



DATE: AUGUST 5, 2011

## HUMAN RIGHTS COMMITTEE

### LOIPR Procedure – list of issues prior to reporting

#### SUBMISSION BY THE INUIT CIRCUMPOLAR COUNCIL

*PREPARATORY TO THE FORTHCOMING FOCUSED REPORT OF DENMARK*

**REGARDING:** GENERAL MEASURES OF IMPLEMENTATION  
INDIGENOUS/HUMAN RIGHTS AND POWERS OF PUBLIC GOVERNMENT  
THE SITUATION OF THE INDIGENOUS COMMUNITY OF THE THULE DISTRICT  
THE “LEGALLY FATHERLESS”

**SUBMITTED BY:** INUIT CIRCUMPOLAR COUNCIL, GREENLAND  
THE ASSOCIATION HINGITAQ 1953 (THE OUTCASTS 1953), THULE, GREENLAND  
AND THE KATTUFFIK ATAATA (THE ASSOCIATION FATHERS)

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1. Inuit Circumpolar Council (ICC) Greenland is the Greenland chapter of ICC, which is an indigenous peoples' organization (IPO) representing the rights and interests of Inuit in Chukotka, Alaska, Canada, and Greenland. ICC Greenland speaks out on international policy and development matters that have an impact on Inuit within Greenland, and internationally in matters such as human rights, environment and climate change. In accordance with Article 71 of the UN Charter the Inuit Circumpolar Council is also an international NGO recognized by ECOSOC. In 2006 ICC changed its name from the Inuit Circumpolar Conference to the present Inuit Circumpolar Council.
2. There is no National Human Rights Institution (NHRI) dedicated to Greenland. The Danish Institute for Human Rights did not cover Greenland and the Faroe Islands, but the geographical scope could be extended thereto in accordance with its enabling act no. 411 of 6 June 2002, Section 13. The ICC in accordance with its Charter has promoted Inuit rights by regularly participating in UN human rights efforts from the early 1980s and since 1996 the ICC has contributed information to UN treaty bodies for their consideration of periodical reports from the Government of Denmark on the implementation of the ICERD and ICCPR conventions. ICC is also a permanent participant to the Arctic Council. The ICC is an umbrella organization, and the Delegation of Greenland to the ICC General Assembly counts representatives of 15 organisations, from Youth Associations, over Cultural and Sports Organisations, Labour and Hunter's and Fisher's Associations, the Inughuit of the Thule District, Political Parties, Municipalities, Women and Elders.
3. Following information from the ICC, the Human Rights Committee in 1996 took note of the pledge by the Danish delegation that the text of the Covenant would be translated into Greenlandic and published. (CCPR/C/Add.68, para. 8) and subsequently ICERD (see CERD/C/408/Add.1, para 128). Prior to a hearing on the UPR process organized by the Ministry of Foreign Affairs and the Self-Government on 25 Oct. 2010 in Nuuk the ICC had prepared a Greenlandic translation of the Paris Principles.
4. The absence of an active National Human Rights Institution for Greenland (NHRI) was noted above.



However, information to the contrary was given by the Government during the first Universal Periodic Report review of Denmark on 2<sup>nd</sup> May 2011. Introducing the Government Report the Self-Government representative stated:

“In 2005 the Act on the Danish Institute for Human Rights was extended to Greenland and Greenland given a seat in the Institute Advisory Council. In 2008 the Parliament of Greenland requested the Government to consider options regarding the establishment of some form of human rights capacity in Greenland taking into account the relatively small size of the population.”<sup>1</sup> The Government of Canada in the subsequent interactive dialogue “welcomed the 2005 inclusion of Greenland in the act establishing the Danish Institute of Human Rights, yet noted the constraints limiting its presence in Greenland...”<sup>2</sup>

5. The Inuit Circumpolar Council has encountered difficulty in verifying the asserted extension of the competence of the Danish Human Rights Institute to cover Greenland. Under Section 13 of the Institute’s enabling act no 411 of 6 June 2002, the geographical coverage of the Act may be extended to cover Greenland and the Faroe Islands by Royal Decree. No such Royal Decree has been promulgated in the Danish legal information system, *Retsinformation*, or its function to list subsequent legislative or administrative acts. A review of the Annual Reports of the Danish Institute for Human Rights for 2005 and 2006 shows no indication of a geographical broadening of the competence of the Institute. This was further confirmed in a response to a freedom of information request to the Ministry of Foreign Affairs regarding the question of an extension of the geographical coverage to include Greenland. In a mail dated 11 July 2011 the Ministry confirmed that the act did not cover Greenland at present and presumably never would. By the end of June 2011, however, the Danish Institute for Human Rights had responded to a questionnaire from the Office of the UN High Commissioner for Human Rights on good practices for National Human Rights Institutions in relation to the UN Declaration of the Rights of Indigenous Peoples. This response repeats that “the act establishing the DIHR entered into force in Greenland in 2005. DIHR was however not given any funding to act as a NHRI in Greenland or to set up a Greenlandic office or otherwise cooperate with Greenlandic authorities”.<sup>3</sup> On the basis of this information the ICC made a renewed search of specialized sources and found that the enabling act had been set in effect for Greenland by Royal Decree No. 414 of 30 May 2005, effective 1 July 2005. The extension was made without any adaptations of the act to provide for the Greenlandic reality, and no Greenlandic entity was given a seat on the Institute Board in order to match e.g. the presence of several Government Ministries on the Board.
6. In practical terms the Danish Institute for Human Rights has not developed relevant expertise in indigenous and human rights in Greenland, comparable to its expertise in the Danish situation. This was noted by the former Center for Human Rights in May 1995 when the Centre gave its advice to the Danish Government regarding the draft UN Declaration on the Rights of Indigenous Peoples. In its response to the Ministry the Institute noted that since it did not itself have sufficient expertise in the area it had asked a member of the Board, dr. jur. Frederik Harhoff to prepare a commentary to the draft declaration.<sup>4</sup> When the major indigenous land rights case came before the Supreme Court in 2003 the Institute demonstrated no interest in monitoring the case. In its parallel report of July 2010 to the CERD Committee The Danish Institute of Human Rights merely recited the view of the Danish Government and the Supreme Court on the lack of indigenous status for the indigenous Thule Tribe in North-West Greenland (see Below, section II) and stated without any indication of reasons that “DIHR agrees with the Government on this position”.<sup>5</sup> The ICC notes that the DIHR also indicated a wrong year for the judgement of the Supreme Court. The ICC further observes, that the 2010 position of the DIHR hardly represent a general position of the Institute since the former Director of the Centre/Institute for Human Rights, Morten Kjærum, took part as independent expert on the CERD Committee in the CERD Conclusions in 2002 and 2006 (See Annex).
7. Summing up, the Danish Institute for Human Rights is not an NIHR dedicated to Greenland, neither in a

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1 Transcript from webcast of the Opening Statement by the Government of Denmark, Marianne Lykke Thomsen,  
2 Draft Report of the Working Group on the Universal Periodic Review, Denmark, A/HRC/WG.6/11/L.2, para. 37.  
3 DIHR, undated reply to “Questionnaire on possible good practices in addressing the rights of indigenous peoples”, ultimo June 2011, pt. 2.  
4 See text and footnote to para. 16, below.  
5 *Parallel Report July 2011 to the Committee on the Elimination of Racial Discrimination on the 18<sup>th</sup> and 19<sup>th</sup> Periodic Reports by the Government of Denmark on the Implementation of the International Convention on all Forms of Racial Discrimination*, Danish Institute of Human Rights (DIHR), para. 31, p. 11f.)



formal nor a practical sense. Even if there has been a decision to extend the Institute's enabling act to cover Greenland it is obscure and falls short of the general human rights standard of accessibility and foreseeability. Rather, on the balance, ICC suggests that there has not been equal access to information, knowledge, research, provision, enjoyment and protection of human rights between Denmark and Greenland and their native right holders. Also resources for human rights work has been distributed unevenly, and on this background it is unfortunate, that the Danish Government in the Spring of 2009 has decided to stop contributions of some ½ million DKR/year by medio 2011 for ICCs participation at the UN for Inuit and indigenous rights. The amount may appear unimportant in the Danish appropriations system, but will have serious impact for the ICC and for capacity-building in human rights work. Despite serious and long-standing human rights issues in Greenland regarding the protection of indigenous land rights and identity, Greenland has been placed at an unfavourable position in regard to human rights knowledge and research compared to Denmark.

8. In respect of other general measures of implementation the ICC shares in broadly shared concerns over the status of UN human rights conventions in domestic law<sup>6</sup> and their lack in incorporation compared to the European Convention on Human Rights. The ICC first reported on this issue to the Human Rights Committee in October 2000, and referring to question 2 of the HRC pointed to Art. 26 as a Convention right which was not in fact protected in Danish law. Court application of the European Convention on Human Rights was rare prior to incorporation in July 1992, and surveys of court practice demonstrate that non-incorporated conventions are only rarely applied today. In cases against the State claims based on unincorporated conventions the Crown Counsel (*kammeradvokaten*) will typically argue that the Convention including CCPR and its art. 26 "has not been incorporated into Danish law and thus cannot be applied directly before Danish court." In a judgment of 5 Dec 2005 the Supreme Court noted that (unincorporated) ILO Conventions, including C. 29 on forced labour "are not directly applicable in Danish law in the sense, that they could result in setting aside the rules on activation in the active [social policy, our addition] law."<sup>7</sup> Yet, Court practice is not consistent, but arbitrary. In the Thule case, which will be discussed further below in section II, where both the ICCPR and the ICERD had been cited as "international sources of law", following the urging of the Crown Counsel, the Supreme Court opted to put premium value in its *ratio decidendi* to a non-binding Danish declaration upon ratification of the ILO C.169 in order to vest all human right entitlement in the hands of the Home Rule Government to the effect of preventing the Thule Tribe as a previously recognized entity, of any identity as a separate group capable of vindicating its traditional rights, despite the tribe's own perception to the contrary (CCPR/C/DKN/CO/5 [2008] para 13).
9. One derived effect of the above discrepancy between incorporated and non-incorporated human rights treaties and their domestic application is that it is difficult for a victim of a violation to obtain an effective remedy in two ways. First, because it is difficult to vindicate your right before the authorities, and secondly because it is difficult to gain access to a remedy. One general principle of the Danish rules on free legal aid before the courts is that the applicant must have a reasonable prospect of winning the case. That decision is made *inter alia* based on the practice of the courts. In this light one may understand that judicial tests of non-incorporated human rights conventions are relatively rare and that exhaustion of local remedies meets with extreme difficulties.
10. The ICC would like to draw attention to the voluntary pledges of the Danish Government in accordance with G.A. Resolution 60/251, when Denmark was a candidate for a seat on the Human Rights Council. In her document Denmark committed itself, *inter alia*, to advance human rights internationally:
 

"By working to strengthen the implementation of international human rights instruments, including the United Nations declaration on the Rights of Indigenous Peoples."

*and* pledged "to ensure effective enjoyment of human rights domestically:

...By submitting fully to independent monitoring of human rights protection domestically through *co-operation with international and national monitoring bodies as well as by complying with their* recommendations."<sup>8</sup>

<sup>6</sup> See e.g. the Secretariat summary for the UPR review in A/HRC/WG.6/11/DNK/2, para. 3.

<sup>7</sup> *Danish Law Weekly*, UfR 2006.770 H. Cited in parallel reports to the CERD Committee in July 2010 by the Danish Centre on Human Right, para 18 and by the Documentation and Advisory Centre on Racial Discrimination, DACoRD, given several examples in para.s 14-19.

<sup>8</sup> Note verbale dated 2 February 2007 from the Permanent Mission of Denmark to the United Nations addressed to the President of the General Assembly. UN Doc. A/61/742, Agenda item 105 (2) ...election of fourteen members of the



- **The ICC urges the Human Rights Committee to explore topics of general measures that would improve implementation of the Convention in Denmark and Greenland, access of the indigenous communities to all Convention rights and access to effective remedies.**
  - **Does the Government remain committed to its pledge before the UN General Assembly to submit fully to independent monitoring and to comply in good faith with the recommendations of international monitoring bodies?**
  - **What measures will the Government take to secure equal access to information, knowledge, provision, enjoyment and protection of human rights and indigenous rights - and to secure this through an appropriate consultation procedure with the indigenous rights holders?**
  - **Will the Government take steps to provide equal access to information, knowledge and research in the field of human and indigenous rights in the Danish realm, support indigenous rights organizations and the possibility of a NHRI for Greenland?**
11. ICC recognizes the important contributions of both the Danish Government and the Greenlandic authorities towards both the UN Declaration on the Rights of Indigenous Peoples and the ILO Convention 169 on Indigenous and Tribal Peoples, but regrets to note serious gaps in implementation, especially when it comes to land rights and to self-identification as indigenous. Thus, the *Human Rights Committee* in 2008 noted with concern the failure of the Supreme Court in November 2003 to recognize the Thule Tribe of Greenland as a separate group capable of vindicating its traditional rights, despite the tribe's own perception to the contrary", and in August 2010 *CERD* recommended that notwithstanding the decision of the Supreme Court, the State party should adopt measures to ensure that self identification is primarily used in determining whether a people are indigenous or not. In this regard, the Committee recommends that the State party should adopt concrete measures to ensure that the status of the Thule Tribe reflects established international norms on indigenous peoples' identification. *The Committee on the Rights of the Child* joined in these recommendations, regretted the lack of concrete measures to follow up and urged "the State party to, in accordance with the Committee's General Comment No. 11 on Indigenous children and their rights under the Convention, undertake all measures necessary for ensuring that *Inughuit* children are able to exercise their right to grow up in a safe cultural environment, maintain and develop their identity and use their own language without being disqualified and discriminated against."<sup>9</sup>
12. Unfortunately, the Government has consistently opted not to comply with the conclusions and recommendations of the Treaty Bodies, contrary to the pledge above. In the Sections below, the ICC shall first comment on the uneasy relationship between the concept of 'peoples', 'indigenous peoples' and 'indigenous communities' and the apparent confusion between public powers of government and human rights (**Section I**), which has made it difficult to reach a sustainable solution on traditional land rights in the Thule Case and discriminates in access to protection of indigenous property (**Section II**). Finally, in **Section III**, a long standing issue of "legally fatherless" is reviewed, concerning unfavourable treatment and status of children born out of wedlock by Greenlandic mothers.

### I. An uneasy relationship: Indigenous rights and public government

13. When Greenland attained home rule in 1979 it was a beginning of a devolution process that transferred powers from the Danish central Government to a new central government entity in Greenland. This process is continuing with the present Greenland Self-Government. This transfer of powers – important as it is - moved government closer to the population in Greenland, but did not vest human rights or indigenous rights of the Inuit in Greenland in the system of public Government – a fact that tends to be overlooked. This point was also stressed in the introduction by the Government to the UPR review, stating: "Mr. President, it is important to point out that the Government of Greenland is a public government, rather than an indigenous self-government."<sup>10</sup>

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Human Rights Council.

<sup>9</sup> See CCPR/C/DNK/CO/5 respectively CERD/C/ DNK/CO/18-19 and CRC/C/DNK/CO/4. A n overview of **Concluding Observations** by the Human Rights Committee, the Committee on Elimination of Racial Discrimination and the Committee on the Rights of the Child 1996-2011 in respect of the Thule case on indigenous land rights, forced removal and the existence of the Inughuit as a separate indigenous entity is **appended** to the present document.

<sup>10</sup> Transcript from webcast of the Opening Statement by the Government of Denmark, Marianne Lykke Thomsen, cf also Draft Report of the Working Group on the Universal Periodic Review, Denmark, A/HRC/WG.6/11/L.2, para. 22.



14. The Home Rule Act for Greenland transferred certain administrative and legislative powers from the central state government to a regional authority, but did not change the legal position of the inhabitants. Thus by Section 10 and 19 of the Home Rule Act/Section 16 and 28 of the Self-Government Act, important provisos are established providing for the respect of the home rule/self-government authorities regarding international obligations that are binding on the Realm (Sections 10/16) and existing valid law and protections which remained in force until amended or repealed by the appropriate authority. Thus, the Home Rule/Self Government Acts must be construed in a way that does not limit or derogate from any existing human rights or fundamental freedoms under any of the laws or any other agreement or international obligation to which the State and its authorities is a party.
15. *Secondly*, The Home Rule Act was not an act of expropriation, and accordingly it did not purport to deprive anyone arbitrarily (Universal Declaration of Human Rights, Art. 17) of their right to the peaceful enjoyment of his or her possessions – owned alone or in association with others due to a requirement of “the public weal” (Danish Constitution, Section 73) or “in the public interest” (1<sup>st</sup> Protocol of the ECHR, Art. 1). Thus, absent any intent to take, e.g. the rights of the members of the Thule tribe at the time of the adoption of the Home Rule Act, the applicants must be deemed to continue in the rights vested in the Thule Tribe which still subsisted at the time of entry into force of the Act.
16. There has, however, been a tendency to perceive home rule/self-government and its contribution towards the right of self-determination as securing in and by itself all human rights in Greenland. One may take as an example a hearing by the Danish Foreign Ministry on the draft UN Declaration on the rights of indigenous peoples. In the reply by the former Danish Centre for Human Rights it was noted that the draft declaration did not impact on the Home Rule system for Greenland, “which on virtually all points fulfilled the requirements of the declaration”. It was therefore recommended, that Denmark in cooperation with the Nordic Countries worked for the adoption of the Declaration if and when it reached the General Assembly for consideration.<sup>11</sup>
17. There is an uneasy relationship between the concepts of “people” and “indigenous people” and “indigenous communities” and the relevant entities to exercise rights as such. The preamble to the Self-Government Act for Greenland of 2009 states that the “people of Greenland is a people in accordance with international law with a right to self-determination”. According to the explanatory remarks for the draft bill, “this implies *inter alia* that the Greenlandic people take decision on independence for Greenland”.
18. In the Annex on Greenland of the 18<sup>th</sup> Danish periodic report to CERD (CERD/C/DEN/18-19), para. 3 and 4 (p. 36) the Government notes the Supreme Court conclusion: that the Thule Tribe does not constitute a tribal people or a distinct indigenous people and refers to the Danish declaration upon the ratification of the ILO Convention 169, that Denmark has “only one indigenous people”.
19. On this matter the ICC should like briefly to note, that no reservations can be made to ILO Conventions, and the Danish declaration at the time of ratification of ILO C.169 has no status in international law. This fact was disregarded by the Supreme Court relying on the Danish Declaration. The general rule regarding reservations was stated also by the *Ad hoc Committee* in its report on the SIK-complaint.<sup>12</sup> The first conclusion of the report reads:
 

The Committee notes that the Declaration deposited with the ratification reflects the understanding of the Government at the time that it ratified the Convention. It recalls that no reservations to the ratification of ILO Conventions are admissible and that, consequently, the Government's Declaration has no binding force. (para. 27)
20. *Secondly*, the word “distinct” has no basis in Convention 169, but was introduced by the Government to suggest, that there could be only one community in Greenland which could claim rights under the convention, i.e. the Home Rule Government. However, the question of which entity can exercise indigenous rights is contextual, depending both on the type of right in question and also of actual or potential interference with that right – e.g. traditional land use is the basis for the exercise of land rights and the right to make claims. Lands rights based in a local, indigenous entity may conflict with other

<sup>11</sup> Danish Centre for Human Rights, ltr. to the Foreign Ministry, dated 15 May 1995, Annex p. 5.

<sup>12</sup> ILO Doc. GB.280/18/5, March 2001, cf. text to n. 12, below.



governmental interests in resource development, which is the very reason for establishing protected rights.

21. Thirdly, in the view of the ICC the existence of an indigenous community is a question of fact, and not an instrument of domestic law. This recalls the fundamental guidance of the Permanent International Court: “*The existence of communities is a question of fact; it is not a question of law*” (PCIJ, *Greco-Bulgarian Communities Case*, Ser. B, No. 17, p.22). Compare in this context also the General Comment No. 23 (1994) by the Human Rights Committee on the “existence” of minorities within a State and members of indigenous communities who exercise a “way of life which is closely associated with territory and use of its resources” (para. 5 and 3.2) and the previous concluding observations by CERD on Denmark adopted on 18 August 2006 (CERD/C/DEN/CO/17, 19 October 2006).

22. The uneasy relation in the application of rights of indigenous communities or peoples in Greenland can also be seen in the fact, that the Greenlandic Home Rule Government acted as a third party intervener in the Thule case before the Supreme Court, whereas the Home Rule refused to support bringing the Thule case to the European Court of Human Rights, one reason being:

The Greenland Home Rule has furthermore not previously recognized that individuals or tribes may have special rights over parts of the Greenlandic territories, as the public have the ownership of land in Greenland.<sup>13</sup>

23. Since there is no public acquisition of ownership of lands in Greenland, this brings into question the very character and effect of the original Inuit occupation and establishment of traditional land use in Greenland, and of the protections established in international law for indigenous peoples and communities. The Thule case exemplifies this problem, but it should be recalled that current efforts towards development of non-renewable resources, oil and mineral extraction and industrial development contributes to the importance of the protection of traditional land use and the interested communities. Insufficient hearing mechanisms and timely consultations with traditional land use owners remain a concern to the Inuit Circumpolar Council, which the ICC seeks to further in a dialogue with member organizations and the Self-Government.

- **Does the Government concur that a distinction must be drawn between public powers of Government on the one side and human and indigenous rights – in their individual and collective aspects on the other side?**
- **What measures are taken to secure appropriate procedures for consultations and seeking consent of indigenous rights holders in Greenland?**

## II. The Thule Case

24. The Thule Tribe or the *Inughuit* (historically also known as the Polar Eskimos and by several other designations) and its members are the original occupants and possessors of the Northwestern part of Greenland, known as the Thule District. The Inughuit (*plural nom.* and *gen.* of *Inughuaq*) are one of several sub-groups or tribes of the Inuit (Eskimo) peoples inhabiting Arctic and Sub-arctic territories from Siberia, over Alaska, Canada and Greenland. Inughuit have a separate language form and special cultural adaptation based on their harvesting the natural resources of their high arctic environment.

25. By unilateral Danish decree no. 304 of 10 May 1921 the Thule District was incorporated into the Danish colonial area in Greenland and thereby under Danish sovereignty. (P.C.I.J. Ser. A/B, Fasc. 53, *Legal Status of East Greenland*, p. 15, cf. Ser. C, No. 64, p. 1539 and *Lovtidende* 1921, A, nr. 27, p. 1041). At the time of Danish colonization the *Inughuit* had for centuries been living as an organized society in their homelands and were the undisturbed and uncontested users of their hunting territory. This situation prevailed until the events forming the interferences, which are the subject of the present section. At no time during colonization or after has the Danish government made pretensions to have abolished or acquired traditional, indigenous land rights in the territory. A special legal regulation for the area, *The Thule Act*, was established by the Danish/ Greenlandic explorer Knud Rasmussen as proprietor of a private trading station in the District in co-operation with a so-called *Hunters' Council* in 1927 and adopted in 1929. The Thule Act was subsequently ratified by the competent Minister on 8 September 1931 – cf. the authority in the

<sup>13</sup> Letter dated 1 June 2004 from Greenland Premier Hans Enoksen to ICC Greenland.



Governance Act for Greenland of 1925 § 45, which incorporated relevant international law.

26. *The Thule case* for present purposes refers to the establishment by agreement between Denmark and the U.S.A. of the *U.S. Thule Air Base in 1951* in the centre of the hunting territory of the Inughuit - without prior consultation nor consent - and the subsequent expansion of the base and forced relocation of the central community village of *Ummannaq* in 1953. Further subsequent takings of traditional lands in 1955 will be specifically noted and new information contributed below. (Map annexed)
- In consideration of the negative effects on the original population in 1959 & 1960 the Thule Hunters' Council raised a claim for compensation for the losses incurred. The claim was never acted on by the Danish state authorities, but was restated in 1985 by the Municipality of Avanersuaq after publication of a monograph revealing part of the military secrets leading to relocation.
- A government appointed Review Committee (1987-1995) failed to provide a satisfactory record of the events; and the matter was therefore submitted to the courts. On August 20, 1999 the *Eastern Division of the High Court* found in part for the Inughuit, but failed to resolve claims based on collective land rights and gave very modest compensation, which did not correspond to the damage and tort of the victims. The judgement was appealed by the Inughuit to the *Supreme Court*, which in a judgement of 23 November 2003 upheld the findings of the High Court. The Supreme Court deviated, however, from the High Court in finding that the Inughuit could not claim indigenous rights under ILO C.169. The Supreme Court made this finding – following the claim by the Government - on the ground that the Inughuit was not a separate indigenous people. Thus, every year in a continuing violation the Inughuit are excluded from their traditional hunting territory and habitation since time immemorial. Furthermore, as the only population group in Denmark, the Inughuit are deprived of the Constitutional protection against unlawful expropriation.
27. In a quite recent development the Government on August 18, 2010 repudiated the *ratio decidendi* of the Supreme Court in the case. Addressing a question on preservation of identity during the CERD examination of Denmark's 18<sup>th</sup> periodic report, the Government informed the Committee, that the ethnic identity of the Inughuit is 'celebrated' and that there is strong support for 'their separate identity': The Inughuit are speaking their own language, they exhibit special cultural traditions and have special legal regulations in the field of hunting and use of the territory. (CERD SR. 2035 pr. Ms. Thomsen (Denmark) the SR does not give a precise reflection of the oral statement).
28. As a matter of fact the Government may thereby be returning to its original position. During the first four considerations of the Thule Case, from 1996-2000 in CERD and CCPR the Inughuit were accepted as an indigenous community (See Annex). At no time during the 4 examinations above has Denmark objected to the status of the Inughuit as an indigenous people or community, nor is it mentioned in the comments on the case in Denmark's 15th report to the CERD Committee (See section III, Reporting on Greenland, Part I, para 126ff. [2001]), but the denial of identity is currently being argued strongly by the State. The objection must be seen as *an argumentative device* after the judgement in the High Court intended to divest the Inughuit of their traditional land rights, and thus avoid the problem. See the 'serious concern' over the denials of the identity and the continued existence of the Inughuit as a separate ethnic or tribal entity in CERDs concluding observations on 21 March. 2002. (The change in the Government's argument was contrary to the Governments general line in the UN arguing against narrow and unproductive definitions of indigenous people(s)<sup>14</sup>, but came after the High Court had cited concluding observations from UN treaty bodies).
29. An unblemished statement of the original Danish position recognizing the legal ties between the local community and their traditional system of land tenure can also be found in the Danish Memorial to the International Court of Justice in the *Jan Mayen Case* (Denmark/Norway):

"104. In the centuries following 1721, Denmark established altogether 16 settlement districts in Greenland. This process was peaceful and without armed conflict between Denmark and the aboriginal population. Denmark did not exercise authority over the administration of wildlife resources (marine mammals, fish and birds), which since ancient times had been *managed by the hunters themselves by way of prescriptive rights which various families had gained with respect to specific hunting and fishing*

<sup>14</sup> Dansk Udenrigspolitisk Institut/Danish Institute of International Affairs (DUPI), *FN, verden og Danmark*, Copenhagen 1999, 470 pp at p. 246f., an English summary of the study was published as, *UN, the World and Denmark. Summary*.



areas.”<sup>15</sup>

This statement relates to Greenlandic customary practice whereby the individual acquire access to the local community’s hunting and fishing areas through membership of the local community. In the Thule Tribe this community attachment covered the entire territory of the District.

30. The legal basis for the UPR under *Resolution 5/1 (18 June 2007) of the Human Rights Council* is all human rights obligations and commitments incumbent on the Member State, including the UN Charter and the Universal Declaration of Human Rights as well as voluntary pledges and commitments made by the State.
31. Under the *UN Charter*, Ch. XI, Art. 73 (e) Denmark reported regularly to the United Nations on Greenland as a non-self-governing territory from 1947 until 1954. The situation on human rights before the constitutional incorporation of Greenland into Denmark was summarized by the UN: “The Greenland Administration has pursued a policy based on the principles of the Danish Constitution. Except for reasons of public policy, there has been no expropriation of private property. In such cases, full compensation is allowed.”<sup>16</sup> – Referring to previous reports Denmark had in 1952 stated: “The Greenland Administration has always pursued the policy in Greenland of adhering to the principles of the Danish Constitution practically applicable there”.<sup>17</sup>
32. Despite the ‘sacred trust’ accepted as an obligation to the interests and well-being of the inhabitants under Art. 73 of the Charter, and art. 17 of the Universal Declaration the High Court and the Supreme Court held in their judgements in the Thule case that the incursions in 1951 and 1953 were acts of expropriation, which could be performed *without* basis in law, prior to the integration of Denmark into the Danish realm by the Constitutional revision in June 1953. On the substance of the matter the Supreme Court and the High Court found, that “*the removal of the population by the end of May 1953 was not an expression of a desire on the part of the population, but took place after a decision taken solely by the Danish authorities.*” The Courts further agreed that the incursion into the tribe’s hunting and catching territory through the establishment of the Thule Air Base in 1951 and the expansion of the base with the consequent removal of the population in 1953 constituted an incursion into a very important and central of part of the hunting territory of the Thule tribe, and that such far-reaching encroachment into the economic rights of the tribe must be considered as an act of expropriation. Thus, the Inughuit are left without an effective remedy for the takings in 1951 and 1953.
33. New facts which were not disclosed before the Supreme Court reveal a further expansion of the Thule Air Base that took place on 13 May 1955 through an Exchange of Notes between Denmark and the US, providing for a revision of the secret Technical Schedule to the Defence Agreement of 1951 in order to allow for a navigational aid in the form of a Loran Station at Cape Atholl. Despite repeated requests on behalf of the indigenous appellants for production of documents on the delimitation of the Thule Air Base the Exchange of Notes from 1955 was not produced during the proceedings before the Supreme Court, and the Supreme Court did not touch upon the 1955 expansion in its judgement on the Thule Case of 28 Nov. 2003.<sup>18</sup> The documents were made available to associate research professor Jens Brøsted only on 28 March 2006 – together with a Note to the then Prime and Foreign Minister, H.C. Hansen, of 9 May 1955 preparing for the signature of the Exchange of Notes. It appears from the documents that they were declassified from “Secret” to “Confidential” on 9 November 1967, but they have remained classified to the public until the

<sup>15</sup> I.C.J., *Memorial submitted by the Government of Denmark*, Vol. 1, July 1989, p. 26f. in the case of *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark/Norway)*. – For further discussion of the Greenlandic *lex loci*, see Brøsted, “Territorial Rights in Greenland: Some Preliminary Notes, *Arctic Anthropology*, Vol. 23, 1986, pp. 325-38.

<sup>16</sup> UN, Non-Self-Governing Territories, Summaries and analyses of information transmitted to the Secretary-General during 1954, NY 1955, ST/TRI/SER.A/9, p. 273.

<sup>17</sup> *Report on Greenland 1952*, The Prime Minister’s Second Department, Copenhagen, 1952, p. 53, cf. UN summaries for 1952 in ST/TRI/Ser.A/7/Add.1, p. 798.

<sup>18</sup> The Exchange of Notes was not listed either in a document submitted to Parliament in response to a question submitted by the Committee on the Defence, which had requested a full listing of the different types of arrangements entered into between the USA and Denmark concerning Greenland and the Defence of Greenland. The Parliamentary request included specifically multi- and bilateral agreements, memoranda, exchange of notes and other arrangements. The Minister of Foreign Affairs’ reply of 4 June 1987 appended a list of 41 items which passed from an entry no 3 of 18 Mch. 1954 to entry 4, dated July 9 and 10, 1956. (*Folketinget*, Committee on Defence of the Danish Parliament, Session 1986-87, General part-Annex 162).



transmission to Mr. Brøsted in 2006.

34. This new expansion included a **further area of approx. 373 km<sup>2</sup> to the defence area** and was entered into by the same procedure as previous takings in fact for the base.<sup>19</sup> Adding some 25% to the base area the act was kept secret as previous takings. There was no consultation with the Hunters' Council, and accordingly no consent, nor anything to resemble an act of expropriation. The apparent revision of a technical schedule thus *represented a new taking of indigenous hunting territory* despite the point that the expansion was introduced as a "*minor expansion*" in a note for the Danish Prime- and Foreign Minister, H.C. Hansen, prior to a presentation of the matter *in camera* before the Foreign Policy Board in Parliament on 8 April 1954.
35. The expansion of the Base in 1955 unquestionably took place *after* the entry into force of the revised Danish Constitution on 5 June 1953 and of the 1<sup>st</sup> Protocol Article 1 of the European Convention on Human Rights on 18 May 1954. Under the Constitutional protection of property in Section 73 expropriation can only take place with basis in law. No such provision was provided for the 1955 taking.
36. During WW II a firm practice was established of paying compensation to indigenous communities and individuals in Greenland which/who had suffered losses due to military installations. This was based on prior civilian practice and continued after the war with a small compensation to the Hunters' Council after the 1946 American Weather Station and landing strip at Thule. The Hunters' Council, which had both political and judicial powers, and acting under the chairmanship of the Government Inspector for the district, in 1959 and 1960 adopted a claim for an annual compensation for lost hunting territory due to the establishment of the base and the ecological/economic consequences of the forced removal. The claim was kept secret and never acted on by the Government. In October 1981 the case file was taken out of the hands of a researcher, and the Commission of Inquiry as well as the High Court were led to believe that the file had been lost. It was recovered by Mr. Brøsted in June 2000, who found it in its systemic place, albeit under a different file number.<sup>20</sup> During the proceedings before the Supreme Court, a report by the Danish National Archives made it clear, that the Government for the entire period had been in control of and had full knowledge of the correct case file number for the "missing" case file. The report was also presented to the Supreme Court, but was not allowed in evidence.
37. The above illustrates the omissions and obstructions employed by the Government in order to protect the secrecy of the Danish-American cooperation under the 1951 Defence Agreement and the costs in the enjoyment of human and indigenous rights for the Inuit in Greenland. It is paradoxical that the protection of traditional Inuit land rights was better in the colonial period than after the constitutional incorporation into Denmark in 1953. Thus, subsequent Danish-American arrangements in March 1958 regarding the Distant Early Warning line (DEW-line) under which the USA would pay possible relocation costs and compensate the loss of hunting and fishing possibilities were also kept secret from the intended beneficiaries as well as officials in the department, who handled compensation claims.
38. The question of potential conflict between traditional hunting and fishing rights and extractive activities within and outside concession areas was raised by the then Provincial Council of Greenland during the preparation in 1973-77 of the *Land Use and Planning Act for Greenland, no. No. 248 of 8 June 1977*. The Provincial Council had insisted on a provision giving legal basis securing compensation for interference in existing collective catching, hunting and fishing rights. During the final stages of discussion in the Danish Parliament a revision clause was set into the bill, in order that the question be studied and the law revised at the latest in the 1981-82 session of the Danish Parliament. However, the study provided for by legislation of legal protection for traditional, collective hunting and fishing rights were never initiated, and the revision clause was disregarded.<sup>21</sup>
39. The ICC recalls that there is a continuing situation and that the effects of the relocation and the takings of land continue also after the entry into force of the ICERD and ICCPR in respect of Denmark. As noted by

<sup>19</sup> The expansion of the total base area in 1955 constituted an increase of 24.7% over the total area after the 1954 increase. The area has been computed on the basis of public geodetic maps from the Danish Geodetic Institute by a digitalized scanning procedure to approximately 372 km<sup>2</sup> out of a total area 1.883 km<sup>2</sup>.

<sup>20</sup> J. Brøsted, Thules forsvundne erstatningssag, *UfR [Danish Law Weekly]* 2000, B, p. 621-634.

<sup>21</sup> Ft 1976-77 (2. samling), B, Col. 447f; for the Bill, see A, Col. 3713 ff, incl. an excerpt from the Proceedings of the Provincial Council.



the Governing Body Ad Hoc Committee in the representation made under Article 24 of the ILO Constitution regarding the failure by Denmark to demarcate the lands of the Inughuit under Article 14(2) of the C.169 there was *a continuing situation*:

However, the Committee notes that the effects of the 1953 relocation continue today, in that the relocated persons cannot return to the Ummannaq 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 ..., despite the fact that the relocation was carried out prior to the entry into force of the 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.<sup>22</sup>

40. In this context, the ICC further recalls the Danish Reply to the Committee of Experts of the ILO, concerning ILO Convention 169, Art. 16 § 2, concerning protective limitations on removal of indigenous peoples. In response to a question (no. 6) in a direct request from the Committee of Experts, asking for an indication of in what cases the people concerned may be removed from the lands which they occupy and the procedures followed in such cases the Government responded in cooperation with the Home Rule Government, that the *Home Rule Government had unencumbered competence: "complete entitlement to regulate the use of land. It is for the Home Rule authorities to decide whether f.i. areas should be preserved without access for hunters and other activities or whether settlements should be abandoned."*<sup>23</sup> This response would allow excluding indigenous population groups from their hunting territories or for their removal. Is this response, in the view of the Government, in full agreement with Denmark's international obligations? Would the view expressed prevent a repetition of the events of 1951 and 1953? See also the considerations in para. 22 above.

- **In her international indigenous peoples policy Denmark's official approach has advocated a broad and inclusive view of indigenous peoples and recommended avoiding the definitional issue as unproductive. Why has the Government argued the Inughuit does not exist as an indigenous entity with collective rights?**
- **Are the Inughuit the original occupant and possessor of the geographical region known as the Thule District and are they the relevant group who "may make land claims"? Is the critical time 1921 for establishing their traditional hunting territory?**
- **What steps has the Government taken to implement the recommendations of the Human Rights Committee in 2008, the CERD in 2010 and the CRC in 2011 to uphold the identity of the Inughuit as a distinct indigenous community capable of vindicating traditional rights in accordance with international norms?**
- **Will the Government take steps to facilitate a legally satisfactory solution to the 1955 expansion of the Thule Air Base into the Inughuit hunting territory, and to secure necessary legal expertise and procedural rights for the assistance for the Inughuit? Considering the Universal Declaration of Human Rights what steps will the government take to secure remedies against the arbitrary deprivation of Inughuit possessions in 1951 and 1953? Will the government consider dialogue and a negotiated settlement?**
- **Will the Government take steps to fulfil the legislative mandate in the 1977 Land use and Planning Act for a study of legal protection for traditional collective hunting and fishing rights and set the indigenous people in Greenland on a par with other rights owners in protection of property?**

### III. "The legally fatherless"

41. On 30 June 2010 an association was formed in Greenland of "legally fatherless" persons (*Kattuffik /Ataata/National Association/Father*). The legally fatherless are persons born out of wedlock

<sup>22</sup> ILO Doc. GB.280/18/5, March 2001, Para. 29. Similarly in a review of the Supreme Court decision in the American Journal of International Law, Vol. 98, p. 572ff, Professor of International Law, Ole Spiermann, observes that "the situation created by the relocation had not ceased to exist" (p. 576). The Representation under art. 24 of the ILO constitution may be found at <http://www.ilo.org/ilolex/english/index.htm> .

<sup>23</sup> Reply submitted with Denmark's Second Report for the period ending 31 May 2001 regarding the Indigenous and Tribal Peoples Convention, 1989 (No. 169).



before and after the entry into force of a 1962 law for Greenland on the legal status of children - in West Greenland on 1 June 1963 and in North (including the Thule District) and East Greenland on 1 July 1974.<sup>24</sup> Prior to these dates there was no legal bases in Greenland to establish paternity for children born out of wedlock, only payment of child contributions could be assessed.<sup>25</sup> The modernization period in Greenland after 1950 was a period with many transient Danish workers in Greenland in connection *inter alia* with a construction boom in Greenland during the modernization phase in Greenland after decolonization in June 1953. After the coming into force of the 1962 law at the critical dates above one man or more men could be obliged to pay child contributions to a child if he had sexual intercourse with a woman in the period of conception – if there was no reason to exclude that the child was the result of the intercourse, and even if the man could not be deemed to be the father of the child by a court order and even if he did acknowledge paternity. Thus, from the perspective of the child, the child could be left without a “father”, without the right to know its origin and social identity, and without a right to inherit its natural father.<sup>26</sup> Greenlandic children born in the period are thus bound by a legal regime abandoned in Denmark proper by January 1938.

42. The issue of the legally fatherless has not previously been presented before the Human Rights Committee. In August 2010, however, the *Committee on the Elimination of Racial Discrimination* urged the State party to take measures to address the problems faced by the legally fatherless who, by virtue of having been born out of wedlock, are negatively affected by various laws including the laws governing family life, land ownership and inheritance. After this recommendation and the founding of the association in Greenland of the legally fatherless certain steps have been taken by the Danish Government in coordination with the Greenlandic Self-Government, but they hardly suffice to remedy the situation of the affected individuals. We shall return to those developments after some further background information on the problem.
43. The reason for the differentiation between Greenland and Denmark at the time of the 1962 act lay in the difficulty in Greenland of establishing paternity by biological evidence – and an aim to secure payment of contributions to the upbringing of the child. During the consideration of the draft bill in the then Provincial Council in Greenland, the Council and its Committee regretted the deviation from legal unity in the area of family law and requested the establishment at an early date of a more secure basis for establishing paternity in Greenland. The Provincial Council therefore requested a revision clause in the act calling for a review of the act within some 5 years. It further appears from the draft bill, that the Provincial Council had requested a safety valve in the law reform with respect to inheritance rights in relation to the legal effect of paternity.<sup>27</sup>
44. These requests were not realized, however. In 1983 the judge of the High Court in Greenland presumed that proposals to equality in paternity cases in Greenland and Denmark would be presented to the Home Rule authorities; and in 2002 a Working Party under the Ministry of Justice characterized the situation in Greenland sentencing maintenance without paternity as ‘outdated’.<sup>28</sup> No action was taken on the legislative review. The situation of the “legally fatherless” was further raised in the Danish Parliament in four

<sup>24</sup> Law no. 197 of 16 June 1962 for Greenland on The Legal Status of Children, published in the Danish Law Gazette, *Lovtidende*, and the Gazette for Greenland, *Nalunaerutit A*, 1962, p. 150. It entered into force for North and East Greenland by Royal Decree of 6 May 1974, *Nalunaerutit A*, 1974, p. 228, on 1 July 1974.

<sup>25</sup> *Betænkning afgivet af den juridiske ekspedition til Grønland 1948-49*, Vol. 1, p. 73 [Report from the Legal Expedition to Greenland 1948-49] (Mimeo, Copenhagen).

<sup>26</sup> By way of example, a judgment of 14 Oct. 1964 from the District Court of Upernavik found a man liable to pay maintenance to a girl, H.S.J.G., born on 1 Jun 1961, but stated in regard to the child, that: “The judgment does not entail a right to inheritance nor a right – without the consent of the contributory – to take his family name.”, published in *Social Kritik*, No. 123/2010, p. 54. A similarly worded conclusion was reached by the District Court of Egedesminde in a judgment of 11 Oct. 1967 and upheld by the High Court of Greenland on 18 Mch. 1970. This case concerned, however, a Danish woman who had been impregnated in Denmark before she went to Greenland on a 2 year work contract, where she gave birth. Two Danish men, living in Denmark were implicated and appealed to the Supreme Court. Even though the child was born in Greenland, a split Supreme Court decided on 25 Apr. 1972 that the case should be considered under the Danish 1960 law and not under the 1962 law for Greenland. Both men were freed from maintenance payment, since the likelihood of their paternity was equal; *UfR* 1972 p. 565. In general, practice under the 1962 law for Greenland appears to be rather uneven.

<sup>27</sup> *Grønlands Landsråds Forhandlinger 1961*, p. 154 and 249.

<sup>28</sup> H. Brønsted, Grønland, Ch. 18, p. 951 in N. Pontoppidan et. al, eds., *Juridisk Formularbog*, 12th ed., Copenhagen, 1983; and Report on *Gennemgang af den familieretlige lovgivning og reglerne om fri process og retshjælp i Grønland*, Directorate on Civil Affairs, 2002, p. 34.



questions to the Minister of Justice in 2003 and 2010 both in respect of recognition and inheritance.<sup>29</sup> It is noted in these questions that many of the Danish men who were in Greenland in the 1950s and 1960s are now quite old, and several died, and also that many children in Greenland has been denied rights after them already.

45. In November 2010 the Prime Minister's Office – after discussions with the Self-Government of Greenland - commissioned a historic examination of the legal situation for children born out of wedlock in Greenland in the period from 1914 and until the enactment of the 1962 Act for Greenland. The Inquiry reported to the Prime Minister's Office on 1 June 2011 – and in accordance with the Committee mandate did not examine the situation nor practice under the current law.<sup>30</sup> In general terms the report confirmed that there was considerable difference between the legal position between children born out of wedlock in Greenland and Denmark in the period up until the entry into force of the 1962 Act for Greenland and that there was no basis in law to establish “fatherhood” prior to the 1962 act, with no right to inheritance and the name of the father until 1963/1974. The Committee further concluded that the perspective of the rights of the child including the rights to a father and social identity were not considered, and that the “legally fatherless” had experienced negative consequences and stigmatization. The Committee was not requested to suggest solutions. While the Committee examined Greenlandic and Danish law, human rights norms regarding the situation were not included.
46. After publication of the report the Ministry of Justice in a letter of 30 June 2011 to the Self-Government has announced plans for the drafting of a law, which would allow “legally fatherless” born prior to the 1962 law the possibility for establishing who the father is. Under the inheritance law for Greenland, an established fatherhood would provide for inheritance rights after the father and his kin, but the new rules should not reopen finalized estates. The new rules were expected to be drafted before the end of 2011.<sup>31</sup>
47. In the opinion of the ICC the present situation maintains in Greenland a discriminatory distinction between children born in and out of wedlock under two laws for Denmark of 1937 (the Legitimacy Act and the Illegitimacy Act), which were abolished for Denmark in 1960. The announced new rules will not resolve the situation of the legally fatherless under the 1962 act and many would appear to be left without a remedy. General human rights norms should therefore be incorporated. Under article 5 of the ICERD Convention State Parties undertake to eliminate racial discrimination and to guarantee the equal treatment of everyone without distinction based on race or ethnic origin, and compare the general prohibition of discrimination in ICCPR art. 2 and 26, read in conjunction with Art. 17. Thus, the question of “legally fatherless” raises questions in relation to ICERD Art. 5 (d) on the right to private life and social identity and Art 5 (d)(vi) on the right to inherit.
48. The situation of the legally fatherless must therefore be seen in the context of the progressive equalization of the legal status of children born outside and within marriage in Danish law as well as in European law. The European Court of Human Rights has noted that:

“The Court considers, in particular, that, having regard to the evolving European context in this sphere, which it cannot neglect in its necessarily dynamic interpretation of the Convention (ref. omitted), the aspect of protecting the “legitimate expectation” of the deceased and their families must be subordinate to the imperative of equal treatment between children born outside and within marriage. It reiterates in this connection that as early as 1979 it held in its *Marckx* judgment [citation omitted here] that the distinction made for succession purposes between “illegitimate” and “legitimate” children raised an issue under Articles 14 and 8 taken together.” (*Brauer v. Germany*, Judgment 28 May 2009 (Appl. no. 3545/04) § 43; for friendly settlement and just satisfaction see, Judgment of 28 January 2010)
49. While the *Brauer case* concerned inheritance rights, disproportional limitations on the possibility to initiate paternity proceedings and the use of modern DNA technique in establishing paternal affiliation was considered in two recent cases against Finland (Judgments of 6 July 2010 in cases of *Gronmark* (Appl. no.

<sup>29</sup> Questions 4183 and 4184 (Ft 2002-03)(Kuupik Kleist) and 38 and 39 (Ft. 2009-10)( Sofia Rossen) and replies by Ministers of Justice of 14 August 2003 (Lene Espersen) and 2 June 2008 (Lars Barfoed).

<sup>30</sup> ”*Historisk udredning om retsstillingen for børn født uden for ægteskab i Grønland 1914-1974*”, afgivet til Statsministeriet d. 1 juni 2011, 76 pp. + annexes, xxi pp.

<sup>31</sup> Jutitsminister Lars Barfoed, letter to Kuupik Kleist, chairman for Naalakersuisut, Greenland, 30 June 2011 (case file no. 2011-7702-0036, 3 pp.



17038/04) and *Backlund* (Appl. no. 36498/05). These cases concerned the ability to establish the biological truth, establishing the legal relationship to the claimed father, and the Court considered that the “important aspect of one’s personal identity, such as the identity of one’s parents”, “falls within the scope of the concept of ‘private life’ – i.e. the first leg of Art. 8 of the ECHR, and that positive duties applied to secure the respect for private life of individuals even in relations between themselves. (*Gronmark Case*, §§ 39-41).<sup>32</sup>

50. The chairperson of the *Kattuffik Ataata* has stated that no one knows how many now living persons are in issue – they have all been struggling with the consequences from this differential treatment throughout their lives. We carry the sorrow and shame of our mothers – anger and pains on account of their situation. We carry year long problems of identity, self-esteem and self-abasement; often mobbing and physical and psychological punishment has been a part of everyday life to a degree that feeds destructive actions. As noted above, the Report to the Prime Minister’s Office sustained these points.
51. Under the Convention of the Rights of the Child Article 8 protects “the right of the child to preserve his or her identity, including ...name and family relations” and in paragraph 2 of that article, State Parties are obliged to provide assistance and protection “where a child is illegally deprived of some or all of the elements of his or her identity” “with a view to re-establishing speedily his or her identity.”
52. In sum, ICC suggest, that the Government has been amiss in securing assistance and protection for the “legally fatherless” children in Greenland. In view of the vital interest of the child in obtaining the necessary information to uncover the truth about an important aspect of their personal identity, the Danish authorities have failed to follow-up on the request of the Provincial Council in 1961 to end the negative differentiation without unnecessary delay. No appropriate and effective remedies have been made available to the “fatherless children” neither in respect of their personal identity nor in respect of inheritance rights. The negative differentiation is based on the grounds of birth and social origin, and due at least in part to the demographic factors at play in Greenland indirectly to their belonging to a mixed ethnic group of off-spring from Greenlanders and Danes and/or foreigners.
  - **Does the Government consider that discrimination exists in relation to legally fatherless in Greenland? Does the Government recognize this as an interference in the right to private life of these children?**
  - **What measures will the government take to address the problem of the “legally fatherless” and to provide remedies for children born out of wedlock in respect of personal identity, name and inheritance?**
  - **Considering the limits in the time frame for the mandate of the Committee examining the “legally fatherless” what is the reasons for not examining the situation of “legally fatherless” under the 1962 Act for Greenland on the status of children? Will the Government take measures to ensure remedies – including access to the use of DNA evidence in order to establish paternity?**

Nuuk, 5 August 2011,



Carl Christian Olsen

PRESIDENT

INUIT CIRCUMPOLAR COUNCIL, GREENLAND

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<sup>32</sup> In two subsequent judgments on just satisfaction of 12 July 2011 the Court awarded costs, but refused award of economic damages since fatherhood had not yet been decided for the applicants at the domestic level. An award for non-economic damages had been decided in the judgments of 6 July 2006.



## Overview of concluding observations of the

- 1) Committee on the Elimination of all forms of Racial Discrimination (CERD)
- 2) the Human Rights Committee (CCPR) and
- 3) the Committee on the Rights of the Child

### Relating to the Thule Case and indigenous rights in Greenland.

**1996 CERD/C/304/Add.2, 28 March 1996, adopted on 11 March 1996:**

13. Concern is expressed over the delay in compensating members of the indigenous population in Greenland who were relocated to permit the establishment of an Air Force base in the early 1950s.

20. The Committee wishes to receive information on the implementation of the Convention in Greenland, particularly in relation to the rights of indigenous people and their compensation for relocation.

**1996 CCPR/C/79/Add.68, 18 November 1996, adopted on 6 November 1996:**

8. The Committee takes note of the declaration by the delegation to the effect that the text of the Covenant would be shortly translated into Greenlandic.

15. The Committee is concerned at the long delay in resolving the dispute arising from the claim for compensation by the members of the indigenous minority of Greenland in respect of their displacement from their lands and loss of traditional hunting rights on account of the construction of the military base at Thule. It is also concerned that the people of Greenland are not able to enjoy fully certain Covenant rights and freedoms, including those provided for in article 12.

**1997 CERD/C/304/Add.35, 15 October 1997, adopted on 13 August 1997:**

22. The Committee reiterates its previous recommendation regarding information on compensation for the population of Thule, Greenland, who have been displaced from their traditional hunting grounds and places of settlement. The Committee recommends that the State party inform it of the latest developments concerning the agreement concerning assistance between the Danish authorities and the Greenland Home Rule Government.

**2000 CCPR/CO/70/DNK, 15 November 2000, adopted on 30 October 2000:**

10. The Committee regrets the delay in resolving the claim for compensation by the members of the Thule community in Greenland in respect of their displacement from their lands and the loss of traditional hunting rights on account of the construction of the military base at Thule



(CCPR/C/79/Add.68, para.15). The Committee is concerned over reports that the alleged victims in the Thule case were induced to reduce the amount of their claim in order to meet the limitations set in legal-aid requirements; the Committee wishes to be informed on this matter.

**The Committee notes the Danish delegation's undertaking to provide information on the outcome of the Thule case (arts. 2 and 27).**

**2002 CERD/C/60/CO/5, 21 May 2002, adopted on 21 March 2002:**

18. The Committee reiterates its previous concern regarding the delay in resolving the claims of the Inughuit with respect to the Thule Air Base. The Committee notes with serious concern claims of denials by Denmark of the identity and continued existence of the Inughuit as a separate ethnic or tribal entity, and recalls its general recommendation XXIII on indigenous peoples general recommendation VIII on the application of article 1 (self-identification) and general recommendation XXIV concerning article 1 (international standard). The Committee recommends that the State party include information in its next periodic report concerning these issues.

**2006 CERD/C/DEN/CO/17, 19 October 2006, adopted on 18 August 2006:**

20. The Committee notes with concern that the Supreme Court decision of 28 November 2003 relating to the case of the Thule Tribe of Greenland, did not consider the Thule Tribe as a distinct indigenous people despite the tribe's perception to the contrary, on the ground that today they share the same conditions as the rest of the Greenlandic people.

**The Committee, drawing the attention of the State party to its general recommendations 8 (1990) on identification with a particular racial or ethnic group and 23 (1997) on indigenous peoples, recommends that the State party pay particular attention to the way in which indigenous peoples identify themselves.**

**2008 CCPR/C/DNK/CO/5, 16 December 2008, adopted on 28 October 2008:**

13. The Committee notes with concern that, in its decision of 28 November 2003, the Supreme Court did not recognize the Thule Tribe of Greenland as a separate group capable of vindicating its traditional rights, despite the tribe's own perception to the contrary (arts. 2, 26 and 27).

**The State party should pay special attention to self-identification of the individuals concerned in the determination of their status as persons belonging to minorities or indigenous peoples.**

**2010 CERD/C/DNK/CO/18-19, 20 September 2010, adopted on 26 August 2010**

17. The Committee reiterates its concern with regard to the decision of the Supreme Court handed down on 28 November 2003 relating to the Thule Tribe of Greenland. The decision failed to follow established international norms in the conceptualization of indigenous peoples. As a result, the Supreme Court rendered a decision which found that the Thule Tribe are not a distinct indigenous people notwithstanding their own perception as such. The Committee further notes the case of Greenlandic people considered to be "legally fatherless" because they were born out of wedlock to Danish



men who were in Greenland in the 1950s and 1960s. This status has an impact on matters of family law, land ownership and inheritance (art. 5 (d) (vi))

**The Committee reiterates that, pursuant to its general recommendation No. 8 (1990) and other United Nations instruments, the State party is urged to pay particular attention to self-identification as a critical factor in the identification and conceptualization of a people as indigenous. The Committee therefore recommends that, notwithstanding the decision of the Supreme Court, the State party adopt measures to ensure that self-identification is the primary means for determining whether a people are indigenous or not. In this regard, the Committee recommends that the State party adopt concrete measures to ensure that the status of the Thule Tribe reflects established international norms on indigenous peoples' identification.**

**The Committee urges the State party to take measures to address the problems faced by the legally fatherless who, by virtue of having been born out of wedlock, are negatively affected by various laws including the laws governing family life, land ownership and inheritance.**

**2011 CRC/C/DNK/CO/4, 7 April 2011, Adopted 4 February 2011.**

#### **Children belonging to minority or indigenous groups**

67. The Committee regrets that the State party has yet to fully implement the recommendations of the Human Rights Committee in 2008 (CCPR/C/DNK/CO/5, para. 13) and the Committee on the Elimination of Racial Discrimination in 2010 (CERD/C/DNK/CO/18-19, para. 17) to uphold the identity of the Inughuit as a distinct indigenous community capable of vindicating traditional rights in accordance with international norms.

68. The Committee reiterates the recommendations of the Human Rights Committee in 2008 (CCPR/C/DNK/CO/5, para. 13) and the Committee on the Elimination of Racial Discrimination in 2010 (CERD/C/DNK/CO/18-19, para. 17) and urges the State party to, in accordance with the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention, take all measures necessary for ensuring that Inughuit children are able to exercise their right to grow up in a safe cultural environment, maintain and develop their identity and use their own language without being disqualified and discriminated against.



