

Independent Report into the Human Rights Aspects of Contraceptive Practices in Kalaallit Nunaat Since 1960



Authors

Dalee Sambo Dorough
Miriam Cullen

Naalakkersuisut

Copyright © 2026

The original report in English is translated into Danish and Kalaallisut by Naalakkersuisut

Naalakkersuisut

Copyright © 2026

Suggested citation:

Dalee Sambo Dorough and Miriam Cullen, Independent Report into the Human Rights Aspects of Contraceptive Practices in Kalaallit Nunaat Since 1960 (Naalakkersuisut, 2026).

.....

Table of Contents

1	Introduction.....	1
1.1	Background.....	1
1.2	Terms of Reference	3
1.3	Approach	4
1.3.1	Avoidance of Harm	5
1.3.2	Collection of Information and Associated Limitations.....	5
1.3.3	Assessment of Material and Use of Circumstantial Information	8
1.3.4	Matters Beyond the Scope of the Report	9
1.3.5	Standard of Proof	10
1.3.6	Composition of the Group	10
1.4	Applying International Law in Kalaallit Nunaat.....	11
1.4.1	Application of International Law within the Realm	11
1.4.2	General Relationship between National and International Law.....	13
1.4.2.1	Distinguishing Responsibility for Healthcare from Responsibility for Human Rights	14
1.4.3	Attribution of State Responsibility.....	15
1.4.3.1	Conduct Contrary to instructions	15
1.4.3.2	Acts of Private Individuals	15
1.4.3.3	Acts Adopted as Its Own	16
1.4.3.4	Composite Act.....	16
1.4.3.5	Conclusion on Attribution of State Responsibility to Denmark in This Case.....	17
1.4.4	Circumstances Precluding Wrongfulness	18
1.4.5	Derogation	19
1.5	Treatment of Specific Terms.....	19
1.5.1	“Force”	19
1.5.2	“Intent” (<i>third term of reference</i>)	20
1.5.3	“Vulnerable Women and Girls” (<i>sixth term of reference</i>)	20
1.6	Inuit Cultural Values.....	22
2	Application of International Human Rights Law.....	26
2.1	Introducing International Human Rights Law	26
2.2	Non-discrimination.....	29
2.2.1	Introduction of Intrauterine Contraception	33
2.2.2	Implementation of Contraceptives Policy.....	34
2.2.3	Conclusion on Discrimination	38
2.3	Freedom from Torture, Cruel, Inhuman and Degrading Treatment.....	39
2.3.1	Absence of Valid Consent or Medical Emergency.....	41
2.3.1.1	“Actively Motivating Techniques”.....	43

2.3.1.2	Rate of Fertility Decline and Contraceptive Interest	47
2.3.2	Seriousness of Harm	49
2.3.3	Positive Obligation to Prevent Ill Treatment: Regulatory Safeguards.....	53
2.3.4	Procedural Obligation.....	57
2.3.5	Conclusion on Ill Treatment.....	59
2.4	Right to Family and Private Life.....	60
2.4.1	Applicable Law	60
2.4.2	Analysis and Discussion	62
2.4.3	Conclusion	64
2.5	Whether Practices Were “Systematic” After 1992	64
2.5.1	Relevant International Law	65
2.5.2	Application to the Facts.....	66
3	Rights Specifically Concerning Indigenous Women	68
3.1	Indigenous Peoples’ Rights.....	68
3.2	Colonisation of Kalaallit Nunaat.....	70
3.3	Inuit as an Indigenous People	71
3.4	Individual and Collective Human Rights.....	72
3.4.1	ILO C169 and Temporal Jurisdiction Over Continuing Violations	73
3.4.2	Indigenous Peoples and “Minority” Protections?	74
3.4.3	UN Declaration on the Rights of Indigenous Peoples	76
3.5	Contemporary Developments in the Rights of Indigenous Women and Girls	77
3.5.1	Convention on the Elimination of All Forms of Discrimination Against Women.....	78
3.5.2	Convention on the Rights of the Child	81
3.6	Right to Culture.....	82
3.6.1	Right to Language	83
3.7	Self-determination	83
3.7.1	Right to Free, Prior and Informed Consent.....	84
3.8	Right to Health for Indigenous Women	85
3.9	Conclusion	86
4	Genocide	88
4.1	Legal Status of Genocide	88
4.2	State Obligations and Definition of Genocide	89
4.3	The Physical Act	90
4.3.1	Imposition of Measures Intended to Prevent Births	90
4.4	The Intent (<i>Dolus Specialis</i>) of Genocide.....	93
4.4.1	The Protected Group	93
4.4.2	Means to Infer the Existence of Genocidal Intent	95
4.4.2.1	Systematic Nature of the Relevant Events.....	97

4.4.2.1	“In Part” and the Scale and Rate of Fertility Decline.....	101
4.4.2.2	“Only Reasonable Inference” Test for Proving Genocidal Intent by Inference	102
4.5	The Duty to Prevent	107
4.6	Conclusion on Genocide under the 1948 Convention	110
4.7	Possibility of Judicial Consideration of State Responsibility for Genocide	111
5	Conclusion and the Future	113
5.1	Right to Legal Remedy: Judicial and Quasi-judicial Options.....	115
5.1.1	Domestic Law	116
5.1.2	European Court of Human Rights	117
5.1.3	UN Complaints Mechanisms	118
5.1.3.1	International Labor Organization	120
5.2	After Compensation and Apology: Building a Human Rights-based Framework	121
5.2.1	Example: Peru: Victim and Community Support and Healthcare	121
5.2.2	Example: Canada: Truth, Memorialization, and Cultural Genocide	123
5.2.3	Memorialization and Truth	125
5.2.4	Advancing Kalaallit Inuit Women’s Health and Well-Being into the Future.....	126

List of Figures

Figure 1. Human Rights Treaties by Signature, Ratification and Entry into Force for Denmark	28
Figure 2. Kalaallit Nunaat Fertility Rate, 1960 to 2023	99



1 Introduction

1. The Expert Group on the Human Rights Aspects of Alleged Instances of Involuntary Contraception in Kalaallit Nunaat since 1960 (Expert Group) was appointed by Naalakkersuisut and commenced work in December 2024. The purpose of its work was to examine the human rights aspects of alleged instances of involuntary contraception in Kalaallit Nunaat since 1960, and to determine whether and what human rights and international law applied, and whether and to what extent those laws might have been violated, and to deliver a report on its findings to Naalakkersuisut. The report was to take into account Indigenous Peoples' rights, collective rights and trauma.
2. In addressing the terms of reference, this report aims to identify any systematic factors that enabled the potential for abuse and elucidate measures that might prevent their recurrence. Through this process, it contributes to broader efforts to secure justice and redress for affected individuals and communities, to strengthen domestic and international accountability for colonial harms, and to promote transparency in public health and reproductive governance. The authors hope that this report can support a deeper understanding of the intersection between reproductive health practice and human rights, and to ensure that lessons from past practices inform more ethical, rights-based approaches to family planning today and into the future.
3. The authors are acutely aware that the timing of this report collides with extremely tense geopolitical realities. Those events are outside our control and occurred after the bulk of our work had been concluded. Such developments have not and cannot affect the legal analysis we have been asked to provide. The authors urge that the findings of this report are not distorted or weaponised as an argument for or against Kalaallit Nunaat's position in the Realm. To use this report in that way would overshadow the agency and healing of the women affected, detracting from principles of justice. The authors reiterate that the history of involuntary contraception or forced sterilization of Indigenous Peoples is far from unique to Denmark and Kalaallit Nunaat. Such practices have also taken place in the United States of America, Canada, Australia, Peru, Eastern Europe and elsewhere. The redress, respect, repair and healing to follow *this* instance is a matter for Denmark and Kalaallit Nunaat to address together, alongside the women themselves.

1.1 Background

4. There was a marked decline in fertility in Kalaallit Nunaat, contemporaneous with the introduction of intrauterine contraception in the late 1960s, illustrated further in this report in Figure 2. The total fertility rate in a specific year refers to "the total number of children that would be born to each woman if she were to live to the end of her child-bearing years and give birth to children in alignment with the prevailing age-specific fertility rates."¹ In 1950, the fertility rate in Kalaallit Nunaat was approximately 50 live births per 1,000 inhabitants. In the six years from 1966-72, the

¹ Organisation for Economic Co-operation and Development, "Fertility rates" (2025).
<https://www.oecd.org/en/data/indicators/fertility-rates.html>

fertility rate decreased sharply to around 20 live births per 1,000 inhabitants.² Between the mid-1960s and the mid-1970s, fertility in Kalaallit Nunaat fell from an average of between 6.5-7.5 children per woman to 2.5 children per woman.³ A 1974 Population Report comparing crude birth levels across 82 countries from 1960-72, identified Kalaallit Nunaat as having experienced the greatest absolute and relative decrease in fertility across them all in that decade (see Figure 2).⁴

5. In 2017 Naja Lyberth, a Kalaallit Inuk woman, placed a post on Facebook describing that she had experienced involuntary contraception as a child (age 13) in Kalaallit Nunaat in the early 1970s, and asked whether others recalled similar experiences. That post led to hundreds of other women coming forward. The media began to take note of the case. In May 2022 a podcast series *Spiralkampagnen* was released on Danish National Radio which significantly heightened public awareness of the allegations.
6. In 2022 a Research Group was established jointly by the Government of Denmark and Naalakkersuisut to examine contraceptive practices in Kalaallit Nunaat from 1960 to 1991. The Research Group's mandate was of a fact-finding nature: to examine the historical context, decision-making processes, and legal, administrative and health-related basis for the program. It was not tasked with considering human rights or international law.⁵
7. In 2023 a civil claim was lodged against the Danish state by 143 women claiming that they had experienced involuntary contraception, mostly as children, and that this violated their human rights contrary to obligations under the *European Convention on Human Rights* (ECHR).⁶ It was announced on 10 December 2025 that the claim had been settled out of court and that 300,000 Danish kroner would be paid to each of the claimants via a compensation scheme the details of which are yet to be released.⁷

² Peter Bjerregaard, "Folkesundhed i Grønland," *INUSSUK, Arktisk Forskningsjournal* 1:1, 39 (2004).

³ Statistics Greenland, "Fertility Indicators" in *Fertility Methods* (Statistics Greenland, updated July 2024) <https://stat.gl/publ/en/be/202407/methods/Fertility.htm>. World Bank, *Fertility Rate, Total (Births per Woman) – Greenland* [SP.DYN.TFRT.IN] (World Bank, World Development Indicators, data from 1960–2023) <https://fred.stlouisfed.org/series/SPDYNTFERTINGRL>.

⁴ R.T. Ravenholt and John Chao, "World Fertility Trends, 1974" Series J(2) *Population Report: Family planning programs* J-21 and J-23 (1974).

⁵ Tenna Jensen et al., "Uvildig udredning af antikonceptionspraksis i Kalaallit Nunaat i perioden 1960-1991," ["An impartial study of contraception practices in Kalaallit Nunaat in the period 1960-1991"] (September 2025), Attachment A (referred to in footnotes as Jensen et al, and in text as "Research Group Report").

⁶ *Convention for the Protection of Human Rights and Fundamental Freedoms*, 213 UNTS 221; Arts 3, 8 and 13 (opened for signature 4 November 1950, entered into force 3 September 1953).

⁷ Indenrigs og Sundhedsministeriet, "Politisk aftale sikrer økonomisk godtgørelse til grønlandske kvinder i spiralsagen" (2025). <https://www.ism.dk/nyheder/2025/december/politisk-aftale-sikrer-oekonomisk-godtgoerelse-til-groenlandske-kvinder-i-spiralsagen>.

8. In June 2023 Naalakkersuisut and the Government of Denmark decided to establish an official inquiry into the overall relationship between Kalaallit Nunaat and Denmark,⁸ whose work commenced in earnest in September 2025.⁹
9. In the same month, the Research Group delivered its report. In total, 354 women reported to the Research Group a total of 488 incidents related to contraceptive practices in Kalaallit Nunaat between 1960 and 1991. Of the 410 incidents reported to the Research Group specifically concerning the insertion of an IUD, 300 of those say they did not consent to contraception; 63 provide no information on whether or not they consented; and 47 described having given consent in circumstances in which that consent might have been vitiated or invalidated by the circumstances because they were children, were actively pressured, or did not understand what was happening. Nearly one-third were 14 or younger at the time, and more than half were under 18.¹⁰ The Research Group also collected 43 reports of incidents involving the injected contraceptive drug Depo-Provera, of which an estimated 38 occurred in Kalaallit Nunaat. In most cases, girls under 18 appear to have been given Depo-Provera as an alternative to an IUD, though the precise circumstances are unclear.
10. On 24 September 2025, Prime Minister of Denmark Mette Frederiksen delivered an official apology on behalf of the Government of Denmark for contraceptive practices in Kalaallit Nunaat from 1960 to 1992. At the same event, the Premier of Kalaallit Nunaat apologised for any actions of his government in relation to cases of contraception without consent after 1992.

1.2 Terms of Reference

11. The terms of reference provided to the Expert Group are as follows:

In relation to the alleged instances of forced, coerced or deceptive practices of contraception in Greenland since 1960, the experts will determine whether and what human rights and international law applied and whether and to what extent those laws might have been violated. To this end Naalakkersuisut directs the experts to:

- 1) Determine whether distinct and which human rights might have been violated, including individual and collective rights, in relation to the alleged instances of forced, coerced or deceptive practices of contraception in Greenland since 1960.

⁸ Naalakkersuisut / Government of Greenland and Education and Research Ministry of Denmark, “Kommissorium: Historisk Udredning af Forholdet Mellem Grønland og Danmark” (22 June 2023). <https://www.ft.dk/samling/20222/almindel/GRU/bilag/66/2727788.pdf>.

⁹ Ilisimatusarfik / University of Greenland, “Historisk Forskningsprojekt om forholdet mellem Grønland og Danmark er nu igangsat” [“Historic Research Project about the Relationship between Greenland and Denmark is now underway”] (3 September 2025). <https://da.uni.gl/nyheder/2025/september/historisk-forskningsprojekt-om-forholdet-mellem-groenland-og-danmark-er-nu-igangsat/>.

¹⁰ Jensen et al. 177-178.

In undertaking this work, the experts shall take into account cultural, psychological, political, and societal factors as part of its assessment.

- 2) Investigate whether specific rights applicable to Indigenous women, including rights to their own bodies, reproduction and contraception, in general, might have been violated.
- 3) Investigate whether the alleged instances of forced, coerced or deceptive practices of contraception in Greenland after 1992 evidence that there was an intentional, systematic approach taken to this practice during this time period (with reference to the National Board of Health’s investigation and report).
- 4) Assess whether the alleged events of forced, coerced, deceptive or nonconsensual practices of contraception in Greenland might fulfil the definition of ”genocide” under international law, including with reference to the Genocide Convention 1948 Article 2 subparagraph (d) “The imposition of measures to prevent the birth of children within the group.”
- 5) Investigate the possible continued impacts among the affected women and broader society, which will include a temporal dimension and a contemporary focus on the case, and thereby not limited by historical or past narratives or context.
- 6) Clarify and assess whether and to what extent vulnerable women and girls were also subject to forced, coerced, deceptive or non-consensual practices of contraception since 1960, for example by obtaining testimonies from the social sector.
- 7) Adopt a trauma-informed and inter-generational perspective in undertaking its work, including cultural and Psychological Dimensions, Holistic Approach and Inter-generational Impacts.

1.3 Approach

12. In line with its resources and the expertise of its appointed members, the Expert Group has understood its terms of reference as being primarily of a legal nature, focused centrally on the application of international law to facts already revealed through the extensive research and reporting that has preceded it. Its work was less about finding out what happened, because so much is already known, but in providing legal clarity and analysis to those matters. The role of the Expert Group was expressly complementary to the work of the Research Group and the Historical Inquiry for this reason, with expertise distinct from theirs. This interpretation of the terms of reference also aligns with the trauma-informed approach the Expert Group was directed to adopt.

////////////////////////////////////

1.3.1 Avoidance of Harm

13. At all times, the preparation of this report has been informed by the principle of harm minimisation or “do no harm.” This has long been a central pillar in similar inquiries that consider potential systematic human rights violations, as guided by the UN Office of the High Commissioner for Human Rights.¹¹ The Expert Group sought to prevent and avoid physical, psychological, social and legal harm to people affected by its work, knowing that individuals have unique responses both to the harm suffered, and to giving evidence about that harm.¹² In addition, the protection of individual and collective human rights also applies to the process of the work itself, particularly the right to privacy.¹³ The Expert Group sought to use the least intrusive means for gathering information, aware that many of the women affected had already shared their account of events several times over with the Health Department, the Research Group, and with lawyers. No members appointed to the Expert Group are qualified investigators, historians, or archivists, nor did the Group have capacity to offer immediate or ongoing psychosocial support. These considerations influenced the approach that was taken. To minimise the risk of harm therefore, and aware of the boundaries of its own expertise and resources, the authors relied substantially, but not exclusively, on materials already gathered through other legal and governmental processes to identify the key facts, as will be elaborated in the next section.

1.3.2 Collection of Information and Associated Limitations

14. The Research Group was dedicated to the collection of information from women affected and facilitated broader listening processes across Kalaallit Nunaat and Denmark with interpretation services and the availability of psychosocial supports. In March 2025 the Expert Group made a written request to the Chair of the Historical Investigation and the Contraceptive Practices Study to furnish relevant information their members could lawfully and ethically share. That request was respectfully declined in early April 2025. Accordingly, Naalakkersuisut granted the Expert Group an extension of time of four months to 31 January 2026 to allow it to review the final report of the Research Group after its anticipated release in September 2025. The Research Group’s report was released in September 2025 and is based on a review of extensive archival material by professional historians, the collection by social scientists of oral accounts from 354 women recounting experiences prior to 1991. The women were between 12 and 37 years old at the time of the relevant administration of contraception.

¹¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Manual on Human Rights Monitoring* (2023); UN Human Rights Council, *Commissions of Inquiry and Fact-Finding Missions Guidance and Practice* (OHCHR, 2015); UNODC “Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Istanbul Protocol, 2004; revised 2022); *Berkeley Protocol on Digital Open Source Investigations: A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law* (2020).

¹² UN OHCHR, *Interviewing Victims of Gender-Based Violence* (2025) 4.

¹³ UN OHCHR, *Berkeley Protocol on Digital Open Source Investigations: Practical Guide on Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law* (2020).

15. The authors have relied heavily, although not exclusively, on the Research Group report's descriptions of archival material and the information shared with it by women who were subject to involuntary contraception. However, it also did so with caution, aware that the terms of reference for the Research Group did not include international law, human rights law, or the period after 1992, nor did it exhaust the information available. That report alone, therefore, could not provide a complete basis for this assessment.
16. In line with its mandate to consider Indigenous Peoples rights, the Expert Group was conscious of epistemic justice for a culture that holds a predominantly oral tradition. Hearing directly from people affected and those with knowledge of the policy and its impacts was an important complement to existing materials. Accordingly, the Expert Group held 10 in-person listening sessions with rightsholders and stakeholders. Among others, the Expert Group spoke with women affected, medical doctors, the current and former Chief Medical Officer of Greenland, and staff from the Health Department. In line with the principle of harm minimisation, where possible, the choice was made to speak to representative bodies and spokespeople for broader groups of affected women to complement the extensive testimonies and information to which the Group already had access. Participants were informed of the Expert Group's mandate and membership in advance, in a language that they understood. Simultaneous translation between Danish or Kalaallisut and English was available.
17. The Expert Group was repeatedly advised that there were more women subject to involuntary contraceptive practices than have participated in the pending civil claim before Danish courts (143 individuals) or shared information with the Research Group (354 individuals).¹⁴ It was outside the mandate and resources of this inquiry to hear the voices of everyone affected. In particular, the Expert Group could not, within its resources, offer a culturally safe space or ongoing process for facilitating healing or truth processes, nor was that its mandate. Truth processes, though, are especially important for People for whom wellbeing is experienced collectively, and individual harm has societal impact beyond the individual alone. In the Conclusion (Chapter 5), we recommend such a process be pursued and provide the reasons why.
18. On 7 April 2025, the Expert Group created an open call for written submissions to balance the limitations of our resources with the importance of providing an opportunity for broad inclusion in a way that minimised the risk of harm. The call was advertised in Kalaallisut, Danish and English to encourage submissions from anyone, within or outside the Kingdom of Denmark, with information they wished to share as relevant to facts, law or the broad themes of the terms of

¹⁴ Submission from Greenland House Aarhus; listening session with Inuit Circumpolar Council; listening session with Tiliq; listening session with affected women before 1992; listening session with currently practicing doctors; listening session with social services Kalaallit Nunaat; alongside the ongoing discovery of contraceptive devices unknown to the woman herself: Nukaaka Tobiassen and Signe Haahr Pedersen, *Gynækolog finder stadig gamle spiraler hos kvinder, der fik dem under spiralkampagnen*, KNR (29 May 2022) KNR <https://knr.gl/da/nyheder/gyn%C3%A6kolog-finder-stadig-gamle-spiraler-hos-kvinder-der-fik-dem-under-spiralkampagnen>; listening session with the current Chief Medical Officer; listening session with practicing doctors.

reference. All submission makers had the right to request confidentiality and that request has been respected. The Expert Group received a total of 11 submissions. Written submissions from institutions, or people who have self-published their contribution, have been referred to in this report by name. Otherwise the accounts are de-identified and anonymous.

19. Most of the material on which this report has relied is already in the public domain. The Expert Group was guided in identification and collection of relevant materials by what was relied upon in the civil claim, referred by the Office of the Chief Medical Officer of Kalaallit Nunaat, those mentioned in the Research Group's report, including secondary and archival materials, those mentioned in media reports, and those described by rightsholders and stakeholders in listening sessions and submissions.
20. Archival material was shared with the Expert Group with the conditional consent of the Danish National Archive. Those conditions included that the Expert Group must avoid publishing or disclosing the names of people identified in the material who were not decision-makers, but that restriction did not apply "if the names have previously been published or are widely known in connection with the issues you are investigating." This report complies with those conditions. This approach also aligns with the terms of reference, which are not concerned with domestic law or discerning individual criminal responsibility, but rather focus on state responsibility under international law.
21. The Expert Group met with lawyers who represented affected women in the civil proceedings before Danish courts for alleged human rights violations, and reviewed a redacted and anonymised copy of the statement of claim in that case and were also provided with a redacted partial extract of the response from the lawyers who represented the Government on the other side of that claim. All such materials had names and other identifying material removed. The civil claim was confined to only ECHR rights, and thus did not represent the full breadth of the human rights obligations of the state, nor the collective rights or other aspects of international law this report been charged with considering. The Expert Group has had no role in those proceedings which have since settled out of court.
22. The official working language of the Expert Group was English, and therefore the English language should govern the interpretation of its content. The authors are aware that this report will be professionally translated into Danish, and then from Danish to Kalaallisut. Certain nuance and legal terminology might be lost in translated versions. Accordingly, the English version of this report should be treated as authoritative.
23. Most written material to which the Expert Group has had access is in Danish, with a small amount of written material in Kalaallisut and listening sessions were held in Danish and Kalaallisut with simultaneous interpretation. The authors of this report are fluent in English, not Danish, although one has a firm grasp of the Danish language. The Secretariat staff member is fluent in all three languages. The authors have relied on translation software to convert materials into English, including many of the quotes in the report, particularly from archival material and from the

////////////////////////////////////

Research Group Report. Although the authors have done their utmost to ensure accuracy, any subsequent use of quotes should be checked against the original source.

1.3.3 Assessment of Material and Use of Circumstantial Information

24. Consistent with the practice of international courts and the terms of reference specifying that the Expert Group “take into account cultural, psychological, political, and societal factors as part of its assessment,” this report has relied on both direct and indirect (or circumstantial) information. Circumstantial information is material that evidences certain patterns, context and circumstances surrounding a given event and from which inferences can be drawn. An example: “If one says he sees a child in the pool, that is direct evidence of the fact the child was in the pool. If one says he saw the child outside the pool, but wet and a puddle nearby, that is circumstantial evidence that the child was in the pool”.¹⁵ The consideration of circumstantial evidence allows an arbiter of truth to, in combination with other information, reasonably infer a conclusion. In this way circumstantial material is distinct from direct evidence, such as witness statements from people who personally saw or experienced the relevant event.
25. Circumstantial material is often essential for the determination of state responsibility under international law.¹⁶ International courts and tribunals have long acknowledged that when one party has exclusive control over official records, it can lead another party to have difficulty furnishing documentation of facts that give rise to responsibility.¹⁷
26. It is rare for individuals or institutions to formally record potential wrongdoing or to engage in other forms of self-incrimination. Not everything relevant to the case is reflected in written historical material, and written records are not necessarily perfectly accurate. For example, in some instances medical journals contained no record of an IUD device having been administered, yet a device was found under subsequent gynaecological examination, placing the accuracy or reliability of medical records in question.¹⁸ Archival materials can be drafted or selected with future scrutiny in mind.¹⁹ All such records represent the state’s point of view, drafted almost exclusively by public servants and supervisory doctors. Oral accounts are crucial supplements, especially in instances

¹⁵ Tatiana Renno, ‘Circumstantial Evidence’, Max Planck Encyclopedias of International Law (Oxford) para 1 quoting R Mosk, ‘The Role of Facts in International Dispute Resolution (Volume 304)’ in *Collected Course of the Hague Academy of International Law* (2003) 107.

¹⁶ *Corfu Channel (United Kingdom v Albania)* Merits (1949), ICJ Rep 4, 18; *Right of Passage over Indian Territory (Portugal v India)* Preliminary Objections (1957) ICJ Rep 125, 141–2; *Case Concerning Certain German Interests in Polish Upper Silesia (Germany v Poland)* Merits (1926) PCIJ (ser A) No 7, 20.

¹⁷ In *Corfu Channel* the Court was referring to exclusive territorial control with respect to a border dispute, but the principle nevertheless applies broadly. *Corfu Channel (United Kingdom v Albania)* Merits [1949] ICJ Rep 4, 18.

¹⁸ Listening session with women affected after 1992; Ann-Sophie Greve Møller and Bibi Nathansen, *28-årige Emma Kuko havde spiral i ni år uden at vide det: Det gør mig meget vred*, KNR (19 January 2023). <https://knr.gl/da/nyheder/ikke-klar-28-%C3%A5rige-emma-kuko-havde-spiral-i-ni-%C3%A5r-uden-vide-det-g%C3%B8r-mig-meget-vred>; Ann-Sophie Greve Møller, *Opfordring til selvstyret: Bør undskyldte for ufrivillige spiralopsætninger*, KNR (13 June 2024) <https://knr.gl/da/nyheder/opfordring-til-selvstyret-boer-undskyldte-ufrivillige-spiralopsaetninger>.

¹⁹ Jensen et al. 13.

where the people affected had no voice in the official record and where their culture is characterised by oral rather than written traditions, as is the case for Inuit. As with written records, oral accounts must also be treated with caution. Memories are not perfectly reliable and can fade or shift with time. Corroborating information is therefore important. It is relevant to consider broader circumstances and patterns of conduct, as well as witness statements and other primary and secondary materials, alongside archival and medical records, to reach a reasoned conclusion. This is the approach taken in this report.

1.3.4 Matters Beyond the Scope of the Report

27. Some matters fall outside the terms of reference but would be relevant to a full legal assessment of some questions which the Expert Group was tasked with answering. A thorough determination of the crime of genocide would also canvass circumstances beyond involuntary contraception alone. This might include the removal of children from Inuit families to Danish families;²⁰ prohibition of children born out of wedlock to Inuit mothers and Danish fathers to determine paternity or inherit from their father;²¹ relocation of people from smaller settlements to urban centres, especially when undertaken in the context of other forms of direct and indirect discrimination such as the removal of Inuit languages from school and working life; and the systematic underpayment of wages, which disproportionately impacted Inuit living standards and health.²² The authors have made no determination on these matters but note they would be probative to the legal questions the Expert Group has been tasked to assess, and to considerations of genocide in particular. In addition, the Expert Group has not the capacity, authority, or mandate to investigate individual criminal responsibility for potential crimes against humanity or genocide that might be relevant to this case.
28. It is also impossible within the resources available to offer a detailed assessment of all the potential human rights implications raised by involuntary contraception. This report has, in line with its terms of reference, focused particularly, though not exclusively, on the rights for which there is potential for enforceable legal remedies, whether through domestic proceedings or the European Court of Human Rights. However, in providing that analysis, it has relied upon material outside the European human rights regime alone (as the European Court of Human Rights itself often does), and has also incorporated reflections on Indigenous and collective rights, which honours the breadth that the terms of reference seek to cover.
29. The facts span a period both before and after some relevant treaties came into force. This report sets out when relevant treaty obligations became binding on the Realm in Figure 1. The authors were not in a position to assess the application of each treaty to the circumstances of each individual allegation, nor was that the Expert Group's remit.

²⁰ Prime Minister of Denmark, *Letter of Apology to the Greenlandic Children* (8 December 2020).

²¹ This applied to people born before 1972; the law was only fully dismantled in 2014.

²² Also known as the "birthplace criterion." See: Danmarks Nationalleksikon, https://lex.dk/f%C3%B8destedskriteriet_-_Gr%C3%B8nland.

1.3.5 Standard of Proof

30. This report has adopted the same standard of proof as other international commissions of inquiry on human rights, that of “reasonable basis to believe.”²³ It is a preliminary or threshold assessment that permits reliable identification of responsibility while recognising the limits in which the inquiry was undertaken, including the absence of judicial guarantees. The Expert Group has no authority to subpoena or demand evidence, to compel witnesses, or to render binding decisions. It has also not had the resources or authority to access and exhaustively review all potentially relevant material or to hear from everyone who has been directly or indirectly affected by involuntary contraceptive practices in Kalaallit Nunaat.
31. “Reasonable basis to believe” is the ordinary standard used by UN Commissions of Inquiry in addressing similar subject matter and in circumstances where the relevant experts have not the access, authority, or capacity to assess all relevant evidence and yet there is enough to make threshold or preliminary findings. The “reasonable basis to believe” standard will have been met where an objective and ordinary prudent observer would have reasonable grounds to conclude that the general pattern of facts took place as described and, where legal conclusions are drawn, that these facts meet the elements of a violation.
32. A final and binding conclusion on any of the legal matters this report has addressed can be made only by a judicial body.

1.3.6 Composition of the Group

33. The Expert Group was originally four members based in Copenhagen, Aarhus, and Alaska. That number reduced to two in the final weeks of work when two members advised the Group that for different reasons they could no longer continue in their roles. This report was written by Dalee Sambo Dorough PhD and Miriam Cullen PhD. These authors have professional expertise in international human rights law, international law, international criminal law, and the rights of Indigenous Peoples. Neither author identifies as Kalaallit Inuk or Danish, and they do not claim to speak for either point of view.
34. Given the sensitivity of the subject matter and the diverse expertise of its members, in October 2025 all four Expert Group members agreed that differing points of view should be incorporated into the report where and if they arose. The consensus was that any dissenting points of view could and would be incorporated as appendices to the report without restriction. None took up this option.
35. The Expert Group has been supported in its work by an Advisory Group made up of one representative each from the Inuit Circumpolar Council Greenland, the Human Rights Council

²³ UN OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, UN Document HR/PUB/14/7, (New York & Geneva, 2015); UN OHCHR, *Who’s Responsible? Attributing Individual Responsibility for Violations of International Human Rights and Humanitarian Law in United Nations Commissions of Inquiry, Fact-Finding Missions and Other Investigations* (2018).

Greenland, Tilioq, the Elder Spokesperson and UNICEF Greenland. The Expert Group has met informally with the Advisory Group collectively and individually over the course of the Inquiry to hear their specific expertise on matters relevant to the terms of reference. The authors and original Expert Group members were ably assisted by Misu Benjaminsen who provided secretariat assistance throughout.

1.4 Applying International Law in Kalaallit Nunaat

36. On the basis of the terms of reference, as a matter of law this report is concerned with principles of international human rights law, including the specific rights of Indigenous Peoples, and the law of genocide. These are matters of public international law and the rules applicable to that body of law apply.

1.4.1 Application of International Law within the Realm

37. Sovereignty over the entirety of Kalaallit Nunaat/Greenland was decreed as belonging to Denmark in a 1933 case before the Permanent Court of International Justice involving a territorial dispute between Norway and Denmark.²⁴ Kalaallit Nunaat has remained, in various forms, part of the Danish state ever since, having not (yet) obtained independence. As will be explained below, this is important because unless a contrary intention appears in the relevant instrument, international human rights law is binding on the state in respect of all people on its territory or under its jurisdiction.
38. In 1945 Denmark joined the United Nations and listed Greenland as a non-self-governing territory in accordance with Part XI of the UN Charter. That meant Denmark was duty-bound, by virtue of the binding nature of the UN Charter, to assist it towards self-government and the establishment of “free political institutions.”²⁵ Under Article 73 of Part XI Denmark recognised that “the interests of the inhabitants of [Greenland] are paramount” and committed to “promote to the utmost” their well-being “as a matter of sacred trust.” To this end it must, among other things, ensure their political, economic, social, and educational advancement, in line with their own culture, as well as “their just treatment, and their protection against abuses.”²⁶
39. In August 1952, Denmark sent the Provincial Council of Greenland (the *Landsråð*) a proposal for Greenland’s incorporation *into* the Danish state. The Provincial Council was chaired by the Danish Governor of Greenland and performed a mostly consultative role. It had no power to implement law, or address constitutional matters.²⁷ Although chaired by a Dane, its members were mostly elected by people within Greenland, although not by anyone from the North or East of Greenland.²⁸ Without referendum, the Provincial Council delivered a response in the affirmative and, following

²⁴ *Legal Status of Eastern Greenland (Denmark v Norway)* Judgment (1933) PCIJ (ser A/B) No 53.

²⁵ UN Charter Art 73(b).

²⁶ *Ibid.*, Art 73(a).

²⁷ Rachael Lorna Johnston, “The Impact of International Law on Natural Resource Governance in Greenland” (2019) 56(e21) *Polar Record* 1, 3.

²⁸ *Ibid.*

the constitutional amendment of 1953, Greenland became a county within Denmark.²⁹ Incorporation as a conclusion to non-self-governing status was always viewed with some suspicion by the UN General Assembly, contrary as it was to the obligation to advance self-government and free political institutions under the UN Charter.³⁰ Nevertheless, Greenland remained a county of Denmark until it later transitioned to Home Rule.

40. The Home Rule Act was adopted by the Danish Parliament on 29 November 1978, and was approved by referendum in Kalaallit Nunaat on 17 January 1979. It entered into force on 1 May 1979. Under this new arrangement, Kalaallit Nunaat remained a part of the Danish state but adopted some self-governing authority. Denmark retained all jurisdiction over foreign affairs³¹ and treaty agreements,³² though it would under the new arrangements refer any treaty on matters affecting Kalaallit Nunaat to the Home Rule Government for comment before the treaty was concluded. There was no commitment that comments received from the Home Rule Government would be either persuasive or decisive.³³ The power to agree and responsibility to adhere to treaties remained with Denmark, even under Home Rule.
41. The Self-Government Act came into force in June 2009, having been adopted by the Danish Parliament following a referendum in Kalaallit Nunaat. It affirms the self-determination of the People of Kalaallit Nunaat and facilitates the progressive transfer of further portfolio responsibilities from Denmark to Kalaallit Nunaat, while also delineating those areas of responsibility and control that would remain with Denmark.
42. Although the Government of Denmark and Naalakkersuisut are described in the Self-Government Act as equal partners, as a matter of international law this classification is inaccurate. The Self-Government Act 2009 is Danish legislation by legal necessity because the Danish Parliament holds authority over the entire Realm. Sovereign authority between Kalaallit Nunaat and Denmark is not (yet) equally wielded. The Danish Government represents the state under international law and holds decision-making authority over the Realm. Kalaallit Nunaat holds two seats of the 179 in the Danish Parliament.
43. The European Social Charter is not referred to in this report. It was ratified by Denmark in 1965. Denmark lodged a declaration in April 1965 with the Secretary General of the Council of Europe to state that the ESC does not apply in Kalaallit Nunaat.³⁴ The Framework Convention for the Protection of National Minorities has been binding on Denmark since 1997. It is also not applied in this report because Denmark does not (yet) recognise Inuit as a national minority within the

²⁹ *The Constitutional Act of Denmark of 5 June 1953* (Denmark) *Danmarks Riges Grundlov* s 1 and 28.

³⁰ James Crawford, *The Creation of States in International Law* (OUP 2007 2nd ed) 283.

³¹ Home Rule Act 1979 s 11.

³² *Ibid.*, s 13.

³³ *Ibid.*

³⁴ Made under Article 34 paragraph 1 which read, in part: "...the metropolitan territory of Denmark to which the provisions of the Charter shall apply, is declared to be the territory of the Kingdom of Denmark with the exception of the Faroe Islands and Greenland." (1965) 138. European Social Charter, opened for signature 18 October 1961, 529 UNTS 89, 138 (entered into force 26 February 1965).

Realm within the meaning of that Convention, notwithstanding that Inuit are in fact a numerical minority within it.

1.4.2 General Relationship between National and International Law

44. When it comes to the relation between national and international law, “each system is supreme *in its own field*; neither has hegemony over the other.”³⁵ Thus, conduct that is lawful under domestic law, and in line with the constitutional arrangements of the state, can be unlawful as a matter of international law.³⁶
45. The terms of reference asked for a determination of whether and what “human rights and international law applied” during the Inquiry period, then elaborated specific questions to that overall purpose through each term of reference. The authors have understood this to mean a central focus on applicable international legal obligations, with domestic legal considerations assessed only insofar as they illuminate that overarching purpose. The authors note that the internal (domestic) law of the state cannot usurp or excuse state responsibility for wrongs of an international character, including violations of human rights.³⁷ This is a well-settled principle of international law about which there is “no doubt”³⁸ and has been reaffirmed by the Permanent Court of International Justice,³⁹ the International Court of Justice,⁴⁰ various arbitral tribunals,⁴¹ and also forms part of customary international law.⁴²

³⁵ James Crawford, *Brownlie’s Principles of International Law* (OUP, 9th ed, 2019) 101.

³⁶ UN *Vienna Convention on the Law of Treaties* (VCLT) (1969) opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) Art 27.

³⁷ VCLT Art 27; UN International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, GA Res 56/83, UN GAOR, 56th sess, 85th plen mtg, Agenda Item 162, Supp No 10, UN Doc A/RES/56/83 (12 December 2001) Art 3 “The characterization of an act of a state as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.” This means, at least in part that “conformity with the provisions of internal law in no way precludes conduct being characterized as internationally wrongful.”

³⁸ UN International Law Commission, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts (with commentaries)* (2001) Art 3, 36-37.

³⁹ S.S. “*Wimbledon*,” P.C.I.J. Series A:1 (1923), 15 at 29-30; Greco-Bulgarian “Communities”, Advisory Opinion, P.C.I.J., Series B, No. 17 (1930) 32.

⁴⁰ *Fisheries*, Judgment, I.C.J. Reports (1951) 116, at 132; *Nottebohm*, Preliminary Objection, Judgment, I.C.J. Reports (1953), 111, 123; *Application of the Convention of 1902 Governing the Guardianship of Infants*, Judgment, I.C.J. Reports (1958), 55, at 67; and *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, Advisory Opinion, I.C.J. Reports (1988) 12, 34–35, para 57; *Reparation for Injuries* (1949), at p. 180; *Elettronica Sicula S.p.A. (ELSI)*, Judgment, I.C.J. Reports (1989), 15 at 51, para. 73

⁴¹ See, e.g., the *Geneva Arbitration* (the “Alabama” case), in Moore, *History and Digest*, vol. IV, 4144, at 4156 and 4157 (1872); *Norwegian Shipowners’ Claims* (Norway v. United States of America), UNRIAA, vol. I (Sales No. 1948.V.2), p. 307, at p. 331 (1922); *Aguilar Amory and Royal Bank of Canada Claims (Tinoco case)* (*Great Britain v. Costa Rica*), *ibid.*, p. 369, at p. 386 (1923); *Shufeldt Claim*, *ibid.*, vol. II (Sales No. 1949.V.1), p. 1079, at p. 1098 (1930); *Wollemborg Case*, *ibid.*, vol. XIV (Sales No. 65.V.4), p. 283, at p. 289 (1956); and *Flegenheimer*, *ibid.*, 327, at 360 (1958).

⁴² The entirety of the VCLT is accepted as customary international law. VCLT Art 27.

46. At all material times covered by the terms of reference, *state* responsibility for any internationally wrongful act committed in Kalaallit Nunaat has rested with Denmark.⁴³ This is so even though Kalaallit Nunaat has had Home Rule and today possesses self-government. That both of these arrangements were facilitated through a legislative act of the Danish Parliament is precisely because the territory exists within the Danish state. How state responsibility arises is described in more detail in Section 1.4.3.

1.4.2.1 Distinguishing Responsibility for Healthcare from Responsibility for Human Rights

47. The Ministry of Greenland was a department in the Danish Government from 1955 to 1987 and oversaw the National Board of Health in Kalaallit Nunaat. The Chief Medical Officer of Kalaallit Nunaat was the medical director of the health service and oversaw medical staff in Kalaallit Nunaat.⁴⁴ Until 2011, Kalaallit Nunaat was divided into 17 health districts, each of which was led by its own district doctor who answered to the Chief Medical Officer and until 1 January 1992, was paid directly by the Ministry of Greenland.⁴⁵ Until 1 June 1986, the Chief Medical Officer held both medical duties on behalf of the National Board of Health and was responsible for the overall administration of the health service. On 1 June 1986, those two roles were split over concerns about potential conflict of interest and capacity.⁴⁶ Naalakkersuisut took over administrative responsibility for healthcare on 1 January 1992. This meant that Kalaallit Nunaat determined the budget framework for the healthcare system and had direct influence on the overall prioritisation and management of health and health services.⁴⁷
48. Administrative responsibility for *health care* should not be confused with state responsibility for *human rights*. While enjoying some limited degree of international legal personality, the Home Rule Government and today's Self Government, remain within the Danish state apparatus. Treaty obligations, including human rights, are the responsibility of the Danish state as a matter of international law, even if responsibility for the administrative decisions that might implement them are divided between authorities within the state.
49. The Self-Government Act 2009 (DK) provides in section 16(1) that Kalaallit Nunaat is "responsible for the obligations that arise out of agreements under international law and other international rules which are at any time binding on the Realm." Article 16(1) ought to be carefully interpreted. As described earlier, a state may not invoke the provisions of its internal law as justification for its failure to perform a treaty.⁴⁸ The *treaty* obligations continue to rest with Denmark. Article 16(1) requires that Naalakkersuisut governs in a way that complies with the

⁴³ Elaborated in the section below on state responsibility. See also, Danish Institute for Human Rights, *Menneskerettigheder i Grønland – Status 2016*, 15: "as foreign policy is a Danish matter, Denmark—and not Greenland—will be held responsible under international law if Naalakkersuisut violates international human rights".

⁴⁴ Jensen et al. 132.

⁴⁵ Ibid.

⁴⁶ Ibid, 134.

⁴⁷ Ulla Christensen, Peter Bjerregaard, Tina Curtis, *Sundhedsvæsenet i Grønland* (1996).

⁴⁸ VCLT Art 27.

international legal obligations applicable to the Realm. It does not transfer responsibility under international law for agreements between states governed by international law (treaties), because it cannot.

1.4.3 Attribution of State Responsibility

50. State responsibility is the attribution to the state, in this case Denmark, of conduct (in the form of an act or omission) that breaches that state's international obligations. The sections that follow explain why as a matter of law, and throughout the inquiry period, the actions of doctors and other health professionals in Kalaallit Nunaat, including the Chief Medical Officer, and those working within the Ministry of Greenland, are attributable to the state under international law because they were agents of the state acting in their official capacity. It is also relevant that the Danish state has since adopted certain acts as its own.

1.4.3.1 Conduct Contrary to instructions

51. Chapter 2 describes that some medical health professionals, under the oversight of the Chief Medical Officer, contravened law and policy, particularly in the administration of contraception to children. That an individual acted contrary to instructions is not enough for the state to avoid having responsibility for their conduct. The conduct of an organ of a state or person empowered to exercise elements of governmental authority is considered an act of the state under international law if the organ, person or entity acts in that capacity, *even if* it exceeds its authority or contravenes its instructions.⁴⁹ As explained by the International Law Commission: "The state cannot take refuge behind the notion that, according to the provisions of its internal law or to instructions which may have been given to its organs or agents, their actions or omissions ought not to have occurred or ought to have taken a different form."⁵⁰ Accordingly, Denmark can still be held accountable for conduct that was undertaken contrary to instructions, particularly in circumstances where the state was on notice that those instructions might have been contravened but took no concrete action to interrogate, monitor, assess, or stop the potentially wrongful conduct.

1.4.3.2 Acts of Private Individuals

52. Even if some health professionals were practicing privately, the state can still be held responsible for violations of international law that take place as a result of their acts or omissions. State responsibility for the acts of private individuals can occur in three ways. First, they "can be attributable to the state if they act on the instructions, direction, or control of the state" in carrying out the conduct.⁵¹ Second, state responsibility for internationally wrongful acts of private individuals can accrue where the act is carried out by former state organs that have subsequently been privatised. That is, "the conduct of a person or entity which is not an organ of the state but is empowered by a law of the state to exercise elements of governmental authority is still an act of

⁴⁹ International Law Commission, *Responsibility of States for Internationally Wrongful Acts* (2001) Art 7; referring in part to *Yearbook of the International Law Commission 1961 (Vol II)* (1961) 53.

⁵⁰ ILC, *Responsibility of States for Internationally Wrongful Acts*, commentaries (2001) 45.

⁵¹ ILC, *Responsibility of States for Internationally Wrongful Acts* (2001) Art 8.

the state under international law”.⁵² Third, state responsibility for the actions of private individuals or entities arises if the state “fails to act with due diligence to prevent violations of rights...”⁵³ By interpretation, there are also positive obligations to prevent violations of human rights by private persons in the ECHR.⁵⁴

1.4.3.3 Acts Adopted as Its Own

53. Conduct shall be considered an act of the state under international law “if and to the extent that the state acknowledges and adopts the conduct in question as its own.”⁵⁵ Denmark has acknowledged responsibility for contraceptive practices in Kalaallit Nunaat directed towards Inuit women and girls before 1992 as being a Danish responsibility in public statements made by the Prime Minister (see Section 1.4.3.5). When a head of state makes an official pronouncement in their capacity as such, the statement is attributable to the state and engages state responsibility.⁵⁶

1.4.3.4 Composite Act

54. Breaches of international legal obligations can consist of individual acts or omissions, or can occur as a result of a composite of acts.⁵⁷ That is, there can be a breach of an international obligation by a state through a *series* of actions or omissions which, when taken with the other actions or omissions, is sufficient to constitute the wrongful act.⁵⁸ “Some of the most serious wrongful acts in international law are defined in terms of their composite character. ... It implies that the responsible entity (including a state) will have adopted a systematic policy or practice.”⁵⁹ “Composite acts give rise to continuing breaches, which extend in time from the first of the actions or omissions in the series of acts making up the wrongful conduct.” However, they are generally

⁵² Ibid.

⁵³ *United States Diplomatic and Consular Staff in Tehran* (Judgment) I.C.J. Reports (1980) 3, 29 [56]; UN Committee on the Elimination of Discrimination Against Women, *Views Adopted by the Committee under Article 7(3) of the Optional Protocol, concerning Communication No 170/2021*, UN Doc CEDAW/C/897D/170/2021 (30 October 2024) [8.7] citing CEDAW General recommendation No. 19 (1992), para. 9.

⁵⁴ For example, *X and Y v The Netherlands* (1985) 8 EHRR 235 (European Court of Human Rights); *Osman v United Kingdom* (1998) 29 EHRR 245, para. 115; *Plattform “Ärzte für das Leben” v. Austria* (1988) 13 EHRR 204, para. 32; *Costello-Roberts v. United Kingdom* (1993) 9 EHRR 112, para. 27; *Opuz v Turkey* (2010) 50 EHRR 28, paras 128-130, 148.

⁵⁵ ILC, *Responsibility of States for Internationally Wrongful Acts* (2001), Art 11.

⁵⁶ *Nuclear Tests (Australia v France) (Judgment)* [1974] ICJ Rep 253, 267 [49] referring to the statements of the Prime Minister of France “There can be no doubt, in view of his functions, that his public communications or statements, oral or written, as Head of State, are in international relations acts of the French State.” Also recognised in the International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001) art 4 [1]–[7].

⁵⁷ “The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.” ILC, *Responsibility of States for Internationally Wrongful Acts* (2001) Art 15.

⁵⁸ ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (UN Doc A/56/10, 2001) Art 15.

⁵⁹ ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, GA Res 56/83, UN GAOR, 56th sess, 85th plen mtg, Agenda Item 162, Supp No 10, UN Doc A/RES/56/83 (12 December 2001) Art 15.

limited to “breaches of obligations which concern some aggregate of conduct and not individual acts as such.” That would include genocide or systematic racial discrimination.⁶⁰

55. If the series of acts or omissions begins before the date a state became bound by a specific human rights treaty, a relevant court or tribunal of international character may still be able to exercise jurisdiction, even if some initial events occurred before the date of ratification. This is because “in such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.”⁶¹ Recognition of continuing human rights violations provides a mechanism to address systematic patterns of abuse, where the aggregate of actions (or inactions) clearly demonstrates a violation of international obligations. It is possible that a state can be found liable for a composite act which commenced before a treaty was in force, and continued after its entry into force.⁶²

1.4.3.5 Conclusion on Attribution of State Responsibility to Denmark in This Case

56. The conduct of an organ of a state or person empowered to exercise elements of governmental authority is considered an act of the state under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes its instructions.⁶³ At all material times, the actions of doctors, and medical professionals practicing in Kalaallit Nunaat, teachers, the Chief Medical Officer, the Ministry of Greenland, relevant ministers, the National Board of Health in Kalaallit Nunaat, and any other public officials or public servants acting in their official capacities and empowered to exercise elements of governmental authority were acts of the state for the purposes of international law, and the state is responsible for that conduct. This is so even if they exceeded their authority or contravened instructions. This includes, as per the above, doctors or medical staff practicing in their private capacity, to the extent those private doctors were acting under the direction and control of the state in undertaking their work.
57. As described above, when a head of state makes an official pronouncement in their capacity as such, the statement is attributable to the state and engages state responsibility.⁶⁴ There is no need to prove attribution to the state because the head of state has plenary authority to represent the state in international relations.⁶⁵ On 24 September 2025, Prime Minister of Denmark Mette Frederiksen delivered an official apology for contraceptive practices in Kalaallit Nunaat from 1960 to 1992. In her prepared remarks, the Prime Minister expressly acknowledged Danish (state) responsibility for the program. She said: “It was systematic discrimination. Because you were Greenlandic. And that

⁶⁰ Ibid.

⁶¹ ILC, *Responsibility of States for Internationally Wrongful Acts* (2001) Art 15.

⁶² Ibid., Art 14.

⁶³ Ibid, Art 7; referring in part to *Yearbook of the International Law Commission 1961 (Vol II)* (1961) 53 “an act or omission shall likewise be imputable to the State if the organs or officials concerned exceeded their competence but purported to be acting in their official capacity.”

⁶⁴ *Nuclear Tests (Australia v France) & (New Zealand v France)*, (1974) ICJ Rep 253.

⁶⁵ Ibid.

was wrong.”⁶⁶ At the same event, the Premier of Kalaallit Nunaat apologised for any actions of his government in relation to cases of contraception without consent after 1992. However, *state* responsibility for internationally wrongful acts remained with Denmark after 1992. The authors find that internationally wrongful acts the result of the acts and omissions of doctors and Danish authorities in implementing the contraceptives policy in Kalaallit Nunaat in the 1960s and beyond are attributable to the Danish state under international law.

1.4.4 Circumstances Precluding Wrongfulness

58. The authors have found no reasonable basis to believe that any of the circumstances precluding wrongfulness under international law apply to the circumstances of this case. First, where violations concern peremptory norms, there is no excuse. Second, none of the six circumstances precluding wrongfulness apply in any case.
59. The prohibition of non-discrimination, the prohibition of torture, cruel, inhuman and degrading treatment, and the prohibition of genocide are today peremptory norms of international law. As described elsewhere, “peremptory” (or *jus cogens*) norms of international law sit at the pinnacle of the international legal hierarchy as those that are accepted and recognized by the international community as a whole as a norm from which no derogation is permitted.⁶⁷ The right to family and private life, to health, and other relevant rights contained in human rights treaties and relevant to this report are not peremptory norms and can be derogated from or violations excused in certain circumstances (see Section 1.4.5).
60. The authors find no reasonable basis to believe that any of the circumstances precluding wrongfulness under international law apply to the circumstances of this case. There are six circumstances in which the wrongfulness of an act of a state that would otherwise violate its international legal obligations can be precluded. They are self-defence, countermeasures, force majeure, distress, necessity, and consent. Self-defence, countermeasures, force majeure, distress, and necessity are irrelevant to this case. Consent in this specific legal context is also irrelevant but requires further explanation.
61. Consent as a preclusion of wrongfulness concerns relations *between states*. The International Law Commission clarifies that “valid consent by a state to the commission of a given act by another state precludes the wrongfulness of that act in relation to the former state to the extent that the act remains within the limits of that consent.”⁶⁸ The consent must be express (it cannot be implied)⁶⁹ and freely given by a person representing the state.⁷⁰ Examples of this kind of consent occur every day. For example, the transit through the airspace or internal waters of another state could

⁶⁶ Mette Frederiksen, “Undskyldningstale til ofrene i spiralsagen” (Speech, Katuaq, Nuuk, 24 September 2025).

⁶⁷ VCLT Art 53; ILC, *Responsibility of States for Internationally Wrongful Acts* (2001) Art 26.

⁶⁸ ILC, *ibid.*, Art 20.

⁶⁹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* Judgment (2005) ICJ Rep 168, 211; ILC, *Responsibility of States for Internationally Wrongful Acts* (2001) commentary Art 20, para 6.

⁷⁰ *Ibid.*, para 2.

constitute a breach of an international obligation without consent.⁷¹ States cannot preclude the wrongfulness of a violation of human rights or any other internationally wrongful act on the basis of individual consent. Personal consent might be relevant to a determination of whether there has been a violation of a human right, but it cannot excuse an internationally wrongful act.

1.4.5 Derogation

62. Most human rights are derogable in times of public emergency that threaten the life of the nation, but only to the extent strictly required by the exigencies of the situation. In such circumstances there can be a temporary suspension or restriction of those rights for which derogation is permissible. To validly derogate from human rights in such circumstances, the state of public emergency must be officially declared and measures that derogate from those rights can be limited only to the degree that is strictly necessary. In the period under consideration by this report, no such public emergency existed and so derogation is not considered further. The right to be free from torture, cruel, inhuman and degrading treatment and the right to non-discrimination cannot be derogated from at all, even in times of public emergency.⁷²

1.5 Treatment of Specific Terms

63. Here the authors explain treatment of some aspects of the terms of reference.

1.5.1 “Force”

64. The terms of reference refer variably to alleged instances of forced, coerced, deceptive, and non-consensual practices of contraception in Greenland since 1960. The question is understood as an attempt to discern broadly the lawfulness or not of contraception practices as a matter of international human rights law, however so described. “Force” itself is not a requisite legal element of any human rights violation. Where it has been discussed in the context of obstetric or sexual violence, regional human rights courts have widely acknowledged that proof of physical resistance is not necessary to prove a violation of human rights, and that requiring such proof can undermine justice.⁷³
65. To limit the analysis of “forced” to only physical force would fail to do justice to the underlying principle of physical autonomy with which human rights is concerned.⁷⁴ It would also fail to account for the various ways in which “force” can be exerted without actual physical violence. In sexual violence cases before the International Criminal Court, for example, consent cannot be inferred by silence or lack of resistance, by the words or conduct of the victim if they are incapable

⁷¹ Ibid.

⁷² *International Covenant on Civil and Political Rights* (ICCPR), GA Res. 2200A (XXI), 16 December 1966, UN Doc. A/6316, 999 UNTS 171 (entered into force 23 March 1976, signed by Denmark 20 March 1968, ratified by Denmark 6 January 1972) Art 4(2).

⁷³ *M C v Bulgaria* (European Court of Human Rights, First Section, Application No 39272/98, 4 December 2003) para 166; see also *Fernández Ortega et al. v. Mexico*, IACtHR, Judgment of August 30, 2010, Series C No. 215, para. 115.

⁷⁴ Ibid.

of giving genuine consent (such as a child), nor can consent be inferred where coercion or taking advantage of a coercive environment undermined the person’s ability to give genuine consent.⁷⁵ Accordingly, this report uses the word “involuntary” to describe any instance of contraception in which there was an absence of consent or that consent was invalidated by the circumstances (“forced, coerced or non-consensual”). Circumstances that invalidate consent are described in Section 2.3 addressing freedom from torture, cruel, inhuman and degrading treatment.

1.5.2 “Intent” (*third term of reference*)

66. Part of the terms of reference asks the Expert Group to investigate whether practices of involuntary contraception in Kalaallit Nunaat were “intentional” (term 6). The authors emphasise that “intent” does not determine whether human rights have been violated. As described in Section 1.4.3, when an agent of the state who is acting in their official capacity undertakes an act or omission that can be classified as an internationally wrongful act, including a violation of human rights, the state can be held responsible for that conduct. This is true irrespective of whether that individual person or the state had any form of maligned intent.⁷⁶
67. This is a particularly important distinction in the context of discrimination. The question is whether the *effect* of a policy or action was in fact discriminatory, rather than what the state or agent of the state intended. An act or omission could be contrary to the prohibition of discrimination under international law even when carried out with benevolent intent, and even when the conduct was lawful under domestic law. Similarly, acts, omissions or policies carried out with malicious intent might not constitute discrimination or other human rights violations, although they could be contrary to other laws.
68. A “special intent” is required to prove genocide under the 1948 Genocide Convention; this is addressed in Chapter 4.

1.5.3 “Vulnerable Women and Girls” (*sixth term of reference*)

69. The sixth term of reference asked the Expert Group to “clarify and assess whether vulnerable women and girls were subject to involuntary contraceptive practices.” International human rights law requires states to adopt special measures aimed at protecting and improving the exercise of human rights by individuals and groups recognised as “vulnerable.” The adoption of special measures is both an express contemporary obligation and implicit in the special protection afforded to particular groups of people.
70. In the present case, those subject to involuntary contraceptive practices were recognised as vulnerable under international law on the basis of intersecting vulnerabilities, including their specific characteristics as a racial group or ethnic minority, as women, as children, and as

⁷⁵ International Criminal Court, *Rules of Procedure and Evidence* (2019) Rule 70, “Principles of Evidence in Cases of Sexual Violence” p.25.”

⁷⁶ Ian Brownlie, *Principles of International Law* (Oxford University Press, 6th ed, 2003) 423.

Indigenous People.⁷⁷ The right to non-discrimination on the basis of race has been a binding peremptory norm of customary international law at least since 1966 (see Section 2.2). International human rights law requires states to afford particular protections to groups exposed to heightened risk of rights violations.⁷⁸

71. In legal practice, vulnerability is assessed based on the totality of circumstances. Possession of a protected characteristic triggers the positive obligation to prevent discrimination, but even without such a characteristic, the particulars of a given situation can render a person “vulnerable,” warranting a heightened standard of care. Contextual vulnerability gives rise to an obligation of a heightened standard of care in most medical settings, and particularly in the context of gynaecological examinations or procedures.⁷⁹ It is well-established in case law and materials that Indigenous women and girls may be disproportionately affected by intersectional discrimination in the specific context of sexual and reproductive health.⁸⁰ That vulnerability is compounded when

⁷⁷ ICCPR Arts 2, 24, 27; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976, signed by Denmark 20 March 1968, ratified by Denmark 6 Jan 1972). Implementing Article 2 requires the identification of social groups who are vulnerable and have suffered and continue to suffer marginalization: Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2 of the Covenant)*, UN Doc E/C.12/GC/20 (2 July 2009), paras. 27-35; See also CESCR, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the Covenant)*, UN Doc E/C.12/2000/4 (11 August 2000), paras. 12(b)(i)-(ii), 18, 35, 37, 40, 43(a), 43(f) and 52. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 5: Persons with disabilities, adopted by the Committee at its eleventh session*, UN Doc E/1995/22 (9 December 1994), para. 9; CESCR, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the Covenant)*, UN Doc E/C.12/2000/4 (11 August 2000), paras. 12(ii) and 35; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Article 12 of the Convention, adopted by the Committee at its twentieth session*, UN Doc A/54/38/Rev.1, chap. I (19 January-5 February 1999), para. 6; CESCR, *General Comment No. 12: The right to adequate food (article 11 of the Covenant), adopted by the Committee at its twentieth session*, UN Doc E/C.12/1999/5 (12 May 1999), para. 13; Committee on the Rights of the Child, *General Comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child*, UN Doc CRC/GC/2002/2 (15 November 2002), para. 5 and 15. European Court of Human Rights (ECtHR), *Stubbings and Others v the United Kingdom* (Application No. 22083/93, Judgment, 22 October 1996), para. 64; ECtHR, *Yazgüel Yılmaz v Türkiye* (Application No. 36369/06, Judgment, 1 February 2011), para. 42; ECtHR, *B.S. v Spain* (Application No. 47159/08, Judgment, 24 July 2012), para. 62; CROC Art 24. See also: Human Rights Committee, *General Comment 17: Article 24 (Thirty-fifth session, 1989)*, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev.1 at 23 (29 July 1994) para 4; Human Rights Committee, *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Adopted on 29 March 2004 (2187th meeting)*, UN Doc CCPR/C/21/Rev.1/Add. 13 (26 May 2004) para 15; *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295, 13 September 2007, UN Doc. A/RES/61/295 (adopted 13 September 2007; endorsed by Denmark), Art 21.

⁷⁸ Ibid.; Alexander H. E. Morawa, “Vulnerability as a Concept of International Human Rights Law” *Journal of International Relations and Development* 6(2) (2003) 139, 150.

⁷⁹ Submission to the Expert Group from Professor Veronika Fikfak, Dr Ula Aleksandra Kos, and Edward Pérez (13 May 2025) pp. 10-12 (hereafter Fikfak et al. submission).

⁸⁰ See, for example, CESCR, *General Comment 16 (2016)*, UN Doc E/C.12/GC/22 (2 May 2016) para 30; Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation 39 (2022) on the rights of Indigenous Women and Girls*, UN Doc CEDAW/C/GC/39 (31 October 2022) para 51; *Forced and Coerced Sterilization of Persons in Canada* report, Standing Senate Committee on Human Rights

doctor and patient cannot speak the same language. By 1975 only 1% of doctors could speak any of Inuit languages, and only 25 per cent of the population could speak Danish at a conversational level.⁸¹ The situation of an Indigenous girl child who is attending the services of a non-Indigenous doctor without their parents for a genital examination places them in an exceptionally vulnerable position, due to both their protected characteristics and the specific circumstances.

72. The authors note that use of the term “vulnerable” for categories of people with similar characteristics is not without critique. Some scholars contend that it problematically reinforces stereotypes by focusing on the traits of the group rather than relations of power. It arguably flattens individuals into categories of vulnerable and non-vulnerable when the experience of vulnerability is often circumstantial or in the hands of another, rather than inherent. Notwithstanding these critiques, the categorisation of “vulnerable” remains that which is used in the case law and materials of contemporary human rights law.
73. It has also been used in other national inquiries related to obstetric violence against Indigenous women and girls. In 2021, for example, the Senate of Canada had prepared a report entitled *Forced and Coerced Sterilization of Persons in Canada*.⁸² Among other things, the final report documents structural power imbalances—rooted in colonisation, historic and ongoing racism, institutional distrust, and marginalisation—rendering Indigenous women particularly “vulnerable” when interacting with the health care system. The conclusions underlined the need for government responses that recognised the intersection of discrimination, poverty, race, and social exclusion and other factors that heightened vulnerability to abuse in health settings.

1.6 Inuit Cultural Values

74. To grasp the real impact of practices of involuntary contraception on Inuit in a collective, societal and intergenerational context—as set out in the terms of reference—requires some understanding of Inuit cultural values. Beginning with the earliest waves of migration, Inuit first arrived to *Kalaallit Nunaat* approximately 4,500 years ago,⁸³ adapting to the marine and terrestrial environment and maintaining and sustaining their common cultural identity across vast distances, with frequent contact between different settlements.⁸⁴ Inuit have shown enduring resilience for centuries, maintaining their distinct cultures despite colonisation. For *Kalaallit Nunaat*’s

(June 2021) accessed 5 December 2025.

https://sencanada.ca/content/sen/committee/432/RIDR/reports/ForcedSterilization_Report_FINAL_E.pdf.

⁸¹ Sixten S.R. Haraldson, *Greenland 1975* (1976) 95.

⁸² *Forced and Coerced Sterilization of Persons in Canada* report, Standing Senate Committee on Human Rights (June 2021) accessed 5 December 2025.

https://sencanada.ca/content/sen/committee/432/RIDR/reports/ForcedSterilization_Report_FINAL_E.pdf.

⁸³ Robert Petersen, *The Last Eskimo Immigration from Canada to Greenland* (1962) *Folk. Dansk Etnografisk Tidsskrift* 4:95-110. See also *Handbook of North American Indians*, 5 Arctic, (Smithsonian Institution, Washington, 1984) 1; Annual report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution 18th pt 1 (U. S. Govt. Print. Off, 1895) p LIII: “The Eskimauan family or stock constitutes one of the most remarkable peoples of the world. They are noteworthy as the most northerly and most characteristically Arctic inhabitants of America and part of Eurasia; [...] from Greenland to Siberia [...]”

⁸⁴ Robert Petersen, “On Ethnic Identity in Greenland” *Études/Inuit/Studies* 25(1/2) (2001) 319, 320.

approximately 56,000 Inuit, exercising this right is tied to both cultural identity and physical survival. Inuit remain separate and distinct from others, not solely because their traditional homeland is an island.

75. Inuit oral traditions—myths, legends, historical accounts, family histories, songs, dances, symbolic art, and naming practices—form a reliable, substantive record of the past. Inuit adaptation is evidenced through diverse tools, technologies, social structures, and survival strategies developed by observing nature, learning from experience, and exchanging knowledge with others. These stories emphasise innovation, cooperation, adaptability, and the preservation of traditions even amid upheaval.
76. Distinct from Judeo-Christian beliefs associated with monotheism, scripture, and centred on individual moral responsibility, Inuit worldviews have been grounded in oral storytelling, an interconnectedness between land, living beings and ancestors, and prioritised collective wellbeing and harmony. Inuit believed that all living beings had a spirit called an *inua*, which could act independently and change forms. Initially, humans and animals could interchange their physical and spiritual forms freely, but over time, only shamans and certain powerful animals retained this ability. *Inuas* influenced nature and daily life, and hunters often reported glimpses of them in animals' features. The concept was so central to their worldview that it played a key role in their creation myth.⁸⁵
77. A prominent legend features the mother of all sea creatures. Inuit respect and honour her, and all life stemming from her, as a symbol of a reciprocal relationship. This tradition about a sea spirit or sea woman holds the same elements across Inuit Nunaat, ranging from her control of access to food and when disrespected to withholding animals from harvest to causing storms and rough conditions. In this way, hunters must behave respectfully to rebalance the relationship and to ensure food security.
78. The legend of the mother of the sea informs dimensions of respect for the environment to ensure sustainable hunting, expressions of gratitude for animals, humility before nature, that humans and the environment are interdependent -- it echoes Inuit spirituality, dependence on marine life, and long-standing principles of environmental care, and reciprocity.
79. Within Inuit culture, wealth centres on community well-being, reciprocity, and generosity rather than personal accumulation. Wealth is measured through health, balance, and strong relationships. In fact, many Indigenous languages lack a direct term for “wealth” as understood in Western capitalism.
80. A core part of cultural integrity is the holistic worldview shared by many Indigenous cultures. This worldview recognises the deep interrelationship among all elements of the environment; when one element is disturbed, all are affected. This principle applies not only to nature but also to health, where well-being is understood as caring for the whole person—mental, social, cultural, physical,

⁸⁵ See description of beliefs of the Bering Sea Inuit in William W. Fitzhugh & Susan A. Kaplan, *Inua: Spirit World of the Bering Sea Eskimo* 6 (Smithsonian Inst. Press 1982), accessed Aug. 3-4, 2025).
<https://repository.si.edu/server/api/core/bitstreams/2aa5fb6e-6358-4eeb-a181-bc11b90607b1/content>,

spiritual, and economic—rather than treating isolated symptoms. These understandings are passed down through generations, helping to preserve cultural wholeness.

81. The matter of stewardship among Inuit reflects a holistic understanding—physical, spiritual, mental, emotional, and intuitive—connecting people with all living and non-living elements of the environment. This differs sharply from Western conservation models that frame nature as a set of “resources” to be used or managed, whereas Indigenous perspectives emphasise relationship, respect, and coexistence rather than exploitation.
82. Inuit are defined not only by individual identities but by their collective nature, which is essential to their cultural survival, self-determination, and relationships to land, territory, and resources. Their rights are exercised collectively through kinship systems, intergenerational relationships, and community-based governance. While most international human rights treaties emphasise individual rights, there is now also explicit recognition of the collective rights of Indigenous Peoples as a matter of binding international law (see Chapter 3).⁸⁶
83. Inuit women’s lives were and continue to be grounded in family, motherhood, and the shared responsibilities that ensured survival in a harsh environment. Marriage was understood differently than in Western cultures—couples were considered married only after the birth of their first child—and although men often acted as household heads, both partners could initiate decision-making, including significant matters such as divorce.
84. Women tended the *qulleq*, the lamp that symbolised the family’s spiritual centre, and balanced the work of gathering, preparing, and cooking food through the shared cultural responsibility of properly respecting animals so future hunts would be successful. Children were celebrated and quietly welcomed into community, extended family and family. They learned by watching and participating in daily tasks from an early age. Their identities were often shaped through the name-soul tradition, in which children were named after deceased relatives whose roles and characteristics they were believed to inherit. Because children were treated as the reincarnation of the person whose name they carried, they were addressed with that relative’s kinship terms and guided gently rather than disciplined harshly, helping to reinforce both familial bonds and cultural continuity.
85. Pregnancy, birth, and child-rearing were guided by long-standing customs and the expertise of midwives and Elders. Expectant mothers followed rules meant to safeguard both parent and baby; midwives oversaw labour, provided instruction, and addressed complications, sometimes with the help of spiritual healers. Birth could occur at home or in hunting camps, with minimal pain relief and an emphasis on movement and a midwife’s guidance.
86. Inuit survival depended on large extended families, where having many children ensured continuity, security, and social functioning. Children were considered a form of old-age support,

⁸⁶ International Labour Organization (ILO), *Convention Concerning Indigenous and Tribal Peoples in Independent Countries* (ILO C169), June 27, 1989, 1650 U.N.T.S. 383; *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), UN Document A/RES/61/295 (September 13, 2007).

and women's fertility, especially the womb, was deeply valued. Inuit culture emphasised spirituality, intuition, animism, connection with nature, and interdependence between women (softness, nurture) and men (protection, physical tasks). Extended families formed the foundation of social safety, collective consciousness, and emotional well-being.

87. A traditional Inuit worldview centres on large extended families, collective responsibility, and deep spiritual and intuitive connections with nature. In this system, men and women had interdependent roles: men providing physical protection, women offering nurturing and social continuity through childbirth. This balance created social and cultural security, belonging, and bodily grounding.
88. Inuit ways of knowing rely on intuition, relationality, silence, and spiritual perception (likened to "tuning an old radio" toward energy). Greenlandic hunters exemplify this deep intuitive intelligence. Colonial society, by contrast, is described as individualistic, hierarchical, materially oriented, dismissive of spirituality and emotional life.

2 Application of International Human Rights Law

89. This Chapter provides legal analysis of potential violations of human rights as a result of the approach taken to contraception in Kalaallit Nunaat since 1960. The sections which follow, while providing technical legal detail, must not be viewed as exhaustive. As outlined in the introduction, it is not possible within the resources available to the Expert Group to canvass all the potential human rights implications raised by involuntary contraceptive practices. In this report the authors have, in line with the terms of reference, focused particularly on the rights for which there is the potential for legally binding remedies across the Inquiry period. In providing that analysis, the report has relied upon legal material outside the European human rights regime alone to interpret those rights (as the European Court of Human Rights itself often does).
90. This chapter commences with a description of applicable human rights standards within the Kingdom of Denmark, then considers rights to non-discrimination, to be free from torture, cruel, inhuman and degrading treatment, to family and private life in turn, and applies the law to the relevant facts.
91. Chapter 3 offers deeper reflections on the broader suite of human rights owed to Indigenous women and girls specifically, including collective rights, in particular as mechanisms for progressing a ensuring a health system that meets the needs of the people it serves, in line with contemporary human rights standards. It is important to observe that human rights are universal and interdependent; thus Chapters 2 and 3 should be read as complementary and interrelated.

2.1 Introducing International Human Rights Law

92. Human rights are drawn primarily, though not exclusively, from a suite of multilateral treaties agreed between states.⁸⁷ When Denmark has “ratified,” “accepted,” “approved” or “acceded to” a treaty, this means it has established on the international plane its consent to be bound by those terms.⁸⁸ Violation of a treaty obligation is an internationally wrongful act.⁸⁹ Every internationally wrongful act entails the responsibility of the state.⁹⁰
93. Denmark operates under a “dualist system” when it comes to the implementation of treaties. That means that an international treaty needs to be incorporated into national law to become enforceable before Danish courts. A treaty that is not incorporated nevertheless remains “binding upon the parties to it and must be performed by them in good faith.”⁹¹ That treaty must inform law and policy as well as judicial decision-making. Denmark accepts that ratified but non-incorporated

⁸⁷ A “treaty” is “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”: VCLT Art 2(a).

⁸⁸ Ibid., Arts 2(b), 11, and 16.

⁸⁹ ILC, *Responsibility of States for Internationally Wrongful Acts* (2001) Art 2.

⁹⁰ Ibid.

⁹¹ VCLT Preamble, Art 26.

human rights instruments are valid sources of law that can be invoked before, and applied by, the courts and other authorities within Denmark.⁹² However, while they can inform judicial consideration of something else, they cannot trigger a cause of action on their own.

94. Most human rights treaties to which the Kingdom of Denmark is a party have not been incorporated into national law. That means there is no legal pathway to enforce those rights under domestic law. The only treaty that has been incorporated is the ECHR. While this arrangement inhibits a person's access to a domestic legal remedy when their rights are breached, it does not change the status of the international legal obligation incumbent upon the state. All of the international human rights treaties to which the Kingdom of Denmark is party bind Denmark as a state irrespective of the treaty's incorporation into domestic law. Nevertheless, as a matter of judicial practice, human rights obligations that are not in the ECHR are rarely actively referred to or applied by Danish courts.⁹³ The failure to incorporate the broader suite of human rights treaties into domestic law leaves Denmark not in full accordance with its international legal obligations.⁹⁴
95. In its assessment of law, the authors have focused on the binding rules of international law applicable at the relevant time. In the European human rights system, state responsibility must be assessed from the perspective of standards prevailing at the time the relevant facts occurred. However, case law that arose after the relevant facts occurred can be applied if they clarify, rather than alter or expand the existing obligations. Within these limitations, case law that arose after the facts can be applied without raising issues of retroactivity.⁹⁵
96. The main international human rights treaties to which Denmark is a party and that apply in Kalaallit Nunaat are listed in Figure 1. Even when a treaty is not yet in force, a state is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty or expressed its consent to be bound by it.⁹⁶

⁹² Danish Ministry of Justice, *Betænkning om inkorporering mv. inden for menneskeretsområdet* (2014) 35, 39, 48; UN Human Rights Council, Universal Periodic Review – Denmark, National Report (6 May 2021) Annex, Responses to Recommendations during 2016 review, [120.15]. Accessed 7 August 2024. <https://www.ohchr.org/en/hr-bodies/upr/dk-index>.

⁹³ In the 22 years between 1992 and 2014, only 44 printed judicial decisions referred to human rights instruments outside the European Convention on Human Rights: Danish Ministry of Justice, Parliamentary report No. 1546, *Betænkning om inkorporering mv. inden for menneskeretsområdet* (2014) 35, 39, 49, 51.

⁹⁴ UN Human Rights Committee, *Concluding Observations of the Sixth Periodic Report of Denmark* (15 August 2016) paras 5-6.

⁹⁵ Fikfak et al. submission, 10 citing *O'Keefe v Ireland*, App no. 35810/09, (ECtHR, 28 January 2014), paras.143, 147. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5412217

⁹⁶ VCLT Art 18.

Figure 1. Human Rights Treaties by Signature, Ratification and Entry into Force for Denmark

Treaty	Signature	Ratification	Entry into Force
European Convention on Human Rights (ECHR)	4 Nov 1950	13 Apr 1953	3 Sep 1953
Convention on the Elimination of Racial Discrimination (CERD)	21 June 1966	9 Dec 1971	9 Jan 1972
International Covenant on Economic, Social and Cultural Rights (ICESCR)	20 Mar 1968	6 Jan 1972	3 Jan 1976
International Covenant on Civil and Political Rights (ICCPR)	20 Mar 1968	6 Jan 1972	23 Mar 1976
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	17 July 1980	21 April 1983	21 May 1983
Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment (CAT)	26 Nov 1987	4 Feb 1985	26 June 1987
Convention on the Rights of the Child (CRC)	26 Jan 1990	19 July 1991	18 Aug 1991 ⁹⁷
Indigenous and Tribal Peoples Convention (ILO 169)		22 Feb 1996	22 Feb 1997
Convention on the Rights of Persons with Disabilities (CRPD)	30 Mar 2007	24 Jul 2009	23 Aug 2009

97. Human rights treaties are often supplemented by subsequent protocols to which states parties to the main agreement can also agree to be bound.⁹⁸ For example, most of the human rights treaties agreed under the auspices of the UN have optional “protocols” on a communications procedure. If a state agrees to the communications procedure, then it gives its consent for individuals on its territory or under its jurisdiction to submit a claim (called a “communication”) to the relevant UN treaty body alleging violations of their rights by that state, subject to certain conditions (see Chapter 5). Relevantly, Denmark has registered a territorial exclusion for a communications procedure to be available to individuals in Kalaallit Nunaat for violations of the Convention on the Rights of the Child. It has also declined to participate in Protocol 12 to the European Convention on Human Rights which expands the recognition of unlawful discrimination under that Convention.
98. Certain human rights treaties and instruments contain rights that were already norms of international law before the enactment of treaty rules which later came to enshrine or elaborate them. Those rules bind Denmark and its actions across its entire territory, even without a treaty. These include, at minimum, rights to non-discrimination on the basis of race (crystallised no later

⁹⁷ Denmark issued a territorial reservation excluding the application of the Convention on the Rights of the Child from operation within Kalaallit Nunaat and the Faroe Islands upon ratification. That exclusion was lifted on 15 May 1993.

⁹⁸ VCLT Art 2.

than 1966),⁹⁹ freedom from torture (crystallised before the enactment of the treaty, sometime in the 1960s),¹⁰⁰ and the prohibition of certain crimes of international character (genocide no later than 1948).

2.2 Non-discrimination

99. Discrimination concerns the denial of rights of certain groups of people based on their membership of that group. It may occur on a range of grounds, including age, disability, and sex, and it may also be intersectional, where different forms of discrimination interact and reinforce one another, creating overlapping structures of disadvantage and oppression. To be contrary to international law, differential treatment must constitute the denial of or interference with human rights. The prohibition of discrimination under international law is concerned with ensuring not just formal equality (or equality before the law) but also substantive or de facto equality in the actual enjoyment and exercise of human rights.¹⁰¹
100. That human rights and fundamental freedoms are “without distinction as to race, sex, language, or religion” was first set out in a treaty in the UN Charter in 1945.¹⁰² Adopted in 1950 and effective in 1953, the European Convention on Human Rights also provides that the enjoyment of rights and freedoms it contains “shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Non-discrimination was enshrined in common Article 2 of both the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights. Although these two Conventions did not themselves come into force until 1976,¹⁰³ “by 1966, at the latest, it was possible to conclude that

⁹⁹ *South West Africa (Ethiopia v South Africa; Liberia v South Africa)*, Second Phase, ICJ Reports 1966 p 6, 300; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports 1971 p 16, 57.

¹⁰⁰ *Questions Relating to the Obligation to Prosecute or Extradite, (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, 422 at 457, para. 99. The International Court of Justice referred to the Universal Declaration of Human Rights of 1948, the 1949 Geneva Conventions for the protection of war victims, and the International Covenant on Civil and Political Rights in expressing its recognition of the peremptory character of the prohibition of torture.

¹⁰¹ UN Committee on the Elimination of Racial Discrimination, *General Recommendation No 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination* UN Doc CERD/C/GC/32 (24 September 2009) 3.

¹⁰² UN Charter Arts 13(1), 55(c), 56, 76(c).

¹⁰³ The ICESCR was opened for signature on 19 December 1966, Denmark signed on 20 March 1968, and ratified the Convention on 6 Jan 1972, it entered into force 3 January 1976. The ICCPR was opened for signature on 19 December 1966, Denmark signed on 20 March 1968, and ratified the Convention on 6 Jan 1972, it entered into force on 23 March 1976. In depositing its instrument of ratification for the ICCPR Denmark made reservations pertaining to the right to appeal a criminal conviction and the rule against double jeopardy (Art 14 para. (5), (7)) as well as prohibiting the use of propaganda during war (Art 20(1)): *Treaties and International Agreements Registered or Filed and Recorded with the Secretariat of the United Nations*, vol 999 (1976) I Nos 14657–14668; II No 742 290-291.

in terms of the [UN] Charter the principle of respect for and protection of human rights on a non-discriminatory basis had become recognised as a legal standard.”¹⁰⁴

101. The prohibition of racial discrimination is today a peremptory norm of international law. It is based in part on the UN Charter (1945), especially Articles 55 and 56;¹⁰⁵ the practice of the UN, in particular the General Assembly resolutions concerned with apartheid (1952, 1966, 1967);¹⁰⁶ the UDHR (1948);¹⁰⁷ and the International Covenants on human rights mentioned above. In its 1970 decision in *Barcelona Traction*, the International Court of Justice referred to protection from racial discrimination as among the “basic rights of the human person” and one which is owed *erga omnes*.¹⁰⁸ An international legal obligation owed *erga omnes* is one that is owed by the state to the international community as a whole.¹⁰⁹
102. Denmark actively participated in the negotiations towards a convention forbidding racial discrimination. In a 1963 proposal to the Commission on Human Rights, Denmark and the United States put forward a joint draft declaration and draft convention on the elimination of all forms of racial discrimination. The first operative paragraph of their draft provided that “No state shall make any distinction in the treatment of persons on the grounds of race, colour, or ethnic origin.”¹¹⁰
103. The final text of the *International Convention on all Forms of Racial Discrimination* (CERD) entered into force in 1971 and became binding upon Denmark on 9 January 1972. Pursuant to its provisions, states have an obligation not only to modify or abolish discriminatory laws and regulations, but also *the customs and practices* that constitute discrimination, including by private persons.¹¹¹ The CERD provides in Article 2 that states must prohibit and bring to an end, by all appropriate means... racial discrimination by any persons.” States must “guarantee the right of everyone... to be protected against any acts of racial discrimination... whether those acts are committed by public authorities or by any private persons.”¹¹² A similar provision is contained in

¹⁰⁴ James Crawford, *Brownlie's Principles of Public International Law* (Oxford University Press, 9th ed, 2012) 619 citing *South West Africa (Ethiopia v South Africa; Liberia v South Africa)*, Second Phase, ICJ Reports 1966 p 6, 300; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports 1971 p 16, 57.

¹⁰⁵ Articles 55 and 56 of the UN Charter provides that member states pledged to take action to achieve, among other things, universal respect for human rights “without distinction of any kind.”

¹⁰⁶ United Nations General Assembly (UNGA), *The Policies of Apartheid of the Government of the Republic of South Africa*, A/RES/1761 (XVII), 6 November 1962; UNGA, *The Policies of Apartheid of the Government of the Republic of South Africa*, A/RES/2202 (XXI), 16 December 1966; UNGA, *The Policies of Apartheid of the Government of the Republic of South Africa*, A/RES/2307 (XXII), 13 December 1967.

¹⁰⁷ *Ibid.*, Art 7.

¹⁰⁸ ICJ Reports 1970 3; 32 paras 33-34.

¹⁰⁹ *Barcelona Traction, Light and Power Company Ltd (Belgium v Spain)* (Second Phase) [1970] ICJ Rep 3 [33] – [34].

¹¹⁰ UNCHR, *Report of the Nineteenth Session, 11 March-5 April 1963*, Official Records of the Economic and Social Council, Thirty-sixth Session, Supplement No. 8, UN Doc E/3743-E/CN.4/857 (1963), para. 94.

¹¹¹ CEDAW, *Views Adopted by the Committee under Article 7(3) of the Optional Protocol, concerning Communication No 170/2021*, UN Doc CEDAW/C/897D/170/2021 (30 October 2024) [8.7].

¹¹² CEDAW Art 2(1); see also Committee on the Elimination of Racial Discrimination (CERD), General Recommendation 31 (2005), para. 6.

the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), where the state must eliminate discrimination against women “by any person”.¹¹³ Racial discrimination in public health and medical care is specifically prohibited in Article 5 of CERD.

104. “Racial discrimination” is defined in Article 1 of the CERD. It means “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Building on norms already enshrined in the UN Charter, CERD makes express states’ obligations to respect, protect and fulfil the freedom from racial discrimination in “public health, medical care, social security and social services.”¹¹⁴ In contemporary practice, this includes a right to control one’s health and body, including sexual and reproductive freedom, and the freedom from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.”¹¹⁵ The general prohibition against racial discrimination was binding customary international law at least from 1966,¹¹⁶ and the text of its own draft of the Convention indicates that the Danish state was actively aware that distinction in treatment on the grounds of ethnicity would be contrary to international norms.
105. The prohibition of discrimination on the basis of sex draws on the same set of multilateral instruments banning discrimination on sex, race, and other characteristics generally and was unlawful, again, at least since 1966.¹¹⁷ The first treaty dedicated to the prohibition of discrimination against women was CEDAW. It confirms women’s right to reproductive choice. States are obliged to include family planning in education and to guarantee women’s rights on the basis of equality between men and women to “decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”¹¹⁸ The CEDAW entered into force for Denmark on 21 May 1983 which means that for some of the alleged cases of involuntary contraception its specific provisions were not in effect. Although a general prohibition of discrimination based on sex was already binding under treaty law in the observance of human rights.¹¹⁹

¹¹³ CEDAW Art 2(e).

¹¹⁴ CERD Art 5(e)(iv). Denmark signed the Convention in 1966; it entered into force for Denmark on 9 December 1971.

¹¹⁵ CERD, *First Draft General recommendation No. 37 (2023) on Racial discrimination in the enjoyment of the right to health* (12 May 2023) 1 [2]; United Nations Treaty Collection, Status of Ratifications, *International Convention on the Elimination of all forms of Racial Discrimination* (New York, 7 march 1966). https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-2&chapter=4&clang=en

¹¹⁶ *South West Africa (Ethiopia v South Africa; Liberia v South Africa)*, Second Phase, ICJ Reports 1966 p 6, 300; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports 1971 p 16, 57.

¹¹⁷ Ibid.

¹¹⁸ CEDAW, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) Art 16(e).

¹¹⁹ UN Charter Art 1(3).

106. Article 12 of CEDAW obligates states parties to take all appropriate measures to eliminate discrimination against women in the field of healthcare, including, specifically, family planning. The UN Committee on the Elimination of Discrimination Against Women has observed that Indigenous women and girls “are often victims of gender-based violence in the health system, including obstetrics violence; coercive practices, such as involuntary sterilizations or forced contraception; and barriers to their ability to decide on the number and spacing of their children.”¹²⁰ Gender-based violence is “violence which is directed against a woman because she is a woman or that affects women disproportionately”.¹²¹ This form of violence is regarded as a societal issue rather than an individual one, necessitating comprehensive responses that extend beyond addressing isolated incidents.¹²²
107. There is a more limited prohibition of non-discrimination in the ECHR. Article 14 of the ECHR provides that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Accordingly, Article 14 prohibits discrimination *only* in respect of the rights that the Convention contains.¹²³ The circumstances of this case give rise to questions of discrimination contrary to Article 14 in the enjoyment of rights protected under Articles 3 and 8 of the Convention.
108. Protocol 12 to the ECHR was adopted by the Council of Europe out of concern that the scope of non-discrimination under the Convention was too narrow because it prohibited discrimination only in relation to rights the Convention itself expressly protected.¹²⁴ That meant that if discrimination was experienced in the realisation of rights not protected by the ECHR, such as the right to health, then that was not contrary to the Convention. The adoption of Protocol 12 expanded the ECHR definition. It provides that the enjoyment of “*any right set forth by law*” shall be secured “without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”¹²⁵ Denmark has not signed or ratified Protocol 12 and as such it has no application in the Kingdom of Denmark. That does not limit the principle of non-discrimination in other treaties or customary international law. However, the narrower interpretation contained in the ECHR is

¹²⁰ CEDAW, General Recommendation 39 CEDAW/C/GC/39 (31 October 2022) para 51, referring to CEDAW Arts 10 and 12.

¹²¹ Committee on the Elimination of Discrimination against Women, *General Recommendation No 19: Violence against Women*, UN GAOR, 47th sess, Supp No 38, UN Doc A/47/38 (1992) annex I, [1].

¹²² Committee on the Elimination of Discrimination against Women, *General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19*, UN Doc CEDAW/C/GC/35 (26 July 2017) para 1.

¹²³ ECHR Art 14.

¹²⁴ Explanatory Report to Protocol No 12 to the *Convention for the Protection of Human Rights and Fundamental Freedoms* (Rome, 4 November 2000) opened for signature 4 November 2000, entered into force 1 April 2005. <https://rm.coe.int/16800cce48>.

¹²⁵ *Ibid*.

significant because the ECHR is the only human rights Convention that can trigger a cause of action before a Danish court.

109. Although not a legal concept in itself, colonialism as experienced by Inuit in Kalaallit Nunaat is central to understanding the facts of this case as a whole. Indeed, colonialism is mentioned in instruments of international law because it has been recognised as a set of harmful practices and systems from which people who were subject to it are entitled to certain rights, protections, and forms of redress.¹²⁶ Colonialism is generally defined as “a policy or system in which a country controls another country or area”¹²⁷ or “the policy or practice of acquiring full or partial political control over another country, occupying it with settlers, and exploiting it economically.”¹²⁸ It is closely connected to imperialism, which “is marked by a belief in the anthropological, cultural, and political superiority of the European powers and their people, which is sometimes masked as an educative mission. It usually led to exploitation of natural and/or human resources and in some cases it also involved the founding of European settlements.”¹²⁹ Colonialism underpins the specific rights to which Indigenous People are entitled precisely because of the inherent power imbalance that its practice manifested, in particular systematic discrimination on the basis of ethnicity.¹³⁰

2.2.1 Introduction of Intrauterine Contraception

110. In a response to a request from the Greenland Council in April 1965, the Greenland Council Secretariat, the Ministry of Greenland and the Danish Family Planning Association produced a document entitled *Memorandum to the Greenland Council regarding family planning in Greenland*, dated 29 May 1965. It sets out what the purpose of a contraceptives policy in Kalaallit Nunaat ought to be: “The purpose of all efforts to spread interest in and knowledge of family planning and its means is to achieve that all pregnancies should be desired by the parents, and that cohabitation should be without fear of pregnancy. The individual should be able to realize his wishes, both as to when in the marriage the children should be born, and as to how many children the family should consist of.”¹³¹ The Danish Health Authority announced “it should be emphasized

¹²⁶ See, for example, ILO C169 Art 1(b).

¹²⁷ Cambridge Dictionary Online, accessed 30 December 2024.

<https://dictionary.cambridge.org/us/dictionary/english/colonialism>

¹²⁸ Oxford Languages, last accessed on 30 December 2024 at <https://www.google.com/search?q=colonialism>

¹²⁹ Jörn Axel Kämmerer, “Colonialism,” *Oxford Public International Law*. Accessed 7 January 2026.

<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e690>. The source defines colonialism: “Generally speaking, it refers to a concerted practice of, in most cases, European states dividing up other inhabited parts of the world amongst themselves. [...] it was in the 19th century when European colonisation proliferated and started to acquire features of an ideology, of which the ending ‘-ism’ is characteristic. Imperialism, which colonialism coincides with and is akin to, is marked by a belief in the anthropological, cultural, and political superiority of the European powers and their people, which is sometimes masked as an educative mission. It usually led to exploitation of natural and/or human resources and in some cases it also involved the founding of European settlements.”

¹³⁰ ILO, *Understanding the Indigenous and Tribal Peoples Convention 1989 (No.169)* (International Labour Office, Geneva, 2013) 1.

¹³¹ Greenland Council Secretariat, Ministry of Greenland, Danish Family Planning Association, *Document No. 18: Memorandum to the Greenland Council regarding family planning in Greenland*, j.nr. 4001-02-03, pk.nr. 3695.

that the method to be used in each individual situation depends entirely on the individual woman's anatomy and attitude, which is why the coil cannot automatically be considered the most suitable method in all cases. In addition, the coil can normally only be inserted in women who have given birth.”¹³²

111. The initial trial of intrauterine contraceptive device use in Kalaallit Nunaat was overseen by medical doctor Erik Rosen and commenced on 20 July 1966 in Nuuk. The preliminary report of the trial was delivered to the Ministry of Greenland in April 1967. About 296 of the 368 women who presented to the doctor for the trial had an IUD inserted. The trial included both Inuit and Danish women. It is not clear how the women were selected for the trial. Rosen estimated that about 10 per cent of the women who attended were in the early stages of pregnancy. In the preliminary report, Rosen explained the reason for the trial was to ensure “that the population in the northernmost county [Kalaallit Nunaat] should have access to modern forms of contraception on an equal footing with the population in southern Denmark.”¹³³ This approach aligns with broader principles of non-discrimination and is an indication that the state was taking positive steps to ensure equity and access to healthcare in line with other principles of human rights law.¹³⁴
112. However, the prohibition of discrimination under international law is concerned with ensuring both formal equality *and* substantive or de facto equality in the actual enjoyment and exercise of human rights.¹³⁵ It is important, therefore, that any analysis of non-discrimination is not reduced to formal equality alone (that is, what the law provided for) but assesses whether there was discrimination in what actually occurred. Thus, it is necessary to examine the implementation of the policy to determine whether discrimination occurred in practice.

2.2.2 Implementation of Contraceptives Policy

113. At least since the IUD trial in 1966, contraception in Kalaallit Nunaat was approached differently depending on whether a person was “Greenlandic” (Inuit) or “*udsendte*” (foreign to Greenland, usually Danish). In particular, the full suite of contraceptive options was not made available on the same terms to Inuit women as to other women. There was a stated preference to fit Inuit women and girls with IUDs, rather than offering alternative contraceptive methods.¹³⁶ This was based in part upon a prevalent belief among practicing doctors, including the Chief Medical Officer of Kalaallit Nunaat, that Inuit women would not be able to take the contraceptive pill as prescribed.¹³⁷

¹³² Jensen et al. 71-72.

¹³³ Jensen et al. 63.

¹³⁴ For example, the right to health: ICESCR Art 12.

¹³⁵ CERD, *General Recommendation 32: Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination* UN Doc CERD/C/GC/32 (24 September 2009) 3.

¹³⁶ Ole Berg, “IUD in Greenland” [I.U.D I Grønland] (5 November 1971) 133 (44) *Ugeskrift for Læger* 2189, 2190; Jensen et al. 64, 240; Letter from Ministry of Greenland in the Danish Government, to Chief Medical Officer of Greenland (11 July 1966).

¹³⁷ Jensen et al. 49, 64, 95, 240; Letter from N, Hahnemann, Ministry of Greenland in the Danish Government, to Chief Medical Office of Greenland Stein (11 July 1966). RA, Kvindehistorisk Samling, Foreningen for Familieplanlægning. ”Internationalt materiale—varia”, pk.nr. N114; Jensen et al. 45.

114. The views of the Chief Medical Officer were important because of the particular role that person undertook in health policy in Kalaallit Nunaat. Until 1992, when Naalakkersuisut took over administrative responsibility for healthcare, the Chief Medical Officer was employed by the Ministry of the Interior and Health and reported in practice to the Health Authority, with final responsibility resting with the Minister for Greenland. The Chief Medical Officer had a supervisory role, and also assisted the National Board of Health in its supervisory duties.¹³⁸ On 1 June 1986 administrative responsibilities (finances, accounting, supervision and registration of inventory and equipment) formerly held by the Chief Medical Officer were transferred to the Danish Ombudsman, though the medical policy and leadership aspects of the role continued. From mid-1987, following the abolition of the Ministry of Greenland, the office of the Chief Medical Officer was placed under the Danish Health Authority.
115. In a letter from the Chief Medical Officer to the Ministry of Greenland in September 1970, the Chief Medical Officer explained that “contraception in Greenland is mainly based on providing women with spirals, and there has been great reluctance to advise Greenlandic women on the use of hormonal contraceptives, as such preparations should usually only be suggested for use by women who can be reasonably expected to take the preparations in accordance with the rules that apply to taking such preparations.”¹³⁹ The Chief Medical Officer’s reluctance to recommend contraception other than IUDs reflected a point of view commonly shared by district doctors in practice or on clinical visits to Kalaallit Nunaat.¹⁴⁰ In 1964, a doctor at the district hospital in Nuuk stated that the IUD was the only applicable method of contraception, as the “Greenlanders” were not yet “prepared to use methods that they themselves must remember.”¹⁴¹ In correspondence about foaming contraceptive tablet (pessaries) in the early 1960s, a district doctor asserted that “with some knowledge of how the majority of the population lives, and what their view of sexual life is, one would beforehand be skeptical about the possibility of a constant and regular use of contraceptive methods, and I believe that this prior skepticism has proven to be well-founded.”¹⁴² The Research Group Report found that “some doctors’ perception of the sexuality and life skills of the Greenlandic population [Inuit] were expressed in the debate on sexually transmitted diseases, perceptions that came to influence the types of contraception that were introduced in Kalaallit Nunaat.”¹⁴³
116. Although oral contraceptives were physically available in Kalaallit Nunaat from at least 1966, they were systematically not equitably accessible for people of Inuit ethnicity. A letter from the Chief Medical Officer to the Ministry of Greenland in Copenhagen advised that 20,000 enavid tablets

¹³⁸ Jensen et al. 134.

¹³⁹ Letter (28 September 1970), archive box 4040-50, GT/ib.

¹⁴⁰ Jensen et al. 45;

¹⁴¹ Ibid., 49; see also Erik Rosen, “Foreløbig rapport vedr. undersøgelser over Intrauterine Preventions (spiralmetodens) anvendelse på Grønland for perioden juli til august 1966,” (4 April 1967) 3.

¹⁴² Jensen et al. 45.

¹⁴³ Ibid, 20.

“are intended exclusively for use by Danish women.”¹⁴⁴ The justification was to ensure that Danish women sent to Greenland from Denmark still had access to the form of contraception to which they were most accustomed. The letter read “I can inform you that the 20,000 enavid tablets that we have requested are intended exclusively for use by Danish women who are deployed at home and who are used to using these tablets and whom we see in increasing numbers here in the consultation. The 20,000 tablets may be somewhat in excess of our consumption, but we have tried to count on a steady increase in consumption within the above-mentioned clientele. We would be happy to discuss family planning for the Greenlandic population with Chief Physician Rosen, for which purpose we are currently procuring a large number of subjects for testing the spiral method.” There is nothing inherently discriminatory about ensuring that Danish women could access the contraceptive pill, but limiting the possibility of offering the pills to Inuit women indicates an approach differentiated along ethnic lines rather than in accordance with the individual needs of each patient.

117. On 22 October 1970, the Chief Medical Officer responded to an enquiry from the Ministry of Greenland regarding whether women in Kalaallit Nunaat must pay for contraceptive pills. In his reply, the Chief Medical Officer wrote: “The prerequisite for a doctor to prescribe contraceptive pills to a woman is that he has a reasonable assumption that she will be able to administer them with the regularity required or prescribed. In most cases up here, this means that doctors generally only prescribe contraceptive pills to women whose lifestyle and income mean that they will be able to pay for the pills without significant financial hardship. These cost between DKK 60 and DKK 80 per year, depending on the brand used, and for the vast majority of families, an annual expense of this magnitude is insignificant compared to what the family spends on non-essential consumable items.”¹⁴⁵ The Chief Medical Officer further stated that there were some women who were undoubtedly able to administer the contraceptive pills, but who had difficulty paying for them, and they should therefore not pay; this applied to school and education students as well as women from “well-ordered” homes with many children and modest incomes. The Chief Medical Officer stated that he therefore “has always been of the opinion that my circular no. 80 should have included a clause stating that the doctor may, on social grounds or in cases of compelling social circumstances, dispense the pills free of charge.”¹⁴⁶
118. Despite the Chief Medical Officer’s stated wish for this clause to be added, it was in fact not included. The baseline remained that oral contraceptives had to be paid for, and was not routinely

¹⁴⁴ Letter from the Chief Medical Officer of Kalaallit Nunaat to the Ministry of Greenland (6 July 1966). Translated from Danish “Tak for Deres brev af 30.6.66. Jeg kan oplyse, at de 20.000 enavid tabletter, som vi har rekvireret, udelukkende er tænkt til brug for udsendte danske kvinder, som hjemmefra er vant til at bruge disse tabletter og som vi her i konsultationen ser i et stadig stigende antal. De 20.000 tabletter er måske noget i overkanten af vort forbrug, men vi har prøvet at regne med en stadig stigning af forbruget indenfor ovennævnte klientel. Familieplanlægningen for den grønlandske befolkning diskuterer vi gerne med overlæge Rosen, til hvilket formål vi i øjeblikket er ved at fremskaffe et stort antal emner til afprøvning af spiralmetoden.”

¹⁴⁵ Archival materials, letter from Chief Medical Officer of Greenland to the Ministry of Greenland, Journal 531.00 (22 October 1970) 1, referring to a letter from the Ministry dated 5 October 1970.

¹⁴⁶ Ibid.

available except to those whose “lifestyle and income” meant they could pay. Even in 1970, Inuit families were disproportionately larger than Danish families, and since 1964 Inuit workers had been subject to the “birthplace criterion” law, which meant Inuit workers received lower pay than Danish workers for the same job.¹⁴⁷ It is ultimately not clear how often the oral contraceptive was presented as a free choice to Inuit women and girls when they received advice on contraception. However, there are reasonable grounds to believe that on a system-wide level, doctors did not offer the full suite of available contraceptives on an equitable basis to Inuit women and girls because they were instructed to favour the IUD, and that the pill was sent predominantly for “Danish women” and for those with a “lifestyle and income” to pay. This gives rise to a reasonable basis to believe that there was both direct and indirect discrimination in the availability of contraceptive options on the basis of ethnicity in Kalaallit Nunaat, at least in the 1960s and 1970s.

119. Limited contraceptive choice is evident also in the way in which Depo-Provera was administered. The Research Group received reports from 43 women who received Depo-Provera. For these women, the Research Group described that “many say that they felt pressured to choose this method because it was not up for discussion that they should have some form of contraception, and they therefore did not have a real opportunity to decide whether they wanted it. The women also report that they were not offered other methods, such as the contraceptive pill, as an alternative.”¹⁴⁸ Depo-Provera is a drug that was approved for use as a contraceptive in the Danish Realm in 1972. Depo-Provera works by preventing ovulation and thinning the uterine lining and is injected into the patient every three months. When a person stops using Depo-Provera, it can take up to one year before ovulation returns, affecting fertility even after discontinuation of use.¹⁴⁹ This was known to the authorities when the drug was approved.¹⁵⁰ A distinctive characteristic of this drug, therefore, like the IUD, is that its effect is ongoing and cannot be easily or quickly reversed by a person to whom it is administered.
120. When the IUD was approved for use, so-called “actively motivating” techniques were adopted to persuade Inuit women and girls to accept contraception. This seemed to be a two-step process that involved actively calling women and girls into the doctor’s office to discuss contraception,¹⁵¹ or raising it while they were there for another reason, then being subjected to some degree of pressure during the consultation (See Section 2.3.1.1). These features of the approach were described in the information obtained from the women affected, by the doctors themselves in their subsequent

¹⁴⁷ *Greenlandic Civil Servants Act No. 168* (27 May 1964) differentiated pay, leave, pension and other benefits based on whether a person was a “resident” or “non-resident” of Kalaallit Nunaat. A resident was considered someone who at the time of employment held permanent residence in Kalaallit Nunaat, or was born in Kalaallit Nunaat, or moved there before the age of five. Non-residents were anyone who was not covered by the term “resident” and received significant more favourable employment conditions. See further: Jacob Janussen, “Fødestedskriteriet – og hjemmestyrets ansættelsespolitik,” *Grønland Årg* (1995) 43(2).

¹⁴⁸ Jensen et al. 188.

¹⁴⁹ World Health Organization, ‘Summary of Product Characteristics: Depo-Provera’ (July 2021).
https://extranet.who.int/prequal/sites/default/files/whopar_files/RH018%20part4v5.pdf.

¹⁵⁰ Jensen et al. 118.

¹⁵¹ *Ibid.*, 198.

academic writing and media statements, and has been recorded in the archival material. The authors have received no information to suggest that Danish women and girls were routinely subject to the same approach.

121. Once it is evident that there has been differential treatment along ethnic lines, the burden falls on the government to show that that this differential treatment was justified.¹⁵² It is possible to suggest that because there had been little access to contraception before the 1960s, that a more active approach in Kalaallit Nunaat was warranted as a “special measure” to ensure that Indigenous women and girls could access reproductive healthcare equitably.¹⁵³ States have an obligation to afford particular protections to “vulnerable” groups exposed to heightened risk of rights violations,¹⁵⁴ and to adopt positive measures to ensure the enjoyment of the rights guaranteed under various international human rights instruments.¹⁵⁵ While a more active information and education campaign could reasonably be pursued on these grounds, mechanisms of “active persuasion” contrary to the express wishes of a woman or child, or withholding particular contraceptive options to a single ethnic group, could not be so justified.

2.2.3 Conclusion on Discrimination

122. On the basis of the foregoing, the authors find there is a reasonable basis to believe that the Chief Medical Officer and practicing doctors actively withheld the full suite of contraception options from Inuit women and girls and applied “actively motivating techniques” to persuade them to accept IUD contraception. In doing so, they classed an entire group of people as less capable, rather than assessing each patient in their individual circumstances, based on the full range of contraceptive options available. Such conduct is contrary to the prohibition of discrimination on the basis of race or ethnicity under customary international law, Articles 2 and 5 of the CERD (for matters arising after January 1972), Article 2 of the CESCPR (for matters arising after January 1976), and on the basis of sex contrary to Articles 2(d), and 12(1) of CEDAW (for matters arising after May 1983), and possibly Article 14 of the ECHR when read with Articles 3 and 8. The discrimination was intersectional: people were subject to this approach to contraception because they were Inuit women. It is important to recall that benevolent intentions are not lawful excuses

¹⁵² *D.H and Others v Czech Republic* (Grand Chamber, European Court of Human Rights, Application No 57325/00, 13 November 2007) [2007] ECHR 2007-IV (Reports of Judgments and Decisions), para 177.

¹⁵³ ICESCR Art 12; ICCPR Art 27.

¹⁵⁴ Alexander H. E. Morawa, “Vulnerability as a Concept of International Human Rights Law,” (2003) 6(2) *Journal of International Relations and Development* 139, 150.

¹⁵⁵ ICCPR Art 27; CROC Art 24; see also Human Rights Committee, *General Comment 23: Article 27 (Fiftieth session, 1994)*, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev.1 at 38 (29 July 1994), paras. 6.1, 6.2, 7; See also Human Rights Committee, *Views adopted by the Committee under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 511/1992 (Ilmari Lämsä et al. v. Finland)*, CCPR/C/52/D/511/1992 (8 November 1994).

for discrimination or ill treatment. It is not necessary to show that relevant people acted with maligned or hostile intent to evidence that a practice, law or policy was discriminatory.¹⁵⁶

123. As will be elaborated in a later section on whether practices were systematic, the status report of the National Medical Board,¹⁵⁷ alongside the listening sessions the Expert Group held with women affected, civil society, the health department, and medical professionals, collectively provide reasonable grounds to believe that at least some doctors continued to engage in “for her own good” approaches to contraception even after the establishment of clear guidance forbidding contraception without informed consent in 2001. In the view of the authors that this practice continued, even rarely, was a consequence of a system in which some of the discriminatory practices embedded in law and policy were not adequately addressed, monitored or dismantled. This is contrary to the state’s binding positive obligations including, among others, Articles 2 and 5(e)(iv) of CERD (for cases after 1972) to eliminate racial discrimination in the field of health; and Articles 2(a), (e) and (f), 5, and 12 of the CEDAW (for cases after May 1983), to take “all appropriate measures” to eliminate discrimination against women, including in healthcare and family planning.

2.3 Freedom from Torture, Cruel, Inhuman and Degrading Treatment

124. Involuntary contraception is a form of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment (referred to collectively as “ill-treatment”).¹⁵⁸ The absolute prohibition of torture cannot be derogated from under any circumstances.¹⁵⁹ It is owed *erga omnes*, or to the international community as a whole. Violation of an *erga omnes* norm constitutes a “gross violation” or a “serious breach of obligations under peremptory norms of general international law.”¹⁶⁰
125. Denmark is party to at least five binding human rights conventions that protect the right to be free from torture, cruel, inhuman or degrading treatment, albeit with slightly different formulations.¹⁶¹ The ECHR entered into force for the Kingdom of Denmark in September 1953. Article 3 of the ECHR states: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The ICCPR entered into force for Denmark in 1976. It provides in Article 7: “No

¹⁵⁶ See the discussion of circumstances precluding wrongfulness under international law, and the section on cruel, inhuman and degrading treatment.

¹⁵⁷ Naalakkersuisut, National Medical Board, “Status på spiralsagerne” [Status of the IUD cases] (24 January 2024). https://nun.gl/nyheder/2024/03/status-paa-spiralsagerne?sc_lang=da.

¹⁵⁸ CEDAW, *General Recommendation 35 on gender-based violence against women, updating General Recommendation 19* (26 July 2017) UN Doc CEDAW/C/GC/35, para 18.

¹⁵⁹ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), opened for signature 10 December 1984, 1465 UNTS 85, entered into force 26 June 1987; ICCPR Art 7 read with Art 4; CRPD Art 15; Universal Declaration of Human Rights (1948) Art 5. on customary status see: *Prosecutor v Furundžija* (Trial Judgment), Case No IT-95-17/1-T (10 December 1998) [144]–[157] (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber).

¹⁶⁰ ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* Art 40.

¹⁶¹ ICCPR Art 7; ECHR Art 3; CROC Art 37; CRPD Art 15; CAT; as well as other treaties that prohibit torture in other contexts. For example, Common Article 3 of the Geneva Conventions.

one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”¹⁶² Subsequent treaties to which Denmark became party re-stated the obligation with respect to specific categories of “vulnerable” people.¹⁶³ The *Convention on the Rights of the Child* (CRC) restates: “no child shall be subjected to torture, or other cruel, inhuman or degrading treatment or punishment”.¹⁶⁴ The Convention on the Rights of Persons with Disabilities (CRPD) contains a similar clause.¹⁶⁵

126. The *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) entered into force for Denmark in 1987. Article 1 of the CAT defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”¹⁶⁶ Key to this definition is that there must be “severe pain and suffering, whether physical or mental.” Also central is that it is intentionally inflicted “for any reason based on discrimination of any kind” and “inflicted by a public official or other person acting in an official capacity.” Thus the definition of torture expressly acknowledges that harm which is discriminatory and carried out by public officials is a “particularly serious” form of ill-treatment.¹⁶⁷
127. Torture can be distinguished from cruel, inhuman or degrading treatment based “principally from a difference in the intensity of the suffering inflicted”.¹⁶⁸ There is also a deliberate character to the infliction of torture,¹⁶⁹ in that it is “intentionally inflicted” and with a specific purpose. Other forms of ill treatment must also meet a minimum threshold but need not be as severe as torture, nor evidence the specific intent of torture, and can involve looking at the cumulative effects of several surrounding factors.¹⁷⁰ Excessive use of force by law enforcement, for example, is a common form of “ill-treatment” below the threshold required for torture but adequate to constitute inhuman or

¹⁶² Article 7.

¹⁶³ *Convention on the Rights of the Child* (CRC) Art 37; *Convention on the Rights of Persons with Disabilities* (CRPD), Art 15.

¹⁶⁴ CRC Art 37.

¹⁶⁵ CRPD Art 15.

¹⁶⁶ CAT Art 1. The reference to lawful sanctions is to make space for those states in which corporal punishment remained an element of the criminal justice system.

¹⁶⁷ *Selmouni v France* (1999) 29 EHRR 403, para 105.

¹⁶⁸ *Ireland v United Kingdom* (1978) 25 Eur Court HR (Ser A) para 167; *ibid*.

¹⁶⁹ CAT Art 1.

¹⁷⁰ *Tyrer v United Kingdom* (1978) 2 Eur HRC 1 (ECHR); *Bouyid v Belgium* [2015] ECHR 29 (GC); *Yubraj Giri v Nepal* (24 March 2011) CCPR/C/101/D/1761/2008 (UN Human Rights Committee).

degrading treatment under international law.¹⁷¹ There is no specific definition of each of the terms “cruel, inhuman or degrading treatment”, and in general assessments must be made based on the “nature, purpose and severity of the treatment applied”.¹⁷²

128. At its core, the right to freedom from torture, cruel, inhuman and degrading treatment contains three central obligations. First, an obligation to refrain from conduct that might constitute torture or other forms of cruel, inhuman or degrading treatment under international law (sometimes referred to as a “negative obligation”).¹⁷³ Second, an obligation to prevent torture, cruel, inhuman or degrading treatment (“positive obligation”).¹⁷⁴ Third, a procedural obligation to properly investigate and prosecute any circumstances in which torture, cruel, inhuman or degrading treatment might have taken place.¹⁷⁵
129. These obligations exist under binding rules of European and international human rights law.¹⁷⁶ There is a heightened duty of responsibility for public institutions with respect to children and other vulnerable individuals (see Section 1.5.3).¹⁷⁷ This is a category within which the women and children affected by involuntary contraceptives clearly fall on the basis of gender, age, and that they were Indigenous.

2.3.1 Absence of Valid Consent or Medical Emergency

130. Medical intervention has been found to constitute inhuman and degrading treatment contrary to international law in circumstances in which the minimum level of severity was met by the absence of valid consent and no medical emergency justified the relevant procedure.¹⁷⁸ Contraception is not a response to any situation of medical urgency or emergency and does not fall under that exception. Under binding rules of European and international human rights law, free, prior and

¹⁷¹ Stuart Casey-Maslen, *The Prohibition of Torture and Ill-Treatment Under International Law* (Cambridge University Press, 2025) 47.

¹⁷² Human Rights Committee, General Comment 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 10 March 1992, para. 4.

¹⁷³ ECHR Art 3; CAT Art 2 (1985); with contemporary obligations for children and persons with disabilities CRC Art 37; CRPD Art 15(1). As described in section 2.1, freedom from torture crystallised into a norm of customary international law before the enactment of the treaty, sometime in the 1960s: *Questions Relating to the Obligation to Prosecute or Extradite, (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, 422 at 457, para. 99. The International Court of Justice referred to the Universal Declaration of Human Rights of 1948, the 1949 Geneva Conventions for the protection of war victims, and the International Covenant on Civil and Political Rights in expressing its recognition of the peremptory character of the prohibition of torture.

¹⁷⁴ CAT Art 16; CRPD Art 15(2).

¹⁷⁵ *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/69/387 (23 September 2014), paras. 21 and 25; ECtHR, *B.S. v. Spain* (Third section, Application 47159/08, Judgement, 24 July 2012), para. 39.

¹⁷⁶ CAT Arts 12, 13; ICCPR Art 7; *Selmouni v France* (1999) 29 EHRR 403; *Labita v Italy* (2000) 30 EHRR 125 paras 130-136.

¹⁷⁷ Fikfak et al. Submission. Citing: *A.P. v Armenia*, App no. 58737/14, (ECtHR, 18 June 2024) at para.116; *Z v Czech Republic*, App no. 37782/21, (ECtHR, 20 June 2024) at para.57-8; *V.I. v the Republic of Moldova*; , *S.F.K. v Russia*, App no. 5578/12, (ECtHR, 11 October 2022); *O’Keeffe v Ireland* at para.145; CROC Art 37; CRPD Art 15.

¹⁷⁸ Fikfak et al. submission, 14.

informed consent is required for all medical interventions that involve contraception, sterilisation, or the medical assessment of an individual's genital region¹⁷⁹ absent it being an urgent medical necessity.¹⁸⁰ The European Court of Human Rights has found that a situation will meet the standard of medical necessity where the relevant urgency involves "imminent risk of irreparable damage" to the individual's life or health."¹⁸¹ Conversely, if the person is a competent adult and there is no medical emergency, "prior informed consent has been considered essential for medical intervention to be considered permissible".¹⁸² Concerns over potential future pregnancy complications, for example, have not been enough to justify sterilisation without consent particularly where other less medically invasive methods were available.¹⁸³ Informed consent for routine medical procedures became a universally binding norm of customary international law primarily through the evolving interpretation of fundamental human rights treaties. While the exact moment cannot be pinpointed to a single date, significant milestones include the inclusion of Article 7 in the ICCPR prohibiting medical experimentation without consent (in force 1976), and case law in regional human rights courts particularly from the early 2000s. Nevertheless, an absence of informed consent could still indicate a contravention of the prohibition of inhuman and degrading treatment, as was binding on Denmark under Article 3 ECHR since 1953 and Article 1 CAT since 1987.

131. The European Court of Human Rights has found violations of both the right to family and private life and the prohibition on inhuman and degrading treatment in cases involving sterilisation and contraception practices where medical personnel failed to "ensure that the full and informed consent of such a patient was obtained ... or that the patient was involved in the decision-making process to a degree permitting her interests to be effectively protected."¹⁸⁴ The temporary nature of contraception does not exclude consideration of the principles generated from that case law being applied, particularly with relation to intrauterine contraception as that form of pregnancy prevention can only be safely reversed with medical intervention. Insertion of an IUD might also be considered effective sterilisation where requests to remove the device were refused,¹⁸⁵ or where a device too large for the uterine cavity or inserted improperly causing permanent damage. Fertility can also be affected by the psychiatric impacts of obstetrics abuse.

¹⁷⁹ ICCPR Art 7; *Salmanoğlu and Polattaş v Turkey* (European Court of Human Rights, Chamber, Application No 15828/03, 17 March 2009) [88]. Now protected under the *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine*, opened for signature 4 April 1997, CETS No 164 (entered into force for Denmark 1 December 1999) art 5, according to which any intervention in the health field can only be carried out after the person concerned had given free and informed consent to it.

¹⁸⁰ *VC v Slovakia* [2011] ECHR 18968/07, [103]; *Jalloh v Germany* [2006] ECHR 54810/00, 69.

¹⁸¹ Fikfak et al. Submission, p 14. Citing *G.M. and Others v the Republic of Moldova*, App no. 44394/15, (ECtHR, 22 November 2022).

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ *VC v Slovakia* [2011] ECHR 18968/07, 151.

¹⁸⁵ Which occurred in a number of instances: Jensen et al. 226-227; redacted statement of claim in the civil case.

132. The initial trial and subsequent approval of the IUD method appear to have been intended as an offer predicated on individual consent, as was the case in Denmark at that time. In 1965 the Greenland Council Secretariat, the Ministry of Greenland and the Danish Family Planning Association agreed: “The purpose of all efforts to spread interest in and knowledge of family planning and its means is to achieve that all pregnancies should be desired by the parents, and that cohabitation should be without fear of pregnancy. The individual should be able to realise his wishes, both as to when in the marriage the children should be born, and as to how many children the family should consist of.”¹⁸⁶ The preliminary report of Rosen’s trial emphasised that broad information about the IUD method must be shared with the woman as a “prerequisite” and that the proposal to insert an IUD should be “presented as an offer.”¹⁸⁷ The actual implementation of contraceptive access in Kalaallit Nunaat, however, was at odds with these policy guidelines and ambitions.

2.3.1.1 “Actively Motivating Techniques”

133. Under the general oversight of the Ministry for Greenland, there was an active “campaign”¹⁸⁸ to encourage the widespread use of the IUD as the preferred contraceptive device for Inuit in Greenland.¹⁸⁹ Whereas in Denmark in the late 1960s and early 1970s, contraception was offered if the woman herself inquired about it, in Kalaallit Nunaat, it was widely acknowledged that the rapid decline in fertility and the high rate of IUD insertion resulted from the “actively motivating” techniques utilised to encourage Inuit women to use contraception.¹⁹⁰ This appeared to be part of a process that involved calling or sending girls into the doctor’s office or hospital for the purpose of contraception,¹⁹¹ or taking the opportunity while she was there for something else,¹⁹² and then some degree of pressure being applied to persuade the woman or girl to acquiesce to contraception. Relational and systemic conditions, underlying power relations, and historical experiences of domination and direct discrimination left Inuit women, and particularly children, in a position of exceptional vulnerability in dealings with Danish doctors. The size of towns and settlements meant that there was often no real choice in where to seek medical advice or treatment.
134. In a published article dated 20 June 1977, Jens Misfeldt, a medical officer at the time within the employ of the state (and later the Chief Medical Officer of Kalaallit Nunaat) described his experience in medical practice in relation to the administration of IUDs since 1966. He described

¹⁸⁶ Greenland Council Secretariat, Ministry of Greenland, Danish Family Planning Association, *Document No. 18: Memorandum to the Greenland Council regarding family planning in Greenland*, j.nr. 4001-02-03, pk.nr. 3695.

¹⁸⁷ Jensen et al. 63.

¹⁸⁸ It was described both as an “IUD program” and as a “campaign” by the doctors who participated in it: Ole Berg, ‘IUDs and the Birth Rate in Greenland’ (1972) 3(1) *Studies in Family Planning* 12, 12, in which he writes that as a result of Rosen’s trial “we started an IUD campaign”. Ole Berg was a medical doctor in practice in South Kalaallit Nunaat at the time the article was published.

¹⁸⁹ Jens Misfeldt, ‘Familieplanlægning i grønlandske lægedistrikter’ (1977) 139(25) *Ugeskrift for Læger* 1501, 1501; Ole Berg, ‘IUD in Greenland’ [I.U.D i Grønland] (5 November 1971) 133 (44) *Ugeskrift for Læger* 2189, 2192

¹⁹⁰ Jens Misfeldt, *ibid*; Flemming Mikkelsen, ‘Om Familieplanlægning’ (1978) 5 *Tidsskrift i Grønland* 152, 153; Jensen et al. 198-199.

¹⁹¹ Jensen et al. 179-181.

¹⁹² *Ibid.*, 181-186.

that “the loop was energetically offered to every fertile woman who came into contact with the health service. Few maternity patients have left hospital without a loop, and the same has been true for women discharged after induced abortion.”¹⁹³ Among other things, he observed that the Lippes Loop was offered irrespective of the reason for which the person was in the clinic and that “in daily consultations, contraception was widely discussed when a woman of childbearing age sought medical attention, and very often the consultation ended with the insertion of a loop or an appointment to do so. In the schoolrooms of the villages and in the modest cabins of the travel boat, work has been done with headlamps and speculums.”¹⁹⁴ In material within the Danish archives, a table entitled “Lippes Loop” dated 1969 lists the total number of Lippes Loop devices inserted across the 17 regions that year. In Jakobshavn (today Ilulissat), it is noted that in total 249 Lippes Loop were inserted “only after offer,” meaning the doctor initiated the conversation, in Frederikshåb (today Paamiut) where 170 were inserted that year it is noted “90% after offer.” and in Sukkertoppen (today Maniitsoq) where 181 were inserted “stor efter tilbud” is noted, meaning “big after offer.”

135. By the accounts of some doctors, this was more than an offer alone but a matter of direct influence.¹⁹⁵ One medical doctor who practiced in Kalaallit Nunaat in the late 1960s to early 1970s wrote about his experience as a medical practitioner administering IUDs in Kalaallit Nunaat: “such things were arranged without petty consideration for informed consent, which would only cloud the problem—the doctor knew better anyway.”¹⁹⁶ Another doctor described that “women who were particularly in need of a break in the long, unbroken chain of childbirths—or who should be able to avoid unwanted pregnancies during their education” were subject to the “direct and personal influence” of the doctor.¹⁹⁷ The Greenland Council Secretariat’s travel report from a visit to East Kalaallit Nunaat in 1972 described that the local doctor explained that he would contact “very young girls” and would do this “through the girls employed at the hospital” and then during the consultation “motivated the girls to have an IUD fitted.” There is no mention of parental contact or consent, nor what form of motivation the doctor employed.¹⁹⁸ Over the same visit, “local politicians explained that women were being given IUDs without knowing what they were and that this information was downplayed by Danish civil servants.”¹⁹⁹ Another Kalaallit politician remarked to a newspaper in 1978 “Today, it is far too widespread that Greenlandic women are given IUDs without having decided so themselves.”²⁰⁰

¹⁹³ Ibid. Jens Misfeldt, ‘Familieplanlægning i grønlandske lægedistrikter’ (1977) 139(25) Ugeskrift for Læger 1501, 1501, 1502.

¹⁹⁴ Misfeldt ibid.

¹⁹⁵ Jensen et al. 83-84.

¹⁹⁶ Sven Refslund Poulsen, *En Ronkedors Bekendelser: Refleksioner over at Langt Liv som Læge og Kirurg i Hele Verden* (Rydendahl Forlag, 2017) 54.

¹⁹⁷ Jensen et al. 199.

¹⁹⁸ Ibid., 99.

¹⁹⁹ Ibid., 80.

²⁰⁰ Jensen et al., 103.

136. For those who were children at the time, a common account was that they were called to the doctor from their schools or dormitories (68 of the 143 women in the civil claim, and 50 of the 204 incidents involving children reported to the Research Group).²⁰¹ The Research Group found only one record specifically detailing IUD contraception initiated by a school. The student wanted to leave school and was considered “more mature than her peers.” The staff wrote that because one of the child’s family members had become pregnant “the staff wanted to ensure that the same thing did not happen to her.”²⁰² There has also been corroboration of an organised approach by schools from some doctors and educators working in Kalaallit Nunaat at the time.²⁰³
137. What women and children themselves might have wanted was not always decisive in the doctors’ approach. Women routinely described the IUD being presented as the “only choice,” or as having no choice at all.²⁰⁴ That applied not only to the initial insertion of the IUD but also, sometimes, whether it could be removed. In the civil claim, there were a number of reports that women did not know that they had an IUD inserted, or that when they requested that the device be removed this request was refused, including in circumstances where the child attended with a parent.²⁰⁵ In the 1972 visit of the Greenland Council Secretariat to the municipal council in Ittoqqortoormiit they were advised that “girls/women had been given IUDs without being properly informed about what they were and why they should have them, just as they did not know that they could have them removed again.”²⁰⁶ The Research Group also found evidence that in specific districts “women were not always able to decide for themselves whether the IUD should be removed.”²⁰⁷ In a travel report the doctor described why he granted a woman’s request to remove her IUD as follows: “only had one child, so the request was granted”.²⁰⁸ Thus, it was the doctor, rather than the woman herself, actively assessing how many children she ought to have. Doctors in medical practice today report that they are still discovering IUD devices in women who did not know they had one, and that they can tell by the size and condition of the device that some of these had been in the woman for “many years.”²⁰⁹ There are a few reports that IUDs were inserted into children after they physically resisted and were restrained. These experiences have had permanent psychological effects.²¹⁰
138. The Research Group report received information about IUDs being inserted without valid consent both after giving birth, and also after abortion procedure. In terms of the experiences after birth,

²⁰¹ There were 410 incidents reported to the Research Group concerning IUDs. Of these, 204 incidents were children (under 18) concerning 185 women (for some people it happened more than once). Jensen et al. 179; redacted statement of claim in the civil proceedings.

²⁰² Jensen et al. 190-191.

²⁰³ Redacted statement of claim in the civil proceedings; DR *Spiralkampagnen* podcast (May 2022).

²⁰⁴ Ibid., 185, 204-206, 208, and 260.

²⁰⁵ Ibid., 203-211; redacted statement of claim in the civil proceedings.

²⁰⁶ Jensen et al. 99.

²⁰⁷ Ibid., 217.

²⁰⁸ Ibid., 198.

²⁰⁹ Nukaaka Tobiassen and Signe Haahr Pedersen, ‘Gynækolog finder stadig gamle spiraler hos kvinder, der fik ; dem under spiralkampagnen’ (29 May 2022) KNR. <https://knr.gl/da/nyheder/gyn%C3%A6kolog-finder-stadig-gamle-spiraler-hos-kvinder-der-fik-dem-under-spiralkampagnen>. Listening session with Chief Medical Officer; listening session with practicing doctors.

²¹⁰ Jensen et al. 210; redacted statement of claim in the civil proceedings.

the Research Group report records 47 complaints, and there were 12 in the civil claim, from women for whom an IUD was inserted without valid consent after giving birth. For some these occurred after being called for a postnatal follow-up examination, during which not all knew that they would have an IUD fitted. One woman recalls “I was called to the hospital and told that I was now to have an IUD inserted. I was not asked or given a choice; it felt like an order.”²¹¹

139. In the Research Group Report, 36 of the total 297 incidents involving IUD insertion without valid consent were after an abortion, many while still under anaesthesia after the abortion procedure.²¹² At least 13 of the reports to the Chief Medical Officer of contraception without consent after 1992 are also after an abortion. These women often describe not having been told at all that they had an IUD or being told after it was already done.
140. The Research Group interviewed eleven people with “first-hand knowledge of contraceptive practices during the period covered by the investigation.” By this, it is assumed the Research Group excludes the women who experienced contraception as having first-hand knowledge. Not all of these eleven people were healthcare professionals.²¹³ It reports that these eleven people “do not believe that IUDs were inserted under duress. Although they all categorically deny any knowledge of coercion, most do not deny that the girls/women may have been subjected to pressure that they, as professionals, were unaware of.”²¹⁴ It is unclear how many, if any, among these accounts were medical doctors or participated in the actual administration of contraception. The Report notes that “as there are only 11 people involved, their accounts cannot be said to provide a comprehensive description of the entire country or of the (professional) groups to which they belonged,” but that they are important “for gaining an insight into practices during the period”.²¹⁵
141. At no point has it been suggested to the Expert Group that all doctors administered contraception in circumstances where consent was invalid. Indeed, the Expert Group has heard that some doctors in practice were concerned when they learned of what other doctors might be doing.²¹⁶ One doctor in practice in the 1960s remarked: “For my part, I do not dare to support any very energetic campaign to reduce the birth rate, as in several instances I have experienced that more prominent Greenlandic fellow citizens here regard such a measure as an unfortunate Danish initiative, which has even been described to me by a member of the *Landsråd* as an attempt on the Danish side, contrary to Greenlandic tradition, to keep the population size down in order thereby ‘to still be able to dominate Greenlandic societal life.’”²¹⁷
142. A former Minister for Greenland (1982 to 1987) is paraphrased in the Research Group Report as holding the view that “because girls under the age of 18 were becoming pregnant, and because

²¹¹ Jensen et al. 184.

²¹² Ibid., 182-184.

²¹³ Ibid., 9.

²¹⁴ Ibid., 215.

²¹⁵ Ibid., 9.

²¹⁶ Listening sessions with affected women.

²¹⁷ Jensen et al. 45.

there was a high incidence of sexually transmitted diseases and many Danish men [sent abroad] seeking female companionship, it was beneficial for as many girls and women as possible to have access to intrauterine devices.”²¹⁸ Yet IUD contraception does not offer any protection against sexually transmitted infections. IUDs are also not a plausible response to protect children from men who were having sex with them. Perversely, such an approach could encourage further sexual encounters with children by reducing the risk that a pregnancy would result from the liaison, while at the same time failing to address statutory rape (sex with a child under the age of consent) or the spread of sexually-transmitted infections. Alternatives might include addressing the sexual behaviour of men, including criminal prosecution where warranted; continued efforts in sex education; and improved availability of contraceptive choice across the spectrum of available and safe contraceptive options.

143. It is important to recall that “intent” is not determinative in whether human rights have been violated. The European Court of Human Rights has found a violation of the prohibition of inhuman and degrading treatment even where “there is no indication that the medical staff acted with the intention of ill-treating [the person]” because “they nevertheless displayed gross disregard for her right to autonomy and choice as a patient.”²¹⁹

2.3.1.2 Rate of Fertility Decline and Contraceptive Interest

144. Data on the rate of fertility decline alongside reports of widespread reluctance to accept contraception corroborates the claims that some instances of contraception were likely involuntary. In 1968, when the Danish Health Authority granted doctors in Greenland permission to provide IUDs to women aged 18 and above, district doctors were required to register all insertions accurately.²²⁰ The 1968 Annual Report of the Chief Medical Officer in Greenland provides an overview of the total number of IUDs fitted in 1968 and previous years, that is before formal approval of the use of IUDs in Greenland. According to the report, 684 women had already been fitted with IUDs prior to the Ministry having approved their use (that is, they were inserted contrary to domestic legal arrangements).²²¹ By 1 January 1969, after IUDs were approved, this number had increased to 1,766 and thus more than doubled within a single year.²²² The number continued to rise: between 1 January and 31 December 1970, registered IUD insertions increased from 2,854 to 3,821.²²³ By the end of 1972, the number of women with IUDs had reached 5,737.²²⁴ Due to gaps in registering all IUD insertions accurately, these totals should be understood as conservative

²¹⁸ Ibid., 215.

²¹⁹ *VC v Slovakia* (European Court of Human Rights, Grand Chamber, Application No 18968/07, 8 November 2011) 119.

²²⁰ Chief Medical Officer in Greenland, “The State of Health in Greenland: Annual Report from the Chief Medical Officer in Greenland” (1968) 81.

²²¹ Chief Medical Officer in Greenland, “The State of Health in Greenland: Annual Report from the Chief Medical Officer in Greenland” (1968) 82.

²²² Chief Medical Officer in Greenland, ‘The State of Health in Greenland: Annual Report from the Chief Medical Officer in Greenland’ (1969-1970), 74 (1969).

²²³ Ibid., 74 (1970).

²²⁴ Jensen et al. 172.

estimates.²²⁵ This total is a significant proportion of the population of Kalaallit Nunaat, which was 38,815 in 1964 and had risen to 47,935 in 1972.²²⁶

145. As first stated in Chapter 1, the sudden and significant fall in fertility in the late 1960s and early 1970s in Kalaallit Nunaat is clearly attributed to the introduction of intrauterine contraception. According to the World Population Report, between 1960 and 1972, Kalaallit Nunaat experienced the greatest absolute and relative decrease in fertility of all the 82 countries measured.²²⁷ Between the mid-1960s and the mid-1970s, fertility in Greenland fell from an average of between 6.5 and 7 children per woman to 2.5 children per woman (see Figure 2).
146. The remarkably rapid drop in fertility contrasted with reports from the Chief Medical Officer and other doctors that Kalaallit Inuit were generally not at all inclined towards contraception. In public remarks and published materials, the Chief Medical Officer and other doctors in practice shared these views widely. In a radio interview in 1960, the Chief Medical Officer expressed concern about the birth rate and scepticism about existing contraception options. He remarked “It would require a significant and lasting interest on the part of the individual in the whole problem of overpopulation, and this interest is completely absent in the Greenlandic population”.²²⁸ A presentation by a district doctor in 1960 indicated that the time “was not yet ripe for promoting birth control on a larger scale in Greenland, as this requires a certain maturity and ambition on the part of the population.”²²⁹ A Danish journalist writing at the time of the first medical conference in Nuuk in 1960 concluded an article with “In Greenland, attempts have been made to get people to use contraceptives, but this has proved hopeless, and sterilisation is therefore the best solution.” The journalist wrote that he expected sterilisation to be discussed at the conference, though it ultimately was not.²³⁰ A doctor writing in 1972 described that condoms and pessaries were available but “seldom used,”²³¹ and that in general “it is an almost hopeless task to get Greenlanders [Inuit] to support contraception.”²³²
147. There is no suggestion that all women who received contraception in Kalaallit Nunaat across the relevant did so without consent. For the purposes of determining whether human rights might have been violated, there is no need to show that all people who could have been subject to involuntary contraception, were in fact subject to it. In total, 354 women reported to the Research Group a total of 488 incidents involving contraceptive practices in Kalaallit Nunaat. Of the 410 incidents reported to the Research Group concerning the insertion of an IUD, 300 of those say they did not

²²⁵ For example data from the Christianshåb (Sisimiut) district is missing in the 1970 overview of IUD insertions. See also Jensen et al. 172.

²²⁶ *Statistics Greenland*, population and population growth. Accessed 2025.
<https://stat.gl/dialog/main.asp?lang=en&version=201003&sc=SA&colcode=t>.

²²⁷ R.T. Ravenholt and John Chao, ‘World Fertility Trends, 1974’ (1974) Series J(2) *Population Report: Family planning programs* J-21, p. J-21 and J-23.

²²⁸ Jensen et al. 36.

²²⁹ Jensen et al. 37.

²³⁰ *Ibid.*

²³¹ Ole Berg, ‘IUDs and the Birth Rate in Greenland’ (1972) 3(1) *Studies in Family Planning* 12, 12.

²³² *Ibid.*

consent to contraception, and 47 gave consent in circumstances in which that consent was vitiated or invalidated by the circumstances because they were children, were actively pressured, or did not understand what was happening, and according to the Research Group 63 provide no information specific to consent.²³³ Nearly one third of the total were 14 or younger at the time, and more than half were under 18.²³⁴ In the civil claim, 143 women alleged they received contraception without valid consent. It is not clear how many of the claimants also submitted reports to the Research Group, although there is likely some overlap. The Expert Group has, however, been informed by some of the women who are parties to the civil claim that they did not submit any information to the Research Group. It has also heard repeatedly that there are more women who have been subject to involuntary contraception who have not come forward to either process, or have since passed away.²³⁵

148. Although the IUD was the dominant contraceptive used in Kalaallit Nunaat in the late-1960s and 1970s, the Research Group also received 43 reports of involuntary contraception involving injections of the contraceptive drug Depo-Provera. Of these, about 38 were administered in Kalaallit Nunaat, and the remainder in Denmark. The Research Group suggests that in most cases girls under 18 were given Depo-Provera as an alternative to an IUD, though the precise circumstances are unclear.²³⁶

2.3.2 Seriousness of Harm

149. Irrespective of whether a person consented to medical treatment, the infliction of serious bodily or psychological harm could be contrary to Article 3 ECHR and Article 7 ICCPR. To amount to ill-treatment in association with a medical procedure, the relevant harm must be distinguishable from and greater than that which was an inevitable part of legitimate medical treatment. Health risks and contraindications were known when the IUD was approved for use in Kalaallit Nunaat.²³⁷ In a summary from a meeting in November 1967, the Chief Medical Officer affirmed that “The intrauterine device is not a completely safe method ... [and is] unsuitable for women who have not been pregnant.”²³⁸ After having completed his trial, Erik Rosen reported to the Ministry of Greenland that between 10 and 15 per cent of the women on whom the Lippes Loop D was trialled had asked to have it removed. About 10 to 12 per cent had bleeding disorders as a result (excessive

²³³ Jensen et al. 177-178.

²³⁴ Ibid.

²³⁵ Submission from Greenland House Aarhus, listening session with Inuit Circumpolar Council, listening session with Tiliq, listening session with affected women before 1992, listening session with currently practicing doctors, listening session with social services Kalaallit Nunaat. In addition, doctors are still discovering old IUD devices inside women who did not know they were there: Nukaaka Tobiassen and Signe Haahr Pedersen, ‘Gynækolog finder stadig gamle spiraler hos kvinder, der fik dem under spiralkampagnen’ (29 May 2022) KNR. <https://knr.gl/da/nyheder/gyn%C3%A6kolog-finder-stadig-gamle-spiraler-hos-kvinder-der-fik-dem-under-spiralkampagnen>. Listening session with the current Chief Medical Officer; listening session with practicing doctors.

²³⁶ Jensen et al. 187.

²³⁷ And also publicly thereafter as it continued to be implemented: ‘Spiralens Sejrsang’, *Atuagagdliutit* (online, 1970) 14. <https://timarit.is/page/3789471?iabr=on#page/n13/mode/2up/search/spiralens%20sejrsang>.

²³⁸ “Referat af møde den 29. November 1967 – Familieplanlægning v/Bøggild” (29 November 1967).

bleeding would later be reported by district doctors administering IUDs too).²³⁹ For these reasons he noted “specialist gynaecological knowledge is highly desirable when selecting suitable patients in order to identify gynaecological conditions that contraindicate use, and it is believed that this assessment is more demanding than the insertion of the coil itself, at least when using Lippes Loop.”²⁴⁰ An IUD works by being physically inserted into the uterus of a person. The procedure must be undertaken by a doctor or medical professional because of the risk of injury or infection if improperly inserted. An IUD must be removed by a healthcare professional for the same reason. An IUD does not prevent sexually transmitted infections.

150. In January 1968 the National Board of Health agreed with Rosen’s conclusion that “the study has not shown any complications that would contraindicate more widespread use of the coil method among the Greenlandic population, despite the high incidence of gonorrhoea.”²⁴¹ The National Board of Health added that: “more widespread use of this method of contraception requires that it only be administered by doctors who have received instruction in the methodology and information about indications and contraindications. There should be established rules for the monitoring of possible complications, expulsion etc., as well as for the registration of pregnancies, abortions, genital infections etc.”²⁴²
151. The National Board of Health asked the Chief Medical Officer in Kalaallit Nunaat to prepare such rules. On 10 July 1968, the Chief Medical Officer issued “Circular No. 80” which was addressed to doctors in practice in Kalaallit Nunaat. The Circular discouraged the use of the contraceptive pill “as such preparations should usually only be recommended for women who can reasonably be expected to take the preparations in accordance with the rules governing their use.”²⁴³ The oral contraceptive pill also risked foetal abnormalities if taken incorrectly. The circular advised that, due to the “special conditions in Greenland” concerning the frequent change of doctors, a particular method of intrauterine contraception was preferred.²⁴⁴ Based on the advice of experts, the Lippes Loop was selected, as it was the method with which most experience existed in Greenland.²⁴⁵
152. The Lippes Loop came in different sizes. The final paragraph of the attachment to the Circular recommended that doctors “use the largest type of loop, D, as far as possible, as there is a clear relationship between the size of the loop used and the safety of the method. The method is generally unsuitable for women who have not been pregnant, but in special cases it can be tried in this

²³⁹ Jensen et al. 236 citing NKA, Landslægeembedet, j.nr. 536-2, Årsberetning 1971-1973, pk.nr. 237; Jensen et al. p. 253 citing Folketingets bibliotek, Folketingets arkiv, 1974 (2. samling), Socialudvalget, L38, ministerens besvarelse af udvalgsspørgsmål nr. 6, bilag 7.

²⁴⁰ Jensen et al. 52.

²⁴¹ Ibid., 73.

²⁴² Ibid., 73.

²⁴³ Ibid., 74.

²⁴⁴ Original text in Danish: “De særlige forhold på Grønland med den ret hyppige udskiftning af læger medfører, at man ved intrauterin prevention må foretrække en bestemt metode”.

²⁴⁵ Ibid., 2.

group.”²⁴⁶ Given that Lippes Loop D was the largest of the Lippes Loop options, the Expert Group assumes the word “safety” in this quote might rather be referring to “reliability” or effectiveness in preventing births, as the physical risks increased the larger the device, particularly for children or women who have not given birth.

153. In the 1968 “State of Health in Greenland” report, the Chief Medical Officer acknowledged that for women who had not given birth, there can be “particular problems in the form of side effects and spontaneous expulsions of the IUD.” As such, “all inserted IUDs must be accurately registered, that follow-up examinations are carried out, and that all side effects are registered.”²⁴⁷ This is consistent with Circular No. 80, according to which “special records (a medical file) were to be kept for each woman fitted with a Lippes loop, indicating the date of insertion, follow-up examinations, complications, and the reason for any removal.”²⁴⁸ Lippes Loop remained the predominant IUD device at least until sometime between 1973 and 1977 when doctors began to adopt the use of a “Copper-T coil.”²⁴⁹
154. As described, not all women knew they could ask to have an IUD removed, and some who tried, including with their parents with them, had their request for removal refused.²⁵⁰ Retained Lippes Loop devices can cause infections and other pelvic inflammatory symptoms, although they can also remain in the person without symptoms.²⁵¹ Women who have shared their accounts with the civil claim and the Research Group have reported bacterial infections and damage from migration of the device within the body or perforation, bleeding disorders, and septic events. There have also been instances where the device stayed retained for many years, migrated, or perforated the uterine lining.²⁵² Perforation can be caused by a “failure to establish the size and orientation of the uterus by careful pelvic examination” because the sizes of the IUD and the size of the uterine cavity must

²⁴⁶ Chief Medical Officer, *Circular 80: to district doctors and doctors at Queen Ingrid’s Hospital: Regarding prenatal hygiene and the use of contraceptives* (10 July 1968).

²⁴⁷ Original text in Danish: ”Det er dog en forudsætning, at alle oplagte spiraler registreres nøjagtigt, at efterundersøgelser foretages, samt at alle bivirkninger registreres. Der er udarbejdet foreløbige indberetningsskemaer, hvorpå der årligt til landslægen indsendes en summarisk redegørelse for de i årets løb oplagte og fjernede spiraler samt antallet af bivirkninger af forskellig art m. v. Skemaet tillader at skelne mellem kvinder, som tidligere har født og kvinder, som ikke har født, idet sidstnævnte antages at have særlige problemer i form af bivirkninger og spontane udstødelse af spiralen. Yderligere indsendes der kvartalsvise rapporter over alle kvinder med spiral, som pådrager sig gonorrhoe. (...) Det skal endelig nævnes, at der er udarbejdet en skriftlig vejledning, som udleveres til alle kvinder, som forsynes med spiral.”; The Chief Medical Officer in Greenland, *The State of Health in Greenland: Annual Report from the Chief Medical Officer in Greenland* (1968) 81.

²⁴⁸ Original text in Danish: ”Der skal føres særlige optegnelser (journal), eventuelt i en protokol, over hver kvinde med indlagt Lippes loop med angivelse af dato for indsættelsen, efterundersøgelser, komplikationer og årsag til eventuel fjernelse.”; Landslægen i Grønland. ”Cirkulære nr. 80 til distriktslægerne samt lægerne ved Dronning Ingrid’s Hospital – Vedrørende svangerskabshygiejne samt anvendelse af svangerskabsforebyggende midler” (10 July 1968), 2-3.

²⁴⁹ Jensen et al. 234.

²⁵⁰ Redacted statement of claim in the civil proceedings.

²⁵¹ Kimberly A Kho and Dina J Chamsy, ‘Perforated Intrauterine Contraceptive Devices: Diagnosis, Management, and Clinical Outcomes’ (2014) *Journal of Minimally Invasive Gynecology* 21(4) 596–601.

²⁵² Redacted statement of claim in the civil proceedings.

be complementary.²⁵³ Some of the women who were children at the time an IUD was administered to them describe severe pain after the insertion and repeated subsequent menstrual pain that would leave them bedridden every month, unable to attend school or work.²⁵⁴ There are a few instances in which parents encouraged their children to go to the hospital to obtain birth control, but it is unclear whether those parents were informed about the contraindications associated with the use of Lippes Loop D, which, as above, was contraindicated for anyone who had not given birth.²⁵⁵

155. In its summary of the harms caused to the 354 women who reported experiences of involuntary contraception, the Research Group summarised that “a large part of the consequences for women who have had an IUD fitted relate to abdominal pain and increased menstrual bleeding, which has resulted in bed rest for shorter or longer periods. In addition, a number of girls and women have experienced discomfort from the IUD during sexual intercourse.”²⁵⁶ The Report summarised the harm as follows:

Some women who have had an IUD fitted report serious pelvic infections in the period following insertion, which in several cases have resulted in prolonged hospitalisation. In addition, there have also been several cases of IUDs that were not or were no longer in the uterine cavity and cases where more than one IUD had been inserted into the same woman's uterus. Several women, especially girls under the age of 18, recall that it was difficult to have the IUD removed when they went to the hospital because of abdominal pain, increased menstrual bleeding, and pelvic infections. The women remember that their complaints and physical discomfort were not listened to on the grounds that they would become pregnant, and in several cases the women therefore removed their IUDs themselves. Childlessness is also cited as a serious consequence for several women, especially for women who have had an intrauterine device fitted, which has subsequently resulted in a pelvic infection, but some women also cite Depo-Provera injections as the cause of their childlessness. For some women, infertility has resulted in them being verbally abused and subjected to violence. The women express grief, loss and anger that they have not had the children they wanted. Many women report that they have been traumatised by their contraceptive incident and have experienced various consequences. These include problems and challenges in adapting to society's demands to a greater or lesser extent.²⁵⁷

156. The Research Group also reported that “for women who have received Depo-Provera injections, the consequences primarily involve increased or absent menstrual bleeding, weight gain and

²⁵³ Dirk Wildemeersch, Thomas Hasskamp and Norman Goldstuck, “Intrauterine Devices That Do Not Fit Well Cause Side Effects, Become Embedded, or Are Expelled and Can Even Perforate the Uterine Wall” (2015) *Journal of Minimally Invasive Gynecology* 22(2) 309–10.

²⁵⁴ Redacted statement of claim in the civil proceedings; Jensen et al. 224.

²⁵⁵ Redacted statement of claim in the civil proceedings.

²⁵⁶ Jensen et al. 230.

²⁵⁷ Jensen et al. 230.

psychological effects.”²⁵⁸ Among the more long-term consequences of IUDs, women have described repeated pelvic infections and cystitis, scarring in the uterus and fallopian tubes, removal of the uterus and chronic pain. Several women also mention that an IUD is a direct cause of ovarian cysts, muscle knots, cysts in the uterus and uterine prolapse. A few mention cancer.²⁵⁹

157. Of the 143 women who were party to the civil proceedings, 52 have never had children, 33 women have had their uterus removed, 74 women have had damage to the fallopian tubes that have made it difficult to get pregnant and 112 have had serious and repeated pelvic inflammatory disease. All of the 143 reported that they had experienced trauma and psychological harm.²⁶⁰ Distrust of the medical system and health care providers and ongoing feelings of shame were repeatedly referred to from rightsholders, civil society, and is also mentioned in the civil claim and the Research Group report.
158. There are reasonable grounds to believe that the administration of contraceptives in Kalaallit Nunaat has led to the infliction of serious bodily or psychological harm that would constitute *ill-treatment* contrary to Articles 3 of the ECHR and Article 7 through the implementation of the contraceptives policy. Even with consent, it is difficult to imagine how a Lippes Loop D could be administered on children or women who had not given birth given the contraindications. The Research Group reports that, 176 women stated they had not given birth when they had the IUD fitted,²⁶¹ and between 185 and 214 were children at the time.²⁶² It also appears that doctors deviated in practice from the key principle regarding when an IUD can be inserted, which was at the end of the menstrual period due to the risk of an absolute contraindication in pregnancy.²⁶³ They also did not obtain parental consent in writing as was required between 1969 and 1973 as per the instructions contained in Appendix B to Circular 80 which governed medical doctor’s contraceptive practice in Kalaallit Nunaat. In addition, the insertion of Lippes Loop D into the uterine cavity of a child could constitute the level of severity required to prove torture, particularly where a request for its removal was refused.
159. The European Court of Human Rights has held that “practices likely to result in sterilisations represent one of the gravest interferences with a person’s integrity. According to the Court, this has manifold implications on their physical and psychological well-being, it is liable to arouse feelings of fear, anguish and inferiority and may entail lasting suffering.”²⁶⁴ All of these effects are present in this case.

²⁵⁸ Ibid.

²⁵⁹ Ibid., 225.

²⁶⁰ Redacted statement of claim in the civil proceedings.

²⁶¹ Jensen et al. 178.

²⁶² Ibid., 177 and 179 show different figures on this point. Page 177 states there were 214 were under 18, while page 179 states that 185 claim they were children.

²⁶³ Redacted statement of claim in the civil proceedings.

²⁶⁴ Fikfak et al. Submission p. 19. Citing *VC v Slovakia* (European Court of Human Rights, Grand Chamber, Application No 18968/07, 8 November 2011) [104]-[106].

2.3.3 Positive Obligation to Prevent Ill Treatment: Regulatory Safeguards

160. The positive obligation to prevent inhuman or degrading treatment applies in particular where “the events in issue lie wholly, or in large part, within the exclusive knowledge of state authorities.”²⁶⁵ In general, states should “ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection.”²⁶⁶ Article 7 of the ICCPR includes the obligation to ensure that “no one shall be subjected without his free consent to medical or scientific experimentation.” While the ICCPR doesn't explicitly mention “medical treatment” in the same prohibitory clause as experimentation, the right to refuse medical treatment is widely considered a human right derived from the right to self-determination, bodily integrity, and freedom from inhuman or degrading treatment. The positive obligation to prevent ill-treatment was at minimum binding on the state of Denmark from the entry into force of the ECHR for Denmark in 1953 and therefore covers the entire inquiry period. As part of the prohibition of torture, inhuman or degrading treatment under Article 3 of the ECHR, states must “prevent any medical treatment of (mentally competent) individual against their will, including by securing, through appropriate regulatory safeguards and practice, their valid consent.”²⁶⁷ The ECHR requirements are complemented by the CAT which entered into force for Denmark in 1987 (see Figure 1 on applicable laws). Article 16 of the CAT provides that “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture [...], when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” At all material times, the health system in Kalaallit Nunaat was a public service and people employed under its auspices were agents of the state when acting in their official capacity for the purposes of international law. Accordingly, the obligation in Article 16 applies to the present facts.
161. On 1 June 1966, the Danish Parliament passed Act No. 200 of 8 June 1966 on prenatal hygiene and obstetric care (*Lov om svangerskabshygiejne og fødselshjælp*). The law entered into force on 1 October 1966. Section 8 of Act No. 200 states that the law does not apply to Kalaallit Nunaat or the Faroe Islands. In July 1968, the Chief Medical Officer of Kalaallit Nunaat advised the Ministry of Greenland, among other things, that doctors, in practice, in Kalaallit Nunaat had offered women and girls in Greenland examinations and counselling similar to those referred to in this

²⁶⁵ *El-Masri v Former Yugoslav Republic of Macedonia* (Grand Chamber) (European Court of Human Rights, Application No 39630/09, 13 December 2012) para 152.

²⁶⁶ Committee Against Torture, *General Comment 2: Implementation of Article 2 by States Parties* UN Doc CAT/C/GC/2 (24 January 2008) para 21; *Z and Others v United Kingdom* (Grand Chamber) (European Court of Human Rights, Application No 29392/95, 10 May 2001) para 73.

²⁶⁷ Fikfak et al. Submission, p. 16. Citing *G.M. and Others v the Republic of Moldova*, App no. 44394/15, (ECtHR, 22 November 2022) para 85.

legislation,²⁶⁸ and that he in fact advised the doctors in practice to follow that legislation.²⁶⁹ This is significant because section 6 of the Act states that: “Guidance on the use of contraceptive methods may [...], without the consent of the custodial parent or guardian, be provided to persons under the age of 18 or incapacitated persons unable to manage their personal affairs. However, this only applies if the person concerned has reached the age of 15.”²⁷⁰

162. At this time, there was a “clear understanding that counselling [guidance] and information were two different things.” Unlike “information,” “counselling included practical measures such as the insertion of the intrauterine device.”²⁷¹ Act No.200 therefore permitted the administration of contraception and not merely its discussion. The Chief Medical Officer, it appears, was acknowledging therefore that doctors in Kalaallit Nunaat had been administering contraception to children between 15 and 18 without parental consent, contrary to law.
163. Circular No. 80 required that medical records were kept for every woman fitted with a Lippes Loop “indicating the date of insertion, follow-up examinations, complications, and the reason for any removal.”²⁷² It did not require documentation of whether consent had been obtained, nor whether and what information was provided to the patient. However, under an appendix to Circular No. 80 from February 1969, which remained in force until Royal Decree No. 525 entered into force on 1 October 1973, doctors were required to obtain such written consent from the parents for any person under the age of 18.²⁷³ Specifically the appendix provided “it is emphasized that permission from the person with parental authority must be obtained in writing before guidance is given in cases where there is reason to offer women who are under 18 years of age or incapacitated, guidance on contraception.” The Research Group described that it had found no examples of such written consent.²⁷⁴
164. From February 1969 until 30 September 1973 no domestic law permitted the administration of contraceptives to children under 18 years of age in Kalaallit Nunaat without parental consent. The filings in the civil claim included claims from 38 people who were children when administered

²⁶⁸ Chief Medical Officer. ”Cirkulære nr. 80 til distriktslægerne samt lægerne ved Dronning Ingrid’s Hospital – Vedrørende svangerskabshygiejne samt anvendelse af svangerskabsforebyggende midler” (10 July 1968), p. 1.

²⁶⁹ Letter from the Chief Medical Officer of Greenland to the Ministry of Greenland, (10 July 1968), p. 1. Journal 531.02. Author’s archival research. Note that in the letter the Chief Medical Officer refers to Act No. 220, however this is a typo and should have read Act No. 200. There was no Act No. 220 of the date to which the doctor refers. The typographical error is also pointed out in the filings in the civil claim.

²⁷⁰ Original text: ”Vejledning om anvendelse af svangerskabsforebyggende metoder kan (...) uden samtykke fra forældremyndighedens indehaver eller værger ydes til personer, der er under 18 år eller umyndiggjort i personlig henseende. Dette gælder dog kun, såfremt den pågældende er fyldt 15 år.”

²⁷¹ Jensen et al. 113.

²⁷² Original text in Danish: ”Der skal føres særlige optegnelser (journal), eventuelt i en protokol, over hver kvinde med indlagt Lippes loop med angivelse af dato for indsættelsen, efterundersøgelser, komplikationer og årsag til eventuel fjernelse.”; Landslægen i Grønland. ”Cirkulære nr. 80 til distriktslægerne samt lægerne ved Dronning Ingrid’s Hospital – Vedrørende svangerskabshygiejne samt anvendelse af svangerskabsforebyggende midler” (10 July 1968) 2-3.

²⁷³ Chief Medical Officer, Appendix 1 to Circular No. 80: to district doctors and doctors at Queen Ingrid’s Hospital: Regarding prenatal hygiene and the use of contraceptives (6 February 1969).

²⁷⁴ Jensen et al. 245.

contraception before September 1973, and the Research Group’s Report records 185 people who were under 18 at the time of the alleged incident and 46 cases in which their age at the time was not given.²⁷⁵ The exact years to which the Research Group’s records refer are not clear, although the majority of cases took place in the 1970s.²⁷⁶

165. On 26 September 1973, Royal Decree No. 525 established the possibility under domestic law of providing contraception to children aged 15-18 without parental consent and to children under 15 after childbirth or an abortion. This was amended by Royal Decree No. 388 of 26 July 1975 which permitted the medical provision of contraception to all children in Kalaallit Nunaat without parental consent, irrespective of whether they had been pregnant before. This brought Danish Act No. 177 of 7 May 1975 into effect for Kalaallit Nunaat, which permitted contraception in Denmark to be offered to children on the same terms. After a high-profile Danish case in the late-1970s involving a medical procedure without consent, the Danish Health Authority set up a working group on 6 March 1980 to address issues of patient consent. Its recommendations led to a Circular No. 15405 on information and consent which was issued on 21 October 1982 by the National Board of Health. It provided, that in general competent adult patients are entitled to information about any treatments and procedures as well as the risk of possible complications and side effects, to the extent that they desire. However, it also allowed exceptions where the doctor assesses that “providing extensive information would cause unnecessary anxiety and insecurity in the patient” and that “in such cases, the doctor must balance his duty to provide information with what he considers to be in the patient's best interests.”
166. Of the 11 professionals interviewed by the Research Group who had knowledge of contraceptive practices during that inquiry period (1960 to 1991), there was consensus that “although the requirement for patient consent seems obvious today, it was not really introduced into the health service until much later. They report that at that time, it was not customary to obtain consent from the parents of women or girls under the age of 18, either in Kalaallit Nunaat or in Denmark.”²⁷⁷
167. The above overview of the relevant regulatory framework suggests that there were no legislative mechanisms or practices in place that would ensure prior informed consent prior to medical interventions or medical experimentation. If proven so, that could be a failure of the state’s obligation to ensure informed consent to non-medically urgent medical interventions contrary to its obligations under Article 3 of the ECHR, Article 16 of the CAT, Article 7 of the ICCPR, and customary international law.
168. The obligation to prevent ill-treatment is heightened with respect to ill-treatment of children, and other “vulnerable” persons.²⁷⁸ In the present case, those subject to involuntary contraceptive practices were recognised as vulnerable under international law on the basis of intersecting

²⁷⁵ Ibid., 178.

²⁷⁶ Ibid.

²⁷⁷ Ibid., 216.

²⁷⁸ *Z and Others v United Kingdom* (Grand Chamber) (European Court of Human Rights, Application No 29392/95, 10 May 2001) para 73.

vulnerabilities associated with specific immutable characteristics (gender, age, ethnicity), as well as the specific circumstances.²⁷⁹ This is elaborated below.

2.3.4 Procedural Obligation

169. Under binding rules of international law, states must conduct an investigation of any potential violation of the prohibition against inhuman or degrading treatment.²⁸⁰ Under the European Convention on Human Rights, this includes any allegations of ill-treatment that took place while the Convention was in force which covers the entire period of this inquiry. Serious allegations of ill treatment require an investigation that is prompt, independent, effective and capable of leading to accountability.²⁸¹ There is a heightened duty of protection with respect to the conduct of public institutions, particularly where those institutions serve “vulnerable” populations, which all of the people directly affected by involuntary contraceptive practices were on the basis of both immutable characteristics (age, sex, race) and the specific circumstances (as described above).
170. In September 1964 a district doctor practicing in Kalaallit Nunaat wrote to the Health Authority to request permission to “try Lippes Loop on a Greenlandic [Inuit] patient population”.²⁸² The National Board of Health noted that the doctor was “eager to carry out contraceptive work” but also found that “their experience is too limited to recommend anything other than conventional

²⁷⁹ ICCPR) Arts 2, 24, 27; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976, signed by Denmark 20 March 1968, ratified by Denmark 6 Jan 1972). Implementing Article 2 requires the identification of social groups that are vulnerable and have suffered and continue to suffer marginalization: CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2 of the Covenant)*, UN Doc E/C.12/GC/20 (2 July 2009), paras. 27-35; See also CESCR, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the Covenant)*, UN Doc E/C.12/2000/4 (11 August 2000), paras. 12(b)(i)-(ii), 18, 35, 37, 40, 43(a), 43(f) and 52; CESCR, *General Comment No. 5: Persons with disabilities, adopted by the Committee at its eleventh session*, UN Doc E/1995/22 (9 December 1994), para. 9; CESCR, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the Covenant)*, UN Doc E/C.12/2000/4 (11 August 2000), paras. 12(ii) and 35; CEDAW, *General Recommendation No. 24: Article 12 of the Convention, adopted by the Committee at its twentieth session*, UN Doc A/54/38/Rev.1, chap. I (19 January-5 February 1999), para. 6; CESCR, *General Comment No. 12: The right to adequate food (article 11 of the Covenant), adopted by the Committee at its twentieth session*, UN Doc E/C.12/1999/5 (12 May 1999), para. 13; Committee on the Rights of the Child, *General Comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child*, UN Doc CRC/GC/2002/2 (15 November 2002), para. 5 and 15. European Court of Human Rights (ECtHR), *Stubbings and Others v the United Kingdom* (Application No. 22083/93, Judgment, 22 October 1996), para. 64; ECtHR, *Yazgöl Yılmaz v Türkiye* (Application No. 36369/06, Judgment, 1 February 2011), para. 42; ECtHR, *B.S. v Spain* (Application No. 47159/08, Judgment, 24 July 2012), para. 62; CROC Art 24; See also: Human Rights Committee, *General Comment 17: Article 24 (Thirty-fifth session, 1989)*, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev.1 at 23 (29 July 1994) para 4; See also Human Rights Committee, *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Adopted on 29 March 2004 (2187th meeting)*, UN Doc CCPR/C/21/Rev.1/Add. 13 (26 May 2004) para 15.

²⁸⁰ CAT Arts 12 and 13; *International Covenant on Civil and Political Rights* Art 7; UN Human Rights Committee *G.M. and Others v the Republic of Moldova* at para.94.

²⁸¹ *Assenov v Bulgaria* (1999) 28 EHRR 652; *El-Masri v The Former Yugoslav Republic of Macedonia* (2013) 57 EHRR 25; *Bouyid v Belgium* (2016) 62 EHRR 32.

²⁸² Jensen et al. 50.

methods being placed in their hands.”²⁸³ In 1973, a different doctor in the same town wrote to the Chief Medical Officer in Kalaallit Nunaat to advise that “as a curiosity it may be mentioned that in 1965, twenty homemade ‘coils’ were installed.” The Research Group also heard from at least one health professional that corroborated this description of events: “the district doctor in another town manufactured and inserted coils himself.”²⁸⁴ The Research Group speculated that “it is likely that the Danish Health Authority’s refusal prompted the district medical officer to start manufacturing and inserting the coils himself.”²⁸⁵ This would contravene Article 7 of the ICCPR which prohibits medical experimentation without free consent. Free consent is impossible to give in circumstances where the device in question has not been subject to scientific review and approval.

171. From 1970-1972 Depo-Provera was administered by a district doctor in Kalaallit Nunaat on 162 women as an “experiment,” before the drug had been officially approved for contraceptive purposes.²⁸⁶ When this became known to the Chief Medical Officer at the time, he retrospectively endorsed the experiment and defended doing so on the grounds that “the studies are being conducted under such reassuring conditions.”²⁸⁷ Fundamentally, the implementation of a medical experiment on women that was not subject to scientific approval in advance, nor monitored throughout, and without public record of where the drug had come from, vitiates any consent that women may have given and is also in contravention of their right not to be “subjected without free consent to medical or scientific experimentation” contrary to Article 7 of the ICCPR. Denmark signed the treaty in 1968, and although it did not enter into force until 1976, it was under an obligation not to defeat the object and purpose of the treaty from the time it signed in 1968.²⁸⁸
172. As outlined in the preceding section, in July 1968 and at least by the letter in 1973, organs of the state were on notice that doctors in Kalaallit Nunaat were administering contraception in ways that were contrary to domestic law and to binding obligations under Article 3 ECHR and Article 7 ICCPR. The use of homemade devices in particular put the state on immediate notice of its duty to prevent inhuman or degrading treatment (known to the authorities by 1973 at the latest), so too statements by a local politician that women had no idea what the devices were for (1972),²⁸⁹ particularly when viewed alongside the extraordinary drop in fertility attributed to the introduction of the IUD and the “actively motivating techniques” about which doctors were publishing academic articles and providing media interviews.
173. To fulfil the procedural obligation under the European Convention on Human Rights, the investigation must be adequate, prompt, thorough, and impartial and provide for the participation

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid. 118.

²⁸⁷ Ibid. 118-119.

²⁸⁸ VCLT Art 18. Also supported by the 1947 Nuremberg Code against medical experimentation without consent.

²⁸⁹ Jensen et al. 80.

of victims.²⁹⁰ That participation must include the possibility that victims have access to the file or materials concerning their case, and that material must not be unreasonably withheld.²⁹¹ Individuals have had difficulty accessing their personal medical files. Sometimes this was for reasons associated with the relevant hospital or archive suffering irreparable damage in weather-related events. In other cases, including one from 2010, the individual was refused access and ultimately it took years and finally an appeal to the Chief Medical Officer before personal files were released. In that case, a woman had been having difficulty falling pregnant. When, after over a year of trying to gain access to them, the medical records arrived there was nothing in her journal about having had an IUD. After more years of failed attempts to get pregnant, in 2019 an internal examination revealed that she did have an IUD that was not recorded in the medical file. The only moment that it could have been inserted without her knowledge was surreptitiously after an abortion.²⁹²

174. The authors find that there has been no investigation that meets the procedural requirement of the prohibition of torture, cruel, inhuman or degrading treatment of Article 3 of the ECHR to carry out effective investigations into arguable claims of ill-treatment which were triggered by 1973 at the latest.²⁹³ The present inquiry was established by Naalakkersuisut, not the Government of Denmark. It has no powers of investigation, to subpoena witnesses, call evidence, hold hearings, hear testimony under oath, nor powers of criminal investigation. Nor did the Research Group, for which human rights considerations were not a part of the terms of reference, although some pages refer to them as a matter of domestic law. These processes do not, therefore, meet the specific requirements of “effective” under Article 3 of the ECHR nor would it satisfy this procedural obligation under customary international law, Articles 12 and 13 of the Convention Against Torture, or Article 7 of the International Covenant of Civil and Political Rights.

2.3.5 Conclusion on Ill Treatment

175. On the basis of the foregoing, the authors find that there is a reasonable basis to believe that the administration of contraception without valid consent has formed some part of medical practice in Kalaallit Nunaat since at least 1966 and has given rise to physical and psychological harm that constituted inhuman and degrading treatment contrary to Article 3 of the ECHR and Article 7 of the ICCPR. The authors find that there is a reasonable basis to believe that the Danish state violated its obligations both to refrain from conduct that might constitute inhuman or degrading treatment and its positive obligation to prevent that conduct. The situation of an Indigenous child who is attending the services of a non-Indigenous doctor without their parents for a genital examination,

²⁹⁰ *El-Masri v The Former Yugoslav Republic of Macedonia* (2013) 57 EHRR 25; *Bouyid v Belgium* (2016) 62 EHRR 32 [183]; Fikfak et al. Submission p. 21, citing *Assenov and Others v Bulgaria*, App no. 24760/94, (ECtHR, 28 October 1998) para.102; *Biçici v Turkey*, App no. 30357/05, (ECtHR, 27 May 2010) para.39; *Mikheyev v Russia*, App no. 77617/01, (ECtHR, 26 January 2006) para.107-109

²⁹¹ *Chernega v Ukraine* (European Court of Human Rights, Application No 74768/10, 18 June 2019) [166].

²⁹² Listening session with women affected by contraceptive practices after 1992.

²⁹³ *G.M. and Others v the Republic of Moldova* at para.94; *V.I. v the Republic of Moldova* at para.101; Fikfak et al. Submission p. 13.

places that child in an exceptionally vulnerable circumstance and warrants a heightened standard of care. The insertion of the largest device, Lippes Loop D, into the uterine cavities of children without valid consent leading to chronic pain or permanent infertility, could constitute a gross violation contrary to the prohibition of torture under Article 3 ECHR, Article 7 ICCPR and customary international law.

176. The authors reiterate the concern expressed by the UN Committee Against Torture, in its Concluding Observations on the eighth periodic report of Denmark (2023) that reports of forced and involuntary contraception “implanted in Greenlandic women and girls dating back to the 1960s” has not been subject to a thorough investigation for potential human rights violations up to the present day.²⁹⁴ The Research Group appointed by the Danish Government and Naalakkersuisut had human rights expressly *excluded* from its terms of reference, and the present report has been prepared only under the auspices and at the request of Naalakkersuisut and has not enjoyed the resources or authority to meet the standard necessary as part of the procedural element of the right to freedom from torture, cruel, inhuman and degrading treatment. Accordingly, the authors find that there is a reasonable basis to believe that the procedural obligation under Article 3 ECHR and Articles 12 and 13 CAT have not yet been fulfilled.

2.4 Right to Family and Private Life

177. This section assesses involuntary contraceptive practices in Kalaallit Nunaat as potential violations of the right to non-interference with family and private life. It draws on material assessed in the preceding sections and adds material relevant to this particular human right.

2.4.1 Applicable Law

178. The protection of family and private life exists in slightly different forms in at least six treaties to which the Kingdom of Denmark is party.²⁹⁵ Article 23 of the ICCPR protects the right to “found a family.” To comply with Article 23, states must ensure that that family planning policies are compatible with the provisions of the Convention as a whole and must “not be discriminatory or compulsory.”²⁹⁶ Article 17 of the ICCPR prohibits arbitrary interference with privacy or family by the state (which includes doctors in the state’s employ).²⁹⁷ Medical approaches to contraception that were discriminatory or without valid consent and occurred after 23 March 1976 would

²⁹⁴ Committee against Torture, *Concluding Observations on the Eighth Periodic Report of Denmark*, UN Doc CAT/C/DNK/CO/8 (8 December 2023), para 34, referring to CAT Arts 2, 12-14 and 16.

²⁹⁵ ECHR Art 8; ICCPR Arts 17 and 23; ICESCR Art 10(1); CROC Art 16 and other articles, including Art 5 includes provision that States shall “respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom” and Art 8 preserves the child’s right to preserve his family relations without unlawful interference (in force in Denmark since 1991); CRPD Arts 22 and 23 (in force in Denmark since August 2009); and CEDAW.

²⁹⁶ CCPR *General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses* (27 July 1990) para 5.

²⁹⁷ *Daniel Billy v Australia* (Communication 1782/2008) UN Doc CCPR/C/100/D/1782/2008 (20 October 2010) 7.

////////////////////////////////////

contravene the Danish state's obligations under Articles 17 and 23 of the ICCPR.²⁹⁸ In addition, CEDAW (described above) is the only Convention to specifically mention family planning and expressly confirms women's right to free reproductive choice (binding in Denmark from 1983).²⁹⁹

179. Despite these conventions coming into force for Denmark slightly later, the right to non-interference with family and private life was binding within the Kingdom under the ECHR at least since 1953.³⁰⁰ Article 8 of the ECHR sets out in paragraph 1 that “everyone has the right to respect for their private and family life, including their home and correspondence.”³⁰¹ The right to private life exists “to protect the individual against arbitrary interference by public authorities.”³⁰² It is “primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings”.³⁰³ The sanctity of family and private life is connected to personal autonomy, to control your own body, and to “physical and psychological integrity.” The state must take active steps to secure respect for this integrity and avoid actions that would compromise it.³⁰⁴ It must not interfere with family and private life, and also must prevent others from interfering with it.³⁰⁵ States are required to have legislation that is effective to protect against acts of violence by others.³⁰⁶ With limited exceptions, involuntary medical intervention constitutes a violation of the right to private life under the ECHR, which, among other things, “incorporates the right to become a parent.”³⁰⁷
180. The right to private and family life is not absolute and can be restricted in certain circumstances. Under the ECHR this is set out in the second paragraph of Article 8: “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” Yet, the “margin of appreciation” (discretion) enjoyed by states when it comes to implementation of this right narrows

²⁹⁸ As outlined in an earlier section, this right can be derogated from only in times of public emergency that threaten the life of the nation which is not relevant to the facts of this case: ICCPR Art 4.

²⁹⁹ Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) Art 16(e).

³⁰⁰ And was earlier contained in Article 12 of the UDHR in 1948.

³⁰¹ Article 8 of the Convention. See also: *Nada v Switzerland*, no. 10593/08 (judgment, 12 September 2012) para 151. Although human rights conventions seem to distinguish in their text between the right to “privacy” and the right to “private life”, the distinction is not legally significant.

³⁰² William A. Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press, 2015) 366. Citing *P and S v Poland*, 57375/08 (30 October 2012) para 94; *Nunez v Norway*, 55597/09 (28 June 2011) para 68.

³⁰³ *Ibid.*, 370. Citing *Costello-Roberts v the UK* Series A No 247-C (25 March 1993) para 6; and *X and Y v the Netherlands*, Series A 91 (26 March 1985) para 22.

³⁰⁴ *Ibid.*, 371. Citing *Tysiąc v Poland*, No 5410/03 (ECHR 2007-I) para 107; *Glass v UK*, no 61827/00 (ECHR 2004-II) paras 74-83; *Seniges v The Netherlands* (dec.) no 27677/02 (8 July 2003); *Pentiacova and Others v Moldova* (dec.) no 14462/03 (ECHR 2005-I); *Nitecki v Poland* (dec.) no 65653/01 (21 March 2002).

³⁰⁵ *Ibid.*, 368.

³⁰⁶ *Ibid.*, 369.

³⁰⁷ William A. Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press, 2015), 372.

significantly where “the activities at stake involve a most intimate aspect of private life.”³⁰⁸ In addition “the state must abstain from interfering with the individual freedom of choice in the sphere of health care, for such interference can only lessen and not enhance the value of life.”³⁰⁹

181. Whether an interference with the right to private life or other so-called “non-absolute” rights is lawful is determined via a proportionality test.³¹⁰ That is, the means to achieve the public interest objective must be those which least restrict human rights. The relevant restriction of a right must answer a “pressing need”, be proportionate to the aim pursued, and that aim must be legitimate.³¹¹
182. States must not only avoid violating the right to family and private life but also undertake “positive measures” (active steps) to protect “a person’s physical and psychological integrity,”³¹² especially in circumstances related to healthcare, treatment, and compensation for medical error. The state has a wide degree of discretion about *how* to go about taking “positive measures,” and there are “different avenues to ensure Convention rights.”³¹³ This positive obligation is expressly necessary where “the events in issue lie wholly, or in large part, within the exclusive knowledge of state authorities.”³¹⁴ States have substantial, though not unlimited, flexibility to implement human rights in ways that best suit their cultural values, legal systems and public administration.

2.4.2 Analysis and Discussion

183. In the late 1960s and early 1970s there was an institutional belief within the Ministry of Greenland that an “appropriate,” “normal” number of children for families in Kalaallit Nunaat was that which existed on average in Denmark at that time, and that such a family size characterised characterising

³⁰⁸ Ibid., 368. Citing *E.S. v Sweden*, no. 5786/08 (21 June 2012) para 58; *Evans v United Kingdom* [GC], no 6339/05 ECHR 2007-I para 77; *Mosley v UK* (10 May 2011) no 48009/08 para 111.

³⁰⁹ *Jehovah’s Witnesses of Moscor v Russia*, no 302/02 (10 June 2010) para 135; *Pretty v UK*, no 2346/02 (ECHR 2002-III) para 63.

³¹⁰ There is some scholarly unease about whether these balancing tests are entirely “coherent with human rights principles or the kinds of functions international human rights institutions are thought to perform” insofar as they might avoid upholding minimum standards of conduct, or what are referred to as “minimum core obligations” in this report. See further: Başak Çali, “Balancing Human Rights? Methodological Problems with Weights, Scales and Proportions” (2007) 29 *Human Rights Quarterly* 251-270.

³¹¹ *Vavříčka and Others v Czech Republic* (European Court of Human Rights, Grand Chamber, Application Nos 47621/13 and others, 8 April 2021) [262]–[294]; Eva Brems and Laurens Lavrysen, “‘Don’t Use a Sledgehammer to Crack a Nut’: Less Restrictive Means in the Case Law of the European Court of Human Rights” (2015) *Human Rights Law Review* 139, 140 referring to *Nada v Switzerland* Application No 10593/08, Merits, 12 September 2013, para 181.

³¹² See, eg, *Špadijer v Montenegro* (European Court of Human Rights, Fifth Section, Application 31549/18, 9 November 2021) [80] citing *Denisov v Ukraine* (Grand Chamber, European Court of Human Rights, Application 76639/11, 25 September 2018); see also *Volodina v Russia (No 2)* (European Court of Human Rights, Third Section, Application 41261/17, 14 March 2022) 47.

³¹³ *Kolyadenko and Others v Russia* (European Court of Human Rights, Application Nos 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, 28 February 2012) 157-161 and *Vilnes and Others v Norway* (European Court of Human Rights, Application Nos 52806/09 and 22703/10, 5 December 2013) 220, also cited in *Brincat and Others v Malta*, Applications Nos 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11, 24 July 2014) 101.

³¹⁴ Fikfak et al. Submission p. 13. Citing *G.M. and Others v the Republic of Moldova* at para.137, 1. Yazgül Yılmaz v Türkiye at para.52.

“modern” development.³¹⁵ The Research Group found that in this period there was a “firmly entrenched belief that the modern family form would be a natural part of development, which would also benefit Greenlandic women and families” but that this “left no room for sensitivity to or understanding of how [...] the Greenlandic [Inuit] population wished to organise their family life.”³¹⁶ The “modern” family form at Denmark at the time was approximately two children per family.

184. That Inuit might value another family structure in terms of the number of children, and the community approach to raising them, was something of which the Danish authorities were aware. An Inuk politician explained to a delegation from the Ministry of Greenland on a visit in 1972, that children born out of wedlock were not necessarily undesirable, they renewed bloodlines and could be adopted by other families.³¹⁷ In 1966 a senior doctor stated about his work in Greenland that “Even women with 7 or 8 children said they wanted more.”³¹⁸ Another doctor remarked: “Greenland currently [has] (...) a major problem with pregnancies among quite young women, who feel no responsibility towards the children they bring into the world.”³¹⁹
185. The prevailing assumption among medical professionals was that having many children was inherently detrimental or primitive. “...the most primitive families [are] often those with the most children, to the detriment of the children.”³²⁰ The word “primitive” is one often used in association with racial prejudice towards Indigenous People. It was not a word routinely used at the time to describe poor Caucasian families with many children.
186. According to the Research Group:

In her study of the Danish self-image in relation to Kalaallit Nunaat in the period 1953-2015, historian Iben Bjørnsson has pointed out that, in contrast to the previous decade, in the 1960s there was no longer any talk of Greenlandic culture or way of life needing to be “protected.” Instead, development was described as “natural and necessary.” Bjørnsson also shows that it was part of the Danish self-image that Denmark had a “responsibility to lead the Greenlanders from the ‘primitive’ to the ‘modern.’” Efforts in relation to contraception can be seen in the same light: it was about familiarising the population with a family pattern and a way of life that, from a Danish perspective, was seen as the only natural way to go.³²¹

187. Observations about the number of generations living in the same home or sharing a room were referred to only as a concerning sign of socioeconomic distress. Indeed, Inuit were poorer than their Danish counterparts on relative terms. But intergenerational co-habitation was not understood

³¹⁵ Jensen et al. 48.

³¹⁶ Ibid.

³¹⁷ Ibid., 99.

³¹⁸ Ibid., 48.

³¹⁹ RA, Kvindehistorisk Samling, Foreningen for Familieplanlægning, ”Internationalt materiale- Varia, 1962-1991, pk.nr. 114” in Jensen et al. 47

³²⁰ NKA, Landslægeembedet, ”Journalsager til 1963”, j.nr. 506-0, pk.nr. 123 in Jensen et al. 37.

³²¹ Jensen et al. 48.

by people outside Inuit culture as also a natural part of collective responsibility for child-rearing and family life. In Inuit culture, a child is not the sole responsibility of the mother but of the entire family. Nor does there appear to have been any serious consideration of policy alternatives through which relative poverty could be resolved through mechanisms beyond fertility management alone. This is contrary to the right to freedom from interference in family and private life enshrined in Article 8 of the ECHR and Articles 17 and 24 of the ICCPR, which can be lawfully restricted only where the means to achieve the public interest objective is that which least restrict human rights.

188. Alternatives to involuntary contraception to improve socioeconomic standing could have included, for example, wage equity for Inuit workers, or potential inheritance or child support for illegitimate children from Danish fathers, which was prohibited by law for children born before 1972. Indeed, the rising cost of social welfare was a repeated concern for policy makers, rather than investment having been perceived as a mechanism to improve socioeconomic well-being and prosperity for people who in the early 1970s made up just under 0.001% of the Danish population.³²²
189. Whatever the medical professionals' view about fertility and family size, all women are now and were at the time entitled to agency over their own bodies and to genuine contraceptive choice, free from coercion. Yet, as outlined in earlier sections of this report, what women themselves wanted was not always decisive to the doctors' approach.³²³ In examples earlier described, in notes contained in medical records and work published by doctors, it was often the doctor rather than the woman herself, who was actively assessing how many children she ought to have in deciding whether to insert or remove an IUD.

2.4.3 Conclusion

190. The authors find there is a reasonable basis to believe that involuntary contraceptive practices described in this report violate the right to non-interference in the right to family and private life, as protected by Article 8 of the ECHR and Articles 17 and 24 of the ICCPR, as well as Article 23 ICCPR which protects the right to found a family. In addition, for involuntary contraception after 21 May 1983, or in situations of a continued violations beyond this date, these practices also constitute a violation of a woman's right to decide freely on the number and spacing of children contrary to Article 16(e) of CEDAW.³²⁴

2.5 Whether Practices Were “Systematic” After 1992

191. The terms of reference direct the Expert Group to “investigate whether the alleged instances of forced, coerced or deceptive practices of contraception in Greenland after 1992 evidence that there was an intentional, systematic approach taken to this practice during this time period (with

³²² World Bank Open Data, *Population Total – Denmark* indicates the total population of Denmark in 1972 was 4,991,596 and in Kalaallit Nunaat was approximately 48,300.

³²³ Jensen et al. 198.

³²⁴ *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) Art 16(e).

reference to the National Board of Health’s investigation and report).” The year 1992 is presumably selected because it is when the management of the health system in Kalaallit Nunaat was transferred from the Danish Government to Naalakkersuisut. However, that transfer of administrative and managerial authority did not alter state responsibility under international law. At all times material to the terms of reference, Denmark held state responsibility for internationally wrongful acts carried out on its territory or under its jurisdiction, including within Kalaallit Nunaat. Accordingly, in undertaking their analysis, the authors did not limit their consideration of whether practices were systematic to only actions after 1992. The determination of any potential responsibility of Naalakkersuisut is a matter for domestic law. Nevertheless, this section considers the question of systematic practices after 1992, on the basis that it is an express element of the terms of reference.

2.5.1 Relevant International Law

192. A breach of a peremptory norm of international law is considered “serious” if it involves a “gross or systematic failure by the responsible state to fulfil the obligation”.³²⁵ Peremptory norms raised in this report are, at minimum, the prohibition of racial discrimination, the prohibition of genocide, and the prohibition of torture.³²⁶ The consequence of a serious breach of a peremptory norm is that it triggers special obligations for all states. States must not recognise the breach as lawful, they must not render aid or assistance to an ongoing breach, and they must cooperate to bring the serious breach to an end.³²⁷
193. The distinction between “serious” violations of peremptory norms and other less serious violations implies that a certain order of magnitude is necessary. Thus a “serious” violation can be either gross or systematic. In this context, the word “gross” refers to the intensity of the violation or its effects.” To be regarded as systematic, “a violation would have to be carried out in an organized and deliberate way”.³²⁸ Among the factors which may establish the seriousness of a violation would accordingly include whether there was “the intent to violate the norm,” as well as “the scope and number of individual violations; and the gravity of their consequences for the victims.”³²⁹
194. The systematic nature of a particular course of conduct can also lead to state responsibility through a “composite of acts.” That is, there can be a breach of an international obligation by a state through a *series* of actions or omissions which, when taken with the other actions or omissions, is sufficient to constitute the wrongful act.³³⁰ The International Court of Justice in such cases does not treat any particular individual action as decisive, but instead has viewed the cumulative conduct *in*

³²⁵ ILC, *Responsibility of States for Internationally Wrongful Acts* (2001) Art 40.

³²⁶ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (UN Doc A/56/10, 2001) Art 40 commentary, para 4; Art 26 commentary, para 5.

³²⁷ ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001) Art 41.

³²⁸ ILC, *Responsibility of States for Internationally Wrongful Acts* (2001) Art 40.

³²⁹ ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001) Art 40 commentary, para 8.

³³⁰ *Ibid.*, Art 15.

aggregate as the wrongful act. This approach has been adopted in genocide cases and other human rights violations, as well in attribution of state responsibility.³³¹

195. In the European Court of Human Rights, a “systemic” violation of human rights indicates that the violation is not isolated but structural and cannot be remedied by damages to a single applicant.³³² This is akin to “systematic” used to describe organised and deliberate breaches of peremptory human rights norms (see Section 2.5).³³³
196. Separately, inferring the special intent for genocide is often achieved by showing a systematic plan or policy evidencing a “pattern of conduct.” In considering the systematic nature of a pattern of conduct, the International Court of Justice (ICJ) will consider whether the events were planned, took place as part of an overall policy, and the scale of the events. This is a *sui generis* (unique) area of law that stands alone and is therefore elaborated independently in Chapter 4 addressing genocide.

2.5.2 Application to the Facts

197. The majority of reports of involuntary contraception in Kalaallit Nunaat relate to incidents in the 1970s.³³⁴ A common account of involuntary contraception in the 1970s in particular was that girls were called to the doctor from their schools or dormitories, (68 of the 143 women in the civil claim, and 50 of the 204 incidents involving children reported to the Research Group).³³⁵ Taking classes or selected school children to obtain IUD contraception in an organised fashion, under the oversight of teachers, nurses, principals, health workers, or doctors, would indicate a systematic approach to involuntary contraception. It is inherently involuntary due to it being imposed on a child without parental knowledge or consent and there being no medical necessity for such a procedure.
198. After the 1970s it is not clear whether this level of central organisation persisted. There are reports of involuntary contraception in Kalaallit Nunaat as recently as the 2010s. The National Medical

³³¹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* Merits (1986) ICJ Rep 14; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* Judgment (2005) ICJ Rep 168; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* Advisory Opinion (2004) ICJ Rep 136; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment (2007) ICJ Rep 43; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)* Judgment (2015) ICJ Rep 3.

³³² *Broniowski v Poland* (Grand Chamber, 2004) (European Court of Human Rights, Grand Chamber, Application No 31443/96, 22 June 2004) para 191.

³³³ ILC, *Responsibility of States for Internationally Wrongful Acts* (2001) Art 40.

³³⁴ Jensen et al.; redacted statement of claim in the civil proceedings; Naalakkersuisut, National Medical Board, “Status på spiralsagerne” [Status of the IUD cases] (24 January 2024). https://nun.gl/nyheder/2024/03/status-paa-spiralsagerne?sc_lang=da.

³³⁵ There were more incidents than there were complainants because for some people involuntary contraception happened more than once. Jensen et al. 179; redacted statement of claim in the civil proceedings. Again, there may be overlap between the people who shared their experiences with the Research Group and those who were party to the civil claim.

Board of Kalaallit Nunaat issued a status report on 24 January 2024 that described that it had received 15 complaints of involuntary contraception between 1993 and 2014, 13 of which occurred after an abortion. None of the 15 incidents implicate schools or relate to women or girls having been summoned to the doctor. The status report observed that in the same eleven-year period over 16,000 abortions were performed, implying that involuntary contraception after abortion was therefore rare.³³⁶ The Expert Group has since been advised by the current Chief Medical Officer that the number of women claiming to have experienced involuntary contraception after 1992 has now reached 29, although the circumstances in which the additional 14 took place (for example whether after abortion, birth, during a medical consultation) were not described.

199. The status report of the National Medical Board, alongside the listening sessions the Expert Group held with women affected, civil society, the health department, and medical professionals, collectively provide reasonable grounds to believe that at least some doctors continued to administer contraception without valid consent even after the establishment of clear guidance forbidding contraception without informed consent in 2001. As described in Section 2.2, that this practice continued, even rarely, was likely a consequence of a system in which some of the discriminatory practices embedded in law and policy were not adequately addressed, monitored or dismantled, contrary to express obligations under international law.³³⁷ These circumstances provide a reasonable basis to believe that the acts and omissions that characterise potential violations of international law in respect of the contraceptives policies implemented in Kalaallit Nunaat fall within the “systemic” category to which the European case law refers. This is true throughout the Inquiry period including after 1992.
200. The authors reiterate that at all times material to the terms of reference, Denmark held state responsibility for internationally wrongful acts carried out on its territory or under its jurisdiction, including within Kalaallit Nunaat.³³⁸ The determination of any potential responsibility of Naalakkersuisut is a matter for domestic law, which falls outside the authors’ expertise.

³³⁶ Naalakkersuisut, Status of the IUD cases (24 January 2024).

³³⁷ As required under international law: CEDAW Art 10(h).

³³⁸ See also, Danish Institute for Human Rights, *Menneskerettigheder I Grønland –Status 2016*, 15: “as foreign policy is a Danish matter, Denmark—and not Greenland—will be held responsible under international law if Naalakkersuisut violates international human rights”.

3 Rights Specifically Concerning Indigenous Women

201. The terms of reference ask the Expert Group to consider whether specific rights applicable to Indigenous women have been violated. Indigenous women are equitably entitled to all human rights and fundamental freedoms. Because Indigenous women have suffered routine and persistent discrimination the world over, international law has established some specific protections that are especially relevant in this context. This section elaborates some of those as well as the context for their establishment, which is important to understand because the very existence of these rights occurred to counter systematic colonial harm.

3.1 Indigenous Peoples' Rights

202. Established in 1919, the International Labour Organization (ILO) was the first intergovernmental entity to legally recognize Indigenous Peoples as distinct populations and rights holders.³³⁹ The adoption of multiple guidelines and regulations concerning Indigenous Peoples dating back to its origin pivoted on exploitation of (Indigenous Peoples') labour. The first ILO Convention to address the rights of Indigenous Peoples was the 1957 *Indigenous and Tribal Populations Convention* (ILO C107). ILO C107 had expressly assimilationist objectives which directly discriminated against Indigenous Peoples by institutionalizing processes that would lead to cultural erasure. This is why the ILO and its member states undertook the two-year revision process in 1988 and 1989 to replace that Convention, resulting in the adoption of the *Indigenous and Tribal Peoples Convention 1989*, which entered into force for Denmark in 1997 (ILO C169). This process marked a shift in states' attitudes towards Indigenous Peoples: from viewing them as a group that needed to be assimilated to recognizing Indigenous Peoples as peoples with their own cultures, values, customs, practices, and social institutions that must be recognized, respected, and protected. Some may ask why this history is important to the present context of the human rights aspects of the contraception case. The relative impacts of both colonization and discriminatory policies of government disempowered Indigenous women and girls in their interactions with people in positions of authority. Indeed, the recognition of Indigenous Peoples as possessed of a distinct legal status was a direct response to that dispossession and disempowerment.
203. With the overarching objective to curb the lingering violence and oppression of colonialism, UN member states, including Denmark,³⁴⁰ endorsed and adopted the *UN Declaration on the Rights of*

³³⁹ International Labour Organization (ILO), *Convention Concerning Indigenous and Tribal Peoples in Independent Countries* (ILO No. C169), June 27, 1989, 1650 U.N.T.S. 383, reprinted in 3 *Int'l Labour Org., International Labour Conventions and Recommendations*, 1977-1995 324-36 (1996); ILO, *Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries* (ILO C107), June 26, 1957, 328 U.N.T.S. 247, reprinted in 2 *Int'l Labour Org., International Labour Conventions And Recommendations*, 1952-1976 99-108 (1996).

³⁴⁰ On September 13, 2007, Denmark voted in favour of the UN Declaration, see Annex and Vote on Indigenous Rights Declaration at [68](https://press.un.org/en/2007/ga10612.doc.htm#:~:text=Vote:%20143%20%E2%80%93%204%20(Australia,their%20own%20needs%20and%20aspirations; and in 2018, the Permanent Mission of Denmark to the UN In</p></div><div data-bbox=)

Indigenous Peoples (the UN Declaration) in 2007. In it, States acknowledged and affirmed colonialism as a series of historic injustices in the context of Indigenous Peoples.³⁴¹ The UN Declaration affirms the legal recognition of “Indigenous Peoples” and specifically the “rights and special needs” of Indigenous women and girls including in the context of “forms of violence and discrimination”.³⁴² The UN Declaration is not a legally binding instrument in itself, but it is an interpretation of existing rules of international law in the context of Indigenous Peoples, and complements the binding treaty obligations contained in ILO C169 and other human rights treaties.

204. In a 2007 newsletter about discrimination, the ILO noted:

Indigenous and tribal peoples’ cultures comprise a heritage of diverse knowledge that is a resource to the whole world. However, these peoples constitute the poorest segment of the societies where they live and they are disproportionately represented among the victims of human rights abuses, conflict discrimination as well as child labour and forced labour. *Indigenous women face additional gender-based marginalisation*. In this sense, promoting indigenous and tribal peoples’ rights and improving their social and economic situation is crucial for achieving the broader development objectives such as respect for human rights, democracy, good governance and poverty reduction.³⁴³

205. Systemic discrimination³⁴⁴ and racial disparities have been evidenced in numerous contexts, including western legal systems.³⁴⁵ More recently, international human rights law and some national legal developments have led to recognition and redress.

Geneva affirmed the “Danish priorities and membership of the HRC.” In September 2018, Denmark was elected as a member of the HRC for the first time. Thus, Denmark was a member of the HRC in 2019-2021. Denmark particularly focused its work in the HRC on well-established and long-standing Danish human rights priorities. These included: women’s and girls’ rights, including their sexual and reproductive health and rights; prevention of torture; rights of Indigenous Peoples; and freedom of religion or belief. Accessed 2025.

<https://fn.geneve.un.org/en/copy-of-human-rights/hrc>

³⁴¹ *UN Declaration*, Preamble para. 6.

³⁴² *Ibid.*, Articles 21 and 22.

³⁴³ Newsletter, *ILO and Indigenous and Tribal Peoples Theme: Discrimination*. (2007) Accessed 12 November 2025.

https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_100542.pdf

³⁴⁴ Special Report on Aboriginal Corrections by Correctional Investigator of Canada, Mr. Howard Sapers, March 2013. See also AFN Press Release accessed on 12 May 2018 at <http://www.media.knet.ca/node/22347>

³⁴⁵ *Ibid.* See also American Friends Service Committee, Fact Sheet on Violence Against Native Women, accessed on 12 May 2018 at http://www.incite-national.org/sites/default/files/incite_files/resource_docs/5676_toolkitrev-native.pdf; and R. Bachman, H. Zaykowski, R. Kallmyer, M. Poteyeva, C. Lanier, *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known*, Doc 223691, August 2008, funded but not published by U.S. Department of Justice.

3.2 Colonisation of Kalaallit Nunaat

206. Danish colonisation of Kalaallit Nunaat is generally recognized to have commenced approximately 300 years ago with the arrival of Danish missionary Hans Egede in 1721. The Danish state expanded its influence over the territory over the course of the next two centuries. In 1933, the Permanent Court of International Justice declared Greenland *terra nullius* (land belonging to no one) prior to 1814 and formally recognized it as belonging to Denmark.³⁴⁶ As had occurred in many other parts of the world subject to European colonization, a declaration of *terra nullius* was a legal mechanism that dispossessed Indigenous inhabitants of their sovereignty, in which the legal rights and interests of non-European permanent populations were essentially ignored.
207. Although not a legal concept in itself, colonialism as experienced by Inuit in Kalaallit Nunaat is central to understanding the facts of this case as a whole.³⁴⁷ Colonialism is mentioned in instruments of international law because it has been recognized as a set of harmful practices and systems from which people who were subject to its harms are entitled to certain rights, protections, and forms of redress.³⁴⁸ It is generally defined as “a policy or system in which a country controls another country or area”³⁴⁹ or “the policy or practice of acquiring full or partial political control over another country, occupying it with settlers, and exploiting it economically.”³⁵⁰ The colonizer is a “foreign state or nation, engaged in the practice of extending and maintaining a nation’s political and economic control over another people or area.”³⁵¹ In the Oxford Dictionary of Social Sciences reference is made to ideologies of superiority and racism in defining colonialism:
- Colonialism:* The control over one territory and its peoples by another, and the ideologies of superiority and racism often associated with such domination. Control may be incomplete or contested although fully established colonialism involves some measure of formal political and legal rule. Colonialism is often, but not necessarily, accompanied by the settlement of the subordinated territory, a process known as colonization.³⁵²
208. Additionally, reference to Indigenous Peoples occur frequently in definitions of colonialism in which the defining feature of their indigeneity is not whether they are a numerical minority, but rather the form of political marginalization.³⁵³

³⁴⁶ *Legal Status of Eastern Greenland (Denmark v Norway)* Judgment (1933) PCIJ (ser A/B) No 53.

³⁴⁷ Jörn Axel Kämmerer, “Colonialism,” *Oxford Public International Law*. Accessed 7 January 2026. <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e690>. See footnote 125 for definition.

³⁴⁸ See, for example, ILO C169 Art 1(b).

³⁴⁹ Cambridge Dictionary Online, accessed 30 December 2024. <https://dictionary.cambridge.org/us/dictionary/english/colonialism>.

³⁵⁰ Oxford Languages, accessed on 30 December 2024. <https://www.google.com/search?q=colonialism>.

³⁵¹ Merriam Webster, accessed on 30 December 2024. <https://www.merriam-webster.com/dictionary/colonialism>.

³⁵² <https://www.oxfordreference.com/display/10.1093/acref/9780199599868.001.0001/acref-9780199599868-e-236>

³⁵³ For example, the following definition illustrates the dynamic force of external control and the notion of dominant and subordinate groups despite the size of the population:

209. Indigenous Peoples, individually and collectively, have suffered from the impacts of colonialism and colonial violence.³⁵⁴ Such actions linger and, though the notion of racial superiority has been soundly denounced, it too lingers. Indeed, the history of the subjugation, domination, and exploitation of Inuit can be corroborated in both historical and contemporary national policies, laws, and directives, including within the Danish Realm including systematic underpayment of wages to Inuit, assimilationist language and education programs, and the forced removal of Inuit children to Danish families. Other examples include the forced relocation of Inuit reflected in the Hingitaq case.³⁵⁵
210. UN Special Rapporteur José Francisco Calí Tzay undertook a country visit to Greenland in 2023. His report observed that “after the formal end of the colonial era in 1953, several Danish policies caused adverse colonial effects in Greenland. By trying to limit the population growth of Greenland and imposing Danish culture, language and social and legal structures and through forced urbanization and discrimination, those policies have threatened Inuit culture, identity and institutions and their presence in Greenland.”³⁵⁶ Colonisation disrupted the Inuit life trajectory. Disease, resource extraction, ecological destruction, forced relocation and removal of children, has devastated many Inuit communities, undermining cultural continuity.

3.3 Inuit as an Indigenous People

211. The United Nations has developed criteria to identify, rather than define, Indigenous Peoples, emphasizing self-identification, historical continuity, cultural distinctiveness, distinct social, economic or political systems, strong ties to traditional lands, and a “resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.”³⁵⁷ The Inuit of Kalaallit Nunaat clearly meet these criteria and Denmark has expressly accepted that Inuit are an Indigenous People through its ratification of the ILO Convention 169.³⁵⁸ In addition,

“Colonialism refers to the political, social, economic, and cultural domination of one group of people over another by a foreign power for an extended period. It involves the maintenance of control by outsiders without actual incorporation into the dominant people's nation. This domination often leads to Indigenous people becoming a minority in their own land and being limited to menial jobs, while the ruling class benefits from the land's natural resources. Colonialism can also be seen as a form of internal oppression, similar to the relationship between dominant and subordinate groups within the same country.” “Colonialism.” *ScienceDirect*, accessed 2025. <https://www.sciencedirect.com/topics/social-sciences/colonialism>.

³⁵⁴ A. Smith, *Conquest: Sexual Violence and American Indian Genocide* (South End Press, 2005).

³⁵⁵ Forced relocation case in Greenland where the European Court of Human Rights acknowledged the fact that “The Thule District was incorporated into the Danish *colonial area in Greenland* in 1921” [emphasis added] in the case of the HINGITAQ 53 - Denmark No 18584/04) Decision 12.1.2006 [Section I], European Court of Human Rights, Information Note No. 82 on the case-law of the Court (January 2006) 26-28, accessed on 30 December 2024. https://ks.echr.coe.int/documents/d/echr-ks/clin_january_2006_eng

³⁵⁶ Visit to Denmark and Greenland Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, UN Document A/HRC/54/31/Add.1, 3 (August 2023) 5, para 25.

³⁵⁷ Factsheet, *Who are Indigenous peoples? UN Permanent Forum on Indigenous Issues*, accessed 3 December 2025. https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf

³⁵⁸ In depositing its instrument of ratification, the Government of Denmark included a declaration relating to Denmark's ratification of ILO C169, which was published as part of Bekendtgørelse nr. 97 af 9. oktober 1997 om ILO-konvention nr. 169 af 28. juni 1989 (the Danish regulation incorporating the convention). The first

the Home Rule Act (1979); drafting and adoption of the UN Declaration (2007); and the Self-Government Act 2009 are all evidence of Denmark’s legal recognition of Inuit of Greenland and their distinct status, role, and rights.

212. ILO C169 and the UN Declaration are considered complementary to each other and to the entire human rights system in reinforcing established human rights rather than creating new ones. A recent UN Special Rapporteur’s report underscored that the term “Indigenous Peoples” stressed that while states are obligated to recognize Indigenous Peoples as rights holders under international law, domestic recognition is not what establishes those rights—they exist independently and are binding regardless of domestic acknowledgment.³⁵⁹

3.4 Individual and Collective Human Rights

213. As noted by the Expert Inquiry mandate, the relevance of individual and collective rights is explicitly requested. The collective dimension of Inuit society is noted above, yet the legal recognition of the collective human rights dimensions of the contraception case must be underscored in the context of the Inuit of Kalaallit Nunaat. In this way, both Denmark and Naalakkersuisut can gain an accurate portrayal of the full impact of the continuing effects of the contraception case and related policy.
214. Indigenous Peoples are and have been, since time immemorial, collectivities or groups. In contemporary terms, the collective dimension of Indigenous Peoples human rights have been affirmed in international human rights instruments, national law and policy, and jurisprudence. The use of the terms “peoples” and “collective” in the UN Declaration,³⁶⁰ ILO C169,³⁶¹ and the American Declaration³⁶² are evidence of this. ILO C169, a treaty binding upon the Kingdom of Denmark, is inherently a collective rights instrument in that it centres “peoples” rather than “individuals” throughout.
215. The European Court of Human Rights stands apart from other international human rights courts and tribunals in that it does not protect collective rights as such or collective legal personality. However, it has acknowledged that individual rights might have a collective dimension, particularly for Indigenous Peoples.³⁶³ In other regional courts, recognition of Indigenous Peoples collective rights is more developed. The Inter-American Court of Human Rights, African Court of Human and Peoples Rights and the African Commission on Human and Peoples’ Rights have made

paragraph of the declaration states that Denmark has only one indigenous people under the convention—the Inuit of Greenland.

³⁵⁹ *Recognition of Indigenous Peoples Report of the Special Rapporteur on the rights of Indigenous Peoples*, Albert K. Barume, UN Document A/HRC/60/29 (7 August 2025).

³⁶⁰ Implicitly in the use of the term “peoples” and specifically UN Declaration, explicit reference is made in Preamble para. 22 and Articles 1, 7, 40.

³⁶¹ Implicitly in the use of the term “peoples” and specifically ILO C169 explicit reference in Article 13.

³⁶² Implicitly in the use of the term “peoples” and specifically American Declaration on the Rights of Indigenous Peoples articles I; V; VI; VIII; XVI; XVIII; XIX; XXVI; XXVII; XXVIII; and XXXIII.

³⁶³ *Chapman v United Kingdom* (European Court of Human Rights, Grand Chamber, Application No 27238/95, 18 January 2001) 33 EHRR 18.

specific reference to the collective nature of the rights of Indigenous Peoples collective land rights,³⁶⁴ the collective right to free, prior and informed consent,³⁶⁵ and the collective right to *legal personality* for Indigenous communities (the latter a crucial step for the adjudication of collective rights in international human rights courts).³⁶⁶ Article 13 of ILO 169 expressly acknowledges the collective aspects of Indigenous Peoples' relationship with their lands and territories. Article 7 of the UN Declaration affirms that Indigenous individuals have the right to life, liberty, security, and physical and mental integrity. And further affirms that Indigenous peoples collectively have the right to live in peace and must be protected from genocide, violence, and the forced removal of their children.

3.4.1 ILO C169 and Temporal Jurisdiction Over Continuing Violations

216. The provisions of ILO C169 cannot be applied retrospectively. ILO C169 entered into force for Denmark in February 1997. However, the Committee of Experts on the Application of Conventions and Recommendations (CEACR)—responsible for monitoring and interpreting ILO C169—has previously determined that the provisions of ILO C169 can apply to violations that are continuing. To be precise, their opinion provided that:

The Committee observes that the relocation of the population of the Uummannaq settlement, which forms the basis of this representation, took place in 1953. It also takes note of the fact that the Convention only came into force for Denmark on 22 February 1997. The Committee considers that the provisions of the Convention cannot be applied retroactively, particularly with regard to procedural matters, such as whether the appropriate consultations were held in 1953 with the peoples concerned. However, the Committee notes that the effects of the 1953 relocation continue today, in that the relocated persons cannot return to the Uummannaq settlement and that legal claims to those lands remain outstanding. Accordingly, the Committee considers that *the consequences of the relocation that persist following the entry into force of Convention No. 169 still need to be considered* with regard to Articles 14(2) and (3), 16(3) and (4) and 17 of the Convention, examined below, *despite the fact that the relocation was carried out prior to the entry into force of the*

³⁶⁴ *Mayagna (Sumo) Community of Awas Tingni v. Nicaragua* (Inter-American Court of Human Rights, 2001); *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council)/Kenya - 276/03* (2010); Communication 588/15 Minority Rights Group International and Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park, DRC) v. Democratic Republic of Congo (DRC) merits, accessed 14 December 2025. <https://achpr.au.int/en/decisions-communications/58815-minority-rights-group-v-v-democratic-republic-congo-drc>. Communication 588/15 Minority Rights Group International and Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park, DRC) v. Democratic Republic of Congo (DRC) merits, last accessed 14 December 2025. <https://achpr.au.int/en/decisions-communications/58815-minority-rights-group-v-v-democratic-republic-congo-drc>.

³⁶⁵ *The Sarayaku v. Ecuador* (2012).

³⁶⁶ Importantly, the *Kaliña and Lokono Peoples v. Suriname* (Inter-American Court of Human Rights, 2022) case affirmed recognition of a collective right to legal personality for Indigenous communities, establishing a crucial recognition for the adjudication of collective rights within international human rights venues.

Convention. These provisions of the Convention are almost invariably invoked concerning displacements of indigenous and tribal peoples which predated the ratification of the Convention by a member state.³⁶⁷

217. It is possible, therefore, that the ongoing effects upon Inuit women and girls for violations of rights under ILO C169 that occurred before the entry into force of the Convention in February 1997, could still be subject to its terms if the effects continue. Ongoing harms might include infertility, physical and psychological injury, ongoing systemic discrimination, as well as broader collective harms such as the intergenerational loss of transmission of culture, and the overall reduction in the population.

3.4.2 Indigenous Peoples and “Minority” Protections?

218. Indigenous Peoples have a completely different legal status from *minorities*, but in practice human rights courts and tribunals might rely on minority protection provisions to ensure Indigenous Peoples’ rights. Article 27 of the ICCPR provides that “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.” To date, the UN Human Rights Committee, which oversees the implementation of the ICCPR has addressed the complaints of Indigenous Peoples in relation to Article 27 because they form a “numerical minority.” In order for the members of minorities to be able to enjoy their culture as prescribed in Article 27, the specific characteristics of the group should not be destroyed; similarly, any action that deprives Indigenous Peoples of their cultural values or ethnic identity constitutes a breach of Article 27 ICCPR. In the present case, due to the interrelated nature of human rights, it is important to link Article 7 concerning human and degrading treatment and Article 17 regarding privacy, family, honour, and reputation, of the ICCPR to fully understand the collective and cultural harm to Indigenous Peoples by targeting and impacting their reproductive capacity.³⁶⁸
219. As described in the Chapter 2, there is a reasonable basis to believe that under the auspices of the Danish state, doctors in medical practice engaged in discrimination against Kalaallit Inuit women in their approach to contraceptives, on the basis of their race and sex, and that this took place in the context of other discriminatory state policies. The overall impacts of colonisation pivot on the

³⁶⁷ *Emphasis added.* Decision, Report of the Committee set up to examine the representation alleging non-observance by Denmark of the Indigenous and Tribal Peoples Convention 169 (1989), made under Article 24 of the ILO Constitution by the National Confederation of Trade Unions of Greenland (Sulinermik Inuussutissarsiatteqartut Kattuffiat-SIK), accessed 28 Nov 2025
https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:50012:0::NO::P50012_COMPLAINT_PROCEDURE_ID%2CP50012_LANG_CODE:2507219%2Cen

³⁶⁸ ICCPR Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation” Article 17: “1: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”

race and cultural identity of Inuit. The UN Special Rapporteur on the Rights of Indigenous Peoples elucidated that Danish policy in Kalaallit Nunaat imposed “Danish culture, language and social and legal structures [including] through forced urbanization and discrimination,” and concluded that these “policies have threatened Inuit culture, identity and institutions and their presence in Greenland.”³⁶⁹ In drawing his conclusions, he was informed by the provisions of the ICCPR, ICESCR, CERD.

220. Complementary to the existing binding prohibition of racial discrimination, the UN Declaration, provides in its preamble “all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust.” The preamble also refers to freedom from discrimination and historic injustices and reaffirms extant binding rules of international law that “Indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind.” The Preamble further expressed that “Indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.”
221. The right to culture and its importance for the identity and the development of individuals and communities is widely recognized by international treaties³⁷⁰ and jurisprudential or para-jurisprudential practice.³⁷¹ Here, it is important to note the bridge connecting reproduction, family and kinship systems of cultural continuity. Article 8 of the UN Declaration refers to Indigenous Peoples’ right not to face forced assimilation or destruction of their culture. In this regard, the Declaration sets out a duty to prevent and remedy actions that undermine Indigenous identity, dispossess them of land or resources, transfer populations, impose forced assimilation, or promote discriminatory propaganda. This should be read alongside binding obligations to protect.

³⁶⁹ United Nations A/HRC/54/31/Add.1, 3 August 2023, Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, review of Indigenous Peoples in Denmark and Greenland.

³⁷⁰ See inter alia, Article 15 ICESCR; Article 5(e)(vi) of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 2 ILO C169 affirming the duty of States to promote “the full realization of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions”; the UNESCO *Convention on the Safeguarding of Intangible Cultural Heritage* (2003) and the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005).

³⁷¹ See, e.g., HRC, *General Comment No. 23, Article 27: Rights of Minorities*, UN Doc. CCPR/C/21/Rev.1/Add.5 of 8 April 1994, para. 7; CERD, General Recommendation XXIII, para. 4(a); IACHR, *Plan de Sánchez Massacre v. Guatemala (Reparations)*, Ser. C No. 116, judgment of 19 November 2004, recognizing that the deaths of women and elderly who were traditionally the oral transmitters of the Mayan Achí culture interrupted the passage of cultural knowledge to future generations, and the militarization and repression after the massacre resulted in the indigenous peoples’ loss of faith in their traditions.

3.4.3 UN Declaration on the Rights of Indigenous Peoples

222. The legal status of the UN Declaration is often misunderstood, especially at the domestic level. Therefore, it is important to emphasize that this universal human rights instrument is not merely aspirational but has diverse legal effects. To be clear, although the instrument *itself* is not legally binding, it is “guided by the purposes and principles of the Charter of the United Nations”³⁷² and constitutes an authoritative interpretation of binding human rights norms in the context of Indigenous Peoples. Some provisions also restate norms of customary international law,³⁷³ and in that sense guide state behaviour and practice.³⁷⁴ According to the International Law Association Committee on Rights of Indigenous Peoples (ILA Committee) “the relevant areas of indigenous peoples’ rights with respect to which the discourse on customary international law arises are self-determination; autonomy or self-government; cultural rights and identity; land rights as well as reparation, redress and remedies.”³⁷⁵ The ILA Committee recognized that “it would be inappropriate to deal with these areas separately...the rights just listed are all strictly interrelated...to the extent that the change of one of its elements affects the whole.”³⁷⁶
223. The 2007 adoption of the UN Declaration by the General Assembly triggered incremental change in relationships between Indigenous peoples and UN member states, both nationally and internationally. The legal status of the Declaration has been a focus of both scholars and states. However, the UN Declaration has affirmed standards that are accepted as norms of customary

³⁷² UN Declaration, Preamble.

³⁷³ Note by the Secretary-General, Interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, UN Doc. A/65/264 (9 August 2010), para. 62: “even though the Declaration itself is not legally binding in the same way that a treaty is, the Declaration reflects legal commitments that are related to the [United Nations] Charter, other treaty commitments and customary international law. The Declaration [...] is grounded in fundamental human rights principles such as non-discrimination, self-determination and cultural integrity.”

³⁷⁴ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua* (Nicaragua v. United States of America), ICJ Decision (27 June 1986), 186: “The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule. If a State acts in a way prima facie incompatible with a recognized rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than to weaken the rule.”

³⁷⁵ International Law Association, The Hague Conference (2010), *Interim Report of the Committee on Rights of Indigenous Peoples* 43. Accessed November 1, 2015. <http://www.ila-hq.org/en/committees/index.cfm/cid/1024>. James Crawford, *Brownlie's Principles of Public International Law*, 8th ed. (Oxford: Oxford University Press, 2012), 42: “Even when resolutions are framed as general principles, they can provide a basis for the progressive development of the law [...] Examples of important ‘law-making’ resolutions include [...] the UN Declaration on the Rights of Indigenous Peoples.” See also International Law Association, Kyoto Law Conference (2020), “Implementation of the Rights of Indigenous Peoples” 11-12. https://www.ila-hq.org/images/ILA/docs/kyoto/Comm%20Impl%20Rights%20Ind%20Peoples_Draft%20Final%20Report%20Kyoto%202020.pdf

³⁷⁶ Ibid.

international law. In particular, the right of self-determination, and rights to redress, remedy, and reparations are within this category.

224. Thus, the UN Declaration does not create “new rights” or “special rights” in favour of Indigenous Peoples. Rather, it provides the important and distinct cultural context or lens to safeguard and understand pre-existing individual and collective human rights of Indigenous Peoples. The former UN Special Rapporteur on the Rights of Indigenous Peoples S. James Anaya described this as follows:

The Declaration does not attempt to bestow indigenous peoples with a set of special or new human rights, but rather provides a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples.³⁷⁷

225. Consistent with the understanding of the UN Special Rapporteur, compliance with the UN Declaration, and more importantly, its implementation is crucial: “[I]mplementation of the Declaration should be regarded as political, moral and, yes, legal imperative without qualification.”³⁷⁸
226. Combined with the state consensus upon its adoption along with the numerous General Assembly resolutions adopted in support of the UN Declaration, it is considered a central international human rights instrument. Denmark participated in the drafting of the instrument, ultimately voting in favour of its adoption on 13 September 2007. In 2014, UN member states, including Denmark, adopted, by consensus, the Outcome Document of the World Conference on Indigenous Peoples affirming their “solemn commitment to respect, promote and advance and in no way diminish the rights of indigenous peoples and to uphold the principles of the Declaration.”³⁷⁹

3.5 Contemporary Developments in the Rights of Indigenous Women and Girls

227. In 2004, the former Special Rapporteur on the rights of Indigenous peoples, Rodolfo Stavenhagen, emphasized the extremely vulnerable situation of Indigenous girls:

The particularly sensitive situation of Indigenous girls is of paramount importance in as much as they are often the most vulnerable victims of discrimination, exclusion and marginalization. The Special Rapporteur appeals to the national and international

³⁷⁷ S James Anaya, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN GAOR, Human Rights Council, 9th sess, Agenda Item 3, UN Doc A/HRC/9/9 (1 August 2008) para 86.

³⁷⁸ S James Anaya, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN GAOR, 65th sess, Agenda Item 68(b), UN Doc A/65/264 (9 August 2010) para 63.

³⁷⁹ UN General Assembly Resolution A/RES/69/2, 25 September 2014. Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, UN Document A/RES/69/2.

authorities and bodies responsible for promoting gender equality and the rights of the child to pay particular attention to Indigenous children and adolescents throughout the world.³⁸⁰

228. Obstetrics violence harms not only individuals, but also the collective identity of their communities.³⁸¹ The threats and harms directed at Indigenous women can contribute to the loss of culture and knowledge, with negative impacts not only on women themselves but on Indigenous Peoples as a whole, thereby creating another form of vulnerability. Intersectional discrimination is central to the contraceptive practices with which this report is concerned and is a form that has now been widely recognized. Structural racial discrimination rooted in colonization has weakened Indigenous community systems and eroded Indigenous women's roles, placing the transmission of their knowledge at risk. Stereotypes and stigma further devalue their contributions.
229. Human rights treaty bodies, in interpreting their treaty provisions, have consistently recognized—through international decisions, jurisprudence, and other interpretative tools—the particular human rights concerns of Indigenous women, girls and children. Such vulnerability, to some extent, simply comes from being Indigenous as well as suffering from the impacts of colonization. The UN Declaration explicitly recognizes the right of Indigenous peoples to be free from any kind of discrimination and requires states to provide effective mechanisms for prevention of, and redress for, any action that has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities.³⁸² This reality has been articulated, for example, in the General Recommendation No.39 of the Committee on the Elimination of All Forms of Discrimination Against Women and General Comment No. 11 of the Committee on the Rights of the Child, which concerns Indigenous children. Elaboration of such norms reinforce the heightened responsibility and duty of care upon Denmark in relation to Inuit women, girls and children.

3.5.1 Convention on the Elimination of All Forms of Discrimination Against Women

230. In 2022, the UN Committee on the Elimination of All Forms of Discrimination Against Women issued General Recommendation 39 On the Rights of Indigenous Women and Girls (GR 39).³⁸³ General Recommendations are published by UN treaty bodies to provide interpretative guidance to states in implementing their obligations under the relevant Convention.³⁸⁴ These interpretations

³⁸⁰ UN General Assembly, The situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General (Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people) A/59/258 (12 August 2004) 6, para. 51. *[emphasis added]*

³⁸¹ Indigenous women and the development, application, preservation and transmission of scientific and technical knowledge Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, UN Document A/HRC/51/28 (9 August 2022) 13-6.

³⁸² UN Declaration, Art 8.

³⁸³ General Recommendation (GR) 39 (2022) on the rights of Indigenous women and girls, 26 October 2022. UN symbol CEDAW/C/GC/39.

³⁸⁴ Persistent discrimination, prejudice, and notions of superiority toward Indigenous women and girls are captured in articles in the Convention. Article 2 affirming state obligation to “(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in

are not strictly speaking legally binding, but they are highly authoritative. GR 39 is effectively an update of General Recommendation 35 (GR 35) of 2017 and General Recommendation 19 of 1992. GR 35 explicitly identified forced and coerced sterilization as a form of gender-based violence that can amount to torture or cruel, inhuman or degrading treatment, especially when directed at marginalized women (including Indigenous women). Although not all women were sterilized in the involuntary contraception with which this inquiry is concerned, involuntary contraception led to various degrees of infertility, and the insertion of an IUD without the person's knowledge (a frequent claim for those who were children or had it inserted after birth or abortion) could have the same effect as sterilization.

231. GR 39 is the first comprehensive UN women's rights instrument dedicated specifically to Indigenous women and girls and their distinct cultural context. It integrates gender equality and Indigenous Peoples' rights, and recognizes that discrimination is often intersectional, that is, based on more than one factor.³⁸⁵ It acknowledges the gender-based discrimination they face and the intersectional harms created by colonialism, racism, poverty, and dispossession. It calls for structural and systemic transformations rooted in respect for Indigenous Peoples' rights to autonomy, self-determination and culture as individual and collective rights.

232. GR 39 stresses that Indigenous women and girls experience compounded discrimination due to:

- Sex and gender
- Indigenous identity
- Socio-economic marginalization
- Linguistic and cultural barriers
- Geographic isolation
- Legacies of colonialism and systemic racism

233. Significantly, GR 39 explicitly refers to disproportionately high rates of "forced sterilization" among other forms of violence and discrimination to which Indigenous women have been subject.³⁸⁶ It provides that due to the multiple forms of discrimination perpetrated against Indigenous women and girls, states must adopt policies that address these intersecting factors together. In relation to the collective dimension of the rights of Indigenous women, their right of

conformity with this obligation"; Article 5: "achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority;" and Article 12 affirming that "states parties shall take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on a basis of equality of men and women, access to healthcare services, including those related to family planning" and a corresponding state obligation to ensure positive services in connection to pregnancy and prenatal care.

³⁸⁵ CEDAW, GR 39 para 2.

³⁸⁶ Other forms of violence include domestic and intimate partner violence sexual violence; trafficking; violence by state actors (police, military); and violence linked to extractive industries and environmental degradation.

self-determination has been explicitly affirmed, including the right to participate in decision-making within their communities and at all levels; and the right to maintain cultural practices, language, and knowledge systems.

234. Access to justice and remedies in the context of human rights violations must address language barriers, access to legal aid, and discrimination and bias in existing justice systems. Intersectionality also requires recognition of and respect for their economic, social and cultural rights, including equal access to education, health services, employment and economic opportunities, housing, and food security. Importantly, states must ensure that women can effectively participate in governance, political processes, and political decisions, including their right to free, prior, and informed consent.³⁸⁷
235. CEDAW has made clear forced contraception is discrimination, gender-based violence, and a violation of physical and reproductive autonomy, and the right to decide on the number and spacing of their children.³⁸⁸ In the context of contraception specifically, it found that informed consent for Indigenous women was often not respected. Importantly, special attention must be given to women with disabilities and Indigenous women, and older women, and ensure that free, prior, and informed consent, confidentiality and privacy are respected in the provision of health services.³⁸⁹ Informed consent must be robust, free of coercion, culturally accessible (e.g., in a language the patient understands), and accompanied by counselling.
236. Inuit women and girls are beneficiaries of the Indigenous-specific international human rights instruments, and all other human rights affirmed in international law. Intersectional discrimination³⁹⁰ refers to situations in which people are discriminated against on more than one ground—in this instance age, gender and ethnicity—and that this leads to a compounded experience of discrimination,³⁹¹ worsening and deepening the impact. Intersectional discrimination is often experienced by Indigenous women and children, particularly those with disabilities. The Expert Group has received little information on the involuntary contraception of women with disabilities specifically. It has however been advised that Kalaallit Inuit women with

³⁸⁷ CEDAW, GR 39, inter alia paras 6, 18, 45, 51. Paragraph 52 specifies that “The Committee recommends that States parties: (a) Ensure that quality health services and facilities are available, accessible, affordable, culturally appropriate and acceptable for Indigenous women and girls, including those with disabilities, older women, and lesbian, bisexual, transgender and intersex women and girls, and ensure that free, prior and informed consent, confidentiality and privacy are respected in the provision of health services.”

³⁸⁸ CEDAW, GR 39, paras 9 and 51.

³⁸⁹ Ibid., para 52.

³⁹⁰ Kimberle Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color,” *Stanford Law Review* 43(6) (1991) 1241–1299. Britannica defines intersectionality as: intersectionality, in social theory, the interaction and cumulative effects of multiple forms of discrimination affecting the daily lives of individuals, particularly women of color. The term also refers more broadly to an intellectual framework for understanding how various aspects of individual identity—including race, gender, social class, and sexuality—interact to create unique experiences of privilege or oppression. “Intersectionality.” Encyclopaedia Britannica Online, accessed 25 July 2025. <https://www.britannica.com/topic/intersectionality>

³⁹¹ Indigenous Women Booklet, Inter-American Commission on Human Rights (2017), accessed 25 July 2025. <https://www.oas.org/en/iachr/indigenous/docs/pdf/Brochure-MujeresIndigenas-en.pdf>.

disabilities are particularly vulnerable to intersectional discrimination and to experiencing a lack of informed consent in medical procedures.³⁹² The authors encourage full compliance with the Convention on the Rights of Persons with Disabilities as health and other policy advances.

3.5.2 Convention on the Rights of the Child

237. The CRC was the first core human rights treaty to include specific references to Indigenous children in its provisions having expressly protected the right of Indigenous children to enjoy their own culture and language.³⁹³ It came into force for Denmark in August 1991. The CRC obligates the state to protect the child against all forms of maltreatment, including the establishment of mechanisms to identify, report, refer, investigate, treat and follow-up of instances of child maltreatment.³⁹⁴ It also protects the child's right to the highest attainable standard of mental and physical health, an elaboration of a pre-existing right to health, binding on Denmark since January 1976.³⁹⁵
238. In 2009, the UN Committee on the Rights of the Child issued General Comment 11 in 2009. GC 11 which offered further interpretive guidance on the CRC in the context of human rights protections for Indigenous children. As noted by the Committee, Indigenous children often face specific, systemic obstacles such as discrimination, lack of access to health care and education, cultural barriers, poverty, and other challenges. The Comment aims to identify those obstacles and guide states on how to implement their obligations under the Convention with specific respect to Indigenous children, including specific measures needed to overcome such obstacles.³⁹⁶ The comment draws on other binding human rights instruments³⁹⁷ as well as the Declaration to reinforce its framework.
239. The key features of the GC 11 include non-discrimination (Article 2) affirming that Indigenous children must enjoy all CRC rights without discrimination; states must ensure domestic law, policy and practices reflect that, including accessible remedies. The best interests of the child (Article 3), the right to life, survival, and development (Article 6), and the right to be heard (Article 12)—these general CRC principles apply with special relevance.
240. The Comment underscores the need for culturally appropriate consultation with Indigenous peoples, including children, in all measures affecting them. A child's right to cultural identity is reinforced, affirming that Indigenous children have the right—individually and collectively—to enjoy their own culture, religion, language, way of life, and to maintain ties with their

³⁹² Listening session with Tilioq.

³⁹³ CRC Arts 29, 30.

³⁹⁴ Ibid., Art 19.

³⁹⁵ ICESCR Art 12.

³⁹⁶ GC 11, para 12.

³⁹⁷ Including the ICCPR, ICESCR, and ILO C169.



community.³⁹⁸ In addition, health services should be community based and planned, and provided in a way that is “mindful of their culture and traditions”.³⁹⁹

241. In essence, GC 11 underscores the multidimensional disadvantages that Indigenous children face and in the absence of explicit and targeted measures, states risk perpetuating inequality, discrimination, and social exclusion, and that such measures must be adapted to the cultural, social, and historical context of Indigenous Peoples and their communities.

3.6 Right to Culture

242. Binding rules of international law protect the right to culture. Article 15(1) of the ICESCR protects the general right of all people to “take part in cultural life.” Article 27 of the ICCPR provides that members of ethnic 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 UN Human Rights Committee has found a violation of Article 27 when the actions of a state party have interfered with Indigenous Peoples’ capacity to “maintain their traditional way of life and to transmit to their children and future generations their culture and traditions.”⁴⁰⁰
243. For Inuit in Kalaallit Nunaat and indeed across Inuit Nunaat, family and community, the embodiment of collective human rights, are central to their distinct cultural identity. These provisions affirm that Indigenous Peoples have the right to maintain, revitalize, practice, and teach their cultural, spiritual, and religious traditions, customs, and ceremonies. This includes the protection, control, and development of their cultural expressions. It is logical to combine these elements with Article 20, which highlights social systems and institutions. Emphasis should be placed on the application of economic, social, and cultural rights and the intersection of the rights of Inuit women and girls in this regard. As such, ICESCR Article 15(1) bolsters state party commitments to recognition of the right of everyone to take part in cultural life, including Inuit women.
244. In this way, the distinct characteristics of Inuit family and community can be promoted and protected. Women who experienced involuntary contraception shared with the Expert Group the loss they felt due to their inability to enjoy these beautiful cultural customs, traditions, and ceremonies. For example, birthing, naming ceremonies, and the collective joy of welcoming a new human being into their arms, homes, and community.
245. The cluster of UN Declaration Articles 11, 12, and 20 emphasize cultural traditions and customs—a central cultural value and attribute of Inuit. In addition, Article 8 of the UN Declaration refers to Indigenous Peoples’ right not to face forced assimilation or destruction of their culture, reinforcing

³⁹⁸ CRC Arts 29 and 30.

³⁹⁹ GC 11 para 52; see also ILO C169 Art 25.

⁴⁰⁰ UN Human Rights Committee, *Daniel Billy and Others v Australia* (Views, Communication No 3624/2019, 21 July 2022) [8.14].

the binding human rights norms described above. In this regard, the state has a duty to prevent and remedy actions that, among other things, undermine Indigenous identity, impose assimilation, or promote discrimination. Article 34 of the Declaration affirms that “Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.”

3.6.1 Right to Language

246. Article 13 of the UN Declaration proclaims the right to *language and oral traditions* and a corresponding responsibility for the state to “take effective measures to ensure that Indigenous Peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.” In relation to health, Article 13 is based on Article 12 of the ICESCR (the right to health). The right to health entered into force for the Kingdom of Denmark on 3 January 1976, and thus could be violated directly on in respect of incidents that took place after this date or for continuing violations beyond that date. In order for healthcare to meet minimum standards of accessibility and acceptability under the human right to health, it is necessary that the patient receives advice and treatment in a language that they understand.
247. There is no doubt that language accessibility is essential in the context of ensuring informed consent to medical procedures. The Expert Group has received little information on the availability or quality of interpreters in Kalaallit Nunaat, although understands that even today they are in limited supply. Research has shown that by 1975 only 1% of doctors could speak any of Inuit languages, and only 25 per cent of the population could speak Danish to a conversational level.⁴⁰¹ Inaccessibility of adequate interpretation in healthcare settings was raised at the informal “listening sessions.” Language difficulties were also noted in the report of the Research Group.⁴⁰²
248. This combined with the broader cultural stereotypes and societal inequalities and gender hierarchies—male doctors and female patients—especially during IUD procedures, exacerbate or compound language barriers, leaving patients in a wholly vulnerable position. Even where there was purportedly written patient material in Kalaallisut, the other dynamics of culturally relevant material is at question, further compromising any notion of genuine, informed consent.

3.7 Self-determination

249. A central cause of discrimination against Indigenous women and girls is “the lack of effective implementation of their rights to self-determination and autonomy and related guarantees.”⁴⁰³ Self-determination carries binding obligations under treaty and customary international law. It is enshrined and affirmed in common Article 1 of the ICCPR and ICESCR and protects the free

⁴⁰¹ Sixten S.R. Haraldson, *Greenland 1975* (1976) 95.

⁴⁰² Jensen et al. 46.

⁴⁰³ CEDAW GR 39 para 11.

determination of political status and the pursuit of economic, social and cultural development. Article 3 of the UN Declaration affirms the right of self-determination for Indigenous Peoples, and Article 4, the right to self-government. Self-determination is widely regarded as a prerequisite and foundational for the realization of all other human rights. Although the Declaration is not binding, these provisions are a restatement of existing binding principles of human rights law.

250. As such, governments must ensure that any measures to address violence or discrimination against Indigenous women and girls are consistent with Indigenous peoples' rights to self-determination and self-government. This means recognizing the authority and agency of Inuit communities themselves—especially women—to define their own priorities, solutions, and responses to involuntary contraception. Respect for Indigenous self-determination includes the guarantee of enjoying an adequate degree of autonomy within the state in which the community concerned (Inuit) lives, which enables it to fully exercise its own cultural identity and integrity and to carry on its political and legal institutions, as well as to acquire political independence when the conditions required by international law for this to happen are met. Inuit and their communities must be meaningfully involved in all decision-making processes affecting them, especially regarding policies and programs designed to protect Inuit women and girls.⁴⁰⁴

3.7.1 Right to Free, Prior and Informed Consent

251. Section 2.3.1 addressed the absence of valid consent in the context of a potential violation of the right to be free from torture, cruel, inhuman and degrading treatment. Beyond this alone, the substantive and procedural aspects of free, prior and informed consent (FPIC) are central to the exercise of the right of self-determination of Indigenous Peoples. The right of self-determination is understood as a pre-requisite for the exercise and enjoyment of all other human rights.⁴⁰⁵ Self-determination is a collective right of Peoples to freely determine their political, economic, social and cultural development without external interference. The right of Indigenous Peoples to FPIC in decisions which affect them is sourced in their right of self-determination.⁴⁰⁶
252. FPIC, in short, means that consent must be given voluntarily; consent must be sought sufficiently in advance of any measures, giving time for deliberation and consideration; receiving adequate, accurate and culturally appropriate information about the proposed action (scope, duration, impacts, alternatives); and explicitly agreeing or withholding agreement.⁴⁰⁷ To operationalize FPIC does not simply mean “consultation.” FPIC carries the potential for withholding consent, of

⁴⁰⁴ ILO C169 Art 6.

⁴⁰⁵ *The Right to Self-Determination Historical and Current Development on the Basis of United Nations Instruments*, Study prepared by Aureliu Cristescu Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, (UN, New York, 1981) accessed 10 December 2025. <https://docs.un.org/en/E/CN.4/Sub.2/404/Rev.1>

⁴⁰⁶ Dalee Sambo Dorough, “The right to free, prior and informed consent in an international context.” *Northern Public Affairs* 4:2 *The Right to Free, Prior & Informed Consent* (May 8, 2016), Introduction and 33-37. https://whatis.fpic.info/files/npa_right_to_fpic.pdf.

⁴⁰⁷ Free, prior and informed consent: a human rights-based approach Study of the Expert Mechanism on the Rights of Indigenous Peoples, UN Document A/HRC/39/62 (10 August 2018), accessed 14 December 2025. <https://documents.un.org/doc/undoc/gen/g18/245/94/pdf/g1824594.pdf>

saying yes or no. Nor is the exercise of the right to FPIC just a procedural formality, it is an expression of Indigenous Peoples' collective right to decide for themselves. Without comprehensively operationalizing FPIC, actions and decisions risk violating and undermining Indigenous Peoples self-determination, culture, livelihoods, environment, and their fundamental collective human rights.⁴⁰⁸

253. Women who reported to the Research Group, participated in the civil claim, and engaged in the Expert Group's discussions described that they did not freely choose the contraception they experienced, that it was decided by others, and that their parents usually knew nothing of it. Many children experienced involuntary contraception while they were "far from their families and left in the care of others."⁴⁰⁹ The previous chapter detailed the circumstances in which there was an absence of valid consent to individual contraception. As a matter of collective rights, the substantive and procedural aspects of free, prior, and informed consent, based in self-determination, were also contravened in which involuntary contraception was implemented systematically and without consent from Inuit collectively, and in particular, through or by Inuit parents.

3.8 Right to Health for Indigenous Women

254. The right to health is contained in six treaties to which the Kingdom of Denmark is a party, and for which no territorial reservations exist with respect to Kalaallit Nunaat. Article 12 of the ICESCR is the first of these, and entered into force in the Kingdom of Denmark on 3 Jan 1976. It protects a general right to health: "the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." It must be implemented "without discrimination of any kind"⁴¹⁰ and consistent with the "equal right of men and women to the enjoyment of all economic, social and cultural rights."⁴¹¹ Article 10 provides that children and young people must be safeguarded from activities that could endanger their health or development. As described earlier, CEDAW obligates states to include family planning in education and to guarantee all women's rights to "decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights".⁴¹²
255. Article 25 of the ILO C169 complements the general right to health in ways specific to the needs of Indigenous Peoples. It reinforces that health services shall be community-based and planned and administered in cooperation with the Peoples concerned. Governments are required to "ensure that adequate health services are made available to the peoples concerned" or "shall provide them

⁴⁰⁸ Dalee Sambo Dorrough, "The right to free, prior and informed consent in an international context." *Northern Public Affairs* 4:2 *The Right to Free, Prior & Informed Consent* (May 8, 2016), Introduction and 33-37. https://whatis.fpic.info/files/npa_right_to_fpic.pdf.

⁴⁰⁹ Jensen et al. Part 3, 186.

⁴¹⁰ ICESCR Art 2(2).

⁴¹¹ ICESCR Art 3.

⁴¹² CEDAW Art 16(e).

with resources to allow them to design and deliver such services under their own responsibility and control” to ensure that they “enjoy the highest attainable standard of physical and mental health.” The right to health is premised on the idea that health is not biologically predetermined but is subject to influence, including by policy decisions of government.

256. The state has wide discretion in determining how the right to health is implemented to allow states to protect health and its determinants in ways that best suit their specific contexts. Nevertheless, there are minimum core obligations under the right to health from which no derogation is permitted, even if resources are stretched. These include access to essential primary health care, and basic access to nutritional food, water, housing, and sanitation on a non-discriminatory and equitable basis.⁴¹³
257. To meet the general right to health a state must, at a minimum, ensure non-discriminatory access to health; primary healthcare; actions to prevent, treat, and control diseases; and equitable distribution of health services.⁴¹⁴ Medical ethics and culturally appropriate health services undergird this framework. Non-discrimination, minimum care, and essential medicines are non-derogable. States must also prevent third parties from violating the right to health.

3.9 Conclusion

258. Inuit women have a crucial role in the maintenance of their culture, ranging from motherhood to participation in decision-making and they are central to the balance of Inuit society. The disruption of this balance through involuntary contraceptive practices has significant consequences for the exercise and enjoyment of the interrelated rights of the Indigenous Peoples of Kalaallit Nunaat. The societal and cultural impacts have undermined the intergenerational transmission and practice of Inuit culture and cultural heritage, affecting Inuit society broadly and disproportionately impacting Inuit women and girls.
259. The authors have determined a reasonable basis to believe that involuntary contraceptive practices have violated the rights of Inuit women and girls based on their legal status as Indigenous Peoples, to determine their economic, social, and cultural development contrary to binding legal obligations under Articles 2, 4 and 30 of ILO C169 as well as Article 3 of the UN Declaration. Significantly, this includes their right to maintain and revitalize their culture, language, and traditions, which in this case are directly related to Inuit traditions of motherhood, childbearing, birthing, midwifery, parenting or mothering, lineage, and other unique aspects of motherhood.
260. Central to such cultural dynamics, was direct and indirect discrimination on the basis of their identity as Inuit women (see Chapter 2), evidenced in the nature with which the overall

⁴¹³ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, para. 1, of the Covenant) (1990) [10].

⁴¹⁴ Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14 (2000) The right to the highest attainable standard of health (ICESCR Article 12).

contraception “campaign” was implemented. Underlying prejudices formed the basis of actions that disrupted the right of Inuit women to belong to and practice the traditions and customs of their community or nation as reflected in Article 2 of ILO C169 and Articles 8 and 9 of the UN Declaration.

261. Involuntary contraceptive practices in Kalaallit Nunaat have violated elements of Inuit health practices, individually and collectively, as well as their “equal right to the enjoyment of the highest attainable standard of physical and mental health” protected by Article 12 ICESCR and ILO C169 Article 25. Individually, Indigenous women have the right to be appropriately consulted before being subjected to any kind of treatment potentially affecting their sexuality and reproductive capacity,⁴¹⁵ and collectively Inuit women must also be consulted on any policies or practices with such an effect.⁴¹⁶ Individually and collectively, Indigenous women have the right to access health education and healthcare services that are culturally appropriate and responsive to their particular needs, including reproductive healthcare, mental health services, and culturally sensitive healthcare practices, and delivery of such care in their own languages. Explicitly in relation to the right to health and social security, due to specific vulnerabilities of Indigenous “women, youth, children and persons with disabilities” the UN Declaration Articles 21 and 22 adds to the preexisting legal obligation of states to pay particular attention to the rights and special needs of vulnerable persons. As described above, the authors have found that the state of Denmark is responsible for actions that were contrary to these protections.

⁴¹⁵ CEDAW Arts 10(h), 12; ICCPR Art 17; ECHR Art 8.

⁴¹⁶ ILO 169 Art 25.

4 Genocide

262. This chapter considers the fourth term of reference in which the Expert Group has been asked to “assess whether the alleged events of forced, coerced, deceptive or nonconsensual practices of contraception in Greenland might fulfil the definition of ‘genocide’ under international law, including with reference to the Genocide Convention 1948 Article 2 subparagraph (d) The imposition of measures to prevent the birth of children within the group.”
263. This section of the report explains what genocide is as a matter of international law and applies that law to the approach taken to contraception in Kalaallit Nunaat since 1960. The focus is potential state responsibility under international law (Denmark).⁴¹⁷ The authors have not interpreted the terms of reference as requesting any interrogation of individual criminal responsibility. The assessment in this report is preliminary, not conclusive or exhaustive, and is based on the ‘reasonable basis to believe’ standard described in Section 1.3.5. As described in that Section, this standard is the ordinary one used by UN Commissions of Inquiry in addressing similar subject matter in circumstances where the relevant experts have not the access, authority, or capacity to assess all relevant evidence, but enough information to make an informed assessment.

4.1 Legal Status of Genocide

264. The prohibition of genocide is a peremptory norm of international law and enshrined in the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* (hereafter Genocide Convention).⁴¹⁸ Its status as a peremptory norm establishes it as a legal rule from which no derogation is permitted.⁴¹⁹ The principles underlying the Convention are binding on all states, even without an express treaty obligation,⁴²⁰ accordingly all states must prevent and punish genocide, regardless of whether or not they have ratified the relevant international agreements.⁴²¹ Denmark signed the Genocide Convention on 28 September 1949 and deposited its instrument of ratification on 15 June 1951, indicating its consent to be bound.

⁴¹⁷ An approach which reflects that taken in other inquiries also addressing the question of genocide in the context of colonial policy: National Inquiry into Missing and Murdered Indigenous Women and Girls [Canada], *Supplementary Report on Genocide* (2019) 9. https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

⁴¹⁸ Concluded at New York, December 9, 1948. Entered into force, January 12, 1951. 78 UNTS 277, 1951

⁴¹⁹ ILC Report on the Work of its Seventy-first session, Official Records of the General Assembly, Seventy-Fourth Session, Supplement No. 10, UN Doc A/74/10 (2019), p. 151.

⁴²⁰ *Advisory Opinion on the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* [1951] ICJ Rep 15 [23]; ‘Act for Punishment of Genocide (Lov Om Straf for Folkedrab)’, Pub. L. No. No 132 (1955). Repealed by Act on Certain International Crimes (2024).

⁴²¹ *Reservations to the Convention on Genocide Advisory Opinion* (1951) ICJ Rep 15, 23; *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* Judgment (1970) ICJ Rep 3 (5 February 1970), 33-4.

4.2 State Obligations and Definition of Genocide

265. The 1948 *Convention on the Prevention and Punishment of Genocide* (the Genocide Convention) establishes three complementary state obligations. These are (1) the obligation to punish genocide; (2) the obligation to prevent genocide; and (3) the duty not to commit genocide.⁴²²
266. The obligation to punish requires that genocide is designated a crime under domestic law. Denmark undertook this through its enactment of Act No. 132 of 29 April 1955, most recently amended by Act No. 1674 of 30 December 2024, which repeals the Act on the Punishment of Genocide and incorporates its content into a new Chapter 13 of the Danish Penal Code concerning certain international crimes. This satisfies part of the international legal obligation to punish genocide through the enactment of domestic legislation criminalising it, although the state must also actively investigate and prosecute acts of genocide that occur within its jurisdiction. It is not within the mandate, resources, or authority of the Expert Group to undertake criminal investigation or prosecution. The focus of this report is therefore on the duty not to commit genocide and the duty to prevent it.
267. Article II of the Genocide Convention defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:
- (a) Killing member of the group;
 - (b) Causing serious bodily or mental harm to members of the group;
 - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group.
268. The crime of genocide requires a physical act (listed (a) to (e)) and the specific intent. That is, that the act is both deliberate and conducted with an intent “to destroy in whole or in part, a national, ethnical, racial or religious group, as such.”
269. It is firmly established in law that genocide can take place without any killing or severe kinetic violence.⁴²³ This has been expressly recognised by the Government of Denmark through its ratification of the Genocide Convention, its incorporation into domestic law, and was recently

⁴²² Article I of the Convention sets out the overall obligation in which the contracting parties “confirm that genocide, whether committed in time of peace or in a time of war, is a crime under international law which they undertake to prevent and to punish.” See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v Serbia and Montenegro) [2007] ICJ Rep 43 Judgment, International Court of Justice (26 February 2007).

⁴²³ See *Prosecutor v Jean-Paul Akayesu*, 40 ICTR, Judgment (ICTR-96-4-T), *Akayesu*, 2 September 1998, [497]; *Prosecutor v Blagojević and Jokić*, IT-02-60-T, 17 January 2005, [666].

reaffirmed in its joint intervention in relevant proceedings before the ICJ. In a November 2023 intervention,⁴²⁴ Denmark joined the Governments of Canada, France, Germany, the Netherlands and the United Kingdom in an intervention in proceedings between The Gambia and Myanmar, in which The Gambia placed before the Court these states' interpretation of the relevant provisions of the Genocide Convention.⁴²⁵ The Governments acknowledged that “the Genocide Convention extends to acts other than killings, such as acts of sexual and gender-based violence as well as other acts causing serious bodily or mental harm [...] provided that the other elements of the crime of genocide are satisfied.”⁴²⁶

4.3 The Physical Act

270. The physical acts of genocide are those listed (a) to (e) in Article II of the Convention. Subparagraphs (b) to (e) include types of conduct that take into account the fact that some acts of genocide further a process. That is, the physical act might be more than a single event, it can be acts that do not give rise to immediate destruction of the group, but form part of a process that occurs over time. As such, it is often necessary to consider a “pattern of conduct” and the broader context within which the relevant acts took place to make a thorough assessment.⁴²⁷

4.3.1 Imposition of Measures Intended to Prevent Births

271. To date, no person has been expressly convicted of genocide by “imposing measures to prevent births” before an international court or tribunal, although it has received some limited judicial consideration. When the Genocide Convention was negotiated, the phrase “measures to prevent births” was adopted to ensure that the breadth of measures to prevent births was captured, including specifically sterilisation, compulsory abortion, segregation of the sexes and obstacles to marriage.⁴²⁸ All of these specific measures to prevent births had been used by the Nazis in the

⁴²⁴ Pursuant to Article 63 of the Statute of the International Court of Justice.

⁴²⁵ Joint Declaration of Intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Intervention pursuant to Article 63(2) of the Statute of the International Court of Justice, 15 November 2023) para 10 <https://www.icj-cij.org/case/178> (hereafter “Joint Declaration of Intervention”).

⁴²⁶ Joint Declaration of Intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Intervention pursuant to Art 63(2) of the Statute of the International Court of Justice, 10 November 2023).

⁴²⁷ See for example: ICTY, Prosecutor v. Stakić, Case IT-97-24-T, Trial Chamber judgment, 31 July 2003 [55]; ICTY, Prosecutor v. Karadžić, Appeal judgment (previously cited), para. 56; ICTY, Prosecutor v. Tolimir, Case IT-05-88/2-A, Appeals Chamber judgment, 8 April 2015, para. 247; ICTY, Prosecutor v. Mladić, Case IT-09-92-T, Trial Chamber judgment, 22 November 2017, para. 3435.

⁴²⁸ *Committee on the Progressive Development of International Law and its Codification, Draft Convention for the Prevention and Punishment of Genocide A/AC.10/42* (6 June 1947); *Draft Convention on the Crime of Genocide (Secretariat Draft)* (26 June 1947) (draft concluded 28 March 1947) Document E/447, reproduced in Hiram Abtahi and Phillippa Webb, *The Genocide Convention: The Travaux Préparatoires* (Martin Nejhoff, 2008) 115 and 209.

Second World War.⁴²⁹ This list was not subject to significant debate during the drafting of the Convention and should be understood as illustrative the kinds of measures contemplated, not exhaustive of them.⁴³⁰

272. What kinds of “measures to prevent births” might be covered by the definition has received modest legal consideration since. In determining individual criminal responsibility for genocide in its *Akayesu* decision, Trial Chamber I of the International Criminal Tribunal for Rwanda found that measures to prevent births as an act of genocide “should be construed” as including “forced birth control”.⁴³¹ The Trial Chamber in *Akayesu* also found that the actual measures imposed to prevent births could be physical or mental “for instance, rape can be a measure intended to prevent births where the person raped refuses subsequently to procreate”⁴³² This interpretation of “measures to prevent births” as including both physical and mental measures was expressly endorsed by the Government of Denmark in its 2023 intervention in proceedings before the ICJ.⁴³³
273. The Danish Government’s assessment of “measures to prevent births within the group” can be reviewed in its 2023 intervention in proceedings before the ICJ concerning potential genocide in Myanmar. Denmark together with five other states, submitted their shared interpretation of, among other things, how “measures to prevent births within the group” should be understood in the Genocide Convention.⁴³⁴ The declaration provides that “clearly, measures will “prevent births” within the group if they create physical barriers to reproduction” or “undermine physical reproductive capacity”.⁴³⁵ It also cited with approval the recognition by the Trial Chamber in *Akayesu* that measures to prevent births “may be physical but can also be mental.”⁴³⁶ It encouraged “a lower threshold” for the assessment of whether there has been “serious bodily or mental harm” when the victim is a child.⁴³⁷
274. The contraceptives administered in Kalaallit Nunaat would constitute “measures to prevent births” within the meaning of the Genocide Convention. The forms of contraception were of a kind that could not be safely reversed by the woman or child herself. It is possible that the psychological

⁴²⁹ Rosemary Grey, “A Legal Analysis of Genocide by ‘Imposing Measures to Prevent Births:’ Myanmar and Beyond” (2024) 26(4) *Journal of Genocide Research* 441, 446.

⁴³⁰ The negotiations saw much more discussion over other aspects of the Convention including whether “cultural genocide” ought to be incorporated as a specific form of genocide, and whether to establish a permanent court to hear such cases. The language did however change from “restricting births” in the initial text to “imposing measures to prevent births” in the final agreed form.

⁴³¹ *Prosecutor v Jean-Paul Akayesu*, 40 ICTR, Judgment (ICTR-96-4-T), *Akayesu*, 2 September 1998, [507–508].

⁴³² *Ibid.*

⁴³³ Joint Declaration of Intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (The Gambia v Myanmar) (Intervention pursuant to Article 63(2) of the Statute of the International Court of Justice, 15 November 2023) para 10 <https://www.icj-cij.org/case/178> (hereafter “Joint Declaration of Intervention”) para 36.

⁴³⁴ The other governments were Canada, France, Germany, Netherlands and the United Kingdom.

⁴³⁵ Joint Declaration of Intervention (2023) para 35.

⁴³⁶ *Ibid.*, para 36.

⁴³⁷ *Ibid.*, para 40.

impacts of such contraception without consent could also fall within “measures to prevent births,” particularly for those who have described no longer wanting to have sexual intercourse due to it being too physically painful.

275. The next consideration is whether such measures were “imposed.” In the view of the authors an absence of valid consent is implied by the use of the word “imposing” in Article II(d) “imposing measures to prevent births”. This distinguishes the physical element of genocide from any ordinary birth control policy. The word “imposing” in the context of the Genocide Convention has not received judicial attention. It is assumed, therefore, to have its ordinary meaning, in light of the object and purpose of the Convention.⁴³⁸ The object and purpose of the Genocide Convention is to prevent and punish the crime of genocide and prevent its recurrence. The Oxford English Dictionary defines the verb “to impose” as meaning “to force an unwelcome decision or ruling on someone”.⁴³⁹ Taking into account this object and purpose, judicial interpretation of “force” in the context of genocide has not been limited to physical force. The Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia explained that otherwise perpetrators could evade liability by “taking advantage of coercive circumstances without relying on physical force.”⁴⁴⁰ In circumstances where consent to contraception was disregarded, that there was no opportunity to refuse, or consent was otherwise vitiated by certain circumstances including duress, psychological oppression or abuse of power, or by taking advantage of a coercive environment, it can be said that measures to prevent births were “imposed.”⁴⁴¹
276. Chapter 2 of this report (see especially Sections 2.3.1 and 2.3.5) established a reasonable basis to believe that some medical professionals while acting in their official capacity inserted IUD devices or injected the contraceptive drug Depo-Provera into the bodies of Inuit women and girls without their consent, or in circumstances where consent was vitiated by the circumstances (see Section 2.3.1). This in itself would constitute the physical act of “imposing measures to prevent births” contrary to Article II(d) and possibly also II(c) of the Genocide Convention.
277. The physical act alone is not enough to prove an act of genocide under international law. The *specific* intent of genocide must also be proven. However, there is no need to prove the specific intent for a finding of a *failure to prevent* genocide (see Section 4.5).

⁴³⁸ VCLT Art 31.

⁴³⁹ “Impose.” Oxford English Dictionary Online. Accessed 2025.

https://www.oed.com/dictionary/impose_v?tab=meaning_and_use#879285.

⁴⁴⁰ *Prosecutor v Kunarac, Kovač and Vuković* (Appeal Judgment) (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber, Case No IT-96-23 & IT-96-23/1-A, 12 June 2002) [129].

⁴⁴¹ A useful parallel is rule 70 of the rules of procedure and evidence of the International Criminal Court which sets out that in sexual violence cases, consent cannot be inferred by silence or lack of resistance, nor by the words or conduct of the victim if they are incapable of giving genuine consent (such as a child), nor can consent be inferred where coercion or taking advantage of a coercive environment undermined the person’s ability to give genuine consent. International Criminal Court, *Rules of Procedure and Evidence* (2019) Rule 70, “Principles of Evidence in Cases of Sexual Violence” 25.

4.4 The Intent (*Dolus Specialis*) of Genocide

278. To amount to genocide under international law there must be evidence of the specific intent or *dolus specialis* required for genocide. This is the “intent to destroy in whole or in part a national, ethnical, racial or religious group as such.”⁴⁴² The acts listed in Article II of the Convention are acts of genocide only when committed with the *intent to destroy* a group as such. There is a crucial distinction between intent and motive. Benevolent motives cannot justify all actions to achieve them. The pursuit of socioeconomic equity could be contrary to the prohibition established by Genocide Convention if the mechanism to achieve it involves the intentional destruction of a substantial part of a single ethnic group. It is also the case that a series of horrific atrocities, not matter how awful, cannot alone constitute genocide unless the specific intent is also proven.⁴⁴³
279. The “intent” as an individual and that of a state are fundamentally and necessarily different. The state is a “legal person” not a natural one and thus its “intent” must be discerned through examination of its policies and the actions of people acting in their official capacity as agents of the state, or private persons acting under its direction and control. As outlined in the introduction, those acting as agents of the state include healthcare professionals, the Chief Medical Officer, teachers and others in the employ of the state and working in Kalaallit Nunaat, as well as the Ministers and public officials within the Government of Denmark acting in their official capacities. It also includes, as described in Section 1.4.3, doctors or medical staff practicing in their private capacity to the extent those private doctors were acting under the direction and control of the state in undertaking their work.
280. The “destruction” of the group through measures to prevent births can, like the transfer of children (Art II(e)) entail the intent to destroy the group physically in whole or in part “because of the consequences it can have for the group’s capacity to renew itself, and hence to ensure its long-term survival.”⁴⁴⁴ The travaux préparatoires for the Genocide Convention elaborate that “the act must be aimed at the destruction of the whole or part of a group or at “preventing its preservation or development.”⁴⁴⁵

4.4.1 The Protected Group

281. The words “as such” serve to “emphasize that intent to destroy the protected group” and is reference to “a collection of people who have a particular group identity.”⁴⁴⁶ There is no definition

⁴⁴² Genocide Convention Article II.

⁴⁴³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) (2007) ICJ Rep 43, [187].

⁴⁴⁴ *Prosecutor v Radoslav Krstić* (Appeals Judgment) International Criminal Tribunal for the Former Yugoslavia, Case No IT-98-33-A, 19 April 2004, [28].

⁴⁴⁵ *Draft Convention on the Crime of Genocide* (Secretariat Draft) (26 June 1947) (draft concluded 28 March 1947) Document E/447 (with commentaries), reproduced in Hiram Abtahi and Philippa Webb, *The Genocide Convention: The Travaux Préparatoires* (Martin Neuhoff, 2008) 209, 232.

⁴⁴⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) (2007) ICJ Rep 43, [188] and [192].

of each of the protected groups against whom the requisite *dolus specialis* is directed. Accordingly, we understand what these mean through associated jurisprudence.⁴⁴⁷ The group must possess positive characteristics that render the aggregation of its members a specific national, ethnic, racial or religious group.⁴⁴⁸ In practice, the four groups identified in Genocide Convention—national, ethnical, racial or religious group—are not defined and often overlap. At the same time, it is a basic principle of legal construction to assume the drafters “intended to give some effect to each of the words used,” and one must interpret the Convention accordingly.⁴⁴⁹

282. In a 1998 decision of the Trial Chamber of the International Criminal Tribunal for Rwanda, defining the protected group was a central issue.⁴⁵⁰ The case involved two “ethnic” groups accused of genocide but they were ethnicities that did not exist before colonisation, but were created by the Belgian authorities based on their assessment of distinctions. In that case, the Court defined a national group as “a collection of people who are perceived to share a legal bond based on common citizenship, coupled with a reciprocity of rights and duties.” It found “an ethnic group is generally defined as a group whose members share a common language or culture.” The Trial Chamber’s definition of “racial group” as “based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors” is a definition no longer widely supported.⁴⁵¹ For this reason, courts have not always identified a group as belonging to just one of the protected groups recognised under the Convention.⁴⁵² The decisive element being that a given “collection of people” is classified as a “group,” within the meaning of the Convention, by the perpetrator(s) of the physical act.
283. Kalaallit Inuit form a racial and ethnic group within the meaning of the Genocide Convention. They share a racial and ethnic identity, a common culture and language, albeit with distinct regional dialects. What is crucial for the definition of protected groups that fall within a claim of genocide is not only whether they are in fact a distinct ethnicity or race, but rather whether those alleged to have committed the wrongful acts treated them as such. The Danish administrative authorities in Kalaallit Nunaat also treated them as such, and distinguished between “*udsendte*”

⁴⁴⁷ VCLT.

⁴⁴⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) (2007) ICJ Rep 43 [193]; Prosecutor v Jean-Paul Akayesu (Judgment) ICTR-96-4-T (International Criminal Tribunal for Rwanda, Trial Chamber I, 2 September 1998) [512]–[515].

⁴⁴⁹ *Prosecutor v Akayesu (Appeal Judgment)* ICTR-96-4-A (International Criminal Tribunal for Rwanda, Appeals Chamber, 1 June 2001) [468].

⁴⁵⁰ *The Prosecutor v Jean-Paul Akayesu* (Trial Judgment) (ICTR-96-4-T), International Criminal Tribunal for Rwanda, 2 September 1998.

⁴⁵¹ National Inquiry into Missing and Murdered Indigenous Women and Girls, *A Legal Analysis of Genocide: Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (Legal Analysis Supplement, Privy Council Office, 2019) 12 (Supplementary Report on Genocide).

⁴⁵² See, for example, *Prosecutor v Mladic*, Case No IT-09-92-T (22 November 2017) para 3442.

(mostly Danish) and “Greenlandic” (Inuit) population, both in fact and in law throughout the Inquiry period.⁴⁵³

4.4.2 Means to Infer the Existence of Genocidal Intent

284. Three central factors deserve specific attention in addressing genocidal intent in this report. These are (1) the scale and rate of fertility decline, which is relevant to whether it was systematic and also to the meaning of “in part” in the definition of genocidal intent; (2) the connections made by people acting as agents of the state between the administration of contraception and the goal of reducing population growth among Kalaallit Inuit; and (3) the statements by people with direct experience that contraception was in fact administered without consent (see Section 2.3.1).
285. As has been described in Section 1.4.3 on attribution of state responsibility under international law, the “state” is an abstract entity and thus its “intent” must be inferred from the acts and omissions of its agents. The ICJ has recognised that it “is difficult to establish [genocidal] intent on the basis of isolated acts”.⁴⁵⁴ The Court will, therefore, typically examine a pattern of conduct.⁴⁵⁵ Acts that occur in parallel to the conduct prohibited in Article II of the *Genocide Convention* can also indicate the presence of the specific intent required to prove genocide.⁴⁵⁶
286. Indirect or circumstantial evidence is probative for the purpose of attributing state responsibility under international law.⁴⁵⁷ Where one party has exclusive control over official records, it can lead another party to have difficulty furnishing documentation of the facts giving rise to responsibility.⁴⁵⁸ In genocide cases specifically, courts have made clear that there is no need for written plans or orders, nor any “smoking gun” document to prove genocidal intent.⁴⁵⁹ In the absence of such material (which is not unusual) courts will look at circumstantial evidence⁴⁶⁰

⁴⁵³ See also Section 2.2 on non-discrimination.

⁴⁵⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)* Judgment (2015) ICJ Rep 3 [148].

⁴⁵⁵ In the *Elements of Crimes* for the International Criminal Court a “manifest pattern” is required: *ICC Elements of Crimes*, Article 6. This phrasing does not appear in the *Genocide Convention 1948* which preceded the ICC Statute.

⁴⁵⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment (2007) ICJ Rep 43, [190].

⁴⁵⁷ *Corfu Channel (United Kingdom v Albania)* Merits (1949) ICJ Rep 4, 18; *Right of Passage over Indian Territory (Portugal v India)* Preliminary Objections (1957) ICJ Rep 125, 141–2; *Case Concerning Certain German Interests in Polish Upper Silesia (Germany v Poland)* Merits (1926) PCIJ (ser A) No 7, 20.

⁴⁵⁸ *Corfu Channel (United Kingdom v Albania)* Merits (1949) ICJ Rep 4, 18. In *Corfu Channel* the Court was referring to exclusive territorial control with respect to a border dispute, but the principle nevertheless applies broadly.

⁴⁵⁹ *Prosecutor v Ruto and Sang* (Redacted Version of the Common Legal Representative for Victims’ Joint Reply to the ‘Ruto Defence Request for Judgment of Acquittal’ and to the ‘Sang Defence “No Case to Answer” Motion’, International Criminal Court, Trial Chamber V(A), Case No ICC-01/09-01/11, 27 January 2016) para 56.

⁴⁶⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43 [373]; and also referred to in cases concerning individual criminal responsibility for genocide before ad hoc tribunals: *Prosecutor v Thomas Lubanga Dyilo* (Judgment pursuant to Article 74 of the Statute) (International Criminal Court, Trial Chamber I, Case No ICC-01/04-01/06, 14 March 2012); *Prosecutor v Germain Katanga* (Judgment pursuant to Article 74 of the Statute) (International Criminal Court, Trial Chamber II, Case No ICC-01/04-01/07, 7 March 2014);

including the statements of officials, the overall political and social context, and a pattern of coordinated actions. Relevant statements can include derogatory language and hate speech, the systematic nature of the relevant events, and the specific targeting of a protected group.⁴⁶¹ For these reasons, it is relevant to consider the broader spectrum of Danish policies in Kalaallit Nunaat across the relevant period. The authors have not had the resources or authority to exhaustively examine the totality of these circumstances, and thus can draw inferences but not firm conclusions.

287. Section 2.2 described the reasons why there is a reasonable basis to believe that the approach to contraception in Kalaallit Nunaat constituted at minimum substantive discrimination (in practice rather than on the face of the law) against Kalaallit Inuit, a protected group under the Genocide Convention. Discrimination on the basis of Inuit ethnicity was also entrenched in other laws and policies (formal discrimination), such as differential pay for the same work, until its repeal in 1991,⁴⁶² limiting the trade of certain products to Inuit,⁴⁶³ the relocation of people to “modernize” Inuit life,⁴⁶⁴ and the prohibition of children born out of wedlock to Inuit mothers and Danish fathers to determine paternity or inherit from their father. In a so-called “experiment” in the 1950s, Denmark removed some Kalaallit Inuit children aged 6 to 9 from their families without parental consent to educate them in Danish language and culture as part of a process of “modernization.” Most were never returned to their families but went back to Kalaallit Nunaat to live in foster homes.⁴⁶⁵ None of these acts fall within the terms of reference for this report. However, it is notable that another of the underlying acts of genocide is “(e) forcibly transferring children of the group to another group.” And that “actions taken before [...] the commission of genocide may be considered in establishing genocidal intent.”⁴⁶⁶

Prosecutor v Duško Tadić (Appeal Judgment) (International Criminal Tribunal for the Former Yugoslavia, Case No IT-94-1-A, 15 July 1999); *Prosecutor v Radoslav Krstić* (Appeals Judgment) International Criminal Tribunal for the Former Yugoslavia, Case No IT-98-33-A, 19 April 2004; *Prosecutor v Jean-Paul Akayesu* (Judgment) (International Criminal Tribunal for Rwanda, Case No ICTR-96-4-T, 2 September 1998).

⁴⁶¹ *Prosecutor v Akayesu* (Judgment) (International Criminal Tribunal for Rwanda, Trial Chamber I, Case No ICTR-96-4-T, 2 September 1998) [728] and [523]-[524] citing International Criminal Tribunal for the former Yugoslavia, Decision of Trial Chamber I, Radovan Karadzic, Ratko Mladic case (Cases Nos. IT-95-5-R61 and IT-95-18-R61), Consideration of the Indictment within the framework of Rule 61 of the Rules of Procedure and Evidence, para 94.

⁴⁶² Otherwise known as the “birthplace criterion.” See: Danmarks Nationalleksikon, https://lex.dk/f%C3%B8destedskriteriet_-_Gr%C3%B8nland; Jensen et al. 32, citing RA, Grønlandsministeriet. ”Journalsager 1957-1989”, j.nr. 1002-10-00, pk.nr. 1230; Keld Hansen, *Kvindens Liv og Vilkår i Grønland* (1975) 21; contrary to Art 23(2) UDHR.

⁴⁶³ Rachael Lorna Johnston, ‘The Impact of International Law on Natural Resource Governance in Greenland’ (2019) 56(e21) *Polar Record* 1, 2. doi: <https://doi.org/10.1017/S0032247419000287>

⁴⁶⁴ Including to “concentrate” the Inuit population: Grønlandskommissionen (1950); see also Tone Huse, ‘Temporal Displacement: Colonial Architecture and its Contestation’ (2025) *International Journal of Housing Policy* 430, 431; Jensen et al. 58.

⁴⁶⁵ Frederiksen, Mette, *Undskyldning til de grønlandske børn sendt til Danmark i 1951* (Speech, Prime Minister’s Office [Denmark], 9 March 2022).; Einar Lund Jensen, Sniff Andersen Nexø, Daniel Thorleifsen, *Historisk udredning om de 22 grønlandske børn, der blev sendt til Danmark i 1951* (2020)

⁴⁶⁶ UN Human Rights Council, *Legal Analysis of the Conduct of Israel in Gaza Pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide: Conference Room Paper of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc

4.4.2.1 Systematic Nature of the Relevant Events

288. As described in paragraph 284, the ICJ has recognised that it “is difficult to establish [genocidal] intent on the basis of isolated acts.”⁴⁶⁷ The Court will, therefore, typically examine a pattern of conduct.⁴⁶⁸ Acts that occur in parallel to the conduct prohibited in Article II of the *Genocide Convention* can also indicate the presence of the specific intent required to prove genocide.⁴⁶⁹
289. In considering the systematic nature of a pattern of conduct, the ICJ will take into account whether the events were planned, took place as part of an overall policy, and the scale of the events. The drastic drop in fertility in the late 1960s to early 1970s in Kalaallit Nunaat is attributed to the introduction of intrauterine contraception in particular. In 1950, the fertility rate in Kalaallit Nunaat was approximately 50 live births per 1,000 inhabitants. In the six years from 1966 to 1972, the fertility rate decreased sharply to around 20 live births per 1,000 inhabitants.⁴⁷⁰ Between the mid-1960s to mid-1970s, fertility in Greenland fell from an average of between 6.5 to 7.5 children per woman to 2.5 children per woman.⁴⁷¹ Some reduction in fertility could reasonably be anticipated as women gained greater access to family planning, contraception of their own choosing and access to education. However, the rate of decline was remarkably high. A 1974 Population Report comparing crude birth levels across 82 countries from 1960-72, identifies Kalaallit Nunaat as having experienced the greatest absolute and relative decrease in fertility across them all during that decade.⁴⁷²
290. As described earlier in this report, in 1968, when the Danish Health Authority granted doctors in Greenland permission to provide IUDs to women age 18 and above, district doctors were required to register all insertions accurately.⁴⁷³ The 1968 Annual Report of the Chief Medical Officer in Greenland provides an overview of the total number of IUDs fitted in 1968 and in the years before formal approval of the use of IUDs in Kalaallit Nunaat. According to the report, 684 women had already been fitted with IUDs prior to 1968.⁴⁷⁴ By 1 January 1969, this number had increased to 1,766 and thus more than doubled within a single year.⁴⁷⁵ The number continued to rise: between

A/HRC/60/CRP.3 (16 September 2025) ICTY p 49 citing Prosecutor v. Zdravko Tolimir, IT-05-88/2-A, Judgement Appeals Chamber (8 April 2015) para. 564-577.

⁴⁶⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)* (Judgment) [2015] ICJ Rep 3 [148].

⁴⁶⁸ In the *Elements of Crimes* for the International Criminal Court a “manifest pattern” is required: *ICC Elements of Crimes*, Article 6. This phrasing does not appear in the *Genocide Convention 1948* which preceded the ICC Statute.

⁴⁶⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) (2007) ICJ Rep 43, [190].

⁴⁷⁰ Peter Bjerregaard, ‘Folkesundhed i Grønland’, *INUSSUK – Arktisk Forskningsjournal* 2004;1:1, p. 39

⁴⁷¹ *Statistics Greenland*.

⁴⁷² R.T. Ravenholt and John Chao, ‘World Fertility Trends, 1974’ (1974) Series J(2) *Population Report: Family planning programs* J-21 and J-23.

⁴⁷³ Chief Medical Officer in Greenland, “The State of Health in Greenland: Annual Report from the Chief Medical Officer in Greenland” (1968) 81.

⁴⁷⁴ *Ibid.*, 82.

⁴⁷⁵ Chief Medical Officer in Greenland, “The State of Health in Greenland: Annual Report from the Chief Medical Officer in Greenland” (1969-1970), 74 (1969).

1 January and 31 December 1970, registered IUD insertions increased from 2,854 to 3,821.⁴⁷⁶ By the end of 1972, the number of women with IUDs had reached 5,737.⁴⁷⁷ This represented approximately half of the female population of fertile age at that time. Due to gaps in registering all IUD insertions accurately, these totals should be understood as conservative estimates.⁴⁷⁸

291. What is remarkable about these overall population figures was that they contrasted with the reports from doctors that Inuit were not inclined towards contraception (see Section 3.7.1). It was widely acknowledged that the rapid decline in fertility and the high rate of IUD insertion resulted from the “actively motivating” techniques utilised to encourage Inuit women to use contraception.⁴⁷⁹ Under the general oversight of the Ministry for Greenland, there was an active “campaign” to encourage the widespread use of the IUD as the preferred contraceptive device for Inuit in Greenland.⁴⁸⁰
292. It is not clear what proportion of these measures were “imposed” within the meaning in the Genocide Convention, but there is a reasonable basis to believe that some were. In total, 354 women reported to the Research Group a total of 488 incidents involving contraceptive practices in Kalaallit Nunaat. Of the 410 incidents concerning an IUD, 300 of those say they did not consent to contraception, 63 provide no information on whether or not they consented, and 47 gave consent in circumstances that mean the consent might not be valid.⁴⁸¹ Nearly one third were 14 or younger at the time, and more than half were under 18.⁴⁸² The Research Group received 43 reports of incidents involving the injected contraceptive drug Depo-Provera of which an estimated 38 occurred in Kalaallit Nunaat.
293. Some comparison with other states with similar birthrates can provide a guide, although it too is not conclusive. World Bank data illustrates that the rate of fertility decline in Kalaallit Nunaat in the late-1960s was completely unique in the scale and distinctiveness of the fertility pattern in Kalaallit Nunaat is remarkable (Figure 2).⁴⁸³ Other states with fertility rates of between 6 and 8

⁴⁷⁶ Chief Medical Officer in Greenland, “The State of Health in Greenland: Annual Report from the Chief Medical Officer in Greenland” (1969-1970), 74 (1970).

⁴⁷⁷ Jensen et al. 172.

⁴⁷⁸ As acknowledged in Jensen et al. 172.

⁴⁷⁹ Jens Misfeldt, ‘Familieplanlægning i grønlandske lægedistrikter’ (1977) 139(25) Ugeskrift for Læger 1501, 1501; Flemming Mikkelsen, ‘Om Familieplanlægning’ (1978) 5 *Tidskrift i Grønland* 152, 153; Jensen et al. 198; Jensen et al. p. 236 citing NKA, Landslægeembedet, j.nr. 536-2, Årsberetning 1971-1973, pk.nr. 237; Jensen et al. p. 253 citing Folketingets bibliotek, Folketingets arkiv, 1974 (2. samling), Socialudvalget, L38, ministerens besvarelse af udvalgsspørgsmål nr. 6, bilag 7; ‘Spiralens Sejrsang’, *Atuagagdliutit* (1970) 14. <https://timarit.is/page/3789471?iabr=on#page/n13/mode/2up/search/spiralens%20sejrsang>

⁴⁸⁰ It was described both as an “IUD program” and as a “campaign” by the doctors who participated in it: Ole Berg, ‘IUDs and the Birth Rate in Greenland’ (1972) 3(1) *Studies in Family Planning* 12, 12, in which he writes that as a result of Rosen’s trial “we started an IUD campaign”. Ole Berg was a medical doctor in practice in South Kalaallit Nunaat at the time the article was published.

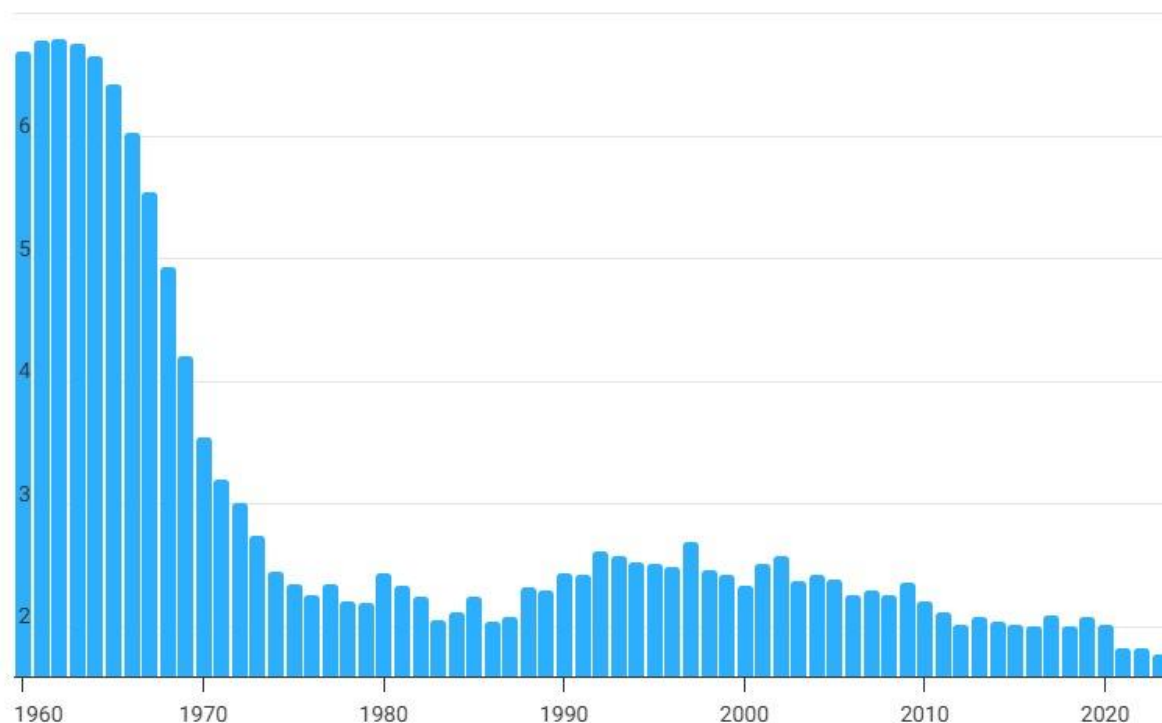
⁴⁸¹ Jensen et al. 177-178.

⁴⁸² Ibid.

⁴⁸³ World Bank, ‘Greenland Fertility Rate Historical Data Chart 1960-2023’ <<https://www.macrotrends.net/datasets/global-metrics/countries/grl/greenland/fertility-rate?utm=>> last accessed 24 January 2026; See also R.T. Ravenholt and John Chao, ‘World Fertility Trends, 1974’ (1974) Series J(2) *Population Report: Family planning programs* J-21.

births per woman show a more incremental decline in fertility with the introduction of contraception in the 1960s.⁴⁸⁴

Figure 2. Kalaallit Nunaat Fertility Rate, 1960 to 2023



Source: World Bank

294. The Expert Group has heard from multiple sources that more women have experienced involuntary contraception than have come forward to any of the official inquiries or the lawyers representing women in the civil claim.⁴⁸⁵ IUD devices continue to be found in women who did not know they

⁴⁸⁴ World Bank, 'Fertility rate, total (births per woman)', accessed 24 January 2026.

<https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?utm>

This is especially evident when compared with other States with a fertility rate of between 6.5 and 7.5 births per woman in the late-1960s: Afghanistan, Angola, Bahrain, Bangladesh, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Cape Verde, Comoros, Djibouti, Dominican Republic, Eritrea, Eswatini, Ethiopia, Ghana, Guatemala, Honduras, Islamic Republic of Iran, Iraq, Kuwait, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mexico, Federated States of Micronesia, Morocco, Mozambique, Namibia, Nicaragua, Niger, Oman, Pakistan, Peru, Qatar, Senegal, Solomon Islands, Somalia, South Sudan, Sudan, Tajikistan, Tanzania, Togo, Tunisia, Turkmenistan, Uganda, Vanuatu, Zambia, Zimbabwe. Although none of these states are perfectly comparable with Kalaallit Nunaat, they are also not comparable with each other but on this one feature.

⁴⁸⁵ Submission from Greenland House Aarhus, listening session with Inuit Circumpolar Council, listening session with Tilioq, listening session with affected women before 1992, listening session with currently practicing doctors, listening session with social services Kalaallit Nunaat; alongside the ongoing discovery of contraceptive devices unknown to the woman herself: Nukaaka Tobiassen and Signe Haahr Pedersen, 'Gynækolog finder stadig gamle spiraler hos kvinder, der fik dem under spiralkampagnen' (29 May 2022) KNR. <https://knr.gl/da/nyheder/gyn%C3%A6kolog-finder-stadig-gamle-spiraler-hos-kvinder-der-fik-dem-under->

had them.⁴⁸⁶ Subsequent statements and writings of doctors have described using “actively motivating techniques” to get women to accept contraception (see Section 2.3.1.1) with one doctor making express reference to having routinely inserted IUDs “without petty consideration for informed consent, which would only cloud the problem—the doctor knew better anyway”.⁴⁸⁷

295. On the issue of scale, it is notable that in a recent case in Sweden, the crime of genocide through the transfer of children was found to have been committed with just nine victims.⁴⁸⁸ The Court held that the element of scale was about the potential impact of the overall approach, rather than whether that effect actually manifested.⁴⁸⁹
296. As described above, in the present case a common account was that children were called to the doctor from their schools or dormitories, (68 of the 143 women in the civil claim, and 50 of the 204 incidents involving children reported to the Research Group).⁴⁹⁰ The Research Group verified that in “some medical districts” children attended an annual health examination in school groups. It found copies of the plans sent from the school to the hospital with lists of which classes would attend on which days. Those lists did not detail the health checks themselves nor whether contraception was part of the process.⁴⁹¹ The Research Group found few archival records of IUD contraception that was initiated by the school, though it is also not clear whether schools would make or archive such records. One exception related to a student who wanted to leave school and was “more mature than her peers.” The staff wrote that because one of the child’s family members had become pregnant “the staff wanted to ensure that the same thing did not happen to her.”⁴⁹²
297. That there is little archival material directly connecting schools with the administration of contraception is not determinative. International courts are very cautious about exclusive reliance on documentary evidence when the relevant records are in the exclusive control of the state. Accordingly, they will review the full suite of available evidence including oral statements and

[spiralkampagnen](#). Listening session with the current Chief Medical Officer; listening session with practicing doctors.

⁴⁸⁶ Listening session with practicing doctors; listening session with Chief Medical Officer; Nukaaka Tobiassen and Signe Haahr Pedersen, ‘*Gynækolog finder stadig gamle spiraler hos kvinder, der fik dem under spiralkampagnen*’ (29 May 2022) KNR. <https://knr.gl/da/nyheder/gyn%C3%A6kolog-finder-stadig-gamle-spiraler-hos-kvinder-der-fik-dem-under-spiralkampagnen>.

⁴⁸⁷ Sven Refslund Poulsen, *En Ronkedors Bekendelser: Refleksioner over at Langt Liv som Læge og Kirurg i Hele Verden* (Rydendahl Forlag, 2017) 54.

⁴⁸⁸ Eurojust, “Final Swedish judgment of 12 years imprisonment in first-ever case against genocide through transfer of children” (11 November 2025), accessed 12 January 2026. <https://www.eurojust.europa.eu/news/final-swedish-judgment-12-years-imprisonment-first-ever-case-against-genocide-through-transfer-children>.

⁴⁸⁹ Stockholm District Court, Case No. B 3210-23, Judgment (2 November 2025), 186-190. English translation, via Eurojust. <https://www.eurojust.europa.eu/sites/default/files/assets/files/clean-stockholms-tingsratt-b-3210-23-dom-20250211-delbar-en.pdf>

⁴⁹⁰ There were people who reported to the research group that they were children at the time of at least incident of involuntary contraception. There were 204 incidents because for some people it happened more than once. Jensen et al. 179; redacted statement of claim in the civil proceedings. Again, there may be overlap in figures given to the Research Group and those involved in the civil claim.

⁴⁹¹ Jensen et al. 190-191.

⁴⁹² Ibid.

circumstantial evidence.⁴⁹³ This case includes hundreds of witness statements, as well as corroboration from some doctors and educators working in Kalaallit Nunaat at the time, that girl children were sent from school to the doctor for the purpose of being administered intrauterine contraception.⁴⁹⁴

298. The authors find that there is a reasonable basis to believe that measures to prevent births were systematic within the meaning of intent under Article II of the Genocide Convention 1948. This finding is supported by the doctors' own subsequent statements, the data showing the scale and pace of the reduction in fertility, and the statements of women who experienced involuntary contraception. That does not mean that all doctors or medical professionals engaged in this practice, nor does it need to. It also does not, by itself, prove genocidal intent under the Genocide Convention.

4.4.2.1 "In Part" and the Scale and Rate of Fertility Decline

299. It is necessary to intend to destroy the part of the group "as such" which means the intent is to *impact* the group as a whole, and not just certain individuals because they are members of the group.⁴⁹⁵ It is enough if the intent is to destroy a "substantial part" of the group in a way that has an impact on the group as a whole, and "it is not necessary to intend to achieve the complete annihilation of a group from every corner of the globe."⁴⁹⁶ In this case, *if* there was an intent to destroy the group, it could only amount to its destruction "in part" due to (1) the unique nature of the underlying act which is the prevention of future people from being born, rather than the destruction of people who were already here, and (2) that the intent was not to prevent all births but to but to substantially reduce them and thereby also slow population growth.
300. Whether the intent was to destroy the group "in part", the ICJ has found that the part destroyed must be a "substantial part."⁴⁹⁷ In determining whether there exists an intent to destroy the group, in whole or in part, by inference, the ICJ has found that "there must be evidence of acts on a scale that establishes an intent not only to target certain individuals because of their membership to a particular group, but also to destroy the group itself in whole or in part."⁴⁹⁸ The ICJ has quoted with approval ICTY case law which assessed that "if a specific part of the group is emblematic of the overall group, or is essential to its survival, that may support a finding that the part qualifies as substantial."⁴⁹⁹ Overall, in determining whether the targeted "part" is substantial, "the Court will

⁴⁹³ *Corfu Channel (United Kingdom v Albania)* Merits (1949) ICJ Rep 4, 18.

⁴⁹⁴ Redacted statement of claim in the civil proceedings; DR *Spiralkampagnen* podcast (May 2022).

⁴⁹⁵ *Yearbook of the International Law Commission 1996* Vol II, Pt Two, Commentary to Article 17, 45, para 7.

⁴⁹⁶ *Ibid.*, para 8. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) (2007) ICJ Rep 43 [198].

⁴⁹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) (2007) ICJ Rep 43, [198]; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)* (Judgment) [2015] ICJ Rep 3 [142].

⁴⁹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)* Judgment (2015) ICJ Rep 3 [138] (*author's emphasis*).

⁴⁹⁹ *Ibid.*, [142].

take into account the quantitative element as well as evidence regarding the geographic location and prominence of the allegedly targeted part of the group.”⁵⁰⁰

301. While it is impossible to exhaustively identify how many contraception measures were in fact “imposed” within the meaning of the Convention, and thus the precise proportion of Inuit women directly affected by these practices, there is a reasonable basis to believe that in at least hundreds of instances measures to prevent births were so imposed based on (1) the lack of valid consent (see Section 2.3.1), and (2) the unusually rapid rate of birthrate decline read with (3) a generally observed hesitancy among Inuit to adopt contraceptive measures.

4.4.2.2 “Only Reasonable Inference” Test for Proving Genocidal Intent by Inference

302. The ICJ has established that “for a pattern of conduct to be accepted as evidence of [genocidal intent], it would have to be such that it could only point to the existence of such intent”.⁵⁰¹ And that “... to infer the existence of *dolus specialis* from a pattern of conduct, it is necessary and sufficient that this is the only inference that could reasonably be drawn from the acts in question.”⁵⁰² This standard is subject to the notion of “reasonableness” and “in order to infer the existence of *dolus specialis* from a pattern of conduct, it is necessary and sufficient that this is the only inference that could reasonably be drawn from the acts in question.”⁵⁰³
303. It is not clear that the “only reasonable inference” standard is a strict test. Application of a strict interpretation has been criticised, including by Denmark, for being so onerous as to effectively immunise states from genocide findings.⁵⁰⁴ A too narrow interpretation is particularly problematic in the context of armed conflict, where a state engaged in the theatre of war and accused of responsibility for genocide, will likely have had valid military objectives too.⁵⁰⁵ It would also seem to contradict a long accepted principle that the existence of other motives alongside genocidal intent (whether economic, political or military) does not negate genocidal intent as long as the intent to destroy the group (in whole or in part) is established.⁵⁰⁶ The following paragraphs consider

⁵⁰⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)* Judgment (2015) ICJ Rep 3 [138].

⁵⁰¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment (2007) ICJ Rep 43, [373].

⁵⁰² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)* Judgment (2015) ICJ Rep 3 [148].

⁴⁹⁶ *Ibid.*

⁵⁰⁴ *Joint Declaration of Intervention of Canada, Denmark, France, Germany, the Netherlands and the United Kingdom, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (International Court of Justice, 13 November 2023) [51]; Amnesty International, “You feel like you are subhuman”: Israel’s genocide against Palestinians in Gaza (Report, 5 December 2024); Judge Antônio Augusto Cançado Trindade, Dissenting Opinion in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)* Judgment (2015) ICJ Rep 3, 360–1 [467].

⁵⁰⁵ See, for example, Natasha Yvonne Barigye, Melissa Hendrickse and Vito Todeschini, “Genocidal Intent in Armed Conflict: Unpacking the ICJ’s ‘Only Reasonable Inference’ Standard” (*Opinio Juris*, 26 May 2025), accessed 24 January 2026. <https://opiniojuris.org/2025/05/26/genocidal-intent-in-armed-conflict-unpacking-the-icjs-only-reasonable-inference-standard>.

⁵⁰⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment (2007) ICJ Rep 43, [278].

the justification for the approach to contraception particularly in the 1960s and 1970s which is the broad period within which most conduct complained of took place, and, crucially, distinguish between motive and intent in this case.

304. The establishment of a more robust contraceptives program in 1960s Kalaallit Nunaat was arguably motivated by a desire to ensure the country and its people would enjoy improved health and socioeconomic standing. The improvement of socioeconomic conditions aligns with Denmark's obligation under the Convention on Economic, Social and Cultural Rights to take steps to progressively realise rights to an adequate standard of living and to the enjoyment of the highest attainable standard of physical and mental health.⁵⁰⁷ A more active approach to contraception might fall within a "special measure" within the meaning of CERD to ensure that Indigenous women and girls could access reproductive healthcare equitably.⁵⁰⁸ States have an obligation to afford particular protections to "vulnerable" groups exposed to heightened risk of rights violations,⁵⁰⁹ and to adopt positive measures to ensure the enjoyment of the rights guaranteed under various international human rights instruments.⁵¹⁰ As described in Section 2.2 on non-discrimination, while a more active information and education campaign could reasonably be justified on these grounds, mechanisms of "active persuasion" contrary to the valid consent of a woman or child or the child's parents, or withholding alternative contraceptive options to a single ethnic group, could not be so justified.
305. There are also some inconsistencies in this justification. In 1964, just one year before the increased focus on contraceptive measures, the "birthplace criterion" entered into Danish law. Its effect was to entrench systematic discrimination in employment conditions. Under this law, workers born outside, but working within, Kalaallit Nunaat (almost exclusively Danish) would receive higher salaries than those born within Kalaallit Nunaat (almost exclusively Inuit) for the same work. Foreign-born employees would also enjoy lower rent, paid annual vacations, and better retirement arrangements than their locally-born colleagues.⁵¹¹ It is inconsistent to suggest at once that reduction in births is necessary for socioeconomic reasons while at the same time entrenching discrimination that inhibits socioeconomic advancement.
306. Crucially, socioeconomic advancement is a question of motive, rather than intent. If a person acting as an agent of the state imposed measures to prevent births with the intent to destroy a substantial

⁵⁰⁷ ICESCR Arts 11 and 12.

⁵⁰⁸ Ibid., Art 12; ICCPR Art 27.

⁵⁰⁹ Alexander H. E. Morawa, "Vulnerability as a Concept of International Human Rights Law," (2003) 6(2) *Journal of International Relations and Development* 139, 150.

⁵¹⁰ ICCPR Art 27; CROC Art 24; see also Human Rights Committee, *General Comment 23: Article 27 (Fiftieth session, 1994)*, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev.1 at 38 (29 July 1994), paras. 6.1, 6.2, 7; See also Human Rights Committee, *Views adopted by the Committee under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 511/1992 (Ilmari Lämsmä et al. v. Finland)*, CCPR/C/52/D/511/1992 (8 November 1994).

⁵¹¹ Marie Kathrine Poppel, 'Indigenous Citizenship: Gender and Discrimination' (2024) in Birte Siim and Pauline Stoltz (eds) *The Palgrave Handbook of Gender and Citizenship*, 565, 575-576.

part of a single ethnic group, then even if the underlying motive for doing so was to ensure a more economically robust group, the intent to destroy that part of the group is still there and remains contrary to Article II. Still, population reduction was not an *express* justification for the initial approval of the IUD in 1968, though it appears to have influenced the manner and form of its implementation.⁵¹²

307. According to the Research Group report, in the period from the late 1950s, the Chief Medical Officer of Greenland demonstrated great interest in population growth in Kalaallit Nunaat. In 1957 he raised the issue of rapid population growth with the Ministry of Greenland and sought the potential to offer contraception free of charge. The request was declined. The Ministry responded, among other things, “it should be noted that no official concerns have been raised about the growth of the Greenlandic population, and that the Ministry can refer to the previous decision, according to which contraceptive can only be distributed free of charge when there is a medical indication for doing so.”⁵¹³ In minutes from a subsequent meeting in April 1958, the Chief Medical Officer asked “how the Ministry viewed the fact that 42% of the Greenlandic population were children[...] He felt it should be made clear whether efforts should be made to reduce the birth rate.”⁵¹⁴ At the meeting, it was agreed that the national doctor, together with two district doctors, should discuss the issue of “possible measures to reduce the birth rate” and then “come up with a more detailed statement on general plans in this regard.”⁵¹⁵ One person in the meeting, a head of department within the Danish Government, stated “this matter must be approached with great tact, and that any measures should initially be justified by the high infant mortality rate and the large number of illegitimate children.”⁵¹⁶ The reference to “great tact” implies a degree of caution that population reduction ought not to be the public-facing justification. Given that it was a doctor who was charged with finding measures to reduce the birthrate, medical intervention rather than other social measures, for example, was implicit. The proportion of young mothers and “illegitimate children” did come to dominate the policy justification for the approach to contraception. Alternative, less invasive, or non-medical approaches to achieve the same goal were not prominent.
308. In a radio interview on 5 February 1960 entitled “Will Greenland Become Overpopulated?” the Chief Medical Officer pointed out that population growth impacts infrastructure and administration and can stymie socioeconomic growth. He remarked that “if the population grows so rapidly that there is not enough money left over to build a new industrialised and competitive society, the country's economic situation and thus the living conditions of the population will

⁵¹² Jens Misfeldt, ‘Familieplanlægning i grønlandske lægedistrikter’ (1977) 139(25) Ugeskrift for Læger 1501, 1501; Flemming Mikkelsen, ‘Om Familieplanlægning’ (1978) 5 *Tidsskrift i Grønland* 152, 153; Jensen et al. 198; Jensen et al. p. 236 citing NKA, Landslægeembedet, j.nr. 536-2, Årsberetning 1971-1973, pk.nr. 237; Jensen et al. p. 253 citing Folketingets bibliotek, Folketingets arkiv, 1974 (2. samling), Socialudvalget, L38, ministerens besvarelse af udvalgsspørgsmål nr. 6, bilag 7; ‘Spiralens Sejrsang’, *Atuagagdliutit* (1970) 14.
<https://timarit.is/page/3789471?iabr=on#page/n13/mode/2up/search/spiralens%20sejrsang>

⁵¹³ Jensen et al. 28.

⁵¹⁴ Ibid., 29.

⁵¹⁵ Ibid.

⁵¹⁶ Ibid.

gradually deteriorate instead of improve.”⁵¹⁷ He considered three options: contraception, abortion, and emigration. He expressed doubt about the possibility that voluntary contraception would be effective to slow population growth. “In his view, “the population may learn this over many years, or better and more suitable methods may be invented, but if it becomes necessary to drastically reduce the birth rate in Greenland for the sake of the region's economy, then it must be done quickly.”⁵¹⁸ Abortion was dismissed as not legal (at that time). Emigration also, in his view, was not realistic. He concluded that the purpose of the new Greenland Committee, established in 1960, must include “what to do about this enormous population growth in the coming years”.⁵¹⁹ In June 1960 a newspaper article reported that “The majority of Greenland’s doctors are of the opinion that it would be a relief for these women and for society if they were sterilized. This will, of course, only happen at the women’s own wish, but usually they let the doctors make the decision. [...] In Greenland, attempts have been made to get people to use contraceptives, but this has proven hopeless, and sterilization is thus the best solution.”⁵²⁰

309. According to the Greenland Committee report (G60), the birth rate had risen 30 percent between 1951-52 and 1961. The Greenland Committee was established to review the political, economic and administrative conditions in Kalaallit Nunaat and to provide a report to the Danish Parliament to that end. The G60 report was published in 1964 and among other things addressed the population increase that it and others attributed to an improved standard of living and healthcare, having led to a rise in fertility and drop in mortality. When commencing its work, the Chair of the Greenland Committee Victor Grams placed the population growth as being a hindrance to the plans for the business sector: “I have gained the impression that the sharp increase in population, which is due in part to an increase in the birth rate and in part to a significant decline in mortality—the latter mainly as a result of the improved health care system implemented following the recommendations of the Greenland Commission—is a problem of considerable scope, which is of particular importance in connection with the plans for the expansion of the business sector, and to which we must pay close attention.”⁵²¹ In September 1960 a new population estimate doubted that the rising birth rate would increase further. It presented four different calculations, three of which would see the population reach 50,000 by 1975. The fourth, and referred to as the least likely development, was 42,000 by 1975. When it was presented to the Parliament’s Greenland Committee, Statistics Denmark gave its perspective that “the most favourable development from an economic point of view will take place according to the unlikely Calculation III, where the birth rate falls all the way down to the current Danish level.”⁵²²

⁵¹⁷ Jensen et al. 36.

⁵¹⁸ Ibid.

⁵¹⁹ Ibid., 36-37.

⁵²⁰ RA, Kvindehistorisk Samling, Foreningen for Familieplanlægning, ”Avisudklip – se udskriftssamling, 1957-1984, pk.nr. II”, cited in Jensen et al. 37.

⁵²¹ Victor Gram, reproduced in Jensen et al. 38.

⁵²² Jensen et al. 39.

310. A new population forecast was released in May 1967 by the Secretariat of the Greenland Council. This was just one month after preliminary report on the IUD trial conducted by Erik Rosen had been submitted to the Ministry of Greenland in April 1967. The population forecast estimated that without change in the fertility rate, the population of Kalaallit Nunaat would expand to 91,000 people by 1990, compared with a total of 35,000 people in 1965. It also predicted that with greater use of contraception, the birthrate would decline. That forecast was further discussed in the Greenland Council on 6 June 1967. Politician members of the Council expressed various opinions about fertility in Kalaallit Nunaat, including that “people now had far better opportunities than at the turn of the century to realise their desire to have fewer children” which was a reference, the Research Group found, to the introduction of the IUD.⁵²³
311. Parity with Danish fertility was in fact achieved within this timeframe, although it had been perceived as the most unlikely of the three scenarios. Between the mid-1960s and the mid-1970s, fertility in Kalaallit Nunaat fell from an average of between 6.5 to 7.5 children per woman, to 2.5 children per woman, which was on par with that in Denmark.⁵²⁴ Some reduction in fertility could reasonably be anticipated as women gained greater access to family planning, contraception of their own choosing and access to education. What is remarkable is the *rate* of decline (see Figure 2). A 1974 Population Report comparing crude birth levels across 82 countries from 1960-72, identifies Kalaallit Nunaat as having experienced the greatest absolute and relative decrease in fertility across them all during that decade.⁵²⁵
312. The reduction in population was taken by people in positions of authority as evidence of the IUD campaign having been a success. In a speech before the Danish Parliament in 1970, then Minister for Greenland referred to the “population explosion” of the 1950s in Kalaallit Nunaat and advised that the fertility rate was now on the decline due to the introduction of the IUD. He noted that almost half the population, was between 0 and 14 and described this as a burden on families and also an “extremely high cost to the public sector for childcare, schools and other educational institutions” as well as housing construction.⁵²⁶ Implicit in the speech is that the reduction in fertility was a positive development in part because of the economic costs to the state associated with high fertility. In reality, the significance of the cost to the State of accommodating the population growth was questionable. The total population in Kalaallit Nunaat at the time approximately 46,000,⁵²⁷ whereas the Danish population was approximately 4.93 million.⁵²⁸

⁵²³ Jensen et al. 70.

⁵²⁴ See Fig 2.

⁵²⁵ R.T. Ravenholt and John Chao, ‘World Fertility Trends, 1974’ (1974) Series J(2) *Population Report: Family planning programs* J-21 and J-23.

⁵²⁶ A C Normann, *Minister for Greenland*, ‘Statement on Greenland’, *Danish Parliamentary Debates* (Folketing, 86th Sitting, 23 April 1970) 5263, 5264. Translated from the Danish “I dag er knap 50 pct. af befolkningen: i alderen fra 0 til 14 år, og dette betyder for den enkelte familie en stor forsørgerbyrde og for det offentlige overordentlig store krav til børneinstitutioner, til, skoler og andre uddannelsesinstitutioner.”

⁵²⁷ *Statistics Greenland*, “Population and Population Growth.” Accessed January 2026.
<https://stat.gl/dialog/main.asp?lang=en&version=201603&sc=SA&colcode=t>

⁵²⁸ *Statistics Denmark*, ‘Population from the Censuses by National Part and Time’ (All Denmark; 1970).

Writing in 1977, Jens Misfeldt describes that after the introduction of the Lippes Loop in Kalaallit Nunaat “population growth is now under control.”⁵²⁹ The 1978 Annual Report from the Chief Medical Officer, covering the years 1973 to 1976, also writes that “It was not until after 1967 that population growth was brought under control.”⁵³⁰ The Greenland Council Secretariat visited the municipal council in Ittoqqortoormiit, at which the first agenda item was family planning which was noted as having been “resolved” because the birthrate had declined from 20 births per year to between 5 and 7.⁵³¹

4.5 The Duty to Prevent

313. The state must give effect to the provisions of the Genocide Convention,⁵³² and take steps to *prevent* genocide. This is a key distinction between the obligations imposed upon states through the Convention and the attribution of individual criminal responsibility to individuals. The International Court of Justice has explained that “responsibility is [...] incurred if the state manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide.”⁵³³ It emphasised the importance of “due diligence” in this regard, which takes into account, among other things, the capacity of the state to influence the conduct of the persons committing the physical acts. In assessing that capacity, the Court would consider the geographical distance of the state concerned from the scene of the events, the strength of the political links and other connections between the authorities of the state and the main actors in the events, as well as the legal position of the state vis-a-vis the persons facing the danger.⁵³⁴
314. Kalaallit Nunaat is a significant geographical distance from mainland Denmark. Nevertheless, there were at all material times strong “political links and other connections between the authorities of the state and the main actors in the events”.⁵³⁵ Kalaallit Nunaat was incorporated as a county of Denmark in 1953, and was thus unquestionably a part of the Danish state when a contraceptives policy for Kalaallit Nunaat was considered and commenced in the late-1960s. As outlined earlier, the Chief Medical Officer and medical personnel were in the employ of the state, they were in regular communication with the Ministry of Greenland and relevant governing entities and monitored centrally in that respect. In the first years of the introduction of the IUD they were reporting, albeit with some inaccuracies, the number of Lippes Loop devices inserted, and although not in detail, also the circumstances. In addition, *state* responsibility for wrongs of an international

⁵²⁹ Misfeldt, ‘Fagligt og socialt’ (20 June 1977) *Ugeskrift for læger* 1501.

⁵³⁰ Jensen et al. 101.

⁵³¹ *Ibid.*, 99.

⁵³² Genocide Convention Art V.

⁵³³ *Case Concerning Application on the Prevention of and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment (2007) ICJ Rep 43, 221 [430].

⁵³⁴ *Ibid.*

⁵³⁵ *Ibid.*

character remained with Denmark even after 1992 Greenland took over the healthcare portfolio (see Section 1.4.3).

315. When it comes to state responsibility for an internationally wrongful act “the breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.”⁵³⁶ This does not mean that the obligation to prevent genocide occurs only after a genocide has commenced, which would, according to the ICJ “be absurd, since the whole point of the obligation is to prevent, or attempt to prevent, the occurrence of the act”.⁵³⁷ Rather it arises at the instant moment “that the state learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed”.⁵³⁸ This duty is triggered not just by actual knowledge, but also by information that, with proper due diligence, would have been obtained. To be found responsible for a failure to prevent genocide, either there must be evidence that the specific intent was formed, or that one of the acts of genocide had been carried out. That moment includes any case in which one of the underlying acts of genocide—in this case the imposition of measures intended to prevent births—is taking place.⁵³⁹
316. “Knowledge” is attributed to the state based on evidence of what its agents knew, or ought to have known. As outlined in the introduction, for the purposes of state responsibility, agents of the state include all people in the state’s employ while acting in their official capacity. If doctors themselves knew, or ought to have known, that they or their colleagues were administering contraception without consent, particularly of a kind that cannot be safely reversed by the woman herself (an IUD or injected contraception) then there has been a *prima facie* imposition of measures to prevent births and the obligation to prevent arises. As detailed in Section 2.3.1, there are reasonable grounds to believe that women and children were administered contraception without consent and that doctors, as agents of the state, knew they might not be consenting. Materials and public statements by doctors and the Chief Medical Officer shared that they had adopted “actively motivating techniques” on women and children and subjected them to “energetic persuasion” whatever the motivation for the medical appointment. Some doctors also refused to remove devices when requested.⁵⁴⁰
317. Doctors in Kalaallit Nunaat acted under the auspices of the Chief Medical Officer of Greenland, who himself reported to the Ministry for Greenland in Denmark. Communications between the Chief Medical Officer in Greenland and the Ministry were undertaken by letter or telegram. According to archival material to which the Expert Group has had access, messages were sent and received generally within a matter of weeks. The Research Group reports that on 23 December

⁵³⁶ International Law Commission Articles on State Responsibility,

⁵³⁷ *Case Concerning Application on the Prevention of and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment (2007) ICJ Rep 43, 222 [431].

⁵³⁸ *Ibid.*, 430.

⁵³⁹ *Ibid.*

⁵⁴⁰ Redacted statement of claim in the civil proceedings; Jensen et al.

1969 the Ministry of Greenland sent a telegram to the Chief Medical Officer in Greenland marked “urgent,” which the Research Group understood was drafted by the head of the Greenland Council’s secretariat. The Ministry, it reports, was alarmed that 25 per cent of women ages 15 to 49 in Kalaallit Nunaat had an IUD fitted in less than two years. That corresponded to up to half of the female urban population. The Ministry requested the Chief Medical Officer’s comments on the results, which “which seem quite surprising, especially given the few spontaneous inquiries.”⁵⁴¹ The reference to “few spontaneous inquiries” is explained by the Research Group as recognition that “so few women apparently sought them out of their own volition.”⁵⁴² There is apparently no record of what the Chief Medical Officer replied to the Ministry.⁵⁴³ In 1972, a delegation from the Ministry had been told in person that women did not understand what was being done to them when they had the procedure. They were informed also, directly and through published academic articles and media interviews with the Chief Medical Officer that “actively motivating techniques” were being used in a way not described of contraceptive practice in Denmark at the time (see Chapter 2).

318. Discussions in the Ministry for Greenland in connection to the World Population Conference in 1974 indicated that Denmark was actively aware that it might face criticism for the contraceptives policies on the grounds it was reducing the population. According to the Research Group report, “prior to the conference, the Ministry for Greenland was made aware that Denmark could expect to receive criticism for its use of IUDs. [...] A Danish delegation led by Bodil Begtrup was to participate, and according to the memorandum she had stated ‘that one must expect Denmark to be attacked for its efforts in Greenland in this area, which have, after all, resulted in a sharp decline in the population.’”⁵⁴⁴ She did not elaborate what that criticism might be, but only that it was connected to population reduction. The World Population Report from 1974 showed that the rate at which intrauterine devices were being administered in Kalaallit Nunaat outpaced any other country in the world.
319. The authors find, based on the above circumstances, that there is a reasonable basis to believe that Denmark knew or ought to have known of a serious risk that imposition of measures to prevent births might be taking place in Kalaallit Nunaat as early as 1969, and at least by 1974. This triggered the state’s legal obligation to “take all measures” to prevent a potential genocide pursuant to the Genocide Convention.⁵⁴⁵ Although a telegram in 1969 from the Ministry of Greenland to the Chief Medical Officer expressed alarm, this cannot be said to constitute “all measures” to which the Genocide Convention refers.

⁵⁴¹ Jensen et al. 84.

⁵⁴² Ibid.

⁵⁴³ Ibid.

⁵⁴⁴ Ibid., 102.

⁵⁴⁵ *Case Concerning Application on the Prevention of and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment (2007) ICJ Rep 43, 221 [430].

4.6 Conclusion on Genocide under the 1948 Convention

320. A final determination on the question of genocide remains complex and can only be made by a court with jurisdiction, authority, and resources to call and review the full suite of available evidence. In the present case, a thorough determination would likely also consider the removal of children from Inuit families to Danish families,⁵⁴⁶ and the relocation of people from smaller settlements to urban centres, especially when undertaken in the context of other forms of direct and indirect discrimination such as the removal of Inuit languages from school and working life, the prohibition of mixed race children from determining their paternity or inheriting from a (Danish) father, and the systematic underpayment of wages which disproportionately impacted Inuit living standards and health.⁵⁴⁷ The authors have made no determination on these matters. The assessment of them would, however, be probative to a full consideration of state responsibility.
321. The authors have not been able to conclude, based on the evidence it has reviewed that the intent to destroy in part the Inuit of Kalaallit Nunaat is established on the basis of contraceptive practices alone across the relevant period. An intent to destroy in part Kalaallit Inuit is not the *only* reasonable inference available from the facts, as required under the test for genocidal intent by inference. There is a reasonable basis to believe that limiting population growth among Inuit was *one* factor that influenced the manner and form in which a number of doctors in Kalaallit Nunaat approached contraception, particularly the administration of the IUD undertaken through so-called “actively motivating techniques” or “energetic persuasion”, and also refusing to remove IUDs when requested, and that this was known about and supported by the Chief Medical Officer. It is difficult to imagine circumstances in which an attempt to substantially reduce the population of a single ethnic group could *not* constitute an intent to destroy, in part, that ethnicity. At the same time, the bar for proving genocidal intent is both notoriously high and quite specific. It remains a possible inference that a full review of all relevant information by a court with appropriate jurisdiction and authority might confirm.
322. The obligations under the Genocide Convention are broader than the obligation not to commit genocide alone. The authors have determined that there is a reasonable basis to believe that the physical act of imposing measures to prevent births under Article II(d) of the Genocide Convention have occurred in Kalaallit Nunaat since 1960. These acts were carried out by people under the state’s employ and thus under the authority of the Danish state and can be attributed to the state under international law. In circumstances where the state knew, or ought to have known with due diligence, that physical acts contrary to Article II(d) were carried out, even without the requisite intent, then the state’s responsibility to prevent genocide is triggered. The responsibility to prevent requires that the state take all measures within its power to prevent those acts from being carried

⁵⁴⁶ Prime Minister of Denmark, Letter of Apology to the Greenlandic Children (8 December 2020).

⁵⁴⁷ Otherwise known as the “birthplace criterion”. See: Danmarks Nationalleksikon, <https://lex.dk/f%C3%B8destedskriteriet - Gr%C3%B8nland>.

out. There is a reasonable basis to believe that Denmark has failed in its duty in this regard, contrary to its obligation under Article I of the Genocide Convention 1948.

4.7 Possibility of Judicial Consideration of State Responsibility for Genocide

323. The prohibition of genocide, as established in the Genocide Convention, is a norm *erga omnes partes*, implying that any state party to the Convention may initiate proceedings before the International Court of Justice against another state party for a supposed violation.⁵⁴⁸ Only states have legal standing before the ICJ. Therefore, for a case to be heard on a question of state responsibility for genocide, another state must be prepared to take the—often significant, political and security—risk of entailing the international legal responsibility of the alleged violating state. This is rare but not without legal precedent. Today there are two active matters pending before the ICJ in which a state has brought proceedings before the International Court of Justice to allege genocide (*Gambia v Myanmar* and, separately, *South Africa v Israel*).⁵⁴⁹
324. Should proceedings be initiated before the ICJ, the standard of proof for genocide is high. In general, the standard of proof in proceedings before the ICJ depend on the nature of the obligation and also the phase of the case. The same wording is not consistently used to describe the standard of proof required. In various proceedings it has, for example, adopted “on the balance of evidence,” “on the balance of probabilities,” “consistent with the probabilities,” “to the Court’s satisfaction,” varying degrees of “certainty” as well as versions of reasonable doubt.⁵⁵⁰ It has on occasion utilised the phrase “beyond reasonable doubt” but not in the leading cases on genocide, in which it has stated that the standard is “fully conclusive evidence.”⁵⁵¹ There will be differing opinions on whether that bar has been met in this case.⁵⁵²
325. Another way the ICJ could proffer an opinion is if a request for an Advisory Opinion was rendered in accordance with Article 96, paragraph 1, of the Charter of the United Nations. It provides that “the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.” To do that, the relevant legal question would need to be carefully drafted and would require that a member state (or states) sponsor a resolution in the

⁵⁴⁸ Unless the relevant state has made a reservation to the compromissory clause enshrined in Article IX. This is not the case for Denmark.

⁵⁴⁹ *Application of Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)*, Provisional Measures, ICJ General List No 178 (Order 23 January 2020) ICJ Reports 2020 9; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* [2023] ICJ Gen List 192 (Order of 26 January 2024) ICJ Reports (Provisional Measures).

⁵⁵⁰ See further, Katherine Del Mar, “The International Court of Justice and Standards of Proof” in Karine Bannelier, Théodore Christakis & Sarah Heathcote (eds), *The ICJ and the Evolution of International Law: The Enduring Impact of the Corfu Channel Case* (Routledge, 2012) 98.

⁵⁵¹ *Corfu Channel (United Kingdom v. Albania)*, Judgment, I.C.J. Reports 1949, p. 17; *Case Concerning Application on the Prevention of and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment (2007) ICJ Rep 43, 90 [209].

⁵⁵² See, e.g., Ebba Lekvall (2025) The Danish “Coil Campaign” in Greenland: Indigenous Genocide Through Forced Birth Control? *Nordic Journal of International Law*, 94 (3) 270-312.

Security Council or the UN General Assembly. The question would be debated and then voted upon. Its successful passage through the General Assembly (which is the usual path) would need affirmative votes from a two-thirds majority of the UN member states.⁵⁵³

⁵⁵³ United Nations organs and agencies, can also request an Advisory Opinion of the ICJ, but only on legal questions arising within the scope of their activities and such a request must still be authorized by the General Assembly. Though substantial legal and moral weight is given to decisions and opinions issued by the ICJ, an Advisory Opinion is not legally binding. UN Charter Arts 18 and 96.

5 Conclusion and the Future

326. In line with its terms of reference, this report has found that there is a reasonable basis to believe that Kalaallit Inuit women have suffered involuntary contraceptive practices that violated their rights to equality and non-discrimination, to non-interference with private and family life, to decide on the number and spacing of children; and to the highest attainable standard of physical and mental health, including sexual and reproductive health, as well as the right to freedom from cruel, inhuman or degrading treatment, and to maintain bodily and cultural integrity. There is also a reasonable basis to believe that the state failed to meet its binding treaty obligations to investigate allegations of ill-treatment and to prevent the physical acts underlying the international crime of genocide.
327. Although not all doctors or medical professionals engaged in involuntary contraceptive practices, discrimination in the availability of contraception methods and the imposition of contraception without valid consent were nevertheless systematic practices that were known to the Danish administration, and which continued without intervention to stop them. Some, if few, doctors continued to engage in “for her own good” approaches to contraception even after the establishment of express domestic guidance forbidding contraception without informed consent in 2001. That this practice continued, even rarely, remains a serious contravention of human rights for those women affected and was a consequence of a system in which some of the discriminatory practices embedded in law and policy were not adequately addressed, monitored or dismantled, in line with binding obligations under international law.⁵⁵⁴
328. These violations do not belong to a distant past, but have continuing and tangible consequences today for the women themselves and broader society. Involuntary contraceptive practices imposed a profound indignity upon Inuit women, children and their parents, and broader families, and have wounded their physical and psychological integrity both as individuals and as Inuit collectively. Systematic involuntary contraceptive practices were an intolerable intrusion into the social, cultural, and spiritual life of Inuit, heavily influencing the natural flow of life, going on to affect future fertility of the women affected, with ongoing consequences at an intergenerational level, and upended the landscape of Inuit family life with tangible and measurable implications today.
329. The European Court of Human Rights has held that “practices likely to result in sterilisations represent one of the gravest interferences with a person’s integrity. According to the Court, this has manifold implications on their physical and psychological well-being, it is liable to arouse feelings of fear, anguish and inferiority and may entail lasting suffering.”⁵⁵⁵ All of these effects are

⁵⁵⁴ Contrary to the state’s binding positive obligations under Articles 2 and 5(e)(iv) to eliminate racial discrimination in the field of health; and Articles 2(a), (e) and (f), 5, and 12 of CEDAW, to take “all appropriate measures” to eliminate discrimination against women, including in healthcare and family planning.

⁵⁵⁵ Fikfak et al. Submission 19. Citing *VC v Slovakia* (European Court of Human Rights, Grand Chamber, Application 18968/07, 8 November 2011) [104]-[106].

present in this case. Women described ongoing and long-term physical and psychological pain including repeated infections, bleeding disorders, septic events, damage from migration of the device within the body, perforation, and infertility. Many women have never borne children, have had permanent damage to the fallopian tubes; and / or endured serious and repeated pelvic inflammatory disease. All describe trauma and psychological harm including mental anguish, shame, and feelings of inadequacy for not having been able to have children or fewer than they had hoped.

330. For many, childlessness is a lifelong grief, and one also felt also by their families and broader society. At a collective level, the landscape of Inuit family life was irrevocably altered, with tangible societal implications today. Involuntary contraception has left Inuit women afflicted in their sexuality, in their ability to procreate, and to give fulfilment to their life, in realizing themselves as women and mothers, as persons proud to be members of their own people, their own society – to become protagonists of the collective growth of the Inuit community through generating new life. The generation born after 1966 was a fraction of the size of that before, and today Kalaallit Inuit lack the population to care adequately for all their elders who are now entering retirement. People’s trust of health services was eroded and that persists today.
331. Whatever the number of victims, systematic involuntary contraceptive practices undertaken under the auspices of the state warrant acknowledgement of responsibility as well as both material and moral collective reparations. The human rights violations that this report has identified are not without precedent worldwide. Indeed, Indigenous Peoples’ rights emerged as a distinct legal regime out of the specific and routine discrimination that Indigenous Peoples have faced the world over, including obstetrics violence and the restrictions of births. Such policies have taken place in the United States,⁵⁵⁶ Canada,⁵⁵⁷ Peru,⁵⁵⁸ Australia,⁵⁵⁹ as well as other parts of the Americas and Europe.⁵⁶⁰ Accordingly, there is also precedent to draw upon in the considering mechanisms to advance the respect, redress and reparations to which these women and their communities are entitled. The Prime Minister of Denmark and the Premier of Greenland have already acknowledged responsibility for systematic discrimination as a result of policies of involuntary contraceptive practices against Inuit women and girls.⁵⁶¹ The question becomes: what are the next steps?

⁵⁵⁶ Mark A. Largent, *Breeding Contempt: The History of Coerced Sterilization in the United States* (Rutgers University Press, 2008).

⁵⁵⁷ *Sexual Sterilization Acts in Alberta (1928–1972) and British Columbia (1933–1973)*; see further Standing Senate Committee on Human Rights, *Forced and Coerced Sterilization of Persons in Canada* (June 2021); Clarke, E. “Indigenous Women and the Risk of Reproductive Healthcare: Forced Sterilization, Genocide, and Contemporary Population Control.” *J. Hum. Rights Soc. Work* 6, 144–147 (2021).

⁵⁵⁸ María Elena Carbajal Cepeda v Peru, *Committee on the Elimination of Discrimination against Women*, Communication 170/2021, UN Doc CEDAW/C/89/D/170/2021 (30 October 2024).

⁵⁵⁹ Friday Essay: “Too Many Aboriginal Babies—Australia’s Secret History of Aboriginal Population Control in the 1960s,” *The Conversation* (11 April 2024).

⁵⁶⁰ For example in Bolivia, the Czech Republic, Slovakia and Hungary.

⁵⁶¹ A formal apology was delivered on 24 September 2025.

332. Legal rules are dry, aseptic, unimaginative, and often fail to adequately capture the various and complex nuances of the psychological and physical suffering caused by collective wrongs. However, they can offer a framework upon which to achieve justice that can be responsive to specific needs, especially those who have been directly injured as a result of the wrongs suffered. This chapter describes various options based on international human rights law, legal precedent, similar harms that have occurred elsewhere which are often informed by pathways to healing for collective trauma, and, crucially, what the Expert Group has heard from women affected and those representing them. These options are not exhaustive but provide a starting point.

5.1 Right to Legal Remedy: Judicial and Quasi-judicial Options

333. Denmark is under binding obligations under international law to ensure that any person who has their rights violated has an effective and enforceable remedy.⁵⁶² To be enforceable, legal solutions must be accessible through national courts and uphold the right to seek adequate reparation,⁵⁶³ and compensation,⁵⁶⁴ non-pecuniary and symbolic reparation.⁵⁶⁵ A remedy that is effective is one that is capable of providing appropriate relief, that stops the violation if it is ongoing and that provides appropriate redress. A remedy will be ineffective if it is excessively slow, or inaccessible in practice or does not adequately address the actual harm. The International Commission of Jurists has identified that redress for gross and systematic violations includes access to an investigation, the right to truth, to guarantees and non-repetition as well as restitution, compensation, rehabilitation and satisfaction.⁵⁶⁶
334. The Government of Denmark has already taken some reparative steps. On 24 September 2025, the Prime Minister of Denmark and Premier of Kalaallit Nunaat delivered apologies to the women who had been subject to involuntary contraception, acknowledging that this was systematic discrimination. On 10 December 2025 the Government announced a settlement in the civil claim that would see compensation of approximately 300,000 Danish kroner (approximately €40,000) to each individual awarded through a fund; as of this writing, that fund is yet to be established and the details of which are yet to be released. An award of compensation is appropriate and necessary but it alone will not address the collective, broader and ongoing societal harms. In this section the authors briefly outline the judicial and quasi-judicial avenues for human rights violations against individuals. The next section looks at non-judicial pathways to address individual and collective harm and to prevent future violations.

⁵⁶² For example, ICCPR Art 2(3); ECHR Art 13.

⁵⁶³ CERD Art 6; CEDAW Arts 2(c), 2(e) and 15; ECHR Art 13.

⁵⁶⁴ CAT Art 14.

⁵⁶⁵ CAT Art 14.

⁵⁶⁶ *The Right to a Remedy and Reparation for Gross Human Rights Violations Practitioners Guide 2 Revised Edition*, International Commission of Jurists (October 2018), accessed 8 January 2026. <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>.

5.1.1 Domestic Law

335. Overall, access to legal remedy for the human rights violations identified in this report through the Danish court system is possible but limited. The Danish Supreme Court tends to interpret and apply the international human rights obligations of the state narrowly, grounding its decisions in Danish domestic law. The European Convention on Human Rights is the only international treaty that has been incorporated into domestic law and as such this tends to be the only Convention to which Danish courts pay much attention, notwithstanding the binding nature of other treaty obligations. The practice of the UN Treaty Bodies is not given significant weight, and human rights conventions outside the European Convention are rarely applied or actively considered. Nevertheless, this report has found a reasonable basis to believe that involuntary contraceptive practices have contravened several provisions of the ECHR (Article 3, ill-treatment; Article 8 non-interference with family and private life Article 8; and Article 14 read with Articles 3 and 8 protecting the right to non-discrimination). Accordingly, claimants have a *prima facie* pathway to legal redress for these specific wrongs through Danish domestic courts as individuals. That some women have already pursued this avenue through civil litigation does not automatically preclude others from choosing this path. Whether it is possible will likely also depend on the specific terms with which compensation is offered and accepted through the scheme being developed by the Danish Government, the specific conditions of which are yet to be revealed.
336. Accessing legal remedies for violations of human rights obligations which exist outside the ECHR regime is hardly possible in practice through the Danish national court system. This is well-known and something for which Denmark has been repeatedly criticised by UN human rights treaty monitoring bodies.⁵⁶⁷ In its periodic review concerning Danish compliance with the Convention on the Elimination of All Forms of Racial Discrimination, for example, the relevant UN Committee stated that it was “concerned by the very limited number of examples that demonstrate the application of the Convention by domestic courts” and was “not convinced by the reasoning of the state party that incorporation of the Convention into the domestic legal order entails a risk of shifting powers conferred upon Parliament and the Government to the courts.”⁵⁶⁸
337. This approach precludes access to legal remedies for rights violations that fall outside the European regime. That means, relevantly, that people have no domestic mechanism through which to enforce their right to freely choose the number and spacing of children,⁵⁶⁹ the right to health,⁵⁷⁰ nor the specific rights of children to, among other things, have their views heard and respected in decisions affecting them.⁵⁷¹ In addition, neither the Danish nor the European human rights system recognises collective rights claims. Chapter 1 described that conduct that is apparently lawful under domestic

⁵⁶⁷ Committee on the Rights of the Child.

⁵⁶⁸ Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Twenty-Second to Twenty-Fourth Periodic Reports of Denmark* UN Doc CERD/C/DNK/CO/22-24 (1 February 2022) para 6-7.

⁵⁶⁹ CEDAW Art 16(e).

⁵⁷⁰ ICESCR Art 12.

⁵⁷¹ CRC Arts 12 and 16.

law, and in line with the constitutional rules of the state, can be unlawful as a matter of international law.⁵⁷² Having no avenue for legal redress embedded within the national system is contrary to the state obligation to ensure effective remedies as set out expressly in the UN treaties that remain unincorporated but still bind the state,⁵⁷³ including under customary international law.

5.1.2 European Court of Human Rights

338. The European Court of Human Rights hears cases concerning alleged violations of individual rights recognised by the Convention. Relevant here are violations of the right to private and family life (Article 8) and to be free from torture, cruel, inhuman and degrading treatment (Article 3) as well as the right to enjoy Convention rights without discrimination (Article 14). A person can bring a case before the European Court of Human Rights against a state party to the Convention where they have exhausted domestic remedies, and have filed the application within four months of the final judgment in the domestic jurisdiction.⁵⁷⁴ The applicant must be a victim,⁵⁷⁵ and must have suffered a significant disadvantage.⁵⁷⁶ Access to remedies before the European Court of Human Rights are important because that Court can issue binding judgments with which states must comply.⁵⁷⁷
339. The primary award made by the European Court of Human Rights is monetary remedy (just satisfaction), including for pain and suffering. The amount of compensation awarded is adjusted so that the effect of a monetary award is the same wherever the victim may be. That means a person in the Danish Kingdom might receive a higher amount than someone in Eastern Europe essentially because of the relative differences in what that money could buy in different places.⁵⁷⁸ If an amount awarded by a Danish court, or indeed through the compensation scheme that Denmark has now established, did not amount to full redress, then it would be possible to bring a claim before the European Court of Human Rights, alleging that the harm has been only partially redressed and seeking a full remedy.⁵⁷⁹
340. The Expert Group has received a submission advising that were the violations of Articles 3, 8 and 14 of the European Convention proven, the awards to each individual claimant would likely be in the vicinity of €50,000 to €60,000, or between roughly DKK 375,000 and DKK 450,000. “These amounts would likely be substantially higher given Danish GDP, but also because judges themselves have expressed a need for higher damage awards specifically in respect of Indigenous

⁵⁷² VCLT Art 27.

⁵⁷³ ICCPR Art 2(3); CAT Art 14; CERD Art 6; CEDAW Arts 2(c), 2(e) and 15.

⁵⁷⁴ ECHR Art 35.

⁵⁷⁵ *Ibid.*, Art 34,

⁵⁷⁶ *Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending the Control System of the Convention*, opened for signature 13 May 2004, ETS No 194 (entered into force 1 June 2010) art 12 (amending ECHR Art 35).

⁵⁷⁷ ECHR Art 46.

⁵⁷⁸ Fikfak et al. Submission 37.

⁵⁷⁹ *Ibid.*, 37-38.

peoples.”⁵⁸⁰ It is possible, therefore, that the DKK 300,000 that the Danish Government compensation scheme will offer could be lower than the European Court would award.⁵⁸¹

341. Where an application reveals a structural or systemic problem that may give rise to similar applications, the Court may use a “pilot judgment” procedure.⁵⁸² In a pilot judgment, the Court’s task is to identify the nature of the structural or systemic issue and the type of remedial measures that the state is required to adopt at the domestic level.⁵⁸³ A pilot judgment procedure can be initiated either by the Court or by one of the parties. In terms of remedies, systemic violations of human rights cannot be addressed by compensation to individual victims alone and therefore require measures that contribute to systemic reform. Accordingly, systemic violations will often lead the European Court of Human Rights to order general measures beyond individual redress alone which could include, for example, budgetary allocation, or changes in administrative or medical practice.⁵⁸⁴ For instance, in a case involving involuntary psychiatric institutionalisation of children with intellectual disabilities,⁵⁸⁵ the Court ordered general measures to reform the system of involuntary institutionalisation and psychiatric treatment of persons with intellectual disabilities, particularly children, including safeguards against discrimination.⁵⁸⁶ In another case, the repeated failure to protect a woman and her mother from domestic violence reflected, the Court found, a broader pattern of a “general and discriminatory judicial passivity in Turkey,” disproportionately affecting women.⁵⁸⁷

5.1.3 UN Complaints Mechanisms

342. UN human rights treaty bodies⁵⁸⁸ are committees of independent experts that oversee how states parties to the relevant convention fulfil and implement the rights outlined in each of the ten core international human rights treaties (see Figure 1 in Section 2.1). These bodies review periodic reports submitted by states and issue concluding observations on those reports with assessments and recommendations. They also research and prepare General Comments or General Recommendations, which serve as authoritative interpretations of the treaty for which each

⁵⁸⁰ Fikfak et al. Submission 39.

⁵⁸¹ Ibid., 38-39.

⁵⁸² European Court of Human Rights, *Rules of Court, Rule 61* (inserted by the Court on 21 February 2011) 1. https://www.echr.coe.int/documents/d/echr/pilot_judgment_procedure_eng

⁵⁸³ Ibid 3.

⁵⁸⁴ European Court of Human Rights, *Broniowski v. Poland*, (Grand Chamber, Application No. 31443/96, 22 June 2004), para. 193-194; European Court of Human Rights, *Yuriy Nikolayevich Ivanov v. Ukraine* (Application no. 40450/04, Judgment, 15 October 2009), para. 90-94; European Court of Human Rights, *Xenides-Arestis v. Turkey* (Application no. 46347/99, Judgment, 22 December 2005), para. 40 and 50; European Court of Human Rights, *Maria Atanasiu and Others v. Romania* (Applications 30767/05 and 33800/06, Judgment, 12 October 2010), para. 228 and 232; European Court of Human Rights, *Wałęsa v. Poland* (Application 50849/21, Judgment, 23 November 2023), para. 317-318 and 329-332.

⁵⁸⁵ European Court of Human Rights, *V.I. v. the Republic of Moldova* (Application No. 38963/18, Judgment, 26 March 2024), para. 196.

⁵⁸⁶ Ibid., para.197.

⁵⁸⁷ European Court of Human Rights, *Opuz v. Turkey* (Application no. 33401/02, Judgment, 9 June 2009), paras. 198 and 200.

⁵⁸⁸ UNOHCHR, “Treaty Bodies.” Accessed January 2026. <https://www.ohchr.org/en/treaty-bodies>

committee is responsible. The UN treaty bodies for the CERD and CRC have issued General Comments specifically concerning Indigenous Peoples, and CEDAW has issued a General Recommendation on the rights of Indigenous women and girls.

343. Persons whose rights under one of the UN human rights treaties were allegedly violated, and who have exhausted domestic remedies for the wrong suffered, can make a claim (called a “communication”) to a relevant treaty body, so long as Denmark has ratified the Optional Protocol to the relevant treaty, or has made the declaration required by the treaty, and has not issued a territorial reservation for Kalaallit Nunaat. To exhaust domestic remedies means to have already taken the complaint to local courts and administrative authorities, up to the highest level available. Where the state has ratified a human rights treaty or treaties and failed to incorporate them into domestic law (as is the case for all of the UN treaties to which Denmark is a party), then a claim might be directly admissible before the treaty body because domestic remedies are simply not available.
344. On 6 January 1972 Denmark ratified the Optional Protocol to the International Covenant on Civil and Political Rights, which entered into force on 23 March 1976.⁵⁸⁹ There is a general requirement that a communication must relate to a violation that occurred when the state was a party to the Optional Protocol, though there is an exception for continuing violations.⁵⁹⁰ The Optional Protocol entitles individuals who believe they have been victims of violations of the ICCPR to submit individual complaints against the state to the Human Rights Committee. That Convention relevantly protects the right to be free from cruel, inhuman and degrading treatment (Article 7), and the right to be free from arbitrary or unlawful interference with family (Article 17) and provides that children shall have, without discrimination, such measures of protection required by virtue of their status as a minor (Article 24).
345. On 11 October 1985, Denmark “recognized the competence of the Committee on the Elimination of Racial Discrimination [under the CERD] to receive and consider communications from individuals or groups of individuals within Danish jurisdiction claiming to be victims of a violation by Denmark of any of the rights set forth in the Convention, with the reservation that the Committee shall not consider any communications unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.”⁵⁹¹ That Convention prohibits racial discrimination in all its forms and guarantees the right of everyone to, among other things, public health and medical care without discrimination.⁵⁹² Complaints can also be made to UN treaty bodies for acts or omissions in Denmark or Kalaallit Nunaat contrary to the Convention Against Torture (since 1987), Convention on the Elimination of All Forms of Discrimination Against Women (since 2000).

⁵⁸⁹ In accordance with Article 9 of the Optional Protocol.

⁵⁹⁰ Miriam Cullen, “‘Eaten by the Sea:’ Human Rights Claims for the Impacts of Climate Change upon Remote Subnational Communities” (2018) 9(2) *Journal of Human Rights and the Environment* 171, 186.

⁵⁹¹ CERD note 10. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-2&chapter=4&clang=en#10

⁵⁹² CERD Art 5(d)(iv).

346. Denmark ratified the Optional Protocol of the Convention on the Rights of the Child in 2015 and entered a territorial reservation with respect to Kalaallit Nunaat, excluding the operation of the communications procedure for alleged violations that might have occurred there. This means that children in Kalaallit Nunaat cannot access a UN complaints procedure if their rights under the CRC are violated. Denmark acceded to the Optional Protocol on the Rights of Persons with Disabilities in September 2014. There too, it excluded the operation of the complaints procedure from operating to alleged violations in Kalaallit Nunaat. The authors encourage Denmark to remove both territorial reservations to ensure that children and persons with disabilities in Kalaallit Nunaat have equitable access to UN complaints mechanisms for violations of their rights under these Conventions.
347. While the decisions of UN treaty bodies are not binding, they carry significant moral and political weight. In previous cases involving forced sterilisation, UN treaty bodies have urged stronger anti-discrimination measures, culturally appropriate reproductive health services, impartial investigations into abuses, and training for medical personnel, the provision of redress, as well as clarity over how free, prior and informed consent is operationalized and implemented in healthcare settings.⁵⁹³

5.1.3.1 International Labor Organization

348. The International Labor Organization is a specialised agency of the UN. It monitors compliance of its member states with the instruments under its auspices through the Committee of Experts on the Application of Conventions and Recommendations (CEACR). This would relevantly include the provisions of ILO C169. The CEACR is an independent body composed of 20 legal experts that examines the application of ILO Conventions, Protocols and Recommendations by ILO Member States.⁵⁹⁴ Its decisions are not legally binding, but are considered expert guidance and carry some weight. While Indigenous Peoples are beneficiaries of the rights affirmed in ILO C169, they do not have direct access to the complaint or recourse mechanism of the ILO. Rather, Indigenous Peoples are required to work through governments, unions, and employer groups to access the dispute resolution mechanism. The exception is if the Indigenous Peoples concerned are organised as a trade unions or workers' federations, such as Sulinermik Inuussutissarsiuqartut Kattuffiat (SIK). In fact, SIK was the entity that brought the 2005 action to the CEACR concerning the forced removal of Inughuit in the north of Kalaallit Nunaat.
349. Although the Convention did not enter into force in Denmark until 1997, it is possible to bring a claim for harms that occurred before then where they have ongoing effects. Ongoing harms might include infertility, physical and psychological injury, ongoing systemic discrimination, as well as broader collective harms such as the intergenerational loss of transmission of culture, and the overall reduction in the population (see section 3.4.1).

⁵⁹³ Canada CAT/C/CAN/CO/7 (21 December 2018) 227; Mexico CERD/C/MEX/CO/18-21 (19 September 2019) 4.

⁵⁹⁴ Committee of Experts on the Application of Conventions and Recommendations (CEACR), accessed 12 December 2025. <https://www.ilo.org/international-labour-standards/ilo-supervisory-system-regular-supervision/committee-experts-application-conventions-and-recommendations-ceacr>

5.2 After Compensation and Apology: Building a Human Rights-based Framework

350. Gross and systematic violations of human rights trigger a broader swathe of remedies than individual violations alone, such as truth commissions, collective reparation programs and institutional reforms.⁵⁹⁵ Such measures protect rights into the future and in doing so fortify the legal obligations to ensure cessation of the wrongful conduct and guarantee non-repetition. This section describes responses that could promote long-term healing and the sustained protection of human rights on an ongoing basis, beyond the static moments of compensation and public apology.
351. Sections 5.2.1 and 5.2.2 provide examples of approaches taken to colonial harms that have occurred in other parts of the world, acknowledging that comparable experiences can offer “constructive history lesson[s] for the future.”⁵⁹⁶ Sections 5.2.3 and 5.2.4 build on these examples to identify measures that might be considered in the context of this report.
352. The measures described in this Chapter are illustrative, not exhaustive. Whatever forms of redress and support are ultimately offered, there must also be minimum safeguards to ensure affected Inuit women’s meaningful participation in a manner that is trauma-informed and culturally safe. For example, representation across regions, social support, interpretation, and specific steps to include women who are socially marginalised and women with disabilities, bearing in mind that many persons affected now live in Denmark and outside the Realm. It must also consider the potential need for (or impossibility of) childcare and travel and take steps to avoid exclusion of some women from accessing such measures for these or other similar reasons. There should be ongoing follow-up, monitoring, and evaluation of any remedies or measures adopted.

5.2.1 Example: Peru: Victim and Community Support and Healthcare

353. In the 1990s, in Peru, rural and Indigenous women were “co-opted by means of coercion, pressure or deception” to undergo sterilization procedures “without their informed consent” in circumstances where some women did not know how to speak or read the language, and “did not understand the significance of the procedure or the fact that it was permanent.”⁵⁹⁷ Although thousands were subject to this procedure, the proportion of the total Peruvian population that the case concerned was a little over 1 per cent at the time.⁵⁹⁸ This is a similar proportion to the women who have come forward in the present case (a little under 1 per cent), bearing in mind the repeated

⁵⁹⁵ Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press, 2006) 390 citing Luc Huyse, “Justice After Transition: On the Choices Successor Elites Make in Dealing with the Past” 20 *L. & Soc. Inquiry* (1995) 51.

⁵⁹⁶ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Executive Summary, 2015) 196.

⁵⁹⁷ *Views adopted by the Committee under article 7(3) of the Optional Protocol, concerning communication No 170/2021, María Elena Carbajal Cepeda et al. v Peru*, UN Doc CEDAW/C/OP.170/2021 (4 October 2024) para 8.4.

⁵⁹⁸ *Ibid.*, para 2.3.

advice that there are more women in Kalaallit Nunaat who were subject to involuntary contraception and who have not come forward.

354. In an agreement brokered by the Inter American Commission on Human Rights in 2003,⁵⁹⁹ the Peruvian Government acknowledged its responsibility for the harms caused. It initiated a criminal investigation for systematic involuntary sterilisations and a “Registry for Victims of Forced Sterilisation” to be accorded compensation for impacts.⁶⁰⁰ Reparations included the construction of monuments recognising and memorialising the harm; the provision of mental and physical health assistance, as well as educational and economic opportunities, in addition to community reparations.⁶⁰¹ In 2015, Peru declared the provision of priority support for victims of forced sterilisation “with a view to the provision of legal assistance, psychological and social support and comprehensive healthcare for the victims of sterilization.”⁶⁰²
355. However, delays in implementing these promises have been subject to scrutiny by the UN. In 2021, the adequacy of Peru’s response was examined by the UN Committee on the Elimination of All Forms of Discrimination Against Women, particularly for significant delays and failings in conducting a thorough investigation and providing reparations. The Committee recommended that the state provide monetary reparations to the victims, psychological assistance for the women impacted and their families, and to hasten their investigation of particular cases.⁶⁰³ It is conceivable that Denmark could be subject to similar scrutiny if compensation or remedies are unduly delayed, or if it fails to meet its procedural obligations (see Section 2.3.4).⁶⁰⁴
356. Beyond this specific case, the Inter-American Court of Human Rights has developed a well-established practice of ordering the creation of co-administered funds to address systemic violations of human rights and the collective rights of Indigenous Peoples. This has included, for example, an order of damages to pay for the construction of housing and infrastructure, and to

⁵⁹⁹ Inter-American Commission on Human Rights, report No. 71/03, *Friendly Settlement: María Mamérita Mestanza Chávez v. Peru*, 10 October 2003, para. 14. Other cases concerning “collective harm” stemming from the Inter-American human rights system include Advisory Opinion OC-22/16; Case of Bedoya Lima et al. v Colombia. Merits, Reparations and Costs; Case of the Moiwana Community v Suriname. Preliminary Objections, Merits, Reparations and Costs; Case of the Plan de Sánchez Massacre v Guatemala. para 93; Case of Pérez Lucas et al. v Guatemala.

⁶⁰⁰ Decreto Supremo que declara de interés nacional la atención prioritaria de víctimas de esterilizaciones forzadas producidas entre 1995- 2001 y crea el registro correspondiente 2015. On 6 November 2015, the Peruvian Ministry of Justice and Human Rights created the Registry for Victims of Forced Sterilisation.

⁶⁰¹ Psychological assistance to the victims and their families was explicitly underlined in *María Elena Carbajal Cepeda et al v Peru* (Views, Communication No 170/2021, Committee on the Elimination of Discrimination against Women, 4 October 2024) para 9(a)(i).

⁶⁰² *María Elena Carbajal Cepeda et al v Peru* (Views, Communication No 170/2021, Committee on the Elimination of All Forms of Discrimination Against Women, 30 October 2024) para 2.6 citing *Committee on the Elimination of Racial Discrimination, Concluding Observations on the Combined Twenty-Second and Twenty-Third Periodic Reports of Peru*, UN Doc CERD/C/PER/CO/22-23 (23 May 2018) para 26.

⁶⁰³ Committee on the Elimination of Discrimination against Women, Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 170/2021, UN Document CEDAW/C/89/D/170/2021 at <https://docs.un.org/en/CEDAW/C/89/D/170/2021> last accessed 8 January 2026.

⁶⁰⁴ CAT Arts 12 and 13; *International Covenant on Civil and Political Rights* Art 7; UN Human Rights Committee *G.M. and Others v the Republic of Moldova* at para.94.

compensate for the destruction of cultural identity.⁶⁰⁵ As one submission noted, although none of the Inter-American cases address the same fact pattern as the present report “the impact to the cultural identity and discrimination that they have suffered provide common ground” that could be useful in an assessment of responses.⁶⁰⁶

5.2.2 Example: Canada: Truth, Memorialization, and Cultural Genocide

357. The Truth and Reconciliation Commission of Canada was established in 2008 and delivered its final report seven years later in 2015. Its mandate was to:

Reveal to Canadians the complex truth about the history and the ongoing legacy of the church-run residential schools, in a manner that fully documents the individual and collective harms perpetrated against Aboriginal peoples, and honours the resilience and courage of former students, their families, and communities; and

In a manner that fully documents the individual and collective harms perpetrated against Aboriginal peoples, and honours the resilience and courage of former students, their families, and communities.⁶⁰⁷

358. Over seven years, the Commission held 238 days of local hearings across seventy-seven communities, and received over 6,750 statements from survivors. It also held national events and public outreach activities to serve as processes of “witnessing” in which Canadians from all backgrounds could learn more about the history of residential schools.⁶⁰⁸
359. Its findings led to the creation of the National Centre for Truth and Reconciliation, which today is a permanent body established as part of a legal agreement between “Residential Schools Survivors, the Assembly of First Nations, Inuit representatives and the parties responsible for creation and operation of the schools: the federal government and the church bodies.”⁶⁰⁹ That settlement agreement specifically provides for individuals to be able to preserve their records for history and ensures health supports for those who wish to do so. The statement can take any form the person wishes, including “written, audio, video, poetry, art, music, etc. There are no restrictions.”⁶¹⁰ It also offers “qualified statement gatherers” to record the experiences and stories of people affected by residential schools and other colonial policies.

⁶⁰⁵ Fikfak et al. Submission 40.

⁶⁰⁶ Ibid.

⁶⁰⁷ Truth and Reconciliation Commission of Canada, “Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada” (2015) 27.

⁶⁰⁸ Ibid., 35-37.

⁶⁰⁹ National Centre for Truth and Reconciliation, “About the TRC.” Accessed January 2026.

<https://nctr.ca/about/history-of-the-trc/truth-and-reconciliation-commission-of-canada/>.

⁶¹⁰ National Centre for Truth and Reconciliation, “Share Your Experience.” Accessed January 2026.

<https://nctr.ca/records/preserve-your-records/share-your-stories/>.

360. The report of the Truth and Reconciliation Commission found, among other things, that Canadian residential schools to constitute cultural genocide. It defined cultural genocide as:

The destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next.

361. In 2022, the Canadian House of Commons unanimously acknowledged that the Residential Schools Program instituted under the auspices of the Canadian Government between the 1870s and 1997 constituted “cultural genocide.” Recognition of cultural genocide represented a shift in the way that this chapter in Canadian history had been viewed and validated the gravity of what was experienced by those who had been subject to abuse under the residential school system.⁶¹¹

362. In the context of this case, involuntary contraception also occurred within a much broader assimilationist agenda. The removal of Inuit children without informed consent,⁶¹² the prohibition of children with Inuit mothers and Danish fathers from determining paternity, the removal of Inuit languages from school and working life, and the systematic underpayment of wages to Inuit, would all be of relevance of a broader assessment of cultural genocide. In this context, the authors encourage the ongoing Historical Inquiry to take the broader conceptualization of cultural genocide—as defined by the Canadian National Centre for Truth and Reconciliation—into account as it undertakes its work.

363. The authors note that “cultural genocide” was the subject of significant debate in the adoption of the Genocide Convention but ultimately excluded from the text on the basis that such ideas were protected by minority rights,⁶¹³ the idea of “culture” and its destruction has remained “central to properly understanding the crime of genocide.”⁶¹⁴ Underlying discrimination, including the destruction of culture, remains relevant to proving genocidal intent.⁶¹⁵

⁶¹¹ See, for example, Antoine Mountain, *From Bear Rock Mountain: The Life and Times of a Dene Residential School Survivor* (Brindle & Glass, 2019).

⁶¹² Prime Minister of Denmark, Letter of Apology to the Greenlandic Children (8 December 2020). The removal

⁶¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* Judgment (2007) ICJ Rep 43 [194]. Whether to include “cultural genocide” in the Convention definition was a sticking point in the negotiations, as many of the States that had been subject to colonial power fought to retain it. Other States felt these matters were already adequately protected under other legal instruments on minority protections.

⁶¹⁴ Kurt Mundoff, *A Cultural Interpretation of the Crime of Genocide* (Routledge, 2020).

⁶¹⁵ *Prosecutor v Radoslav Krstić* (Appeals Judgment) International Criminal Tribunal for the Former Yugoslavia, Case No IT-98-33-A (19 April 2004) [28]; *Application of the Convention on the Prevention and Punishment of*

5.2.3 Memorialization and Truth

364. Women with whom the Expert Group met found the process of sharing their stories difficult. Those who came forward valued that their accounts were heard, believed, and taken seriously. Their efforts and persistence, they described, were not just for themselves, their parents, and immediate family, but also for the generations of Inuit women to follow. Sharing their experiences with one another also provided community and catharsis where they had otherwise felt alone. They saw value in finding a way to support and maintain community into the future, grounded and supported by historical honesty and collective witnessing. The authors encourage outreach to the Canadian National Centre for Truth and Reconciliation to learn more about their methods for collective witnessing in a specifically Inuit context, the provision of culturally safe support, and the culturally safe memorialization and permanent recording of stories, experiences and testimonies of people affected. What constitutes the “historical record” must be able to incorporate the breadth of accounts, including by Peoples who do not hold written traditions. Women affected must be able to contribute in a way that is permanently preserved and undertaken in a manner and form that allows for epistemic equity.
365. The authors encourage the establishment, in consultation with people affected and civil society, of a permanent and ongoing mechanism to memorialize the testimonies of people affected that will be preserved and archived on an ongoing basis as part of the historical record. Collective memory and truth-telling processes can be healing, restorative, and reparative if designed thoughtfully and in a way that is culturally safe and community-led. This might include, as recommended by some of the women affected, a process for culturally safe *collective and reciprocal witnessing* of testimony, which could serve as a powerful pathway toward collective healing and build and support relationships between women and communities affected. This could take the format of a truth process, undertaken in a way best suited to Inuit women, within which testimonials (whether written, oral, or other forms of depiction) could be recorded and retained for the historical record. The Canadian Truth and Reconciliation Commission has implemented something similar which might serve as a starting point.⁶¹⁶
366. Also suggested by women affected was the establishment of a dedicated place for Inuit women to congregate supported by long-term Government commitment to contribute to the preservation and maintenance of such a space. In Kalaallit Nunaat there are obvious geographical challenges for accessing the space, but there could also be more than one. Such a space could be for women and community to gather for purposes of healing and related community building activities. Digital modes will be uniquely important given both the vast distances between communities affected and the need to ensure equity of access to healing spaces (digital or physical).

the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) (2007) ICJ Rep 43 [344].

⁶¹⁶ Truth and Reconciliation Commission of Canada, “Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada” (2015) 35-37.

367. Access to existing archival material should be facilitated in a way to allow people to easily access the records about this chapter in Danish history. Digitalization of those records is encouraged. The Expert Group noted that some of the archival material it reviewed had been marked by other readers (such as with underlining) and that some pages were missing.

5.2.4 Advancing Kalaallit Inuit Women's Health and Well-Being into the Future

368. States must ensure the right to the highest attainable standard of mental and physical health and guarantee women's rights to "decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."⁶¹⁷ In addition, they must take "all appropriate measures" to eliminate discrimination against women and Indigenous Peoples and to ensure "specific educational information to help to ensure the health and well-being of families, including information and advice on family planning."⁶¹⁸
369. Given the number of years over which involuntary contraceptive practices took place and the breadth of individual and collective rights it negatively affected, different forms of reparations of both individual and collective nature are appropriate. Importantly, any remedial efforts must include the direct, effective, and meaningful participation of the rights holders in their design and implementation. To this end, policymakers can draw on the breadth of relevant human rights instruments, especially those that offer specific protections for Indigenous women and children.⁶¹⁹ Together these provide a substantive framework within which to address the structural and underlying factors to prevent discrimination against Indigenous women and girls, and to emphasize collaboration and partnership within and throughout Inuit society and their communities.
370. In terms of concrete measures that will both offer collective restitution and rehabilitation, and advance non-repetition, strict legal standards on informed consent must be implemented and monitored. There should be mandatory reporting by medical professionals of all instances in which IUD devices are discovered in the bodies of women who appear not to have known it was there and a system in place for supporting these women including legal and psychosocial support. For women who have been subject to involuntary contraception and are still trying to get pregnant, free fertility treatment in addition to any monetary compensation ought to be offered, and promptly. Some women described significant challenges in accessing their own medical journals.⁶²⁰ Access to one's own medical record should be prompt and without restriction.
371. Culturally safe reproductive healthcare practices should be embedded and available across the Realm, tailored to, and taking into account the history of involuntary contraception, and understanding of the distrust of medical service providers that these practices, and knowledge of

⁶¹⁷ CEDAW Art 16(e).

⁶¹⁸ Ibid., Art 10(h).

⁶¹⁹ ILO C169, CRC, CEDAW, CERD and guided by the UN Declaration.

⁶²⁰ Listening session with women affected after 1992; listening session with Chief Medical Officer of Greenland; listening session with Tilioq.

them, has created. Mandatory training of health professionals on culturally safe medical care in an Inuit health environment, including modules on human rights, Indigenous rights and this specific part of colonial history. At minimum this training must include effective communication in an Inuit-specific health environment.

372. Inuit women affected by involuntary contraception should have equitable access to adequate and culturally safe medical, psychological and social support. Trauma counselling and rehabilitation of those impacted should include resources for the collectivity to independently manage and review activities and to ensure their own, independent, technical capacity and supervision of all such actions.⁶²¹
373. Decision-makers might also consider the establishment of an independent collective reparations fund similar to that ordered by the Inter-American Court of Human Rights in cases of collective violations.⁶²² The Fund would compensate for material and non-material damage *to the community as a whole*, and thus would be separate to any individual compensation offered. It could be managed by an Inuit or an independent entity based on equal composition of diverse women concerned and geographic balance from across Kalaallit Nunaat, but the state should “adopt all administrative, legislative, financial, and human resources measures necessary for the implementation of this Fund.”⁶²³ That fund could finance specific and appropriate projects in favour of the collective community and/or its members, and could incorporate, for example, educational, health or cultural projects.⁶²⁴ The authors encourage examination of the case law and practice of the Inter-American Court of Human Rights which explains the ways in which remedial measures such as this might operate.⁶²⁵
374. As described in more detail in Chapter 1, although Naalakkersuisut has taken over administrative responsibility for healthcare, human rights responsibility remains with Denmark as a matter of international law, and it therefore must support Naalakkersuisut in meeting its international legal obligations including through the provision of adequate resources.⁶²⁶ When it comes to Indigenous

⁶²¹ ILO C169 Art 25.

⁶²² *Case of the Garifuna Community of Triunfo de la Cruz and its Members v Honduras* (Merits, Reparations, and Costs, Judgment of 8 October 2015, Inter-Am Ct H.R. (ser C) No 305).

⁶²³ *Ibid.*, para 297.

⁶²⁴ *Case of the Xákmok Kásek Indigenous Community v Paraguay* (Merits, Reparations and Costs, Judgment of 24 August 2010, Inter-Am Ct H.R. (ser C) No 214) para 323; *Case of the Moiwana Village v Suriname* (Merits, Reparations and Costs, Judgment of 15 June 2005, Inter-Am Ct H.R. (ser C) No 124) para 213.

⁶²⁵ *Case of the Garifuna Community of Triunfo de la Cruz and its Members v Honduras* (Merits, Reparations and Costs, Judgment of 8 October 2015, Inter-Am Ct H.R. (ser C) No 305); *Case of the Sawhoyamaya Indigenous Community v Paraguay* (Merits, Reparations and Costs, Judgment of 29 March 2006, Inter-Am Ct H.R. (ser C) No 146) paras 224-227; *Case of the Yakye Axa Indigenous Community v Paraguay* (Merits, Reparations and Costs, Judgment of 17 June 2005, Inter-Am Ct H.R. (ser C) No 125) para 205; *Case of the Xákmok Kásek Indigenous Community v Paraguay* (Merits, Reparations and Costs, Judgment of 24 August 2010, Inter-Am Ct H.R. (ser C) No 214) para 323; *Case of the Moiwana Village v Suriname* (Merits, Reparations and Costs, Judgment of 15 June 2005, Inter-Am Ct H.R. (ser C) No 124) paras 213-215; *Case of the Pueblos Kallina and Lokono v Suriname* (Merits, Reparations and Costs, Judgment of 4 May 2015, Inter-Am Ct H.R. (ser C) No 309) paras 295-299.

⁶²⁶ ICESCR Art 2(1).

women’s health, Denmark has an obligation to ensure that health services across the Realm are community based, and take into account Inuit “economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.”⁶²⁷ Among the social and cultural conditions of Kalaallit Inuit women is the experience of colonialism and the collective impact of involuntary contraception, which meaningfully impacts access to healthcare services today and ought to be taken into account in the training and education of people working in the healthcare sector both in Kalaallit Nunaat and across the Realm.

⁶²⁷ ILO C169 Art 25; UN Declaration Art 24.