing "a basis for real equality and autonomy" (Broderstad & Hernes, 2014, p. 194). Furthermore, deliberative theories can lay out ways to advance suggestions and criticisms to democratic institutions (Chambers, 2003, p. 308).

The model of deliberative democracy is based on the public use of arguments and the impartial pursuit of truth in informed debates. Deliberative democrats believe that continuous learning processes are at the core of a reasonable political judgement. Thus, they seek to enhance the political participation of citizens, by designing institutional procedures that produce knowledge and understanding founded on reasoning (Held, 2006). It implies a refusal of *true* or *correct* values and perspectives, valid only when justified (Held, 2006, p. 233). Individual views, moreover, must be tested in the broader social context, taking into account others' views and therefore considering the moral point of view. Hence, democracy should be designed based on the principle of reciprocity. Furthermore, there should be considerable emphasis on the procedures and settings in which citizens learn and form their preferences (Held, 2006). Therefore, deliberative democracy constitutes:

> "a form of government in which free and equal citizens (and their representatives), justify decisions in a process in which they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching conclusions that are binding in the present on all citizens but open to challenge in the future" (Gutmann & Thompson, 2004, p. 7).

According to Gutmann & Thompson (2004), the proposals must be advanced by the parties through the justification of decisions, in a public and comprehensible way. The final resolution has a temporary binding aspect, as the dialogue evolves in a dynamic process (Gutmann & Thompson, 2004). Moreover, the reasons must be assessed genuinely and equally by the participants, regardless of who the speakers are. The authors affirm that this last criterion is the most challenging one when it comes to divided and complex societies because of the higher level of mistrust (Gutmann & Thompson, 2004, p. 161). Deliberative democracy aims to strengthen the legitimacy of democratic procedures and institutions by adopting elements that

expand the quality of democratic life and therefore enhance the outcomes (Held, 2006). Fishkin (2009) contributes with five other criteria for legitimate deliberation: information, substantive balance, diversity, conscientiousness, and equal consideration (p. 160). Thus, the deliberative process must be informed and informative. The group discussions require all perspectives to be expressed through considerations and the respective answers. According to him, random samplings among the population can guarantee the diversity of participants (Fishkin, 2007). Public deliberation must be free, in the sense that democratic institutions shall ensure that it is not influenced by any kind of constraining force, but the one of the better argument (Cohen, 2007, p. 220). In summary, deliberative democracy, as Cohen (2007) states, "is about making collective decisions and exercising power in ways that trace to the reasoning of the equals who are subject to the decisions" (p. 220).

Mansbridge et al. (2012) divide the evolution of deliberative theories into three phases. Firstly, proponents designed the "ideal proceduralism", consisting of sets of theoretical principles and standards (Mansbridge, et al., 2012, p. 25). Secondly, democrats elaborated on some criticisms of the theory. The main one highlights the idealist aspect of deliberative democracy: it did not consider realistic contexts. Consequently, deliberative advocates have attempted to ground the theory on actual and possible situations (Bohman, 2000). Thirdly, deliberative processes started to be regarded as parts of a broader system. The systemic approach to deliberative democracy acknowledges the interdependence of individual deliberative practices since their success depends on the social, economic and political systems in which they operate (Mansbridge et al., 2012, p. 26). This perspective therefore aspires to improve the comprehension and function of the democratic system as a whole (Mansbridge et al., 2012).

3.4 Decolonising deliberative democracy

Recently, some democrats have recognised the need for decolonising deliberative democratic theories and practices because, despite the emancipatory aspirations about inclusion and equality, they acknowledge the theory's relation to colonial logic both in the past and in the present (Mendonça & Asenbaum, 2022; Morán & Curato, 2022; Banerjee, 2021; Bussu & Eseonu, 2022). This section analyses the arguments of such emerging discourse. Scholars critically draw on the evolution of other theories and academic debates such as critical theory, multiculturalism, feminism, and postcolonialism, and they especially build on decolonial thinking. The discussions generated from these theories are a starting point for stimulating a decolonising transformation of deliberative democracy because they address both external and

internal inequalities, by advocating for emancipation from all forms of oppression and fostering grassroots deliberative practices to serve as public counterparts in opposition to the state (Mendonça & Asenbaum, 2022).

Decolonisation has lately become a much-used term in different fields, and as such "it risks appropriation, co-optation, misunderstanding, misuse" (Bussu & Eseonu, 2022). Tuck and Yang (2012) noted how "the language of decolonisation has been superficially adopted into […] social sciences" (p. 2). When the concept is applied shallowly to whatever people want to sound innovative or more inclusive, such metaphorization "extends innocence to the settler", erasing the decolonial alternative (Tuck & Yang, 2012, p. 3). For this reason, the authors point up the importance of understanding what decolonisation means. It must entail "both material and epistemological change" (Bhambra, 2021, p. 75). For the latter to occur, it is necessary to acknowledge the colonial comprehension in which the 'modern' world is rooted and to *(re)constructively* respond to it by elevating the knowledge affirmations of others (Bhambra, 2021, p. 75). Further, decolonisation is also about substantive justice through the redistribution of resources to confront the inherited inequalities that are still characterising the present (Bhambra, 2021, p. 84). According to Tuck and Yang (2012), turning to decolonisation "must involve the repatriation of land simultaneous to the recognition of how land and relations to land have always been differently understood and enacted" (p. 7).

There are radical voices who claim it is not possible to lead deliberative democracy through a decolonial process because they believe that its intertwinement with colonial logic is too deep to disentangle (Fuji Johnson, 2022). However, deliberative scholars, such as Mendonça & Asenbaum (2022), argue that the theory has already been shown to be adaptive and open to critique. They believe in advancing the emancipatory potential of deliberative democracy by reflecting on the implications of decolonial thinking on deliberative theory and practices. Thus, they propose six steps to move towards decolonising deliberative democracy. The first three are deconstructive and therefore focus on criticising, questioning, and interrogating the theory, while the last three are reconstructive understood as endeavours to produce changes in deliberative thinking and its applications (Mendonça & Asenbaum, 2022). The following paragraphs look at the six moves to comprehend how decoloniality can be applied to deliberative democracy.

- *Acknowledging the violence of modernity*

Scholars start by questioning the premises of deliberative theories, which are historically related to colonial logic (Mendonça & Asenbaum, 2022; Morán & Curato, 2022). One might argue that ideally speaking racism, for instance, is fundamentally in contrast with the equality principle of deliberative democracy. However, as Morán & Curato (2022) claim, this kind of "abstraction is a way of obscuring power relations". Hence, they express, instead, the need to contextualise democratic ideas. Banerjee (2021) analyses how Enlightenment values such as freedom, development and progress informed the dichotomy between 'modern' societies and 'uncivilised' peoples and provided the theoretical reason for land robbing and the oppression of the 'underdeveloped' in the name of the expansion of the Eurocentric vision of modernity (p. 286). Thus, Enlightenment democratic thinking was deeply intertwined with colonialism and sustained the classification of peoples in hierarchies, in which power and sovereignty are on the side of European modernity (Mendonça & Asenbaum, 2022). Besides the material and physical subjugation, the structural domination of modernity has also been profoundly violent in epistemic, ontological and cosmological terms (Tuck & Yang, 2012, p. 5). In fact, the process of colonialism imposed a change of worldview: land is seen as property and human relationships to land are translated into ownership (Tuck & Yang, 2012, p. 5). Alternative perspectives, mostly Indigenous knowledge systems, are 'uncivilised' and therefore not worthy of existing. Again, the domination of European reasoning has been justified by deliberative democrats, Habermas[2] among others, as a need to replace the 'irrational' and 'primitive' knowledge with a 'rational' and 'advanced' understanding based on Western ontological standards (Morán & Curato, 2022).

Scholars illustrate how democratic theorists and schools of thought have never expressed themselves on Western colonialism (Mendonça & Asenbaum, 2022; Morán & Curato, 2022; Banerjee, 2021). They condemn the silence and acknowledge the entrenched history of European notions of democracy and colonial thinking. The recognition and awareness of such a foundational interconnection are crucial to developing a radical comprehension of

[2] Jürgen Habermas is considered one of the main pioneering philosophers who influenced deliberative democratic theories. Nevertheless, he is mentioned here as a representative of universalising and binary ways of thinking which should be left behind in favour of a decolonial approach, according to the authors mentioned in the present chapter.

contemporary political realities and the possible adoption of a decolonial approach (Banerjee, 2021, p. 286).

- *Recognising epistemic asymmetries*

Thus, as Morán & Curato (2022) state, it is not enough to identify the blindness of deliberative democratic foundations, by "foreground[ing], instead of denying imperialism as part of our intellectual history". Hence, to move towards a decolonial future, it is necessary to recognise the contemporary colonial legacies that keep existing in political theory and practice (Banerjee, 2021, p. 286). The previous section expresses a need to understand how democratic ideas have been "used to sustain coloniality", while the second deconstructive move requires a comprehension of "how coloniality in democracy produces inequality and injustices" (Banerjee, 2021, p. 289).

Historically, the oppression of peoples by colonial powers enabled the emergence of a deliberative culture in "English coffee houses and French salons" (Morán & Curato, 2022). Similarly, Morán & Curato (2022) argue that present public spheres in 'developed' countries are facilitated by the subjugation of others, for example through the work of underpaid individuals from/in the Global South. To participate in deliberative practices, non-Western persons face many challenges, having to suppress their language and their forms of knowledge because they are not suitable for Western canons, besides the need to overcome financial disparities (PDD, 2022; Mendonça & Asenbaum, 2022). The community of deliberative democrats itself reflects the inequalities that characterise the broader academic environment and the global society at large (Mendonça & Asenbaum, 2022). The epistemic injustices manifest themselves in asymmetries based on class, gender, race and geopolitical derivation, which impact individual recognition, legitimacy and respect (Mendonça & Asenbaum, 2022). Scholars from the Global South, for instance, are often not treated as equals in the academic fields. The Global South is considered a provider of 'exotic' cases to study, on which to apply theories developed elsewhere; it is not referred to as a valid source of knowledge production, and, for this reason, Western institutions do not take into account theoretical contributions from the Global South (Smith, 2012). This also leads to the next point.

- *Criticising the colonial drive of deliberative institutions*

Knowledge production has adopted a one-way approach by imposing Western theories on the Global South (Banerjee, 2021, p. 289). Regardless of the theoretical content, this approach is

"problematic and inherently colonial, constraining rather than fostering democratic creativity and critical energy" (Bussu & Eseonu, 2022). The belief that there exists one universal model privileges Western-based theory while disqualifying knowledge produced at the margins of such Eurocentric worldview, which means by the colonised (Banerjee, 2021, p. 287). The idea of deliberative polling constitutes an example of a practice designed in and by Western institutions that, according to Fishkin, can be universally applied to obtain a refined public opinion (Mendonça & Asenbaum, 2022). Bussu & Eseonu (2022) critique this approach to mini-publics because it "shows little sensitivity to, and understanding of, local cultures and democratic practices in different parts of the world". As Banerjee (2021) states, the universalisation of Eurocentric theory and practice is part of the epistemic violence produced by colonial systems, which oppress non-Western epistemologies and ontologies (p. 287).

- *Theorising inductively*

With the fourth point, Mendonça & Asenbaum (2022) introduce the first of three reconstructive moves. Taking into consideration the reflections above, the deliberative scholars point to the need to ground the theory on knowledges cultivated outside the Eurocentric academic environment (Mendonça & Asenbaum, 2022). Inspired by decolonial scholars, deliberative democracy needs to include the experiences of marginalised groups to take into account the diversity of worldviews and alternative epistemologies, going beyond the canons defined by Western modernity (Banerjee, 2021, p. 289). The Indigenous leader Krenak claims that the acknowledgement of epistemic and ontological diversity "must integrate the ordinary experiences and practices of Indigenous communities to challenge the idea of a homogeneous humanity, which is an abstraction that systematically denies the connections of many different entities, including land, plants, and animals" (as cited by Mendonça & Asenbaum, 2022). This move is necessary from a perspective of decolonising deliberative democracy by problematising the privileged worldview based on Eurocentric beliefs, which democratic theories come from. Deliberative democrats need to engage in an "ecology of knowledges" (Krenak, 2020, p. 29) or, as the Zapatistas' concept, a *pluriverse*, "a world where many worlds fit" (Escobar, 2011, p. 139). A pluriversal approach requires not only the recognition of relational ontologies – that design the world as an entwined network of relationships rather than a hierarchy based on a distinct division between humanity and nature – but also their inclusion in theorising practices (Escobar, 2011, p. 139). The inclusion of marginalised groups' knowledge should aim at erasing the oppressive hierarchies of colonial legacies (Eseonu, 2023).

- *Engaging in an open dialogue with Global South scholarship*

The fundamental value of deliberative democracy is dialogue. However, dialogue is often only treated as the object to be studied or to be introduced in political procedures to solve problems (Mendonça & Asenbaum, 2022). Instead, deliberative democrats also must embrace proper dialogue as the attitude within the academic field (Mendonça & Asenbaum, 2022). As Bussu & Eseonu (2022) write, "to decolonise knowledge-making, we need to invite those whose knowledge has been othered, ignored and rendered invisible to teach us how to meaningfully deconstruct it, so as to rebuild and reimagine more inclusive democratic innovations". Thus, they recognise the collective responsibility of democratic scholars to engage in a dialogue that involves and centres non-Western voices (Bussu & Eseonu, 2022). Hence, it is not enough to let marginalised knowledge into the academic dialogue, the pluralisation of theoretical understandings should be oriented towards redesigning the structural relationships that constitute academia (Mendonça & Asenbaum, 2022). The democratic scholarship should seek to generate relationships characterised by respect, responsibility and reciprocity (Eseonu, 2023).

- *Focusing on emancipation*

Although other central values of deliberative democracy are equality and reflexivity, they are frequently treated with abstraction, leaving the actual inequalities intact (Mendonça & Asenbaum, 2022). Democratic practices often do not challenge such tangible inequalities produced by the neoliberal political economy (Bussu & Eseonu, 2022). Decolonial scholars, instead, criticise the extractive models of global capitalism that keep creating and aggravating social, political and economic asymmetries (Banerjee, 2021, p. 288). Mendonça & Asenbaum (2022) claim that deliberative democrats must concretely oppose any form of oppression to establish dialogues founded on meaningful exchange. Therefore, deliberative democracy should be a theory that endeavours to impact concrete spaces and relations, focusing on how democratic theory and practice can actually address social, political and economic justice and finally entail equality and self-determination.

In conclusion, to carry on the described deconstructive and reconstructive moves towards a decolonisation process of deliberative democracy, scholars also acknowledge the importance of critically reflecting on their own positionality (Bussu & Eseonu, 2022). Considerations of both the individual and collective roles and backgrounds as scholars must always be present

because of their implications in ways of thinking, acting and researching. Bussu & Eseonu (2022) question whether "white scholars based in Western institutions [should] occupy this epistemic land, as their ancestors might have occupied geographical land". The answers might differ depending on several factors, but such an open question should represent a departure point for many to be aware of their own position. Reflecting on their positionality, Bussu & Eseonu (2022) then recognise the collective responsibility of scholars to make space for the involvement of different voices and languages in democratic theories. Scholars and thinkers are held accountable for the innovation (and decolonisation) of deliberative democracy through a meaningful epistemic and ontological dialogue because, as Curato states, of their privileged academic position "on stolen land" (PDD, 2022). The discussion presented by this master's thesis is based on the aforementioned reflections on how to decolonise deliberative democratic theory and practice. This research therefore attempts to integrate such considerations into the interpretation of the Education Act case and, especially, in the subsequent discussion of the theoretical gap that partly compromises the full implementation of Indigenous consultation procedures.

3.5 Consultation standards as deliberation

Standards of consultation processes are based on principles that can be likened to the concept of public deliberation at the heart of deliberative democracy (Broderstad & Hernes, 2014, p. 195). The concept of dialogue is the shared fundamental pillar from which deliberative theories and consultations develop. The criteria embedded in international law instruments such as UNDRIP and ILO 169, illustrated in the previous chapter, prompt the existence of deliberative spaces between the majority population and Indigenous peoples (Broderstad & Hernes, 2014, p. 195). In his analysis of consultations in Bolivia, Schilling-Vacaflor (2012) demonstrates this connection through the identification of overlapping and complementary features of deliberation and consultation mechanisms. For instance, both the democratic theory and international human rights instruments recognise that dialogue between the parties must be respectful, genuine, understandable and culturally adequate; all affected groups or their representatives must have "equal opportunities to present interests and preferences"; all the relevant information must be accessible by the parties; the objective is to reach a common agreement, that is binding (Schilling-Vacaflor, 2012, p. 9). Pirsoul (2019) employs a more theoretical approach by identifying deliberative aspects that are relevant to Indigenous consultations in the three main functions of deliberative democracy.

First, the *epistemic function* seeks to establish a truthful process. In a deliberative space, the parties must justify their arguments through logical and empirical evidence to sound reasonable and therefore valid (Pirsoul, 2019, p. 264). To this end, the involvement of expertise in deliberation is important. However, Mansbridge et al. (2012) argue for a non-hierarchical distribution of expertise to avoid its concentration in one delegation of experts that can be biased and self-referential (p. 14-15). Epistemically, "experts are particularly likely to ignore the experience of marginalised groups" (Mansbridge et al., 2012, p. 14). Thus, for the deliberation to be legitimate, it is essential to design a democratisation of knowledge by increasing the participation and recognition of informed non-experts who can contribute with more diverse epistemologies and worldviews (Pirsoul, 2019, p. 264; Mansbridge et al., 2012, p. 17).

Second, the *ethical function* requires that deliberative spaces be characterised by mutual respect. This means that members must recognise each other as equal partners in dialogue (Pirsoul, 2019, p. 265). On several occasions, this abstract ideal does not materialise, especially when considering deliberations in which marginalised groups are involved; for instance, Indigenous peoples frequently become a 'junior' party with less influence in decision-making (Pirsoul, 2019, p. 265). Moreover, marginalised communities often face systematic disadvantages since the validity and acknowledgement of others' reasons are influenced by cultural and social factors (Chambers, 2003, p. 322).

Third, the *democratic function* entails the egalitarian aspect of deliberative decision-making and, as such, it forms a sort of basis for the epistemic and ethical functions (Pirsoul, 2019, p. 265). According to Chambers (2003), "for the process of deliberation […] to work as it should, participants need to be on equal footing" (p. 322). The democratic function of deliberative democracy relates to the conditions of equality that provide individuals with equal opportunities to participate. Again, marginalised groups rarely start from equal footing with other parties, thus there is a need to improve their capacity to meet the conditions, including material ones, in order to reach a higher level of equality and guarantee a democratic process (Chambers, 2003, p. 322).

As previously examined, international law instruments on consultations between governments and Indigenous communities require the participants to embrace the diversity of knowledges and to be fully informed, mutually respectful and with an equal opportunity to present their arguments. Hence, the values embedded in the three functions of deliberative democracy are intrinsic principles of Indigenous consultation procedures (Pirsoul, 2019, p. 265). As Schilling-

Vacaflor (2012) states, the requirements for consultations can be understood as a version of the more abstract and general deliberative standards specifically tailored for deliberation with Indigenous peoples (p. 8). However, both authors acknowledge that some principles of deliberative democracy are not or not entirely reflected in the criteria for Indigenous consultations. Through their analysis, several shortfalls of consultation mechanisms emerge. Pirsoul (2019) and Schilling-Vacaflor (2012) argue that a deeper implementation of deliberative standards would help to mitigate some of the current deficits that are common in consultation processes.

3.6 Conclusion

Given the foundational aspects of deliberative democracy for Indigenous consultations, this master thesis employs the theory as a framework to analyse the empirical case provided by the consultation process between the Sámediggi and the Norwegian Ministry of Education regarding the new Education Act. In particular, the research investigates how the case complies with the three functions of deliberative democracy mentioned above. Furthermore, it advances a discussion on which directions democrats can adopt to overcome the deliberative deficits of consultation mechanisms and enhance the procedure, by implementing to a greater extent the epistemic, ethical and democratic qualities of deliberative theories. This research is inspired by the emerging discussion on decolonising deliberative democracy. Therefore, it intends to embrace a decolonising perspective, as illustrated in this chapter, in the application of deliberative values to the Norwegian-Sámi context and in the following discussion of the theory.

4 Methodologies and methods

4.1 Introduction

This chapter presents an overview of the methodologies and methods applied to conduct the research. First, it describes the Indigenous research methodologies and the ethical considerations that this approach entails. Subsequently, it provides an account of the data collection process, both for textual material and interviews. It includes a brief explanation of the kind of data. The next section sets out the phases implemented to undertake the thematic data analysis. Lastly, the chapter concludes with the acknowledgement of the research limitations and the measures employed to mitigate them.

4.2 Indigenous research methodologies

Research, understood in all its meanings and methods, has been intertwined with colonialism (Smith, 2012). The extractive nature of mainstream research practices has damaged indigenous and local communities, by 'othering' them, owning knowledge, producing and legitimising colonial systems (Smith, 2012). As in most indigenous peoples' territories, the violence of research can also be found in Sápmi (Virtanen, Olsen, & Keskitalo, 2021). The Sámi people have been the researched object of missionaries and scholars, mainly from European countries, since their early journeys to Sápmi. These 'Lappological research' traditions "have been largely tainted by racist and stereotype ideologies" and practices (Virtanen et al., 2021, p. 9). To contrast the historical entrenchment between research and colonialism, indigenous scholars have started developing research methodologies based on decolonisation and indigenisation (Smith, 2012; Chilisa, 2020; Lawrence & Raitio, 2016, p. 117). As discussed in the theory chapter, a decolonising perspective is critically deconstructive towards the suppressive Eurocentric academia and embraces instead the diversity of knowledges. Moreover, an indigenising approach aims at centring Indigenous needs and contexts, for instance by creating spaces within academia to affirm Indigenous values and practices (Virtanen et al., 2021, p. 13). Thus, Indigenous methodologies are raised with the objective of "reimagin[ing] the narrative" of Indigenous research (Kovach, 2018, p. 215). As a master's thesis in Indigenous studies, the present work is inspired by Indigenous research methodologies.

4.3 Ethics

Indigenous research methodologies call for strong ethical frameworks. According to Bagele Chilisa (2020), researching under Indigenous methodologies should follow four general principles: relationality, respect, reciprocity and rights and regulations.

A relational approach emphasises that "actions, words and motifs all have a part in the ethics that surround" the research (Olsen, 2016, p. 26). Methodologies are validated through the action of building relationships with the communities, individuals, their stories, and their epistemology (Kovach, 2018, p. 223). The scholar is "accountable to all relations" that the research process creates and, therefore, they need to be aware of and reflect on how these relations are developed (Chilisa, 2020, p. 24). Such a responsibility demands that the research outcomes should be evaluated in terms of the impact on the communities and individuals related to the project (Olsen, 2016, p. 28). Being responsible for the project's consequences also requires paying respect to "the voices and knowledge systems of the Other" by actively listening and acknowledging them (Chilisa, 2020, p. 25). When telling their stories, the scholar must ensure a respectful representation. According to Kovach (2018), representing the research respectfully includes respect for indigenous epistemological principles of knowledge's origin, deep contextualization within the indigenous experiences, and recognition of the realities faced by the communities, consisting of "colonialism, neocolonialism, and resistance" (p. 227).

Furthermore, Indigenous research methodologies imply the principle of reciprocal appropriation within the relationship between the researcher and the researched community. The research should be carried out in a way that both entities take advantage of the process and its results (Chilisa, 2020, p. 25). Research comprises appropriation; thus, when a scholar receives contributions from the community to develop academic work, they are required to give something back (Olsen, 2016, p. 41). Indigenous research methodologies implicate the contribution to Indigenous peoples to be positive (Olsen, 2016, p. 39). However, it has to encompass concrete actions and not merely passive support. As Kovach (2018) states: "change will not come solely with good intentions. There must be decolonizing action" (p. 231). As mentioned below, this research aims to promote a decolonial perspective within academia and the results will be shared with the Sámi representatives.

The scholar's responsibility in the relationship with the community necessitates adherence to ethical regulations and guidelines. Such protocols are important as they serve to underline the importance of relational accountability and to ensure the maintenance of a relationship based on mutual respect and shared ownership (Chilisa, 2020, p. 25; Kovach, 2018, p. 225). In a Sámi context, until now there are no general guidelines on ethics that are common across all Sápmi. However, there are some specific regulations, for instance regarding Sámi health research in Norway, and the Saami Council is planning a process to work towards shared ethical guidelines for Sámi research (Holmberg, 2021).

Intending to create responsible relationships, this research endeavours to centre Sámi interests by highlighting Sámediggi's opinions and experiences related to the analysed case study. Section 4.5 illustrates how this has been accomplished. However, I am aware of being a non-Indigenous scholar and, as part of the majority society, I acknowledge I "do not have an unqualified right to 'speak out' on behalf of indigenous peoples" since it would highly risk building "discursive hierarchies" (Lawrence & Raitio, 2016, p. 127). Instead, I aspire to respectfully represent the challenges faced by the Sámediggi within the Norwegian decision-making system, paying attention to indigenous values and power relations. The aim is to bring "a critical gaze from within to Western academia and Western institutions" (Lawrence & Raitio, 2016, p. 121). Finally, this project will possibly be public and shared with the participants and the Sámediggi in an effort to contribute with a tool to explore and further comprehend the consultation mechanism within the Norwegian context. I hope the results of this research will be useful to the Sámediggi to enhance its role in relation to the right of self-determination, claiming an improvement of the consultation procedure by the state.

4.4 Research fatigue

Following the ethical consideration outlined by indigenous research methodologies, I decided to minimise the direct involvement of Sámi stakeholders because of the research fatigue they face. Indigenous individuals and groups receive great demand for participating in research, for example through interviews by different actors such as media and academic scholars (West, 2020). Managing all the requests is a draining process which intensifies the workload they already carry. This situation contributes to what is generally referred to as research fatigue (West, 2020). For this reason, I initially opted to address the research questions by analysing existing documents. However, during the process of data collection, I came to realise that the available texts do not offer sufficient information for my work. Consequently, I included interviews as a means to gather data. When contacted, the interviewees seemed to express willingness to share information about the case since it is recent and, for this, not much researched. Still, I endeavoured to burden them as little as possible to respect their needs, as noted in section 4.5.2 on interviews.

4.5 Methods

4.5.1 Data gathering: texts

In this research, I ask what prevented reaching an agreement between the Sámediggi and the Norwegian ministry in the consultation process concerning the new Education Act. To answer this question, it is important to understand the argumentative positions in support of the Sámediggi's choice not to consent to the proposed Act. Thus, I looked for documents that allowed me to gain that kind of knowledge. I consulted two main textual categories: newspaper articles and institutional documents issued by the Sámediggi. Both categories were available online.

Many newspaper articles dedicated to the Education Act case are available online. Most of them report interviews with Mikkel Eskil Mikkelsen, a member of the governing council of the Sámediggi with the political party *Norske Samers Riksforbund* (NSR). His work regards mainly Sámi languages, education, research, youth, diversity and LGBTQI+ politics. Such interviews present interesting insights into the Sámediggi's position. I mainly used two articles from *Utdanningsnytt*, one from *Tronderdebatt* and one from the news section of the Sámediggi website.

Among the several documents that were public in the Sámediggi's archive and the Norwegian Stortinget's website, I selected six of them as the main sources for the thesis. I analysed the following texts: *Sámetingets årsmelding 2022* [Sámediggi's annual report 2022], *Posisjonsnotat til konsultasjonsmøte med Stortingskomiteen angående ny opplæringslov* [Position paper for a consultation meeting with the Storting committee regarding the new Education Act], *Samiske rettigheter i ny opplæringslov Arkivsaknr. 20/505* [Sámi rights in the new Education Act Archive case number 20/505], *Høringsinspill fra Sámetinget* [Hearing input from the Sámediggi], *Informasjon om opplæringsloven* [Information on the Education Act] and *Anmodning om konsultasjoner* [Request for consultations]. The choice was dictated by the fact that these documents contain clear and detailed reasoning that forms the basis for the Sámediggi's position regarding the new Education Act. The following table shows the main information regarding the documents. All of them are written by the Sámediggi and, therefore, are expected to represent the Sámediggi's perspective on the case.

Table 1 – Textual data

DOCUMENT TITLE	TYPE	SENDER	RECEIVER	DATE	NUMBER OF PAGES	LANGUAGE
SÁMETINGETS ÅRSMELDING 2022	Annual report	Sámediggi	Public	9/03/23	168	Norwegian
POSISJONSNOTAT	Position statement	Sámediggi	Storting	4/04/23	4	Norwegian
SAMISKE RETTIGHETER I NY OPPLÆRINGSLOV	Plenary sessions	Sámediggi	-	26/01/21-28/01/21 9/03/21-12/03/21 23/02/21-25/02/21	24	Norwegian
HØRINGSINSPILLING FRA SÁMEDIGGI	Hearing inputs	Sámediggi	Storting	25/05/23	3	Norwegian
INFORMASJON OM OPPLÆRINGSLOV	Position statement	Sámediggi	Storting	25/05/23	4	Norwegian
ANMODNING OM KONSULTASJONER	Request of consultations	Sámediggi	Storting	4/04/23	2	Norwegian

In addition to these texts, I looked for the consultations' minutes both in the Sámediggi's archive and on the Stortinget's website because they could provide crucial insights into how the meetings occurred. I used keywords such as *opplæringslov, møtereferat, konsultasjoner, kunnskapsdepartementet* and combinations of these and others. In the Sámediggi's archive, most of the meeting reports regarding the Education Act are marked as exempted from

publication according to the institution's regulation. Still, I sent a request for access to meeting minutes that seemed available to the public. However, they said they could not yet share it.

4.5.2 Data gathering: interviews

Despite the texts I gathered providing essential data, they did not fully answer the research questions. For this reason, I decided to conduct interviews to learn about the concrete experiences of the Sámediggi in how they and their arguments were treated during the consultation process with the Norwegian ministry.

The research participants are two employees at the Sámediggi who took part in the consultation process regarding the Education Act. Their names and contacts are linked to documents related to that process in the Sámediggi's archive as case managers. For this reason, I thought they could contribute to the research by telling me about their experiences during the consultations with the Norwegian ministry. I contacted them via email to ask for an interview and they replied with a positive answer setting an appointment for an in-person meeting in Tromsø since they already planned to attend a conference in town. However, they could not come to Tromsø due to extremely bad weather which caused the cancellation of most ways of transport during the week of the meeting. Thus, we then decided on an alternative way: they provided me with written answers to the questions, which was their preference. The answers were written in Norwegian.

I decided to conduct a semi-structured interview because I wanted to be sure to focus on certain pre-established matters in a relatively short period of time to avoid clashing with the tight schedule of the research participants. Therefore, I planned an interview guide with a list of questions which I also sent to the interviewees in advance so they could prepare themselves on the topics to discuss. The questions were formulated in an open format to allow the participants to choose how to address the content. In this way, I could also advance the discussion with follow-up questions. When the interview was moved into writing, the questions remained unchanged. However, it turned into a structured interview due to the inflexibility of the questions' order (Chilisa, 2020, p. 250). After the data description report was ready, I sent them the text to be sure they agreed with how I had integrated their comments into my research. Then, I adjusted a few expressions according to their feedback.

The aim of the interview was to gather information on the main issues that led to the lack of consent. The questions especially focused on the challenges they faced in their relationship with

the ministry. Therefore, the questions investigated about, for example, the information shared, the organisation of the consultation process, the main debated arguments, the impact of the disagreement on the role of the Sámediggi and on its relationship with the Norwegian authority. This kind of information is essential to be able to answer the research questions. Before the interview, they signed the informed consent form, as according to the Norwegian Agency for Shared Services in Education and Research (Sikt) regulation, and I guaranteed to treat the information with respect and confidentiality. To collect data from and about the participants, I had to apply for approval by Sikt.

4.5.3 Data analysis

I conducted a thematic analysis of the data collected, as outlined by Braun & Clarke (2006; 2012). It is a method for "identifying, analysing and reporting patterns (themes)" within qualitative data (Braun & Clarke, 2006, p. 79). I believe thematic analysis to be suitable for the present project due to its accessibility and flexibility since it is a systematic procedure that "can be applied across a range of theoretical frameworks and indeed research paradigms" (Clarke & Braun, 2017, p. 297). In thematic analysis, the research questions guide the analysis orienting the scholar to choose codes and themes that are relevant to the topic. The aim of this thesis is to identify the main challenges in a consultation process between the Sámediggi and the ministry, as they are described in the texts. Here, it was done by looking for repeated patterns across a data set and examining the commonalities (Braun & Clarke, 2006). This research applies a predominantly inductive approach to data analysis, meaning that the analysis is data-driven. Thus, codes and themes "derive from the content of the data themselves – so that what is mapped by the researcher during analysis closely matches the content of the data" (Braun & Clarke, 2012, p. 58).

Braun & Clarke (2006; 2012) develop six phases to approach thematic analysis systematically. The analysis conducted in this thesis followed the described process. The first phase consists of reading the texts multiple times to familiarise myself with the data (Braun & Clarke, 2006, p. 87). Whenever I noticed relevant content, notes were taken. In the second phase, I created codes every time I encountered material that could be appropriately related to the research questions. Codes can comprise a concise summary or initial interpretation of a portion of data (Braun & Clarke, 2012, p. 61). The next phase involved revisiting the coded data "to identify areas of similarity and overlap between codes" (Braun & Clarke, 2012, p. 63). Through this process, I actively generated themes based on groups of overlapping codes. The phase

terminated with the formulation of a thematic map. Phase number four presupposed "quality checking" by reviewing the themes first in connection with the coded data and then with the entire data set (Braun & Clarke, 2012, p. 65). During the fifth phase, I started building the proper analytical structure by determining extracts of data to present. I then reflected on the interpretation of and interconnection between those extracts representing the themes. According to Braun & Clarke (2012), the analysis should describe "*what* about an extract is interesting and *why*", thus "data must be *interpreted* and connected to your broader research questions" (p. 67). This phase also requires developing an adequate name for each theme. The last phase corresponds to the writing process of producing an account that coherently illustrates the analysis (Braun & Clarke, 2006, p. 93). The account is reported in chapter 5 of this thesis, in which the ultimate themes correspond to subtitles: education as an essential tool; current shortfalls in the school system; Sámediggi's main demands and proposals; the process; opinions, actions and reaction of the Sámediggi and the Norwegian authorities.

I worked with the texts' original language for the first three phases. I read and analysed the documents with the support of an online dictionary from Norwegian to English for some terms which were new to me. This is because it would be time-consuming to translate all the texts before analysing them. Furthermore, I preferred to completely familiarise myself with the authentic material (Zhu, Duncan, & Tucker, 2019, p. 416). Then, during the creation of the thematic map, I actively translated data extracts from Norwegian to English. The translation was later verified by another master's student in psychology, who is a Norwegian native speaker. Her language proficiency is high, but she does not have a strong background in Indigenous or education issues. This allowed me to minimise the influence of possible bias of the language assistant, while still improving the interpretation validity and reliability (Hennink, 2008, p. 28).

4.6 Limitations

The available time to work on this project was quite limited since it is a master's thesis. For instance, I did not have the opportunity to explore deeply several analytical methods, which could have resulted in a different interpretation of the data collected. Moreover, if I had more time, I would have spent more of it gathering other relevant information about the case. Without the strict timeline, I would have probably searched longer for documents and texts or, for instance, organised a proper discussion with the research participants. For this and other aspects, I feel the need for a more thorough application of indigenous research methodologies

in my practices. Hence, with more time to examine the topic and increase my research skills, I think a further analysis would have considerable potential.

The ways in which I conducted interviews also entail some limitations. The fact that I received a written document in response to my interview questions did not allow me to ask follow-up questions in the same way as in an in-person conversation. However, at one point it became the more suitable compromise, as mentioned in the data gathering section. Finally, the translation from a language I do not adequately master restrain the results of the data analysis by adding a filtered perspective due to the interpretation (Zhu, Duncan, & Tucker, 2019, p. 418).

Nevertheless, I have adopted some measures to minimise the limitations of my work. I believe the relationship with the participants has been as respectful as possible, for example by being flexible about time, methods, and language. Moreover, I have learned the Norwegian language enough to be able to read the documents without the need for a translator. Still, I relied on a native Norwegian speaker to verify my translation and interpretation.

4.7 Summary

The chapter presented a brief explanation of Indigenous research methodologies which informed how this thesis is conducted. Indigenous research methodologies require strong ethical frameworks based on relationality, respect, reciprocity, rights and regulations. The present research endeavours to create responsible relationships by respectfully centring Sámi interests and experiences and sharing the results with the participants and the Sámediggi. Furthermore, the chapter explained the processes of data collection and data analysis. The thesis mainly analyses newspaper articles and institutional texts representing the Sámediggi's perspective on the Education Act case. In addition, conducting a written structured interview, it integrates comments from two research participants who took part in the case in question. The gathered data have been processed through an inductive thematic analysis which allowed to generate codes and consequent themes based on the data's content. Finally, the chapter reflected on limiting elements such as language barriers and time restrictions. The next chapter consists of the account of the analysed data's content.

5 The Education Act case

5.1 Introduction

The present chapter explains the content of the analysed texts and the contribution provided by the research participants, with the support of other sources such as academic articles, when needed. It begins by highlighting the importance of education and the Education Act in protecting and promoting Sámi languages and culture. Then, it offers a short overview of the main shortcomings that currently characterised the Sámi education sector. Subsequently, the chapter describes the main requirements proposed by the Sámediggi in an attempt to overcome such issues by enhancing the Sámi children's right to education in and on Sámi. The following section briefly illustrates how the legislative process and consultations were carried out. Finally, the chapter presents the opinions and positions of both the Sámediggi and the Ministry.

5.2 Education as an essential tool

For a long time, the Norwegian authorities conducted a policy of assimilation towards minitories, which is now referred to as *fornorskning* or Norwegianisation (Minde, 2003). The policy aimed at conforming the populations living in the territories under Norwegian control to majority standards. The time frame of such policy is established by the conventional dates 1850-1980 (Minde, 2003, p. 122). In 1850, the Norwegian Storting established the first recognised item to unify the citizens' culture. During this period, schools and education were central tools for implementing the assimilation of Sámi and Kven [3] pupils. Especially through the establishment of institutional and boarding schools, Sámi languages were not allowed to be spoken and instead the Norwegian language was imposed (Minde, 2003). While at the beginning of the 1980s, the famous Alta controversy marked a political change that was later characterised by more tolerance and recognition of minorities.

The Norwegianisation process has caused the systematic loss of Sámi speakers, leading the Sámi languages to be endangered. Due to oppression and marginalization, Sámi people themselves even "take distances from their own language" [4](Utdanningsnytt, 2023). As a result of the policy, nowadays the knowledge about Sámi is quite limited. Moreover, the leader of the

[3] The Kvens are a recognised national minority in Norway, descending from Finnish immigrants (Minde, 2003).

[4] All translations from languages other than English are made by the thesis' author.

Sannhets- og forsoningskommisjonen[5] [Truth and Reconciliation Commission (TRC)] declared that the Norwegianisation process which limits the Sámi languages is still ongoing (Sámetinget, 2023c; Utdanningsnytt, 2023). This statement emphasises even more the present dimension of the need for the protection and promotion of Sámi languages in an effort to revitalise Sámi languages and culture. According to the Sámediggi, "the government and the Storting must use the new Education Act to rectify the wrong policies of the past, by ensuring Sámi pupils' language rights in the Education Act and also that more children have the opportunity to become Sámi-speaking" (Sámetinget, 2023e, p. 4).

Mikkel Eskil Mikkelsen, a member of the Sámediggi Council, claims that "it is time to use the schools as a tool for strengthen the Sámi languages, culture, identity and pride" (Utdanningsnytt, 2023). The Sámediggi underlines the importance of the school as an essential social institution which teaches about the past and prepares us for the future (Sámetinget, 2021, p. 1). If in the past the school was used to control and restrict the transfer of Indigenous knowledge and culture, now it is crucial to invest in a system which supports the development of a Sámi society according to its values and needs. In this context, the Education Act represents the most important frame (Sámetinget, 2021, p. 1). However, the national legislation regarding Sámi education has been characterised by immobility: the government has not improved the Sámi pupils' right to education in and on Sámi languages for 26 years (Sámetinget, 2023a). The last changes to the Education Act regarding Sámi languages date back to 1998. According to Mikkelsen, this is "very wrong" (Tronderdebatt, 2021) and "we cannot wait other 26 years" to strengthen the Sámi pupils' rights (Utdanningsnytt, 2023).

5.3 Current shortfalls in the school system

The Sámediggi often refers to several reports or studies, which investigate the field of education in Norway, to outline the main current issues related to Sámi teaching. For example, the evaluation of the school reform *Kunnskapsløftet* in 2006 demonstrates that Sámi pupils, the ones who are not in Sámi schools, do not become Sámi-speaking (Sámetinget, 2023c). In 2022, the Sámediggi dealt with the case *Kvalitet i fremtidens skole* [Quality in the school of the future] which identified several challenges related to statistics in the education sector. Among others,

[5] The TRC was appointed by the Storting in 2018 with the mandate of investigating the Norwegianisation policy and injustice against the Sámi, Kvens and Forest Finns and the effects on them up until today (Broderstad & Josefsen, 2023). They published the report on 1st June 2023.

some national statistics are not even produced due to the small numbers of Sámi pupils. This does not provide a good basis to introduce new measures (Sámetinget, 2023d, p. 44). Furthermore, the *Stortingsmelding* in 2023 states that "the lack of Sámi language competence is the biggest challenge to being able to provide good services to the Sámi population" (Stortinget, 2023). Another research from 2021 shows that there is a dropout of up to 60% from Sámi teaching (Tronderdebatt, 2021).

Overall, the Sámi pupils' rights to education in and on Sámi are not fulfilled, as announced in the legislative proposal NOU 2016:18 *Hjertespråket* (Utdanningsnytt, 2022). The appointed committee writes in the proposal that some of the causes are insufficient financial resources, lack of qualified teachers and strict and inflexible regulations (Utdanningsnytt, 2022). Moreover, the *Riksrevisjonen* – a national body that conducts research to evaluate the work of the government and state authorities – published a report in 2019 on the Sámi children's rights to education in and on Sámi. The document points to significant weaknesses also regarding the available information on the rights to education, the teaching content and access to teaching materials (Utdanningsnytt, 2022). For decades, access to teaching materials has been critical. According to Mikkelsen, the "fragmentation of responsibility between counties, municipalities, Sámediggi, directorate and ministry" makes the situation even more problematic (Utdanningsnytt, 2022).

The Riksrevisjonen's report underlines that some of the shortfalls in the education offer derive from deficiencies in the Education Act (Sámetinget, 2023c; Sámetinget, 2021, p. 2). The Education Act does not include the opportunity to develop teaching in and on Sámi through, for instance, strong educational models and easier access to education (Tronderdebatt, 2021). Because of this, the legislation does not ensure Sámi pupils become Sámi-speaking and, instead, limits their right to education (Utdanningsnytt, 2023). According to Mikkelsen, this situation is not aligned with what national agreements and international conventions require, and the proposal of a new Education Act did not change it (Tronderdebatt, 2021).

5.4 Sámediggi's main demands and proposals

The Sámediggi based its demands for the new Education Act on the willingness to improve the situation described above. The main goal is to protect the rights of Sámi pupils to education rooted in the Sámi language and cultural values (Sámetinget, 2023a). Enshrining the Sámi pupils' rights in the Education Act would facilitate the development of Sámi languages and ensure that Sámi children learn their own language (Tronderdebatt, 2021; Utdanningsnytt,

2023). The Sámediggi's position on which rights to include in the Education Act was unanimous. This paragraph mentions some of the demands presented by the Sámediggi to change the Education Act. The most important requirements are the following:

- "To legislate the right to Sámi teaching materials in Sámi schools;
- To make arrangements for more people outside Sámi language administrative areas to be given an unconditional right to be hosted in a Sámi-speaking environment;
- To make arrangements for more Sámi students to receive education in and on Sámi;
- […] Some cities must be obliged to provide a Sámi educational offer, which many cities already do."

(Sámetinget, 2023a, p. 1)

Thus, it is important that the Education Act ensures the implementation of measures for training and recruiting more teachers with Sámi language competence and for enrolling more pupils in learning Sámi (Utdanningsnytt, 2023). For example, by incorporating the parallelism requirement which entails that all the materials in different languages – Bokmål, Nynorsk, North Sámi, South Sámi and Lule Sámi – must be available at the same time (Sámetinget, 2021, p. 11). Moreover, the Sámediggi advance the adoption of strong models for bilingual education, such as the "immersion" or "*språkbad*" [linguistic bath] which would consist of using the Sámi languages also to teach other subjects different from Sámi language classes (Sámetinget, 2021, p. 3).

Another proposal concerns the authority of the Sámediggi regarding education. The Sámediggi emphasises that, according to the principle of self-determination of peoples outlined by international law and enshrined in the Norwegian constitution art. 108, they should be able to determine the content of Sámi study programmes (Sámetinget, 2023b). In Norway, two parallel and equal curriculum bodies exist: one is the national curriculum body, and the other one consists of the Sámi curricula applied to Sámi schools (Gjerpe, 2017). The Education Act establishes that the Sámediggi has the authority to determine curricula in the Sámi subject and special Sámi subjects in secondary education, as well as the Sámi content in the national curriculum body. However, it "strangely does not decide the Sámi content of Sámi curricula, which is decided by the Ministry in consultation with the Sámediggi" (Interview, March 2024).

In addition, the Sámediggi claims that education in and on Sámi must be guaranteed as an individual right regardless of the location and the number of students. This is especially important in a society with ongoing demographic changes. In Norway, studies show that people

move from the language administrative area to major cities where for Sámi pupils it is even more complicated to obtain Sámi teaching (Sámetinget, 2021, p. 7). The Sámi Language Administrative Area (SLAA) includes thirteen municipalities where Sámi is generally used as the main language in most activities or where the Sámi language needs to be revitalized (Broderstad, 2022b, p. 62). The research participants explain:

> "The Sámediggi expected that the new Education Act would strengthen Sámi educational rights so that more pupils than today will receive an education offer in Sámi. Today, students living in Sámi districts (Sámi Language Administrative Area) have the right to education in Sámi, and outside Sámi districts there must be a minimum of ten pupils who want education in Sámi to be given the right to education in Sámi. Among other things, the Sámediggi expected the new law to reduce the restrictions linked to geography and the number of pupils". (Interview, March 2024)

The Sámediggi has substantiated its claims by referring to international law. They mention numerous legal instruments that can be applied to safeguard the educational rights of minority children, such as the Universal Declaration of Human Rights (art. 26), the ILO Convention No. 169 (art. 27 and 28), the UN Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of the Child (Sámetinget, 2021, p. 2). Furthermore, in 2017, the Sámediggi submitted two reports to the UN Committee on the Rights of the Child which communicated their discontent with the existing Education Act and underlined their demands for enhancing the legislation (Sámetinget, 2021, p. 2). The UN Committee on the Rights of the Child followed with a recommendatory document stating that Norway shall "enforce the right of all Sámi children of school age to Sámi-language education and ensure that the new Education Act significantly strengthens their rights, regardless of their residency" (UN, 2018, p. 11 in Broderstad, 2022b, p. 68).

Thus, in conclusion, the Education Act should secure the opportunity for Sámi children to develop their language and culture at school through the enforcement of a more stable and regulated Sámi teaching system. However, this is not the current case (Sámetinget, 2023c).

5.5 The process

In September 2017, the Education Act Committee received the task to investigate and assess the need for regulation in the field of basic education. Two years later, the Committee presented its report containing a proposal for a new Education Act regarding primary and secondary schools (Sámetinget, 2021, p. 1). The proposed text was then the object of hearings between January and July 2020. A year later, the *Kunnskapsdepartement* [Ministry of Education]

submitted its proposal for a new Education Act, which was sent for hearings until December 2021 (Regjeringen, nd). In March 2023, the ministry presented the final proposal, *Prop. 57 L (2022-2023) – Lov om grunnskoleopplæringa og den videregåande opplæringa (opplæringslova)* [Act on primary and secondary education (Education Act)], to the Storting which undertook a last short phase of hearings (Stortinget, nd). On June 1st 2023 [on the same day the Truth and Reconciliation Commission presented its report to the Norwegian Parliament], the Storting started to discuss the proposed Act, which was sanctioned on June 9th. In November 2023, the Directorate of Education was tasked to work on the proposal for regulations related to the Education Act. The legislation is planned to be applied from Autumn 2024 (Regjeringen, nd). According to the Sámediggi annual report, the consultation process between the Ministry of Education and the Sámediggi started in 2021 and continued in 2022 with six meetings (Sámetinget, 2022; Sámetinget, 2023d). The process ended without the parties being able to find a common agreement.

The Sámediggi has expressed discontent with how the Norwegian authorities have conducted the process. First, they were not consulted before the decision regarding the composition and mandate of the Education Act Committee (Sámetinget, 2021, p. 1). The Ministry contacted the Sámediggi after the committee was appointed and the mandate was determined. According to the research participants, "it would have been natural that the composition of the legislative committee and the conditions they were to access, hence the mandate", should have been decided in consultation with the Sámediggi (Interview, March 2024). Second, the Storting did not consult with the Sámediggi. Although they asked for consultations with the Storting about the establishment of guidelines for consultations between the two bodies, these do not exist yet. Nevertheless, "the Storting is not exempted from the obligation to consult under international law" and, therefore, "the Storting committees must fulfil their obligation to consult with the Sámediggi in the best possible and flexible way" (Sámetinget, 2023a, p. 1). Third, Mikkelsen declares that the process missed a comprehensive discussion, for instance, regarding how the restrictions posed by the law affect education in and on Sámi (Tronderdebatt, 2021). Lastly, the research participants regard the consultation meetings as demanding: it was difficult to obtain a breakthrough and they experienced minimal progress (Interview, March 2024).

5.6 Opinions, actions, and reactions of the Sámediggi and the Norwegian authorities

The positions of the Sámediggi are based on the aim to provide pupils with an increased possibility to learn and use more Sámi at school (Sámetinget, 2023c). Moreover, its standpoint

is grounded in Norway's obligations under the Constitution and international law to facilitate the conditions in various areas that are important for Sámi language, culture and social life, including education in Sámi (Interview, March 2024). However, the Ministry has not listened to the Sámediggi nor the broad support of the Sámi society, hence "the government seems to choose to ignore everybody" (Sámetinget, 2023e, p. 3). Therefore, the Sámediggi finds it crucial to comprehend the reasons why the government decided not to implement a strengthening of the educational rights of Sámi pupils (Utdanningsnytt, 2023). The Ministry asserts that certain demands from the Sámediggi have not been the object of public hearings and, also, that they cannot include such requirements because of the teachers and educational institutions lacking competence, knowledge and teaching resources (Sámetinget, 2023d, p. 44). The research participants confirm that not one of the Sámediggi's demands was included in the hearing process by the Ministry (Interview, March 2024). It is also for this reason that the Sámediggi conducted its own hearings regarding Sámi rights in the new Education Act. Several educational agencies, such as schools, Sámi parents' groups, educational organisations and institutions, participated. Through the hearing process, the Sámediggi could provide written feedback from the education sector (Interview, March 2024). Still, the Ministry asserts, if the demands are not the object of public hearings, they cannot be introduced into the law. As pointed out by the research participants, it is therefore a problem that the Sámediggi cannot have an influence on which Sámi rights are to be considered in the Ministry's public hearings (Interview, March 2024).

During the consultations, the Ministry has brought forward the following main arguments:

> - "There are not enough teachers with Sámi language competence today who can cover the need to lower the numerical limitation for the right to education in Sámi outside the Sámi Language Administrative Area, to grant education in Sámi in two subjects if three pupils want it.
> - The Ministry clarifies that pedagogical soundness must be assessed in accordance with the accommodation availability when distance learning is offered.
> - Giving pupils who receive distance learning education the right to stay in a Sámi-speaking environment challenges the school's pedagogical and professional assessment, and it is not always justifiable to send pupils out for a prolonged stay to attend classes, especially the youngest.
> - There are not enough Sámi teaching resources for a right to Sámi teaching materials to be introduced."
>
> (Interview, March 2024)

According to the Sámediggi, the arguments presented by the government to defend its choice not to integrate the Sámediggi's proposals into the new Education Act rely on circumstances which depend on the government itself (Sámetinget, 2023d, p. 44). On the other side, the Ministry is afraid of establishing too strict boundaries on the local authorities. Furthermore, the Norwegian authorities argue that the proposed changes could weaken the social relationship between Sámi and the majority of students, besides being expensive (Tronderdebatt, 2021). In addition, the government does not agree with including the parallelism requirement (Utdanningsnytt, 2022) and believes that "we should look for improving the situation of Sámi teaching materials through other means than by law" (Prop. 57 L (2022-2023) in Stortinget, 2023). Overall, the scarcity of resources often comes up to justify the lack of positive action by the government (Utdanningsnytt, 2023). In Mikkelsen's opinion, by not actively protecting and promoting the Sámi pupils' rights to, among other things, teaching materials in their language, the government legitimises "today's unsustainable situation and a serious neglect" of such rights (Utdanningsnytt, 2022).

Despite the high expectations that the new Education Act would strengthen Sámi children's rights (Tronderdebatt, 2021), the Sámediggi expressed disappointment over the Norwegian state's minimal efforts to progress in that direction (Sámetinget, 2023b). Even though the authorities expressed understanding, the views and assessments from the unanimous plenary of the Sámediggi were not considered by the Ministry, which did not strengthen the Sámi educational rights (Interview, March 2024). Therefore, the process did not lead to the desired developments in the Act (Sámetinget, 2023a). The Sámediggi states that "it is critical that none of the most important demands" were taken into account (Sámetinget, 2023e, p. 1). Due to the disagreement with the Ministry regarding the most central Sámi rights to education, the Sámediggi did not give its approval to the legislative proposal (Sámetinget, 2023d, p. 44). For them, this is "sad and upsetting" (Sámetinget, 2023c).

5.7 Conclusion

The Education Act is one of the most important laws in Norway. The education sector should be central in the revitalisation and development of Sámi languages, which have been strongly weakened by the Norwegianisation policy. However, the Education Act still falls short in adequately guaranteeing education in and on Sámi (Interview, March 2024). Although nothing would suggest that consultations regarding education are more challenging than other themes, the process of elaborating the proposal for the new Education Act uncovered some difficulties

from its inception (Interview, March 2024). The Sámediggi aimed at strengthening the rights to Sámi education to ensure the opportunity for more children to become Sámi-speaking and to increase the recruitment of teachers with Sámi language competence. Despite the consultations with the Kunnskapsdepartement, the demands presented by the Sámediggi to improve the situation of Sámi educational rights were not considered in the legislative proposal. Thus, the Sámediggi did not give its approval to the law, leading the consultation process to end without agreement between the parties. The Sámediggi criticises the fact that the new version of the Education Act has yet to fulfil Norway's obligations to facilitate the development of Sámi languages and culture through education. This case marks a disappointing breach.

6 Discussion

6.1 Introduction

After describing what the analysed texts and the research participants communicate about the Education Act case, this chapter proposes a discussion of the case that ultimately aims to connect the research to the broader literature. It begins by illustrating the main content of the legislative proposal that introduced the obligation to consult as a chapter in the Sámi Act. Then, it will investigate how the identified challenges of the Education Act case relate to the obligation to consult in Norway, as outlined in that legislative proposal. The subsequent section shows how the case reflects the implementation gap underlined by the international literature on Indigenous consultations. After that, the chapter delves into a more theoretical discourse to find out whether the case in question complies with the standards set by the main functions of deliberative democracy. The last section advances a discussion about the role of deliberative democracy and scholars in improving the implementation of Indigenous consultation procedures.

6.2 Chapter 4 of the Sámi Act: the obligation to consult

As described in Chapter 2 of the present thesis, Norway has integrated the obligation to consult the Sámi people through different measures. Recently, it became part of the national legislation by being included as a chapter in the Sámi Act. In February 2021, the Norwegian Ministry of Local Government and Modernisation presented to the Storting the proposal for changes in the Sámi Act to include consultations. The new Chapter 4 of the Sámi Act was then approved in June 2021. This section highlights the central elements of the proposal Prop. 86 L (2020-2021) *Proposisjon til Stortinget (forslag til lovvedtak) Endringer i sameloven mv. (konsultasjoner)*.

The proposal is based on ILO Convention No. 169 Article 6 and the work of the Sámi Rights Committee. Thus, the text reaffirms that consultations must be carried out with the purpose of achieving agreement or consent. When a process embraces conflicting interests, the aim is to find a balanced solution and assess possible mitigating measures. The most important element remains to provide the Sámi people with an opportunity to have a real influence on the process and the outcome. For this to happen, the authorities have the responsibility to share full information on relevant matters as early as possible. Furthermore, consultations shall not end as long as the parties believe that it is feasible to reach an agreement. However, one of the parties can end the process if, despite consultations in good faith, it is not possible to settle an agreement. It should happen only after the point at issue has been sufficiently disclosed and the

parties' assessments have been clearly stated. The Ministry admits that there are challenges linked to the consultation mechanism that could be limited by establishing more guidelines which, among other things, could adapt the procedure to the state's case management practice. There is also a need to clarify which Sámi actors have the right to be consulted and who must consult them. With this proposal, the Ministry aimed to "facilitate more effective and better consultations between public authorities and the Sámi Parliament and other affected Sámi" (Prop. 86 L (2020-2021), p. 6).

The document firstly deals with the question of in which cases and at what stage consultations are required. As ILO Convention No. 169 Article 6 states "legislative or administrative measures […] which may affect them [indigenous peoples] directly", the Ministry proposes to include "legislations, regulations and other decisions or measures" (Prop. 86 L (2020-2021), p. 75). The obligation to consult is triggered by authorities' active actions of considering establishing or making changes to new laws or regulations that could have a direct impact on the Sámi people. It includes also dealing with international agreements or declarations that may affect Sámi interests. The decisive factor is the considered action's impact on the Indigenous people. Thus, it is sufficient that the measure, or sections of it, can produce such an effect to oblige the authorities to put in place consultation processes. However, if parts of or the whole society are affected, consultations with the Sámi people are not a requirement. Similarly, the requirement does not exist when the matter only impacts one or more Sámi individuals, without impacting broader Indigenous interests. If the responsible body is unsure about whether it is required to consult the Sámi or not, Sámediggi's assessments must be the starting point. In general, the Ministry does not want to set a high threshold because it would prevent the fulfilment of one of the purposes of consultations, which is "precisely to map the effects that interventions will have on the Indigenous peoples" (Prop. 86 L (2020-2021), p. 71). As the next section will show, the position of the government in the Sámi Act provisions seems to contradict the attitude taken by the Ministry of Education in the Education Act case. Furthermore, consultations must take place before a decision is taken, sufficiently early to ensure that the process is meaningful and effective. Hence, authorities must inform as early as possible the affected Sámi group(s) about the relevant matter and which interests or conditions could be impacted. An early involvement implies greater possibilities to influence the case. At the same time, the Sámi people can request consultations at all stages of the process.

Secondly, the proposal assesses the matter of who is obliged to consult. According to the ministry, the word "governments" in Article 6 of ILO 169 includes ministries, directorates,

inspectorates, boards councils, as well as municipalities and municipal county councils and bodies subordinate to the state. The obligation applies when such bodies are responsible for proposing, designing or implementing regulations, making decisions or undertaking activities that may have a direct impact on the Sámi people. Since the obligation applies at all stages of a decision-making process, the Storting is also obliged to consult the affected groups (Prop. 86 L (2020-2021), p. 83-84). The next section will argue that this is not consistent with how the government performed in the Education Act case. Moreover, certain legal entities and state enterprises have the obligation to engage in consultations when acting on behalf of public authorities. Nevertheless, the Norwegian authorities remain responsible for ensuring that the mentioned bodies act in accordance with the provisions. Overall, the essential factor in deciding whether the case requires consultations is again "the type of disposition in question" and thus the impact that can have on Sámi interests, not the kind of entity (Prop. 86 L (2020-2021), p. 90).

The third central element outlined in the proposal is who has the right to be consulted. The ILO Convention No. 169 determines that the people concerned must be consulted through their representative institutions. Thus, the important characteristic of representatives is that "they should be the result of a process carried out by the Indigenous peoples themselves" (Prop. 86 L (2020-2021), p. 94). According to the Norwegian Ministry, the following actors have the right to consultations in Norway:

A) "The Sámediggi
B) Sámi rights holders, including the relevant reindeer herding *siida* and reindeer herding districts
C) Representatives of Sámi interests related to the use and exploitation of land and resources
D) Representatives of Sámi general cultural interests
E) Representatives of Sámi local communities"
(Prop. 86 L (2020-2021), p. 93)

The Sámediggi must be consulted regarding matters that may directly affect the Sámi in Norway as a whole or a large part of the Sámi population. In addition, the Sámediggi can represent Sámi interests also when the measure has an impact on fewer Sámi but still embraces important principles of the Sámi culture. Whereas in local cases with a minor impact on Sámi cultural interests in general, other groups than the Sámediggi are considered to be better representatives. However, the Sámediggi can provide guidance to local actors and/or be assigned as a representative by them. Furthermore, when more than one Sámi group are affected, the authorities have the obligation to consult with all of them, ensuring that all views

are expressed. Which specific Indigenous institutions shall be consulted is, once again, closely related to the discussed measure.

6.3 The Education Act case in light of the obligation to consult in Norway

The consultation meetings regarding the Education Act started on the same days the new Chapter 4 of the Sámi Act was being approved. The available information on the Education Act process does not report evident and severe violations of the procedure itself outlined in the new consultation provisions. After the Education Act Committee presented the proposal, the Kunnskapsdepartement initiated consultations with the Sámediggi, before the public hearing process began (Interview, March 2024). The Sámediggi was the consulted body since it is the representative institution and, among other responsibilities, has the authority to deal with educational matters on behalf of the Sámi people (Interview, March 2024). In addition, legislating on education can significantly affect the development of Sámi cultural principles. As described in the previous chapter, schools were a central tool for implementing the Norwegianisation policy. Now, the Sámediggi ask the authorities to invert the circumstances and use schools to promote Sámi culture. Hence, due to the broad and fundamental implications of the Education Act, the Sámediggi is the institution to represent Sámi interests in dialogue with the Ministry. For the same reasons, the Ministry dealing with the legislative proposal was obliged to establish a consultation mechanism. The meetings continued for more than two years after the first contact and ended without agreement between the parties. Overall, the process seems to conform to the new provisions on consultations. However, the previous chapter of this thesis already reported some deficits pointed out by the Sámediggi. The following paragraphs briefly assess the Sámediggi's claims in relation to the adopted consultation provisions.

According to the Sámediggi, it is problematic that the authorities did not consult them regarding the composition and mandate of the Education Act Committee before making the decision. On the other hand, in the proposal on consultations, the Ministry includes that it is normally not required to consult when appointing a legislative committee nor on its investigation (Prop. 86 L (2020-2021), p. 75). However, the text continues:

> "Only when a legislative proposal from the committee, for example an NOU, will follow, the obligation to consult applies. When it comes to investigating central topics for Sámi culture, and important guidelines are laid in the committee's mandate, an obligation to consult on the mandate may nevertheless arise. For example, the ministry consulted the Sámediggi about the mandate for a Sámi language committee" (Prop. 86 L (2020-2021), p. 75).

The Sámediggi argues that the law's relevance for Sámi pupils and the authority of the Sámediggi in education, build a good foundation for consulting them on the matter (Interview, March 2024). As pointed out before, education is a central topic for Sámi culture. Furthermore, chapter 4 of the Sámi Act, based on international law and the Consultation Agreement, clearly defines that the authorities must consult the affected Sámi group as early as possible in the process. Finally, the Prop. 86 L (2020-2021) states that when it is not clear if there is an obligation to consult on a certain matter, it is natural to rely on the Sámediggi's assessment of whether the decision will directly affect Sámi interests (p. 72). Therefore, based on the government's own law proposal on consultations, the Kunnskapsdepartement should have consulted the Sámediggi before determining the mandate of the Education Act Committee, since the Sámediggi expressed the need to influence a process that concerns their interests.

Another issue underlined by the Sámediggi is the missed consultation with the Storting. The Sámediggi requested consultations with the Storting as it was to consider a law that had not previously obtained consent from the Sámediggi. Article 6 of ILO 169 delineates that the obligation to consult shall apply at all stages of a decision-making process. Thus, the Ministry's proposal document on consultations concludes that the Storting is also obliged to consult the Sámi people when dealing with legal matters that may impact them (Prop. 86 L (2020-2021), p. 83). It specifies that it is the case "if the Storting considers making substantial changes to a legislative proposal" which affects the Sámi (Prop. 86 L (2020-2021), p. 85). It is not easy for the author to find out whether the Storting made *substantial changes* to the legislative proposal. Nevertheless, the Norwegian Parliament was still going to discuss and approve changes to the Education Act, impacting Sámi languages and culture. And, again, the Prop. 86 L (2020-2021) defines that, when circumstances are not clear, the Sámediggi's assessment shall be the basis for the authorities' decision on whether to consult or not. In this case, the Sámediggi formally asked the Storting to be consulted before deciding on the new Education Act (Sámetinget, 2023a).

In conclusion, the integration of new provisions on consultations into the Sámi Act was a necessary step towards a better implementation of the obligation to consult the Sámi people in Norway. However, the Education Act case demonstrates that the interpretation of the law is still not grounded in a shared understanding. Furthermore, the case confirms the need for more detailed guidelines on how to adapt the consultation mechanism in the work of Norwegian authorities, to ensure a real opportunity for the Sámi representatives to influence the process

and outcome regarding matters that may affect Sámi interests. The next section reflects on how this case relates to the findings of previous research on Indigenous consultations.

6.4 The implementation gap

The global literature on Indigenous consultation mechanisms points to a so-called implementation gap. This concept is used to define the existing challenges in applying and fulfilling Indigenous rights through national frameworks and, especially, government practices (Wright & Tomaselli, 2019, p. 279). The implementation of the right to consultations is often inadequate and reduced to a "mere bureaucratic box-ticking exercise" (Pirsoul, 2019, p. 267). It means that the authorities understand the mechanism as a formal pre-requisite before making decisions (Santamaría Ortiz, 2016, p. 242). This understanding leads to the final agreement or consent generally losing its importance as the ultimate goal of the dialogic process. The fact that consultative bodies' recommendations and arguments are not binding for the decision-makers makes the effort of active listening and shared reasoning even less worthy (Pirsoul, 2019, p. 267). Overall, most authors illustrate in their analysis that consultation processes reproduce power imbalances that leave the state authorities in a privileged position compared to Indigenous representatives. The asymmetries materialise in co-optation, persuasion and, in general, lack of equal distribution of resources, inclusion and trust between the parties. In this way, consultations replicate the colonial practices in which "the state dictates the role that Indigenous peoples must play, including in processes that – ironically – are established with the aim of defending their rights" (Wright & Tomaselli, 2019, p. 289). And the lack of practical domestic guidelines facilitates the authorities to escape from their responsibilities. In summary, the practices of consultations generally do not live up to the expectations outlined by Indigenous peoples' rights.

As described in the second chapter of this thesis, implementation challenges are manifested also in Norwegian participatory mechanisms. The studies cited in that chapter report on issues such as the late inclusion of Sámi representatives after the decision being made, meetings to provide information and not for a genuine exchange of reasons, lack of documentation and absence of Indigenous knowledge in the process. All these aspects contribute to consultations being considered not in *good faith*. According to Fjellheim (2023b), the implementation gap in Norway "still has assimilating effects for Saami reindeer herding communities today", among others (p. 143). The Education Act case lends support to the findings of previous research on consultations, both in Norway and elsewhere. In light of the preceding discussion in relation to

the new consultation provisions, the case does not show very critical shortfalls in terms of procedural requirements, although it is possible to question the exhaustive fulfilment of the authorities' obligation to consult. Thus, the process regarding the Education Act does not present the most common challenges, meaning the ones that can be considered of a mere procedural and bureaucratic nature. In fact, the available texts and the research participants do not criticise, for instance, the authorities for sharing insufficient information or not giving enough time. However, the analysed case is still representative of the power asymmetries that often characterise the dialogue between Indigenous peoples and states. As Wright & Tomaselli (2019) argue, behind the failures of many procedures there appear to be political factors, "rather than technical difficulties" (p. 286). As frequently happens, "asymmetries of power and vested interest are reflected" in "state authorities and companies set[ting] the agenda and terms of the process, rather than Indigenous peoples themselves" (Wright & Tomaselli, 2019, p. 286). The manifestation of these imbalances led to the consultations concerning the Education Act ending with a disagreement.

Consultations create spaces of deliberation, as explained in chapter three of the present work. Thus, some authors have recently investigated the implementation gap in consultation procedures through the lenses of deliberative democracy. According to Pirsoul (2019), the existing issues are caused by a "deliberative deficit" in the mechanism's institutionalisation (p. 256). Chapter three illustrated the epistemic, ethical and democratic functions of deliberative democracy, the three main dimensions of the theory employed by the author to analyse Indigenous consultations (see section 3.4). For similarities of research topics, his analytical framework appears appropriate to discuss the power imbalance between the Sámediggi and the Norwegian authorities in the Education Act case. However, the available textual data and the research participants do not mention the Sámediggi's capacity, in terms of, for instance, material resources, to effectively participate in decision-making. For this reason, the chapter does not examine the deliberative democratic dimension of the process, which comprises the equality of conditions that allows the party to start the dialogue on an equal footing. The democratic function of deliberative democracy is linked to the egalitarian aspirations of the theory. It requires the democratic deliberative system to deeply "promote and facilitate inclusion" by creating "equal opportunities to participate" (Mansbridge et al., 2012, p. 12). The shortage of data regarding the material capacity of the Sámediggi to participate in the process does not allow for an investigation of the equality of conditions in the Education Act case.

Therefore, the following sections display what the application of the two other deliberative functions, epistemic and ethical, on the case can reveal.

6.5 Lack of deliberative epistemic function

The epistemic function performed by deliberative democracy consists in seeking a truthful process (Pirsoul, 2019, p. 264). In deliberation, the truth – a fact or principle that is generally considered in accordance with reality by most people in a society – manifests itself through reasoned arguments. Argumentation is at the core of deliberative democracy as participants need to justify their positions to reach a common agreement. Therefore, a deliberative system relies on the knowledge of experts to be able to provide sound reasons (Mansbridge et al., 2012). However, most "experts can be biased" and "self-referential", and they often ignore the knowledge of marginalised groups (Mansbridge et al., 2012, p. 14). For this reason, truthful deliberation requires an increased inclusion of knowledges from a diverse range of informed participants to minimise the influence of one expert elite. It is what Pirsoul (2019) identifies as a democratisation of knowledge (p. 264).

In the Education Act case, the Sámediggi criticised that the appointment of the legislative committee happened without their opinion being asked. Therefore, Sámi insights were not directly considered before these decisions were made; although the government asserts that it is important to consult on the commission's mandate when it investigates central topics for Sámi culture (Prop. 86 L (2020-2021), p. 75). In addition, as mentioned, the Sámediggi's arguments were not included in the public hearing process. According to the Kunnskapsdepartement, this is one of the reasons why the Sámi demands could not be integrated into the legislative proposal for the new Education Act which was submitted to the Storting (Interview, March 2024). Nonetheless, the role of the Sámediggi comprises the authority over Sámi educational matters. Furthermore, the Sámediggi's arguments were enriched and supported by the opinions of several Sámi bodies and institutions working in the field of education, collected through separate hearings (Interview, March 2024). Despite the Sámediggi's expertise and competence in Sámi education, they could not impact decisions of high importance for the Sámi students. As a result, the process, which concerned Sámi educational rights, was carried out by Norwegian institutional experts who, however, do not have sufficient knowledge about and insight into Sámi perspectives. In this case, power asymmetries are evident in the disregard for Indigenous understanding "by prioritising and normalizing Western (settler) ontologies and epistemologies" (Parsons et al., 2021, p. 287). The

Sámediggi experiences what Catala (2015) describes as hermeneutical domination. It is a type of epistemic injustice: when injustice is related to one's role as a knower. Hermeneutical domination is the effect of the intersection between testimonial and hermeneutical injustice (Catala, 2015). Testimonial injustice is the dismissal of the minority's speech, which is considered untrustworthy due to the receiver's prejudice. Testimonial injustice can be a structural problem of a society in which the majority's biases are always in the background, generating unequal power relations (Catala, 2015). Hermeneutical injustice is the deprival of the minority's opportunity to contribute to the collective understandings due to the credibility deficit, leading to the misjudgment of the minority's experience. As a consequence of their convergence, the marginalised group is subjected to an interpretation of the matter in question "that is shaped by putatively collective understandings that are in fact wholly formulated and imposed by the majority" (Catala, 2015, p. 428). These circumstances of epistemic disparities undermine the dialogue by preventing the Sámediggi, in the role of the Indigenous minority party, from having a concrete opportunity to have an impact on the discussion, which the majority arbitrarily controls.

To counter hermeneutical domination, it is necessary to alter the first ring of the chain, that is testimonial injustice. In the opinion of Catala (2015), this is achieved by building on epistemic trust (p. 432). It implies that the majority recognises the minority's expertise in attesting their firsthand experiences, even if the majority have a different perspective on the matter. Catala (2015) argues that strictly applying the deliberative democracy's requirements of equality, legitimacy and accountability enables epistemic trust and, therefore, a deliberation free from epistemic disparities. However, this is an idealistic perception of deliberative democratic commitments. Unfortunately, merely implementing deliberative democratic procedures does not solve the power imbalance that distinguishes divided societies. As a matter of fact, even if the deliberative mechanism of Indigenous consultations is now in place, there remains the aforementioned implementation gap from theory to practice. In practice, epistemic trust is still absent as the authorities keep ignoring and/or obstructing the knowledge of consulted Indigenous groups (Fjellheim, 2023a; Parsons et al., 2021). To explain this phenomenon, Townsend & Lupin Townsend (2020) elaborate on three categories that describe the silencing approaches in the context of Indigenous consultations. Among others, the authors analyse a case where the claims of the affected Indigenous community were not given the same epistemic attention as other participants' speeches, considered experts (Townsend & Lupin Townsend, 2020, p. 791). The Indigenous group had the opportunity to speak, but the authorities did not

recognise their expertise and system of knowledge. They define the situation as illocutionary group silencing: when the "widely-held prejudicial views about the epistemic credentials and authority of Indigenous communities may systematically impede the illocutionary capacities of these communities" (Townsend & Lupin Townsend, 2020, p. 792). It resonates with Catala's (2015) concept of hermeneutical domination; however, Townsend & Lupin Townsend (2020) reveal that epistemic trust can be denied even when minorities are formally included in a deliberative democratic procedure (p. 795).

In the Education Act case, the Sámediggi participated in many consultation meetings with the Norwegian Ministry of Education. Nonetheless, their Sámi expertise was not considered when the legislative committee was appointed nor when it was determined which rights to include in public hearings. Then, the Ministry decided to exclude the Sámi demands concerning the improvement of Sámi educational rights from the Education Act. The case demonstrates a lack of epistemic trust since the majority dominates the dialogue while silencing the minority's attempt to voice their knowledge. An equal distribution of expertise, that enables the dialogic exchange based on solid reasons, occurs only with full inclusion of the others' knowledges. Therefore, the relationship between the Norwegian government and the Sámediggi does not sufficiently embrace the democratisation of knowledge identified by Pirsoul (2019) as the central element of the deliberative epistemic function.

6.6 Lack of deliberative ethical function

The ethical function of deliberative democracy resides in the mutual respect between the parties. Deliberative democracy demands participants see each other as equal partners, rooting the practices in "radical equality between citizens understood as rational agents of argumentation" (Pirsoul, 2019, p. 265). In deliberation, participants are not only informative parties or objects of legislation, but they must be respected in terms of their deliberative capacities. Citizens participate in the process as a "source of reasons, claims and perspectives" and one must be open to affiliate oneself with another's discourse (Mansbridge et al., 2012, p. 11). This ethical requirement is sometimes associated with the deliberative ideal of reciprocity, which materialises in conditions of mutual respect and recognition (Pirsoul, 2019, p. 265). According to Pedrini et al. (2013), an exchange based on reciprocity entails two key features: interactivity and respect (p. 488). The first requires a deep engagement among participants. They do not provide their speech, but they must listen to and interact with the other participants' arguments. The second feature, respect, implies the recognition of others' deliberative capacity

as well as the principles of non-domination and transformative power, the latter meaning that participants are receptive and willing to consider alternative positions as valid and viable (Pedrini, Bächtiger, & Steenbergen, 2013, p. 488).

However, the ethical function of deliberative democracy is deeply challenged in contemporary divided societies. It is undermined by the high polarisation of the population and the assumptions that the other party is not legitimate to be taken into consideration (Wahl, 2021). In complex societies, the groups who are already "marginalised due to historic and current conditions of oppression are likely to also be excluded from or disadvantaged within deliberation" (Wahl, 2021, p. 165). Even when oppressed people participate in deliberation, the dominant party maintains the privileged status by not recognising the other as equally legitimate. Such a lack of mutual respect for the other's role leads to the majority's unwillingness to sincerely engage in deliberation. This generates unfavourable circumstances in which the deliberative decision-making mechanisms can fail to live up to deliberative principles (Fung, 2005, p. 401). Fung (2005) claims that it is a critical violation of deliberative principles when a party declares itself to commit to dialogue and then, in the process, does not respect others by not being open to considering their positions (p. 403). According to Wahl (2021), for the participants to respect each other as equal democratic co-creators, it is needed recognition of the legitimacy of their moral sources. The author argues that the risks of one dominating the deliberation can be reduced by profoundly increasing the mutual understanding of the other's authority (Wahl, 2021, p. 167).

Thus, the deliberative commitment to radical equality calls for a certain reciprocal responsibility, that contributes to the reciprocity at the core of the ethical function. Nevertheless, in the context of inclusive processes involving minorities and disadvantaged people, Pedrini et al. (2013) contend it cannot be considered fair to expect the same level of responsiveness between the parties, especially if there are marked historic and current inequalities. They propose, therefore, "friendly amendments" to the deliberative principle of reciprocity to rectify the power imbalances (Pedrini et al, 2013). These adjustments comprise the majority and privileged groups to take on a larger portion of the *burden of reciprocity*. It is mainly an obligation of the majority to respectfully listen and accommodate the reasoned arguments of the oppressed people (Pedrini et al, 2013). Minorities are still accountable for genuinely engaging in a reciprocal dialogic exchange, but it is natural that their approach can develop into a more adversarial stance towards the majority. To conform to democratic requirements, the relaxation allowed to marginalised or disadvantaged groups is obviously

conditional and partial (Pedrini et al, 2013). Their approach and demands are relative to what kind of interests are in question and need always to be respectful and just.

In practice, the state's attitude towards Indigenous communities is essential in the concept of partnership the ethical function embodies (Pirsoul, 2019, p. 265). The authorities must treat the Indigenous representatives as equally legitimate partners in deliberation, by actively listening to their arguments and respectfully engaging with them. However, the state often does not face its burden of reciprocity and relegates the Indigenous group to the role of a junior party (Pirsoul and Armoudian, 2019; Parsons et al., 2021). In doing so, the power imbalances remain unchanged. Since the Norwegian authorities did not consult the Sámediggi about the legislative committee, one could claim that they did not embrace the burden of reciprocity and neglected the other party's opinion. According to Mansbridge et al. (2012), "to fail to grant to another the moral status of authorship is, in effect, to remove oneself from the possibility of deliberative influence" (p. 11). Moreover, the government did not demonstrate to be open to considering the Sámi demands. Indeed, from the beginning of the process, the Sámediggi experienced difficulties in bringing their claims forward (Interview, March 2024), proving the other party's unwillingness to move from its predetermined position. In deliberative democratic theories, the intrinsic principle of reciprocity entails mutual respect which includes "being moved by the words of another" (Mansbridge et al., 2012, p. 11). Therefore, the Education Act case lacked the elements of the ethical function of deliberative democracy, confirming the Sámediggi as a junior party with less authority in deliberative decision-making processes on matters that affect them.

6.7 The theoretical gap

The inclusion of the obligation to consult in the Sámi Act uplifted even more the importance of the procedure, by securing the Indigenous right to impact decision-making on matters that regard them within national legislation. However, the challenges in fulfilling this right give rise to noticeable general discontent among the Sámi people about how the procedure is carried out by the Norwegian authorities (see section 2.4 of this thesis). The mere procedural challenges can be assessed against the law and what the results suggest is the development of further regulations to better integrate the procedure within the work of those in positions of power. Besides that, the Education Act case revealed other challenges that undermine the relationship between the Sámi people and the Norwegian authorities. As discussed, these difficulties derive from the lack of epistemic and ethical deliberative function. In the analysed case, the expertise

of the Sámediggi regarding Sámi educational rights was hardly taken into account, and they were treated as a junior party with less authority in decision-making. These shortfalls exacerbated the disappointment of the Sámediggi causing their withdrawal of consent to the legislative proposal. In the end, the Sámediggi had almost no influence on the process or the outcome. The case represents an example of what Bächtiger & Parkinson (2019) define as wallpaper democracy: the citizens are included in sophisticated processes to discuss the colour of the wallpaper, while they actually have little say regarding the structure of the house (p. 83). To draw parallelism, one can also depict a similar kind of wallpaper democracy in the government's conduct. The Norwegian authorities mainly focus on the procedure – the colour of the wallpaper – rather than paying the same attention also to the processes' content.

The Education Act case shows that such emphasis on the procedure "postpones or mitigates, but does not eliminate, substantive disagreements" (Rodrígez-Garavito, 2010, p. 273 in Schilling-Vacaflor, 2011, p. 19). Participatory mechanisms do not dismantle the pre-existing colonial norms. The privileged majority is not pressed to take into account the knowledge diversity and fails to create inclusive spaces (Parsons et al., 2021, p. 307). According to Schilling-Vacaflor (2011), substantive disagreements are expected to be more prominent in future political debates (p. 19). The current discussion on Indigenous consultations would suggest that it has already become a necessary development. Debates need to evolve around the factual empowerment of Indigenous peoples "rather than the – ever evasive – fulfilment of legal standards" (Wright & Tomaselli, 2019, p. 289). It includes claiming a real involvement of Indigenous groups in political decision-making by not only establishing participatory procedures but also recognising their representatives as equal partners and acknowledging the importance of considering others' understanding. Due to the theory's influence on political developments, these claims must be equally addressed to theorists.

Reflecting on the implementation challenges naturally leads to questioning the theoretical framework from which consultation procedures originate. In fact, notwithstanding the efforts of being inclusive, deliberative democracy still enables the assimilation of marginalised groups within the dominant societies, persisting in building hegemonic systems (Banerjee, 2019, p. 296). It is, therefore, untruthful to theorise about inclusive and participatory mechanisms while not opposing the severe socio-political inequalities perpetuated by deliberative democratic theories themselves. As illustrated in chapter three of the present thesis, some deliberative scholars have recently started criticising the theory's relation to colonial logic (see section 3.3). In light of the recent research findings on deficits in Indigenous consultations, it is even more

essential that deliberative democrats acknowledge their privileged positions and become aware of the colonial relationships on which the theory is grounded and work on how the theory can reduce inequalities. As scholars pointed out, deliberative democracy must be deconstructed and reconstructed following a path of decolonisation of the theory to evade the oppression of minorities (see section 3.3). However, even though some democrats advance renewed perspectives centring on epistemic diversity and decolonial approaches, there still exists a gap between theory and practice (Parsons et al., 2021, p. 310).

For deliberative democracy to effectively disentangle the existing inequalities within deliberative processes, theorists must turn their focus to elaborate on the practice. As discussed, the contemporary divided societies host majorities that do not spontaneously take into consideration the difference of knowledges and do not take on their burden of reciprocity to counter power disparities. Thus, the theory must comprise practices to implement within deliberative fora with the aim of guiding the participants to act according to inclusive and emancipatory principles and, most importantly, with the purpose of ensuring marginalised groups a central role. Currently, the theory offers little guidance about how institutions and actors should behave in different circumstances (Fung, 2005, p. 398). It needs, therefore, to adopt an additional empirical perspective and embrace reality by providing practical guidelines to implement theoretical discourses. This is especially significant when inequalities are understated, such as in procedurally correct mechanisms which, however, still encompass imbalances of a colonial nature.

To elaborate on just practices, a decolonial approach arises as a fundamental element. In this sense, the six decolonising moves proposed by Mendonça & Asenbaum (2022) represent a useful framework to be applied to and by the work of academic scholars (see section 3.3). Therefore, scholars themselves must reveal colonial relationships, acknowledge epistemic diversity, recognise the authority of oppressed peoples, and integrate the experiences of Indigenous communities. They must make space for experts representing minorities and marginalised groups to revolve the formulation of deliberative practices around their expertise. The development of deliberative practices must be based on grassroots customary systems. As Pirsoul (2019) states, grounding the research on Indigenous experiences allows "the creation of deliberative frameworks that are culturally sensitive and, therefore, more likely to create conditions of mutual respect between equals that is fundamental to deliberative democracy" (p. 268). In addition, such culturally sensitive deliberative frameworks, accompanied by sets of good practices to decolonise deliberation, would allow to reduce the substantive disagreements

between Indigenous groups and state authorities and, consequently, make the implementation gap smaller.

6.8 Summary

After looking at the Education Act case in relation to the new provisions regarding the obligation to consult in Norway, the chapter highlighted the need for further regulation and guidelines to better implement the consultation mechanism within the state's activities. Furthermore, it called for a more shared understanding of the procedure. This confirmed the results of previous research in Norway presented in chapter 2. Then, the chapter described the existing implementation gap in consultations which is also demonstrated by the Education Act case in terms of power asymmetries between the Sámediggi and the Norwegian government. Therefore, such inequalities have been assessed according to the epistemic and ethical functions of deliberative democratic theories. As a result, the text suggested identifying a lack of epistemic trust and equal partnership in the process regarding the new Education Act. Finally, the chapter advocated for a turn in deliberative democracy towards a practice-oriented approach informed by decolonial thinking to reduce the power disparities that the theory sustains through Indigenous consultation processes. In doing so, it is likely possible to minimise the substantive disagreements between the parties in dialogue, such as the one that characterised the Education Act case.

7 Conclusion

International law safeguards the participatory mechanism of Indigenous consultations to ensure the right of Indigenous peoples to influence decision-making on matters that affect their culture and interests. This right is guaranteed by different legal instruments: ILO Convention No. 169, ICCPR, and UNDRIP are the most important at the international level. Several nation states have adopted consultation procedures to promote and defend the languages, cultures and rights of Indigenous peoples. Norway has progressively introduced the mechanism within the country's legal system. Finally, in 2021, consultations gained a statutory status by being included in the Sámi Act. All Norwegian authorities have the obligation to consult the Sámi when considering decisions which could have an impact on Sámi rights and interests. Although Norway is considered an advanced example in respecting Indigenous rights, previous research and experiences show that the Sámi people face several issues with the implementation of the consultation arrangement. Indeed, despite the emancipatory and inclusive intentions, consultations still foster Indigenous-state relationships of a colonial nature based on power asymmetries. To further the research on such challenges and contribute with different perspectives, the present master's thesis investigated the empirical case represented by the consultation process between the Sámediggi and the Kunnskapsdepartement regarding the new Education Act, approved by the Storting in June 2023. The case depicts uncommon circumstances since it ended with a disagreement between the parties on a topic, educational rights, which is normally based on shared understandings. Hence, the Education Act process can provide new insights into the difficulties faced by the Sámediggi in the dialogue with the Norwegian government. While the thesis examines a specific empirical case, it speaks to the general discussion on Indigenous consultations and how to decolonise deliberative spaces.

The research endeavoured to identify and analyse the main challenges experienced by the Sámediggi. It did so through a thematic analysis of a set of documents which explain the Sámediggi's perspective on the process, including the main Sámi demands and opinions, and the response of the Norwegian government. A written interview with two participants from the Sámediggi supported the textual data and was included in the analysis. In this way, the research emphasises the perspectives of the Indigenous representative institution that took part in the process. To explore the consultation process on the Education Act and to promote a renewed discussion on Sámi consultations in Norway, the thesis was guided by the question: "What were the main challenges that prevented consent in the Sámi consultation process on the Norwegian Education Act, how can these challenges be interpreted in light of deliberative democratic

principles, and how can a decolonial perspective on deliberative democracy improve our understanding of those challenges?". Three sub-questions were developed to be able to answer the main research question. The following paragraphs summarise the results of investigating the three sub-questions.

The first sub-question aimed to acquire knowledge of the Sámediggi's perspective on the process regarding the Education Act. The collected data was analysed to gain an understanding of the Sámediggi's positions. The analysis identified what the Sámediggi points out as the critical elements of the process. First, they were not consulted on the appointment of the Education Act Committee, which had the mandate to formulate a legislative proposal. Second, the Storting did not consult the Sámediggi when assessing the proposal. Third, the process did not include a discussion on how the law could affect education in and on Sámi. Overall, the consultations were demanding and did not meet the expectations of the Sámediggi since their opinions and proposals to improve the law were listened to but not taken forward. As a result of this process, the new Education Act does not sufficiently strengthen the Sámi children's educational rights. Such rights were already not fulfilled by the former Act causing several issues in promoting Sámi culture through education and failing to counter the existing effects of the Norwegianisation policy. The Sámediggi was not satisfied with the process and the legislative proposal, thus the consultation meetings ended with no consent from the Sámi party.

The second sub-question asked how the identified challenges relate to the Norwegian obligation to consult and to deliberative principles. To answer this question, the thesis placed the Sámediggi's claims beside the government's proposal for the new consultation provisions. Doing so, the thesis found that the implementation of the consultation procedure is still not rooted in a shared understanding. This is demonstrated by the divergence between the government's preparatory work on the consultation chapter in the Sámi Act and how the Kunnskapsdepartement acted in the Education Act case. According to the legislative text, the Ministry of Education should have consulted the Sámediggi on the mandate of the Education Act Committee because it concerned a central topic for Sámi culture and the Sámediggi maintained it should have an influence on such decision. Furthermore, the government's document concludes that the Storting is obliged to consult the Sámi people when considering changes to a law which can impact the Sámi. In addition, the preparatory work explains that, if the circumstances are not clear enough, the Sámediggi's opinion should determine whether it needs to be consulted or not. Although it requested so, the Sámediggi was not consulted by the Storting. These experiences suggest the need for better integration of the consultation procedure

into the work of Norwegian authorities. More detailed guidelines could be helpful to obtain that.

The thesis, then, analysed the issues emphasised in the Education Act case by applying the requirements of the epistemic and ethical functions of deliberative democracy. The deliberative epistemic function requires the inclusion of informed participants with a diversity of knowledges to be able to provide arguments based on sound reasoning without excluding the expertise of marginalised groups. Through the democratisation of knowledge, a deliberative process seeks to be epistemically truthful. The consultation process on the Norwegian Education Act provided an opportunity for the Indigenous expertise of the Sámediggi regarding Sámi educational rights to be expressed. However, the Kunnskapsdepartement and the Storting did not include Sámi knowledges in their discussions, resulting in the Sámediggi's demands not being considered in the final legislative proposal. The case indicates a lack of epistemic trust as the dialogue is dominated and determined by the Norwegian authorities. The deliberative ethical function demands the process to generate relationships based on radical mutual respect between the parties involved. It comprises a deep dialogic engagement through active listening and interactivity, the recognition of others' capacity to participate in deliberation and the willingness to acknowledge different viewpoints as legitimate and feasible options. Contemporary divided societies challenge the ethical function as minority groups are disadvantaged in deliberation because the majority often does not recognise them and their arguments as equally legitimate. The lack of reciprocal understanding of the other is manifested in the Education Act case. The Norwegian authorities, expected to be accountable for their *burden of reciprocity*, did not show to be willing to move from their position and, instead, treated the Sámediggi as a junior party with less deliberative capacity and authority in decision-making.

The process regarding the Education Act aligns well with the implementation gap described by the global literature on Indigenous consultations. The majority party maintain its privileged status by reducing the procedure to a bureaucratic requirement, instead of giving importance to the real participation of Indigenous representatives. Thus, it is common for consultations to reproduce colonial power imbalances, dismissing Indigenous peoples' rights. In this way, consultations fail to create inclusive deliberative dialogues. This led the research to discuss the third sub-question: "How can a decolonial approach to deliberative democracy shed light on how to deal with the challenges identified in the analysed consultation process?". In view of the fact that deliberative spaces as consultations perpetuate unequal and hegemonic systems,

deliberative democrats must finally acknowledge and oppose the colonial logic which the theory preserves.

A decolonial approach to deliberative democracy implies several moves: acknowledging the violence of modernity, recognising epistemic asymmetries, criticising the colonial drive of deliberative institutions, theorising inductively, engaging in an open dialogue with Global South scholarship, and focusing on emancipation. Such a perspective calls for democrats to work on deconstructing colonial relationships and reconstructing deliberative practices that reduce inequalities. Therefore, as scholars start to apply a decolonial lens to the theory, at the same time it is urgent to further concentrate on the implementation of the theory. The Education Act case confirmed challenges linked to disparities supported by the lack of reciprocity and epistemic trust, even when the process was for the most part procedurally correct. Deliberative democracy, thus, must also offer practical guidelines that lead institutions and participants to generate and act in real and inclusive deliberation. A decolonial practice-oriented approach must involve the expertise and knowledges of Indigenous peoples in the formulation of deliberative theory and its application. The experiences of marginalised groups must be the foundation for culturally sensitive frameworks to apply in deliberative spaces. With a theoretical and practical system which recognises colonial logic and centres the diversity of knowledges, imbalances can be minimised. Hence, disagreements such as the one characterising the Education Act case could be reduced.

The findings of this thesis reveal similarities with the results of previous studies on Indigenous consultations, which point out the authorities' understanding of the procedure as a mere bureaucratic exercise and underline epistemic injustices due to the greater power of the dominant party. Considering this, it becomes less crucial to suggest that scholars replicate the same analytical framework in other empirical cases or examine the same case from a different perspective. Yet, further research is needed to investigate how deliberative democracy can properly and fully embrace a decolonial approach. In addition, it is necessary to elaborate on sets of good practices to be implemented in deliberative spaces to alter relationships based on colonial inequalities. Employing inductive reasoning, academic researchers can, for instance, focus on identifying best practices within grassroots customary lifestyles. Integrating features of Sámi knowledge and expertise into developing consultation guidelines may improve the effort to decolonise deliberative democratic dialogues. In a decolonial deliberative perspective, all parties must take mutual recognition of and equal respect for knowledge diversity seriously to concretely address existing epistemic asymmetries within consultation arrangements.

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