Submission to the

Expert Inquiry on Human Rights Aspects of the Contraception Cases

Professor Veronika Fikfak,[*]
Dr Ula Aleksandra Kos,[**]
and
Edward Pérez[***]

London and Copenhagen, 13 May 2025

1. ---

[*] Professor of Human Rights and International Law, University College London; Director of UCL Institute for Human Rights. Email: v.fikfak@ucl.ac.uk. We are grateful to Urban Piskar Slak and Dimi Georgieva for excellent research assistance.
[**] Postdoctoral Researcher at the University of Copenhagen, Faculty of Law. As part of her doctoral project, she has extensively researched the European Court of Human Rights and focused in particular on the scope of its human rights protection, the question of remedies, and compliance with its rulings. Email: ula.kos@jur.ku.dk.
[***] PhD Candidate at University College London Faculty of Laws. Former attorney at the Inter-American Court of Human Rights. Former Senior Legal Adviser at the Center for Reproductive Rights. Email: edward.perez.23@ucl.ac.uk.

Table of Contents

Executive Summary

1. In this submission, we analyse the potential human rights violations of the Contraception policy implemented in Greenland between 1960 and 1991, with some consideration given also to the practices adopted after this date. Our analysis is based on the case law of the European Court of Human Rights (ECtHR/the Court). The European Convention of Human Rights (ECHR/Convention), of which Denmark is a member, applies across the whole of Denmark and Greenland.
2. Since no official account has yet been undertaken to explain what happened or analyse the scope and motives of the policy or indeed its immediate and long-term impact, this submission relies on publicly available information, including official reports from UN bodies, NGOs and other institutions, as well as reporting from reputable news agencies. In Part 1, we provide a brief account of the contraception practices and some personal testimonies as summarised from newspaper reporting. We wish to underline, however, that in a litigation context, the standard of proof will be much higher than is the case for journalistic accounts. In that regard, we hold off from drawing categorical conclusions as to whether violations of human rights in specific individual cases did indeed occur. Instead, we speak more generally about the different articles of the European Convention that are engaged as well as the relevant case law. We believe there are several ECtHR precedents that are directly relevant to the Greenlandic cases.
3. The analysis underlines that the IUDs were inserted into women from age 12 onwards. As such, most of the women were both inherently vulnerable because of their age, gender, and because they belonged to the Indigenous community, but also because of situational vulnerability, whereby health care was under exclusive control of Denmark at the time of these events and there were no alternatives but to rely on the existing healthcare system. In this context, in Part 2, we analyse the events from the perspective of three articles of the Convention: Article 3 (ill-treatment), Article 8 (family and personal life) and Article 14 in conjunction with Articles 3 and/or Article 8 of the Convention (discrimination in the enjoyment of rights protected under Articles 3 and 8).
4. Under Article 3, states must refrain from torture and inflicting ill-treatment on an individual (referred to as a negative obligation) and prevent such treatment of individuals within their jurisdiction (positive obligation). We note that according to the Court's case law, coercive or involuntary contraception has generally been considered as inhuman and degrading treatment, especially when children and young women were involved. In this regard, the Court would investigate whether there was a medical emergency, which would constitute an exception to the prior informed consent requirement. As regards consent, the Court would investigate whether the consent was acquired prior to the procedure and whether such consent was free and informed. Specifically, the Court would investigate whether children and minors can ever give consent in the absence of their parents. Furthermore, the existence or lack of a legal framework requiring consent to be sought would be probed for the entire period under question. Finally, the Court would investigate the different types of harm that Greenlandic women suffered as a result of these procedures. These would include immediate bodily and psychological harm as well as lasting bodily and psychological harm. Ultimately, Article 3 requires that that states carry out effective investigations into arguable claims of ill-treatment. Given that such an investigation has already been set up, we map out what the characteristics of such an investigation have to be for it to qualify as an effective investigation under the ECtHR case law.
5. As regards Article 8, we analyse the involuntary practices of contraception as interference with the right to private and family life. The Convention comprises a negative obligation of states

to refrain from arbitrary interference and a positive obligation to secure effective respect for an individual's private and family life. With respect to administration of medical treatment, this provision specifically safeguards the individual's involvement, autonomy and choice in medical care, ensures information about and consent to treatment and even protects the decision to have children or not. Although Article 8 protects several aspects of women's private and family life, including, in particular, their reproductive and sexual autonomy, it allows for certain limitations of these rights. In line with this, states must pursue a legitimate aim and maintain a fair balance between the general interest and the interests of the persons concerned. In its analysis, the Court would analyse whether the contraception practices had a legal basis and were aimed at addressing a pressing social need, as well as whether they pursued a legitimate aim. In addition, the heart of the assessment would likely centre on whether the extent of the practice and manner in which it was performed was disproportionate. This relates mostly to whether alternative means of contraception were available.

6. As regards Article 14, we find that the interferences at such a large scale and over such a long period of time could constitute systemic racial discrimination against the Indigenous population of Greenland and against individual Greenlandic women and girls. The conclusions depend on whether a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case. The Court would likely analyse whether these events were isolated incidents or part of a broader practice, possibly a result of general stereotypes or history of discrimination against a specific vulnerable group. The Court would examine both whether there was a difference in the treatment of individuals in analogous situations without objective and reasonable justification as well as the state's positive obligation to prevent the perpetuation of past discriminatory practices.

7. In Part 3, we introduce relevant law and practice from other international and human rights courts. Denmark is a member of the International Covenant on Civil and Political Rights as well as a member of the CEDAW Convention. Recently both the UN Human Rights Committee and the CEDAW Committee rendered decisions in which they adopt a notion of collective harm in cases concerning indigenous communities and speak about the need for community remedies to redress such harm. These concepts may be relevant to the Contraception cases and may serve as inspiration for the future agreement on remedies. For the sake of completeness and to contextualise the notion of communitarian harm caused to the Indigenous communities, we introduce these precedents together with the relevant jurisprudence of the Inter-American human rights system.

8. In Part 4, we outline the range of remedies that those shown to have suffered as a result of the involuntary contraception policy would be entitled to. Following the Court's case law and extensive research, we argue that individual compensation amounts should move in the range of around 50-60,000 Euros per person, plus any additional payments in case Article 14 is found to be engaged. We note that in individualizing the damage amounts, the ECtHR would consider the *age* of the victim at the time of the insertion of the IUD (minors would be entitled to higher awards) or other vulnerability; *type* of intervention (insertion or surgery); whether *consent* had been sought (or parents had been advised) or whether the victim has been deceived, tricked or otherwise involuntarily persuaded into the intervention (eg whether the intervention took place in school or during school hours), and the long-term damage caused to the individual (eg sterilization, ability to have children, other health issues). The Court would also consider any attempts made by the state to redress the harm caused – whether through apology, damage awards, or provision of other support. In addition to this, we underline the need to monetarily redress communitarian harm stemming from individual cases of human rights violations or indeed a policy impacting the Indigenous community through 'community development funds'.

9. As regards non-monetary remedies, we note that remedies adopted should redress the victims' harm along four different axes: justice, restitution and rehabilitation, satisfaction, and compensation. Investigation, prosecution and sanction are intended to accord victims *justice*. Remedies that aim to provide *restitution* and *rehabilitation* are intended to ensure victims are able to recover from the violations suffered. In contraception cases, these require the provisions and access to physical and mental healthcare for the victims. This may require the creation or strengthening of the conditions of health centres, including teaching and training of personnel. Remedies pursuing *satisfaction* to the victims to redress their harm can extend from acknowledgements and apologies to assurances of non-repetition. These include comprehensive reparations frameworks to address all victims and often require a new legal framework to advance reparations in all similar cases. In this context, we map out a range of remedies European states have adopted to redress similar type of human rights violations. We do not limit ourselves to the individual cases of women affected by the involuntary contraception policy but also consider the harm caused to the Indigenous community as a whole. In this context, we map out a range of potential community remedies.

10. In this submission, we use the case law of the European Court of Human Rights, Inter-American Court of Human Rights and other bodies as a guide in determining the range of appropriate remedies for victims of the involuntary contraception policy. We use this case law to map out what individual applicants could expect at the international level. It is important to underline, however, that compensation at European level is merely symbolic and that non-monetary remedies are rarely specified, because the Court acts as a supranational organ, only to provide redress when states have failed to do this fully or at all. Respondent states are therefore expected to accurately redress the harm caused based on their own domestic law and practice. This means not only that compensation awards in domestic law are likely to be higher and indeed much higher than those awarded by the ECtHR, but also that the type and scope of non-monetary remedies is left to the discretion (and creativity) of the respondent state. Together with a variety of stakeholders, the respondent state should therefore consider the full range of remedies available to redress the harm caused both to individuals and the community as a whole.

1. Factual context

11. This section outlines the factual basis on which this submission is based. It seeks to outline the alleged instances of contraceptive practices in Greenland since 1960. This short description of facts relies on publicly available information from official sources, such as domestic and international reports, as well as reports from reputable journalistic sources. Drawing from news agencies, we also provide some first-person accounts. Our aim in citing these is to understand the variety of harm individuals and communities may have suffered. The legal analysis that follows this factual outline is based exclusively on this publicly available information. The Inquiry will of course have access to more detailed personal accounts and other public information that was not at our disposal. They will thus be able to apply the law to individual cases and specific facts and they will be able to propose the most appropriate remedies available.

1.1. "Spiral" (Coil) Campaign

12. According to the reporting in the BBC, between 1966 and 1970 more than 4,500 Greenlandic women were fitted with coils to limit birth rates among the Indigenous population.[1] Other sources report that the practices continued in the mid-1970s, but after 1970 IUD insertions stopped being registered and so the total number of insertions is unknown.[2] The Danish Institute for Human Rights reported that in late 2022, a number of women came forward stating that they had been subjected to involuntary IUD insertions from 1990s to the present day.[3] BBC reported that one woman had been inserted with a contraceptive in 2014 without her consent.[4] The UN Special Rapporteur in his report noted that cases of involuntary IUD implants had occurred as recently as 2019.[5]

13. It is estimated that in this period around half of the 9,000 women and girls of childbearing age were fitted with an IUD,[6] though the government of Greenland estimates that, by the end of 1969, 35% of women in the territory who could potentially have borne children had been fitted with an IUD.[7] According to the UN Special Rapporteur, women and girls, some as young as 12 years old, had IUD devices inserted without their consent, or that of their parents.[8] Girls were sent to local hospitals on routine medical examinations, sometimes conducted in school, and had IUDs inserted.[9] The type of devices that were fitted were called Lippes Loop (Spiral).

1. ---

[1] Christy Cooney, Greenland women seek compensation over involuntary birth control, BBC, 3 October 2023: https://www.bbc.com/news/world-europe-66990670. Danish Institute for Human Rights argues that the program lasted between 1960 and 1975.

[2] Julie Gjesing (Heroica), My Uterus was the Government's Possession: Danish Neo-Colonial Control of Greenlandic People's Reproductive Rights, https://www.heroica.co/commentary/my-uterus-was-the-governments-possession-danish-neo-colonial-control-of-greenlandic-peoples-reproductive-rights.

[3] Marya Akhtar, Nadja Filskov, Kathrine Storgaard Carlsen and Maria Ventegodt, HUMAN RIGHTS IN FOCUS – REPORT TO INATSISARTUT 2022-23, 2023, https://www.humanrights.dk/files/media/document/HUMAN%20RIGHTS%20IN%20FOCUS%20–%20REPORT%20TO%20INATSISARTUT%202022-23_accessible.pdf.

[4] Cooney, supra note 1.

[5] José Francisco Calí Tzay, Report of the Special Rapporteur on the rights of Indigenous Peoples, 3 August 2023, https://un.arizona.edu/search-database/report-special-rapporteur-rights-indigenous-peoples-his-visit-denmark-and-greenland.

[6] Elaine Jung, BBC, 'Doctors fitted a contraceptive coil without my consent', 8 December 2022, https://www.bbc.com/news/world-europe-63863088.

[7] Cooney, supra note 1.

[8] UN Rapporteur Report, supra note 5, para 26.

[9] Ibid.

These are designed for adult women who had already gone through childbirth, but in Greenland, they appear to have been inserted in younger girls.[10] According to the women, the sizes of IUD devices were too large for them at a time, which led to excruciating pain, infections and even infertility if not removed in certain period.[11] In addition, several women report severe medical problems, including bleeding, infection, persistent pain and infertility.[12] In some cases, the uterus had to be removed due to damage by IUD.[13]

14. According to the UN Rapportuer, Inuit women's average birth rate dropped from 7 to 2.3 children, as a result of this policy. As he noted, 'in some villages in Greenland, the birth rate dropped to zero.'[14]

15. In response to these facts, Denmark adopted several measures. In 2022 Greenland and Denmark agreed on *Terms of reference* and to launch an impartial investigation into the IUD case during the 1960-1991 period. By 2024, the investigation had received a total of 352 reports from women and 7 reports from professionals for a period of 1962-1991.[15] Findings of the investigation are expected in September 2025.

16. In March 2023, the Danish Institute for HR and HR Council of Greenland wrote a joint letter to Minister of Health Sophie Løhde expressing the need for a compensation to the victims and that it should not be up to an individual woman to seek recognition and compensation. On 2 October 2023, 67 women sent a letter to Danish government demanding 300,000 DKK each in compensation.[16] A group of 143 women took legal action demanding close to 43 million Danish kroner. According to reporting from Bloomberg, each of the women is seeking 300,000 DKK.[17]

1.2. Personal accounts

17. Naja Lyberth was the first woman to ever speak publicly about what happened. As the UN reports, she first came forward on Facebook and has set up a Facebook group where other women with similar stories can share what happened and the aftermath of the insertions of IUDs.[18] According to the BBC, she had the IUD forcibly inserted at the age of 13, according to her the permission from her parents was not sought.[19] "It felt like I was stabbed with knives",

1. ---

[10] Jung, supra note 6.
[11] Jung, supra note 6.
[12] UN Rapporteur Report, supra note 5, para 27.
[13] Ibid.
[14] Ibid.
[15] Tenna Jensen, Ingelise Olesen, Janne Rothmar Herrmann, Mette Fransiska M. Seidelin, Kirsten Nystrup, Maja Cecilie Koch Christiansen, Bonnie Jensen, Gitte Adler Reimer, Ellen Bang Bourup, 'Mid-term report: Impartial investigation of contraceptive practices in Greenland and on continuing education schools in Denmark with Greenlandic students in the years from 1960 to 1991', 28 June 2024, https://www.ft.dk/samling/20231/almdel/SUU/bilag/355/2892996/index.htm.
[16] UN, Speaking up for women in Greenland spiral-case: "We were frozen in our bodies for decades", 8 March 2024, https://unric.org/en/speaking-up-for-women-in-greenland-spiral-case-we-were-frozen-in-our-bodies-for-decades/.
[17] Sanne Wass, Greenland Women Sue Denmark Over Forced Teenage Birth Control, 6 March 2024, https://www.bloomberg.com/news/articles/2024-03-06/greenland-coil-campaign-women-seek-compensation-from-denmark?accessToken=eyJhbGciOiJIUzI1NiIsInR5cCI6IkpXVCJ9.eyJzb3VyY2UiOiJTdWJzY3JpYmVyR2lmdGVkQXJ0aWNsZSIsImlhdCI6MTc0MTgxNTYxMywiZXhwIjoxNzQyNDIwNDEzLCJhcnRpY2xlSWQiOiJTOVdXUDJEV1gyUFMwMCIsImJjb25uZWN0SWQiOiIxOENCNzY1ODkwMTQ0MjA0ODA5RjNFRUI0NTAzQjBOSJ9.sxWQtoQqzd2Ceu8OzW8AwPSKnvyCNIJW0t24LZz2_Mc.
[18] UN, supra note 16.
[19] Jung, supra note 6; Adrienne Murray, Inuit Greenlanders demand answers over Danish birth control scandal, BBC, 30 September 2022, https://www.bbc.com/news/world-europe-63049387.

Lyberth said. After years of pain, the IUD was removed at the age of 17. After years of trying to conceive, Lyberth had one child at the age of 35.[20] She revealed to the UN that at the time "it was forbidden to fight back and speak up" and that (Danish) doctors were "an authority", which you could not flee or fight against.[21]

18. Holga Platou, school friend of Naja Lyberth, had IUD inserted without consent when she was 14.[22] According to Bloomberg, she went to school in Maniitsoq in Western Greenland, where she was sent to doctor during school hours. The pain lasted many years after the visit. She also cannot remember at exactly what age the coil was finally discovered and removed. Platou was never able to get pregnant due to complications from the IUD. According to the BBC, she had her uterus removed in 2018 on the advice of her doctor, due to various complications as a result of Lippes Loop.[23]

19. Hedvig Frederiksen was 14 years old when she went to a hospital in Paamiut in Southwestern Greenland. According to Bloomberg, she was sent there by her Danish headmistress. According to her, her classmates' names were called, and one by one they returned from the examination room crying and clutching their bellies.[24] Similarly, Arnannguaq Poulsen had a coil fitted when she was 16 when she was in Denmark. According to the BBC, she was studying at a boarding school for Greenlandic children on the island of Bornholm in 1974. According to her, they did not ask her before the procedure, and she did not know what it was all about. She is certain her parents were not consulted. She described suffering pains that followed the insertion. Upon return home at 17 years old, she had her IUD device removed.[25] Another individual speaking to the BBC, Katrine Jakobsen, from Nuuk, stated she had IUD device fitted when she was 12. She remembers being taken to a doctor by a relative's girlfriend in 1974. She had IUD device for almost two decades and a string of complications. In her late 30s, her uterus was removed and she never had any children.[26]

20. The Guardian interviewed several women. Anne Lise Albrectsen was 15 years old at a time of implantation. According to her, before insertion she said she needed to talk to her parents about procedure, but the medical staff said that they would do it for her.[27] Bula Larsen revealed that she was 14 when she and her friends were told to go to hospital, where she was fitted with IUD device. She recalls "cold metal stirrups" and lack of consent to the procedure.[28] Later when she tried to get pregnant, they found out that her fallopian tubes were closed because of the IUD device, which caused severe bleeding and left her sterile.[29]

21. The BBC also reported other cases. In case of Sussane Kielsen, she was five months pregnant with her second child. The doctor told her, he wanted to abort the nasciturus because of a previous gynaecological complication, although this had been already addressed before, and

1. ---

[20] Ibid.
[21] UN, supra note 16.
[22] Wass, supra note 17.
[23] Jung, supra note 6.
[24] Wass, supra note 17.
[25] Murray, supra note 19.
[26] Ibid.
[27] Juliette Pavy: Sony World Photographer of the Year 2024, The Guardian, 19 April 2024, https://www.theguardian.com/artanddesign/2024/apr/19/juliette-pavy-sony-world-photographer-of-the-year-2024.
[28] Helen Pidd, The chilling policy to cut Greenland's high birth rate, The Guardian with guests: Celine Klint and Bula Larsen, 10 April 2024, https://www.theguardian.com/news/audio/2024/apr/19/the-chilling-policy-to-cut-greenlands-high-birth-rate-podcast.
[29] Miranda Bryant, 'I was only a child': Greenlandic women tell of trauma of forced contraception, The Guardian, 24 March 2024, https://www.theguardian.com/world/2024/mar/29/i-was-only-a-child-greenlandic-women-tell-of-trauma-of-forced-contraception.

there was nothing wrong. She went ahead and induced an abortion, which required 31 injections, but was still unsuccessful. At seven months she went into labour and unfortunately her baby died within an hour of being born. According to her, within hours there were four attempts to insert an IUD device before she finally told the doctor to stop.[30]

22. BBC writes about other anonymised women who recently discovered they had IUD device already fitted. One of them discovered device in 2019, when a doctor found it during a medical examination. She thinks the IUD could have been fitted during uterine surgery in 2018, as she suffered intense pain for a year after the surgery. According to her, she was continuously dismissed by her doctor until that check-up. IUD pierced her uterus, so she decided to have it removed, but operation was not successful.[31]

1. ---

[30] Jung, supra note 6.
[31] Ibid.

2. Potential individual violations under the European Convention on Human Rights

2.1. Applicability of the Convention to the facts

23. The alleged events of nonconsensual practice of contraception in Greenland occurred since 1960. In examining which human rights have been violated in this context, this opinion relies primarily on the case law of the ECtHR and as needed, case law and practice of other human rights courts and quasi-judicial bodies.

24. Denmark ratified the Convention immediately after it came into force in 1953,[32] which makes the ECHR applicable to all events that occurred after that year. In turn, all alleged instances of involuntary contraception that took place after 1960 fall within its scope of protection and thus the Convention and its case law are applicable to the facts at hand.

25. As concerns the application of the Convention and the ECtHR's case law to historical events, the ECtHR held in *O'Keeffe v Ireland* that any state responsibility must be assessed from the perspective of standards prevailing at the time the relevant facts occurred.[33] In this regard, the Court maintained that the function of the case law subsequent to the facts is *clarification* rather than expanding obligations existing at the relevant time.[34] Accordingly, any relevant case law – even when issued after the facts at issue – does not raise questions of retroactivity and is thus applicable.[35]

26. In our opinion, we therefore rely on the totality of the ECtHR jurisprudence as relevant to the facts. In this regard, the following sections examine caselaw addressing involuntary (i.e. non-consensual) medical interventions, specifically concerning the reproductive health of particularly vulnerable victims. Other relevant case law includes cases of historical violations, violations against children and minors, specifically in public institutions and under state care, violations against members of (ethnic) minorities and other persons who are inherently considered vulnerable either because of their status, or because they are in (analogous) situations of exclusive state control and/or authority, such as, for instance, in detention, police custody, in psychiatric confinement. In the relevant case law, the Court considered violations of Article 3 (torture and ill-treatment), Article 8 (family and personal life) and Article 14 in conjunction with Articles 3 and/or Article 8 of the Convention (discrimination in the enjoyment of rights protected under Articles 3 and 8). This is also the scope of violations that will be examined in this document.

2.2. Context: Vulnerability of Greenlandic women and girls and its implications

27. Before turning to the specific articles of the Convention, we wish to underline the specific context in which the events and practices took place. As detailed below, the reported practices were suffered by victims that were inherently or situationally vulnerable. This context crucially shapes the manner in which the ECtHR would approach the assessment of the respondent government's interferences, the margin of appreciation it would accord to the state and the way it would interpret its duty towards the victims as well as assess any remedies these victims were entitled to. It is thus important to keep this context in mind throughout the analysis.

1. ---

[32] Denmark ratified the Convention on 3 September 1956.
[33] O'Keeffe v Ireland, App no. 35810/09, (ECtHR, 28 January 2014), at para.143.
[34] O'Keeffe at para.147.
[35] Ibid.

28. From the perspective of the Court, all the victims of the alleged involuntary practices of contraception in Greenland are considered vulnerable. More specifically, the Court has been attributing the characteristic of vulnerability to individuals or groups that have been 'historically subject to prejudice with lasting consequences' and are, as such, presumed to be more susceptible to harm, exploitation or adverse outcomes compared to other individuals who are not considered vulnerable.[36] This is due to 'a combination of factors, circumstances, or characteristics that diminish their capacity to safeguard or advocate for themselves'.[37] Generally, vulnerability pertains to either an individuals' inherent status/identity, for example due to their age or their ethnicity, or to an individual's situation, arising from a specific social context, for example from the contemporary political context or because their ethnic group has faced a history of segregation.[38] Importantly, the Court has so far granted special protection only to individuals as members of vulnerable groups rather than vulnerable groups collectively,[39] although the collective aspects have been taken as an important consideration, even evidence, in determining the scope of individual violations or their effects.

29. In the case of the alleged instances of involuntary practices of contraception in Greenland, the vulnerability of Greenlandic women (who are, for the purposes of this document, considered adult) and girls (considered minors) pertains to either their status as children/adolescents and (Indigenous) women and/or falls under the situational vulnerability, due to Denmark's control/authority over Greenland's healthcare system. This includes both the period before and after the transfer of Greenland's healthcare system from full Danish control (until 1991) to Greenlandic self-government (after 1992), since – for jurisdictional purposes of Article 1 ECHR – Denmark remains responsible for securing human rights in its territory after that year.

30. As far as the victims' inherent vulnerability is concerned, the Court has considered children as the 'most vulnerable members of society'[40] as well as adolescent victims up to nineteen[41] years of age, noting in particular that their young age inherently makes them dependent on adults. In the case at hand, several Greenlandic girls fall within this category since they were well below nineteen at the time events occurred, with some as young as twelve.[42] The Court has furthermore regarded as an important circumstance of inherent vulnerability victims' gender and has accorded special protection to individual vulnerable women,[43] including when such women belonged to historically disadvantaged ethnic minorities, most notably in the ECtHR

1. ---

[36] Kiyutin v Russia, App no. 2700/10, (ECtHR, 10 March 2011) at para.64; Alajos Kiss v Hungary, App no. 38832/06, (ECtHR, 20 May 2010) at para.42. See more generally: I. Boutier, 'Understanding vulnerability through the eyes of the European Court of Human Rights' jurisprudence: challenges and responses' (2024) *Peace Human Rights Governance*, at 6.

[37] Boutier supra note 36 at 9.

[38] Ibid, at 15-7. Identifying young age as vulnerability in Stubbings and Others v the United Kingdom, App no. 22083/93, (ECtHR, 22 October 1996) or noting the political context as vulnerability in Akdivar and Others v Turkey, App no. 21893/93, (ECtHR, 16 September 1996).

[39] The ECtHR has in this respect identified a number of vulnerable groups, such as those suffering different treatment on the account of their sex (Abdulaziz, Cabales and Balkandali v the United Kingdom, App nos. 9214/80, 9473/81 and 9474/81, (ECtHR, 28 May 1985)), sexual orientation (Schalk and Kopf v Austria, App no. 30141/04, (ECtHR, 24 June 2010)), race or ethnicity (see D.H. and Others v the Czech Republic, App no. 57325/00, (ECtHR, 13 November 2007)), etc.

[40] Yazgül Yılmaz v Türkiye, App no. 36369/06, (ECtHR, 1 February 2011) at para.42.

[41] E.g. in P. and S. v Poland, App no. 57375/08, (ECtHR, 30 October 2012) and V.I. v the Republic of Moldova, App no. 38963/18, (ECtHR, 26 March 2024) the victims were 15, in Yazgül Yılmaz v Türkiye the victim was 16, in Salmanoğlu and Polattaş v Turkey, App no. 15828/03, (ECtHR, 17 March 2009) the victims were 16 and 19.

[42] See para.13.

[43] B.S. v Spain, App no. 47159/08, (ECtHR, 24 July 2012).

context, the Roma people.[44] So far, the ECtHR has not yet deliberated on victims' status as Indigenous women specifically, although their status seems analogous to that of women from other historically disadvantaged (ethnic) minorities.[45]

31. With respect to victims' situational vulnerability, the ECtHR has accorded special consideration and protection of the health and well-being of individuals, placed under states' exclusive control or authority, for example, in detention or police custody, psychiatric confinement, or serving in the military. The requirement of special protection has also extended to states' providing important public services such as public healthcare or education, especially when these have no realistic and acceptable alternatives or are paired with victims' inherent vulnerability.[46] The situational vulnerability of Greenlandic victims stems from Greenland's former status as a Danish colony (until 1953) and its subsequent status as an autonomous part of its territory. Until 1991, this entailed full control over Greenland's healthcare.[47] Paired with the geographical isolation of Greenland, this context fostered a particular situation of dependence, which left the Greenlandic women and girls with no feasible alternatives but to rely on the exclusively Danish healthcare system. In this respect and since (female) reproductive health often – possibly even as a rule – requires medical attention, women's reproductive autonomy, including the decision about contraceptives, was severely limited.

32. As mentioned before, the recognition that the individuals on whom these contraceptive practices were inflicted were inherently or situationally vulnerable has important implications for the legal analysis that follows. First, the ECtHR takes into account victims' vulnerability in highlighting (the gravity of) violations,[48] including the weight and severity of their systemic (i.e. non-isolated) nature[49], assessing victims' capability to consent, resist or act to protect themselves[50] and narrowing states' margin of appreciation in restricting their rights[51]. In addition, the Court has required a 'heightened duty' of protection from states in relation to such vulnerable individuals, including by adopting special measures and safeguards.[52] Furthermore, the Court has, to this end, adjusted evidence standards, including by shifting the burden of proof from victims to respondent states.[53] It has also required 'special consideration' to the 'needs' and 'different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases', especially in preventing discrimination against individuals belonging to vulnerable minorities.[54] Accordingly, discussions of all the relevant articles below must be perceived in light of these standards.

1. ---

[44] V.C. v Slovakia, App no. 18968/07, (ECtHR, 8 November 2011); G.M. and Others v the Republic of Moldova, App no. 44394/15, (ECtHR, 22 November 2022). On the vulnerability of the Roma generally see also: D.H. and Others v the Czech Republic.

[45] IACtHR may offer a more appropriate context for examination of this aspect.

[46] O'Keeffe v Ireland at para.145, 151; G.M. and Others v the Republic of Moldova.

[47] Landslægeembedet, Notat - Status på spiralsagerne, Dok. nr. 23818398, 24 January 2024 (National Health Board's Report).

[48] V.I. v the Republic of Moldova; O'Keeffe v Ireland; G.M. and Others v the Republic of Moldova.

[49] Horváth and Kiss v Hungary, App no. 11146/11, (ECtHR, 29 January 2013); V.I. v the Republic of Moldova.

[50] Yazgül Yılmaz v Türkiye; see also: Partly Dissenting Opinion of Judge David Thór Björgvinsson, joined by Judge Garlicki, in Juhnke v Turkey, App no. 52515/99, (ECtHR, 13 May 2008).

[51] Horváth and Kiss v Hungary.

[52] V.I. v the Republic of Moldova at para.124; Boutier supra note 36 at 13.

[53] D.H. and Others v the Czech Republic at para.163.

[54] Horváth and Kiss v Hungary at para.102.

2.3. Article 3

33. In this section, we analyse the involuntary practices of contraception under Article 3 of the Convention. Article 3 of the European Convention of Human Rights provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

As the analysis shows, applying the jurisprudence of the ECtHR, the involuntary contraception practices likely qualify as inhuman and degrading treatment under the Convention, as they amount to serious bodily and mental harm, and in certain cases even sterilization of individual Greenlandic women and girls.

34. In line with the absolute prohibition enshrined in Article 3 of the ECHR, states must refrain from torture and inflicting ill-treatment on an individual (referred to as a negative obligation) and prevent such treatment of individuals within their jurisdiction (positive obligation). The latter includes putting in place 'a legislative and regulatory framework of protection', taking 'operational measures to protect specific individuals' against a risk of ill-treatment and carrying out 'an effective investigation into arguable claims of infliction of such treatment.[55] Although it also extends to treatment administered by private individuals,[56] this positive obligation most importantly relates to situations where 'the events in issue lie wholly, or in large part, within the exclusive knowledge of state authorities'.[57] In accordance with the Court's case law, heightened duty in this regard applies to public institutions, especially when these involve children or other vulnerable individuals.[58]

35. To meet the threshold of ill-treatment contrary to Article 3, an act or omission must generally attain a minimum level of severity.[59] This assessment is relative and it depends on all the circumstances of the case, including the duration of treatment, its mental and physical consequences, and where appropriate, the sex, age and health of the victim.[60] In deciding whether an act or omission constituted ill-treatment, the Court has considered the nature and the context of such treatment. In this respect, it has taken into account whether its purpose was to humiliate or debase the victim,[61] whether it involved severe bodily harm[62] or whether it has driven the victim to act against their will or conscience.[63] To find the treatment inhuman, the Court has taken into account the elements of premeditation, duration of the treatment or actual bodily injury or intense physical and mental suffering.[64] To find the treatment degrading, the ECtHR assessed whether it brought about feelings of fear, anguish, or inferiority, whether it

1. ---

[55] G.M. and Others v the Republic of Moldova at para.94, V.I. v the Republic of Moldova at para.101.
[56] Begheluri and Others v Georgia, App no. 28490/02, (ECtHR, 7 October 2014) at para.97.
[57] G.M. and Others v the Republic of Moldova at para.137, 1. Yazgül Yılmaz v Türkiye at para.52.
[58] 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.
[59] This distinguishes the act from torture, qualified as a deliberate, purposive inhuman treatment causing very serious and cruel suffering. See: ECtHR Registry's Guide on Article 3 of the Convention, 31 August 2024, at para.9-10.
[60] Riad and Idiab v Belgium, App nos. 29787/03 and 29810/03, (ECtHR, 24 January 2008) at para.96; V.C. v Slovakia at para.101.
[61] The absence of such purpose, however, did not automatically preclude the existence of a violation. V.C. v Slovakia at para.101.
[62] Ibid.
[63] Keenan v the United Kingdom, App no. 27229/95, (ECtHR, 3 April 2001) at para.110.
[64] Gäfgen v Germany, App no. 22978/05, (ECtHR, 1 June 2010) at para.89.

was capable of humiliation or debasement or breaking one's physical and moral resistance,[65] as well as whether the treatment has driven a victim to act against their conscience or will.[66]

36. More important for the Greenlandic context, imposition of medical treatment and interventions such as (coercive) contraception[67] and sterilisations[68] has generally been considered as inhuman and degrading under Article 3 when the minimum level of severity was met by the absence of medical necessity paired with a lack of consent. According to the Court, which most notably found such violations in practices of involuntary contraception and sterilisations specifically targeting Roma women and girls in *G.M. v The Republic of Moldova* and in *V.C. v Slovakia*, such treatment was contrary to human freedom and dignity as the two core principles of the Convention.[69] To find a violation of Article 3, the Court has also considered other relevant circumstances, such as the victim's vulnerability, nature of the intervention and the severity of bodily and mental harm.[70] Furthermore, an aggravating factor in this regard – which seems to have expressly distinguished the more severe Article 3 cases from cases falling under Article 8 – has been when the imposed medical intervention was 'based on eugenics'. In particular, this included 'situations of forced sterilisation scheduled in advance for women belonging to a certain group, for reasons of racial discrimination or poverty' and as part of the premeditated family 'planning to reduce births in those groups that normally have more children than the rest of the population, with more poverty, and less social inclusion'.[71] Accordingly, the Court in *G.M. v The Republic of Moldova* explicitly emphasized the need to safeguard 'the reproductive health of women of Roma origin, who particularly required protection against sterilisation because of a history of non-consensual sterilisation against this vulnerable ethnic minority'.[72] This obligation was all the more important 'in the context of a public service with a duty to protect the health and well-being of people, especially where they are particularly vulnerable and are under the exclusive control of the authorities.'[73]

2.3.1. Substantive limb of Article 3

37. The key questions for the assessment of whether the facts of the Greenlandic case constitute a violation of the prohibition of inhuman and degrading treatment under the substantive limb of Article 3, are: (i), did a medical emergency exempt the Danish doctors from obtaining individual victims' consent; (ii), if the answer is negative, was individual victims' consent obtained and, if yes, was it also valid. Regardless of consent, (iii) has any serious bodily or psychological harm been inflicted upon individual victims. With reference to the facts of the Greenlandic case, we address each in turn below.

1. ---

[65] Ibid.
[66] Ibid.
[67] Eg notably in G.M. v The Republic of Moldova.
[68] Eg notably in V.C. v Slovakia.
[69] Ibid. at para.107.
[70] G.M. v The Republic of Moldova at para.89; Yazgül Yılmaz v Türkiye; V.C. v Slovakia; Akopyan v Ukraine, App no. 12317/06, (ECtHR, 5 June 2014); Labita v Italy, App no. 26772/95, (ECtHR, 6 April 2000) at para.119-120.
[71] Concurring Opinion of Judge Elósegui in Y.P. v Russia, App no. 43399/13, (ECtHR, 20 September 2022) at para.9, 12.
[72] G.M. v The Republic of Moldova at para.111.
[73] Ibid.

i. Medical emergency

38. The existence of a medical emergency (also referred to as necessity) constitutes an exception to the prior informed consent requirement.[74] Accordingly, an 'emergency involving imminent risk of irreparable damage' to the individual's life or health[75] has generally precluded the Court from finding treatment contrary to Article 3. Conversely, if there has been no medical emergency (presuming also that the individual was also a mentally competent adult), their prior informed consent has been considered essential for the any medical intervention to be considered permissible. Crucially in this respect, the Court in *V.C. v Slovakia* expressly emphasized that 'sterilisation is not generally considered as life-saving surgery' as it does not involve an imminent risk of irreparable harm.[76] This is even when performed during or after childbirth and is motivated by alleged concerns over potential future pregnancy complications, where any life-threatening deterioration of health could be 'prevented by means of alternative, less intrusive methods'.[77]

39. Applying the above principles to the alleged instances of involuntary practices of contraception in Greenland, the facts suggest that there was likely no medical necessity cases for contraceptives to be surgically administered, since these are preventative measures. Several reports of involuntary contraception suggest that the IUDs were administered after giving birth[78] or in relation to abortions.[79] These situations are directly analogous to *V.C. v Slovakia*, where the Court explicitly noted the absence of medical necessity in involuntary sterilisations, even when these are allegedly motivated by fear of future pregnancy complications. Since the sole purpose of contraception practices in Greenland seems to have been family planning, the absence of consent in this regard does not appear to be justified by medical emergency.

ii. Consent

40. Principles of respect for human dignity and freedom embodied in the ECHR require that all medical interventions against an individual, including contraception, sterilization and treatment very likely to result in sterilisation, require a valid (ie prior, free and informed) consent of the person concerned.[80] A key fact attesting to the importance of consent is that in some circumstances, the sole absence of consent can in itself cause harm to the concerned individual and can thus constitute inhuman and degrading treatment in violation of Article 3.[81] Accordingly, states must refrain from and protect against involuntary medical interventions on persons who are free and capable of a valid consent. Starting with positive obligations in this regard, both aspects are deconstructed below with reference to the Greenlandic case.

State's Positive obligations

41. As part of their positive obligations under Article 3, states must prevent any medical treatment of (mentally competent) individuals against their will, including by securing, through

1.

[74] G.M. v The Republic of Moldova at para.111.
[75] Ibid.
[76] Ibid. at para.110.
[77] Ibid. at para.109-113.
[78] There were 15 such reports. Landslægeembedet, Notat - Status på spiralsagerne, Dok. nr. 23818398, 24 January 2024 (National Health Board's Report) at 3.
[79] There were 17 such reports altogether. Ibid.
[80] V.C. v Slovakia at para.112, Salmanoğlu And Polattaş at para.88, A.P., Garçon and Nicot v France, App nos. 79885/12, 52471/13 and 52596/13, (ECtHR, 6 April 2017) at para.132.
[81] V.C. v Slovakia at para.117.

appropriate regulatory safeguards and practice, their valid consent.[82] Clarifying the extent of consent, the Court noted that states must install the necessary regulatory measures to ensure that doctors for example in *Codarcea v Romania* and *Csoma v Romania*, both in public and private hospitals, consider the foreseeable consequences of the planned medical intervention and, in line with this, adequately and in advance inform the concerned individual.[83] To determine whether and to what extent states failed to comply with this provision, the Court has, inter alia, considered whether the alleged violation of Article 3 was an isolated incident or part of a widespread, systemic issue.[84]

42. Applying these general principles to the facts underlying the involuntary practices of contraception in Greenland, there seem to be several issues with the informed consent requirement in the regulatory framework of the relevant period. For clarity and following the report of the National Health Board, the period and the corresponding regulations are divided in two parts, period between 1966 and 1991 and period after 1992 to the present.

43. During the first period, Greenland's healthcare system was fully governed by Denmark, with the existing regulatory framework based on corresponding Danish regulations.[85] Accordingly, in 1987, a circular from the Chief Medical Officer's Office provided that all citizens had the right to receive information about contraception and that it was part of the right to 'full free medical care.' In 1990, a revised circular on contraception counselling stated that doctors had a duty to 'provide guidance on contraception when patients requested it, as well as in connection with childbirth or abortion procedures'.

44. In the second period, the healthcare system was transferred to Greenland in 1991 and existing laws and guidelines remained in force until the Home Rule/Self-Government in 2001 introduced new regulations. This period is accordingly divided into two phases: in the initial phase between 1992 and 2001, the regulation of informed consent in relation to contraception was based on the existing regulatory framework in force since 1966.[86] As described above, this provided 'the right to receive information about contraception' and 'duty of doctors to offer guidance on contraception when patients requested it, including in relation to childbirth and abortion'. The second phase between 2001 and present is regulated by *Act No. 6/2001 on the legal status of patients* passed by the Inatsisartut (the Parliament of Greenland). This legislation introduced the concept of informed consent, prohibiting any treatment without the patient's informed consent. Guidelines on medical records keeping informed consent have since been issued by the Chief Medical Officer's Office, most recently in 2023.[87]

45. The above overview of the relevant regulatory framework suggests that during the first period in question (1966-1991), Denmark had no adequate legislative mechanisms in place that would ensure prior informed consent to medical interventions. As referred to in the existing legislation at the time, the loosely defined 'information' and 'guidance' on contraception in this regard even prima facie fail to provide for an adequate requirement for prior informed consent (we return to the applicable standards of consent in the next section). Accordingly, the failure to

1. ---

[82] G.M. v The Republic of Moldova at para.85. This is a direct corollary of the principle of patients' autonomy in their relationship with health care professionals, as acknowledged in V.C. v Slovakia at para.115.
[83] Codarcea v Romania, App no. 31675/04, (ECtHR, 2 June 2009) at para.105; Csoma v Romania, App no. 8759/05, (ECtHR, 15 January 2013) at para.42.
[84] G.M. v The Republic of Moldova at para.111.
[85] Landslægeembedet, Notat - Status på spiralsagerne, Dok. nr. 23818398, 24 January 2024 (National Health Board's Report).
[86] Ibid.
[87] Ibid.

put in place any consent regulations likely constitutes a breach of Denmark's positive obligations under Article 3 ECHR.

46. The second period (1992-present) entails two phases. In the first phase (1992-2001), the absence of regulations on consent to medical treatment persisted, which – regardless of any healthcare self-governance arrangements – perpetuated Denmark's violation of the positive aspects of Article 3. In the subsequent phase (2001-present), the ongoing positive aspect of the violation may have ceased, provided that the 2001 legislation on the legal status of patients (which introduced the concept of prior informed consent) was not only adopted but also effectively implemented in practice. Yet, considering reports of several cases of involuntary contraception occurring also during this phase, this may not have been the case.[88] In fact (and we return to this in the scope of Article 14 below), the continuation of the involuntary contraception practices has been reported in several hospitals across Greenland,[89] which attests to the possible persistence of the systemic issue. Should this indeed be the case and provided that Denmark has failed to effectively prevent it, the state remains in breach of its positive obligations under Article 3 ECHR.

Absence of valid consent

47. The obtained consent must not only be given, but it must also be valid. According to the ECtHR's case law, this means that it must be obtained prior to the medical intervention, informed and given freely by a competent adult. More specifically, an 'informed' consent means that the patient has obtained full knowledge about their health status, the proposed procedure, including its foreseeable consequences and possible alternatives.[90] They must be able to freely consider all the relevant issues and, should they wish, reflect on the implications of the procedure, including by involving their partner, as the Court expressly highlighted in *V.C. v Slovakia*.[91] The requirement of competence and freedom to validly consent furthermore entails taking account of individual's inherent or situational vulnerability, such as their age, mental capacity and the circumstances in which consent was given.[92] Conversely, consent is invalid if obtained under any kind of duress, including persistent persuasion, misleading and deception at the hands of authorities, who exercise control over the concerned individual.[93] In this respect, the standard of consent is even more stringent with respect to medical treatment and examination of children[94] and adolescents: according to the ECtHR in *Yazgül Yilmaz v Türkiye*, their consent must be obtained properly and surrounded by additional safeguards beyond those provided for adults, such as by ensuring an accompanying person of their choice.[95] This is especially pertinent with particularly invasive bodily intrusions on children or adolescents such as, for instance, gynaecological and other intrusive examinations, which may, due to their nature, cause additional trauma.[96]

1. _____

[88] Ibid.
[89] Ibid.
[90] V.C. v Slovakia at para.112; Csoma v Romania at para.42.
[91] V.C. v Slovakia at para.112.
[92] Juhnke v Turkey, V.C. v Slovakia.
[93] Ibid.
[94] V.I. v The Republic of Moldova.
[95] Yazgül Yilmaz v Türkiye at para.45 and 47. Similarly inO'Keeffe v Ireland.
[96] Yazgül Yilmaz v Türkiye at para.45 and 47.

48. The facts of the Greenlandic cases suggest three consent-related issues, namely a) the absence of prior consent of victims, b) its questionable validity given the vulnerability of victims[97] and c) the lack of victims' freedom to validly consent.[98] Each element is addressed in turn.

49. According to the facts of the case, evidence suggests the practices of (involuntary) contraception involved a systemic disregard for **prior consent** of Greenlandic women and girls. The most obvious example illustrating this is, for instance that, although these practices had been a routinized state-led practice across all of Greenland and within all age groups of women of reproductive age as part of the so-called 'spiral campaign',[99] there are no comprehensive sources documenting their use, effects or obtained consents. Second, there is ample evidence attesting to the fact that obtaining victims' consent has not been a regular practice in Greenland. In this respect, several victims have reported that they obtained contraception without being asked or informed about the procedure or its purpose beforehand.[100] Several victims have been subject to IUD insertions when undergoing different medical procedures.[101] Some victims were unaware of using contraception until they discovered the devices years later.[102] In addition, some underage victims who obtained IUDs during school hours reported that, upon their resistance pertaining to the absence of consent from their parents, doctors expressly disregarded their protests.[103] In some reports, doctors deceived the victims into believing that they would ensure the consent of their parents subsequently, but then failed to do so.

50. Even if it can be argued that some victims consented, **the consent** in such circumstances has to be **valid**. The first issue in this regard relates to the very *capability* of unaccompanied underage victims to validly consent. In this respect, statistics suggest that the majority of IUD practices targeted the younger part of the population, with reports showcasing that several Greenlandic girls were minors or even children as young as 12 at the time they had IUDs inserted.[104] As minors, these individuals were considered vulnerable and thus less capable of providing valid consent. Their capability to validly consent was furthermore impacted by the circumstances of the procedures. In particular, the examination and the procedures of IUD insertions of minors intentionally took place during school or dormitory hours, without the knowledge or presence of their parents.[105] In this respect, the accompanying presence of Danish teachers and headmasters likely only added to the pressure.

51. The second issue concerning the validity of consent is that several victims may have been subject to *persuasion and deception* by the hospital staff. Examples of this include the underage victims being told their parents would be consulted after the procedure, and adult women being subject to IUDs and other contraception, reasonably believing they were undergoing another, often unrelated procedure.[106]

52. The third issue under this head is the *absence of information* provided to victims that would allow them to validly consent. This relates to information about the procedure, its purpose and,

1. ---

[97] Ibid, para 45.
[98] Juhnke v Turkey, para.76-77.
[99] According to annual reports from the National Health Board, by the end of 1970, 3,821 women had had an IUD inserted and still retained it—representing 46% of women aged 15–49.
[100] See para.12-14 and following.
[101] See para.21-22.
[102] See para.21-22.
[103] See para.20.
[104] See para.13.
[105] See para.19.
[106] See para.21-22. See also the report of the National Health Board documenting instances of forced contraception related to or following abortions and other procedures.

most importantly, about its foreseeable consequences.[107] In this respect, victims report they were not consulted or informed about whether they wished to obtain contraception, about its purpose or possible alternatives. In fact, a one-sized-only IUD device was used for all women and girls, including the youngest victims.[108] Lastly, none of the victims had been informed about the serious consequences that the IUD devices may cause, including about the pain of the procedure or bleeding and pains in the immediate aftermath.[109] None of the victims were informed about the possible long-term complications, including serious medical complications, difficulties conceiving or, ultimately, possible infertility.[110]

53. The facts of the case lastly suggest that any obtained consent was **not given freely** and thus cannot be valid. As mentioned above, there was a considerable power imbalance between the hospital staff and Greenlandic women and girls. Given the vulnerability inherent in this relationship, victims had no option but to agree to the procedures which the doctors considered appropriate for them.[111] As victims were unable to reasonably avoid the procedure, choose an alternative or effectively resist it, this potentially amounts to duress. Furthermore, the situation was even worse for underage victims who were coerced into obtaining IUDs via the education system: called one-by-one to the examination room in schools, they were subject to contraception without the knowledge or involvement of their parents or guardians.[112] Any consent obtained under duress could not have been free and is, as such, invalid.

iii. Harm

54. In addition to the absence or invalidity of consent (which can itself be a cause of harm),[113] a crucial factor constituting inhuman or degrading treatment under Article 3 is also the harm that the (medical) treatment or its after-effects inflict upon an individual.[114] Although largely depending on the circumstances, such harm is generally divided into physical (ie actual pain and damage) and psychological (eg arousing feelings of anxiety, fear, anguish and inferiority) and can be an immediate or long-term result of the inflicted treatment.[115] Specifically with (involuntary) medical treatments, the standard for determining possible harm is that the suffering or humiliation involved must go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment.[116] In this regard, the Court has maintained that sterilisations and 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, is liable to arouse feelings of fear, anguish and inferiority and may entail lasting suffering.[117] This is especially grave with young

1. _____

[107] V.C. v Slovakia, where the Court required that the applicant be informed about her status, proposed procedure and alternatives to it, as well as implications of the procedure.
[108] See para.13.
[109] See para.13 and following.
[110] See para.19-20.
[111] This specifically relates to one-sized IUD devices that were designed for adult women only, but were used for all ages. See para.13.
[112] See para.13, 19-20.
[113] A.P., Garçon and Nicot v France, App nos. 79885/12, 52471/13 and 52596/13, (ECtHR, 6 April 2017) at para.128. Also in V.C. v Slovakia and G.M. v The Republic of Moldova.
[114] V.C. v Slovakia at para.118.
[115] Begheluri and Others v Georgia at para.100;) V.C. v Slovakia at para.118.
[116] V.C. v Slovakia at para.104.
[117] V.C. v Slovakia at para.104-6.

victims where even the seemingly less intrusive procedures, such as, for example, an involuntary gynaecological examination, can cause additional, even sexual trauma.[118]

Immediate bodily and psychological harm

55. The facts of the Greenlandic cases suggest that involuntary contraception practices in some cases inflicted severe immediate bodily and psychological harm upon the victims. Concerning physical harm, several victims reported that excruciating pain both of the procedure of IUD insertion as well as immediately after, describing the feeling like being 'stabbed with knives'.[119] Several girls returning from examination during school hours are reported to have been crying and clutching their bellies.[120] Even though the IUD devices used were one-size-only and intended only for women who have previously already given birth, they were used indiscriminately among all age groups, including with girls as young as 12.[121]

56. Concerning psychological harm, contraception procedures were carried out with unaccompanied minors as well as generally without consent, explanation or alternatives. This led victims to report they felt confused and afraid, not understanding the procedure or its consequences.[122]

Lasting bodily and psychological harm

57. Victims of involuntary contraception practices have also reported to have suffered lasting physical and mental harm. In particular, several victims reported severe and consistent pain, infections and bleeding years after the procedure of IUD insertion; some even up until the devices were discovered and ultimately removed.[123] For complications related to this, many victims had to undergo the same medical procedure several times. Furthermore, several victims report severe medical complications following the IUD insertions, including with future pregnancies and miscarriages, whilst several had to have their uteruses removed due to complications directly attributed to IUDs.[124] Frequently, the IUD insertions or their after-effects caused infertility of victims, with many of the IUDs given to girls at the very beginning of their reproductive age. As infertility was a common complication and affected several victims,[125] the IUDs effectively led to the sterilization of certain Greenlandic women and girls. As reported, Inuit women's average birth rate dropped from 7 to 2.3 children on average during the relevant time.[126]

2.3.2. Procedural limb of Article 3

58. The procedural limb of Article 3 demands that states carry out effective investigations into arguable claims of ill-treatment or put in place a framework that enables such investigations.[127]

1. _____

[118] Yazgül Yilmaz v Türkiye at para.50.
[119] See para.17.
[120] See para.19.
[121] See para.13.
[122] See para.17.
[123] See para.13, 20-22.
[124] Ibid.
[125] According to the BBC, Dr. Siegstad, gynaecologist in Nuuk, found IUDs in patients who were being assessed for infertility after trying to become pregnant for numerous years. Jung, supra note 6.
[126] See para.14. See also: Landslægeembedet, Notat - Status på spiralsagerne, Dok. nr. 23818398, 24 January 2024 (National Health Board's Report).
[127] G.M. v The Republic of Moldova at para.94.

Article 3 stipulates that an effective investigation must be adequate, prompt, and independent and one that provides for the involvement or participation of victims.[128]

59. An important consideration in determining whether the investigation was prompt under Article 3 is whether victims attempt to pursue an investigation by filing a complaint about their case, contemporary to their abuse. The literature in this regard suggests that although this may be the case normally, the situation may be different in cases of historical violations where such expectations may be unrealistic.[129] In particular, in cases of long-term historical practice, victims may have reasonably believed that the conduct was legal, especially if it was also endorsed or even perpetrated by the state.[130] In this context, the Court has noted that even without an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that ill-treatment might have occurred.[131] This is the case afortiori with a vulnerable population, which has left important psychological and traumatic effects on the individuals and the community.

60. As relates the adequacy, the investigation must be capable of leading to the establishment of the facts and to a determination of whether ill-treatment took place and – if appropriate – identifying and punishing those responsible.[132] The investigation must be thorough, which means that the authorities must always make a serious attempt to find out what happened. They must take all reasonable steps available to them to secure the evidence concerning the events, including through eyewitness testimony and forensic evidence.[133] An effective investigation has to consider both what happened at individual and community level, the human rights violations that took place and identify the role of the authorities in these events, whether in contributing to the events or in failing to prevent them.[134] If given indication, the investigation must consider potential motives, including racial motives when systemic occurrence of an alleged violation is at stake.[135]

61. Third, the investigation must involve the victims. They should be able to participate effectively.[136] Victims must be heard in person and have access to the files or decisions and final reports of the investigation.[137]

62. Turning to the case under examination: The official investigation into the alleged practices of involuntary contraception started in 2022.[138] Although the facts of the case at hand reach back to 1960, no investigation had taken place before 2022. This raises issues related to promptness. Even in the absence of an express complaint, an investigation probably should have taken place

1. ---

[128] Assenov and Others v Bulgaria, App no. 24760/94, (ECtHR, 28 October 1998) at para.102; Biçici v Turkey, App no. 30357/05, (ECtHR, 27 May 2010) at para.39; Mikheyev v Russia, App no. 77617/01, (ECtHR, 26 January 2006) at para.107-109.
[129] Gallen, The European Court of Human Rights, Transitional Justice and Historical Abuse in Consolidated Democracies at 694.
[130] Ibid.
[131] Members of the Gldani Congregation of Jehovah's Witnesses and Others v Georgia, App no. 71156/01, (ECtHR, 3 May 2007) at para.97.
[132] Labita v Italy at para., 131; Jeronovičs v Latvia, App no. 44898/10, (ECtHR, 5 July 2016) at para.103.
[133] El-Masri v "the former Yugoslav Republic of Macedonia", App no. 39630/09, (ECtHR, 13 December 2012) at para.183.
[134] Gäfgen v Germany at para.117; Hristovi v Bulgaria, App no. 42697/05, (ECtHR, 11 October 2011) at para.86, 91.
[135] Antayev and Others v Russia, App no. 37966/07, (ECtHR, 3 July 2014) at para.110.
[136] Bouyid v Belgium, App no. 23380/09, (ECtHR, 28 September 2015) at para.122; X and Others v Bulgaria, App no. 22457/16, (ECtHR, 2 February 2021) at para.189.
[137] Chernega and Others v Ukraine, App no. 74768/10, (ECtHR, 18 June 2019) at para.166.
[138] See para.15.

earlier, since there are sufficiently clear indications that ill-treatment might have occurred.[139] To be adequate, the current investigation should examine whether even in the absence of express complaints from victims at the time of the events, Denmark knew or ought to have known about the practice taking place and about the serious medical effects this had on the victims, and when this was the case. Since it seems the IUD campaign was likely state-initiated and state-led, with some procedures taking place in Danish hospitals and in Denmark, determining the precise timing of the involvement of the Danish authorities should be part of the investigation, as well as the delay in setting up the investigation. The investigation should establish what happened and the extent of ill-treatment. It should also consider the motives behind the contraception policy.

2.4. Article 8

63. In this section, we analyse the involuntary practices of contraception as interference with the right to private and family life under Article 8 of the European Convention of Human Rights. Article 8 provides:

    "Everyone has the right to respect for his private and family life, his home and his correspondence. 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."

    Article 8 of ECHR thus addresses an individual's private and family life, protecting, inter alia, their physical and psychological integrity.[140] In this section, we argue that the involuntary contraception practices constituted arbitrary interferences into reproductive and sexual autonomy of individual Greenlandic women and girls.

64. Like Article 3, the protection of Article 8 comprises a negative obligation of states to refrain from arbitrary interference and a positive obligation to secure effective respect for an individual's private and family life.[141] Each of the two aspects is addressed below with reference to the affected Greenlandic women and girls.

2.4.1. Negative aspects of Article 8

65. Some of the issues under Article 3, such as, for example, the requirement of consent in medical interventions, may also appear as an issue under Article 8. In spite of the overlap, the two articles are examined separately when they raise distinct issues or rely on a different set of facts.[142] In the case of involuntary contraception practices in Greenland in particular, the consequences of involuntary contraception for the affected women and girls' reproductive and sexual autonomy protected by Article 8 represent a distinct issue from the issue of consent and harm examined above under Article 3. Accordingly, Article 8 is considered independently below.

1. ---

[139] Gldani, supra note 131.
[140] Tysiąc v Poland, App no. 5410/03, (ECtHR, 20 March 2007) at para.107.
[141] V.C. v Slovakia at para.138 onwards.
[142] This was, for instance, the case in V.C. v Slovakia. See also: O'Keeffe v Ireland at para.192.

66. As noted, under Article 8, states are prohibited from arbitrary interference with an individual's physical and psychological integrity.[143] With respect to administration of medical treatment, this provision specifically safeguards the individual's involvement, autonomy and choice in medical care, ensures information about and consent to treatment[144] and even protects the decision to have children or not.[145] In this context, special protection pertains to (vulnerable) individuals' reproductive health, particularly when the medical treatment concerns essential bodily functions.[146] For example, the Court regarded (involuntary) abortions, sterilisations and treatment very likely to result in sterilization as major interferences with a person's reproductive health and family life, having a severe impact on their personal integrity, especially when conducted against their wishes.[147] Importantly, in *G.M. v The Republic of Moldova* the ECtHR explicitly acknowledged that forced sterilization and imposed birth control are forms of gender-based violence.[148] In addition to reproductive health and autonomy, Article 8 furthermore protects women's sexual autonomy. In this regard, in *Carvalho Pinto de Sousa Morais v Portugal* the Court highlighted the importance of detaching the purpose of childbearing from a woman's sexual autonomy and emphasized the physical and psychological importance of the latter for her self-fulfilment.[149]

67. The facts of the Greenlandic case first suggest that the involuntary practices of contraception in Greenland have indeed interfered with the Greenlandic women and girls' reproductive and sexual autonomy in several aspects. First, the affected women have been deprived of their decision of whether (if at all), by what means and when they wished to opt for contraception. Instead, the decision was taken on their behalf, including as to its timing (eg the devices were administered routinely and to girls as young as 12) and its means (eg IUDs were the only contraceptive available, the administered IUDs were one-size-only). Second, the affected women have been deprived of the decision whether, when and on what terms they wished to have children, which, by having consequences as severe as infertility, severely interfered with their private life and family planning.[150] Accordingly, there has been a severe interference with Greenlandic women and girls' private and family life including, in particular, their reproductive and sexual autonomy.

68. Even if Article 8 protects several aspects of women's private and family life, including, in particular, their reproductive and sexual autonomy, it allows for certain limitations of these rights. In line with this, states must pursue a legitimate aim and maintain a fair balance between the general interest and the interests of the persons concerned.[151] Such limitations must be "in accordance with the law" and "necessary in a democratic society",[152] meaning that the interference corresponds to a pressing social need and is proportionate to legitimate aims pursued by the authorities.[153] As Judge Elósegui in her concurring opinion in *Y.P v Russia* suggests, any measures that are motivated by 'population control for reasons of eugenics or

1. ---

[143] See also ECtHR Registry's, Guide on Article 8 of the Convention, 31 August 2024.
[144] Codarcea v Romania (31675/04) at para.105.
[145] Evans v the United Kingdom, App no. 6339/05, (ECtHR, 10 April 2007) at para.71; A, B and C v Ireland [GC], App no. 25579/05, (ECtHR, 16 December 2010) at para.212; R.R. v Poland, App no. 27617/04, (ECtHR, 26 May 2011) at para.180; A.K. v Latvia, App no. 33011/08, (ECtHR, 24 June 2014) at para.63; V.C. v Slovakia at para.138.
[146] For example, children and adolescents. See e.g. P. and S. v Poland; V.C. v Slovakia.
[147] V.C. v Slovakia at para.106-107; AP, Garçon and Nicot v France at para.128, 132.
[148] G.M. v The Republic of Moldova at para.88.
[149] Carvalho Pinto de Sousa Morais v Portugal, App no. 17484/15, (ECtHR, 25 July 2017) at para.52.
[150] See para.12-22.
[151] AP, Garçon and Nicot v France at para.132.
[152] V.C. v Slovakia at para.139.
[153] Ibid.

racial discrimination', would not qualify as a 'legitimate aim' and would thus disproportionately limit the rights at stake.

69. The next question is therefore whether any circumstances may have justified such severe interferences. In this regard, the facts of the cases suggest that the Danish authorities allegedly aimed to improve family planning.[154] The legal basis of these interventions is perhaps less clear, although the discussion in the previous section laid out the law under which individuals were entitled to contraception. It is unclear at the time of writing this brief, whether legislation existed to provide a basis for the insertion of IUDs and under which conditions.

70. Even assuming that such practices had a legal basis and were aimed at addressing a pressing social need and pursued a legitimate aim, it is likely that at least in certain cases the extent of the practice and manner in which it was performed was disproportionate. First, in assessing proportionality, the Court would consider whether the same aim could have been pursued, for instance, by another means, eg advocating for contraception among the entire population of Greenland or providing alternative means of contraception.[155] This raises the issue of suitability. In this context, the Court would investigate specifically whether alternatives were advertised or encouraged, and also examine the claims that only one size IUDs were made available, which, at the time, may have been inappropriate for the majority of victims.[156]

71. Second, especially when children are concerned, their best interests would form part of the analysis. The Court would examine why the practice was specifically aimed at young girls at the very beginning of their reproductive lives, even though abortions, for instance, occurred among women of all ages.[157] This would go to the issue of capability. And finally, the proportionality assessment would also look at whether the measure chosen was strictly necessary, by examining the significant impact of the interferences on individual women's lives, including their pain and suffering, infertility, and long-term medical issues. The disproportionate effect on the birthrate among the Greenlandic population would also be taken into account.

2.4.2. Positive aspects of Article 8

72. The positive aspect of Article 8 requires states to secure persons within their jurisdiction effective respect for their right to private and family life, notably by providing legal protection against arbitrary interferences by private parties.[158] This includes putting in place effective legal safeguards to protect the reproductive health of women and other vulnerable individuals, especially when they belong to various groups exposed to greater risks than the rest of population.[159] Notably in this respect, in determining whether the state has failed to comply with its positive Article 8 obligations, the Court in *V.C. v Slovakia* considered the systemic nature of the issue which the state allegedly failed to prevent. The ECtHR took account of 'the widespread negative attitudes towards the relatively high birth rate among the Roma compared to other parts of the population', which were 'often expressed as worries of an increased

1.

[154] Landslægeembedet, Notat - Status på spiralsagerne, Dok. nr. 23818398, 24 January 2024 (National Health Board's Report).
[155] Such as for example in Subaşı and Others v Türkiye, App nos. 3468/20, 5898/20, 7270/20 (ECtHR, 6 December 2022) at para.105-109 where the Court considered whether prisoners' communication was available via means other than phone calls which the authorities restricted.
[156] See para.13.
[157] Landslægeembedet, Notat - Status på spiralsagerne, Dok. nr. 23818398, 24 January 2024 (National Health Board's Report).
[158] V.C. v Slovakia at para.140, Csoma v Romania at para.41.
[159] V.C. v Slovakia at para.145-6.

proportion of the population living on social benefits'.[160] In this context, the state had a duty to adopt measures designed to secure respect for private and family life, especially when children and other vulnerable individuals are involved.[161] This should include investigation, prosecution and sanctioning of individuals who are responsible for ill-treatment. In addition, any amnesty accorded to such acts would be in breach of the positive obligation under both Articles 3 and 8 of the Convention.[162]

73. Different reports, which are publicly available, suggest that various Danish doctors and experts advocated for the wide implementation of the IUD policy across the entire territory of Greenland, including in Greenlandic boarding schools in Denmark.[163] If these doctors acted own their own initiative and inserted IUDs of their own accord, the respondent government still had a responsibility to provide for legal protection and put in place legal safeguards against arbitrary interferences with Greenlandic women and girls' rights under Article 8, including by criminalising acts, identifying and persecuting the perpetrators, and punishing them. This positive duty seems enhanced when children are involved.

2.5. Article 14

74. In this section, we examine involuntary practices of contraception under Article 14 of the Convention, which prohibits discrimination. Article 14 provides:

"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."

We argue that the interferences at such a large scale and over such a long period of time could constitute systemic racial discrimination against the Indigenous population of Greenland and against individual Greenlandic women and girls.

75. Three are two procedural issues that need to be addressed before discussing possible violations of the ECHR's prohibition of discrimination. Firstly, as Denmark has not ratified Article 1 of Protocol No. 12 to the Convention protecting against discrimination generally, this affects the scope of assessment of the Greenland case under Article 14, ie the prohibition of discrimination in the enjoyment of the rights. In this regard, Article 14 is ancillary to other substantive provisions, meaning it has no independent existence and must always be examined in conjunction with other Convention violations.[164] This, however, does not mean that the applicability of Article 14 depends on the existence of those substantive violations.

76. Secondly, Article 14 can only be examined separately – as opposed to being absorbed under other substantive violations – when it represents a distinct allegation, present when a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case.[165] A key consideration for a separate examination of Article 14 in conjunction with a

1.

[160] V.C. v Slovakia at para.146.
[161] X and Y v the Netherlands, App no. 8978/80, (ECtHR, 26 March 1985) at para.23-24 and 27; August v the United Kingdom, App no. 36505/02, (ECtHR, 21 January 2003); M.C. v Bulgaria, App no. 39272/98, (ECtHR, 4 December 2003).
[162] E.G. v the Republic of Moldova, App no. 37882/13, (ECtHR, 13 April 2021) at para.39-41.
[163] Landslægeembedet, Notat - Status på spiralsagerne, Dok. nr. 23818398, 24 January 2024 (National Health Board's Report). See also para.9, 14-15.
[164] ECtHR Registry's Guide on Article 14 and on Article 1 of Protocol No. 12, ECtHR, 31 August 2024.
[165] Oršuš and Others v Croatia [GC], App no. 15766/03, (ECtHR, 16 March 2010) at para.144; Begheluri and Others v Georgia, App no. 28490/02, (ECtHR, 7 October 2014) at para.176.

substantive provision has also been whether the violation was an isolated incident or part of a broader allegation, possibly a result of general stereotypes or history of discrimination against a specific vulnerable group.[166] In this respect, the ECtHR has found violations and thus combined Article 14 with cases where individuals were discriminated against in their enjoyment either of Article 3 or Article 8 rights, including as part of involuntary medical treatment.

77. More specifically, the discussion on the separate examination of Article 14 in the area of involuntary medical interventions, particularly of Roma women, was part of the Court's deliberation in *V.C. v Slovakia*. Noting that systemic deficiencies in Slovakia particularly affected members of the Roma community, the majority found no evidence suggesting either that the practice of involuntary sterilizations was 'part of an organised policy' or 'that the hospital staff's conduct was intentionally racially motivated'.[167] In the majority's opinion, this confined the Court to finding a violation of both, Article 3 and Article 8 but not Article 14.[168] The refusal to separately examine Article 14 was criticised in a dissenting opinion of Judge Mijovic, claiming that this reduced the case to an individual level despite the obvious existence of a former general state policy of sterilizing Roma women, the effects of which continued to be felt at the time.[169] The applicant in the case claimed that as a relic of the former discriminatory state policy against the Roma, the 'discriminatory climate' influenced the attitudes of the medical personnel in Slovakia's hospitals.[170] According to the dissenting judge, the applicant was '"marked out" and observed as a patient who had to be sterilised just because of her origin, since it was obvious that there were no medically relevant reasons for sterilising her'. This reasoning is furthermore supported by Judge Elósegui who referred to the *V.C. case* in *Y.P. v Russia*. She noted that the Slovak Roma cases where sterilisations were planned and conducted to reduce births of a particular vulnerable group, clearly contained malicious racially-motivated intent on the part of health professionals.[171]

78. Several observations can be drawn from the above. First, to be examined separately, discrimination under Article 14 must be a fundamental aspect of the case.[172] Second, for this to apply, the Court's case law suggests that 'an organised state policy' or a racially motivated intent on the side of healthcare professionals must be 'convincingly demonstrated'. In other words, to establish a violation of Article 14 in conjunction with Article 3 and 8, the hospital staff's conduct in violation of Articles 3 and 8 must either clearly be part of an official state policy or evidently intentionally target specific members of a population group solely because they belong to such group. Third, the absence of evidence about an organized state policy or a clear racial intent would generally preclude the Court from separate examination of the case under Article 14 in combination with Articles 3 and 8.

2.5.1. Negative aspects of Article 14 in conjunction with Articles 3 and 8

79. For an issue to arise under Article 14, there must be a difference in the treatment of individuals in analogous or relevantly similar situations without objective and reasonable justification, meaning without a legitimate aim or a reasonable relationship of proportionality between the

1.

[166] V.I. v The Republic of Moldova at para.167.
[167] Ibid. V.C. v Slovakia at para.177.
[168] Ibid. at para.170, 179.
[169] Dissenting Opinion of Judge Mijović in V.C. v Slovakia, App no. 18968/07, (ECtHR, 8 November 2011).
[169] V.C. v Slovakia at para.170.
[170] V.C. v Slovakia at para.170.
[171] Concurring Opinion of Judge Elósegui in Y.P. v Russia, App no. 43399/13, (ECtHR, 20 September 2022).
[172] Oršuš and Others v Croatia at para.144; Begheluri and Others v Georgia at para.176.

means employed and the aim sought to be realised.[173] The alleged difference of treatment may be a result of discriminatory statutory provisions or practice in applying such provisions.[174] Furthermore, in determining the scope of Article 14, the Court has mainly focused on discrimination against (vulnerable) individuals, and has also taken into account whether these individuals belonged to (vulnerable) groups. In this respect, the Court has looked into the broader context beyond an individual violation and has taken into consideration evidence of historical or systemic discrimination and prejudice against a specific group.[175] The Court has furthermore in *Mižigárová v Slovakia* reiterated that no difference in treatment based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.[176] In light of this, the Court regarded discrimination on account of a person's ethnic origin a clear form of racial discrimination[177] and has marked gender-based violence as a form of discrimination against women.[178]

80. To bring the Greenlandic contraception cases under the ambit of Article 14 in conjunction with Article 3 and Article 8, it must be first demonstrated that the Inuit origin of Greenlandic women and girls was the sole reason for the violations. In accordance with the Court's reasoning in *V.C. v Slovakia*, this targeting must either be part of an organized state policy or entail the element of intent on the side of the healthcare staff. Numerous reports appear to suggest that during the initial period (1966-1991), Denmark organized and led the so-called 'spiral campaign'.[179] This campaign seems to have intentionally and almost exclusively targeted or affected Inuit women and girls, as evident from the fact such practices took place exclusively in Greenland and at boarding schools in Denmark attended by Greenlandic students. As reported by journalists, the IUD campaign was conducted without valid consent of Greenlandic women and girls, including without the consent of parents of underage victims. All this suggests that – at least as concerns this first period – Article 14 is likely to be engaged.

2.5.2. **Positive aspects of Article 14 in conjunction with Articles 3 and 8**

81. In addition to the negative obligation to refrain from discrimination, states have a positive obligation to prevent the perpetuation of past discrimination or discriminatory practices against individuals. In case individuals are members of vulnerable groups, the Court has considered the potential historical or systemic discrimination against such groups to depict the context for individual violations as well as to offer evidence for the extent of the states' failure to protect them.[180] In other words, the Court has assessed various circumstances surrounding individual violations to determine whether violations of positive obligations of states are an isolated incident or whether their failure to protect vulnerable individuals in fact perpetuates a

1.

[173] V.I. v The Republic of Moldova; D.H. and Others v The Czech Republic.
[174] V.I. v The Republic of Moldovaat para.171.
[175] V.C. v Slovakia, Horváth and Kiss v Hungary, D.H. and Others v the Czech Republic, Carvalho Pinto de Sousa Morais v Portugal.
[176] Mižigárová v Slovakia, App no. 74832/01, (ECtHR, 14 December 2010) at para.114.
[177] D.H. and Others v The Czech Republic at para.176.
[178] E.g. in Opuz v Turkey, App no. 33401/02, (ECtHR, 9 June 2009) at para.184-191; Halime Kılıç v Turkey, App no. 63034/11, (ECtHR, 28 June 2016) at para.113; M.G. v Turkey, App no. 646/10, (ECtHR, 22 March 2016) at para.115 Tkhelidze v Georgia, App no. 33056/17, (ECtHR, 8 July 2021) at para.47, 51.
[179] See para.12. Also: Landslægeembedet, Notat - Status på spiralsagerne, Dok. nr. 23818398, 24 January 2024 (National Health Board's Report) at 1-2. The report frames these as the Danish authorities starting "forskellige initiativer med henblik på at indføre adgang til familieplanlægning" [differing initiatives with a view of introducing access to family planning]. Translation by authors.
[180] E.g. D.H. and Others v the Czech Republic; Horváth and Kiss v Hungary; Mižigárová v Slovakia; Bekos and Koutropoulos v Greece, App no. 15250/02, (ECtHR, 13 December 2005); Begheluri and Others v Georgia, etc.

discriminatory systemic practice against a particular group.[181] In this regard, the Court would – in addition to the systemic nature of the involuntary contraception practices – likely take into account the broader context, including the practice of 'parenting competency testing' of Inuit parents, a policy that has removed children from Inuit parents at a far greater frequency than from Danish parents,[182] as well as practice of 'legally fatherless', whereby individuals born out of wedlock during 1948-2014 were denied the legal right to establish paternity from their Danish fathers and, in turn, obtain inheritance or receive information about them.[183] Article 14 also demands that states conduct an effective investigation of cases involving allegations of racially motivated violence against individuals belonging to such vulnerable groups.[184]

82. Whilst Article 14 may be more obviously engaged during the first period, the situation is less clear in the second period in question (1992-present) since, by then, the official 'spiral campaign' had reportedly already ceased. However, certain reports suggest that contraception practices targeting Greenlandic women and girls appear to have continued. Only within the first year of data collection, there were 15 reports of such practices occurring after 1992, with 13 of these cases involving surgical abortions between 1993 and 2014.[185] These contraception cases seem to have occurred across the entire territory of Greenland, with two towns having two cases each; others have one.[186] This suggests that, irrespective of the absence of an official state policy, the contraception practices against Greenlandic women and girls continued well into the second period.

83. Although Denmark was no longer in charge of health and welfare in Greenland after 1991, for the purposes of the ECHR, it would have had a positive obligation to ensure that past discriminatory practices were brought to an end, that a legislative framework was put in place to prevent such practices continue in the future, and that medical personnel performing such practices were identified and (re)trained.

1. ---

[181] V.I. v The Republic of Moldova at para.175.
[182] Institute for Menneske Rettigheder (Danish Institute for Human Rights), Testing of parenting skills with Greenlanders in Denmark, 24 May 2022, https://menneskeret.dk/udgivelser/testning-foraeldrekompetencer-groenlaendere-danmark; UN Rapporteur Report, supra note.
[183] Institute for Menneske Rettigheder (Danish Institute for Human Rights), HUMAN RIGHTS IN FOCUS – REPORT TO INATSISARTUT 2022-23, 2023, https://www.humanrights.dk/files/media/document/HUMAN%20RIGHTS%20IN%20FOCUS%20–%20REPORT%20TO%20INATSISARTUT%202022-23_accessible.pdf.
[184] Mižigárová v Slovakia at para.119.
[185] Four cases explicitly complaining about the absence of consent. See: Landslægeembedet, Notat - Status på spiralsagerne, Dok. nr. 23818398, 24 January 2024 (National Health Board's Report).
[186] Ibid.

3. Beyond the European Convention of Human Rights: Potential Indigenous Community Violations

84. While the European Convention of Human Rights focuses on individual violations of human rights, it does not acknowledge the potential collective harm these violations may have caused to the wider community. In the context of sterilization of Roma people, for example, the ECtHR has taken into account the broader implications of infertility on the potential family life and marriage in cases concerning individual Roma people,[187] but it has not yet deliberated on the possible communal effects of widespread infertility of a large proportion of a specific (ethnic) minority group.

85. To offer a comprehensive account of possible violations in the Greenlandic Contraception cases, including by contextualising the notion of communitarian harm caused to the Inuit community, we expand our analysis beyond the ECtHR system. In the following section, we thus introduce relevant law and practice from other international and human rights systems, particularly the UN Human Rights System and the Inter-American Human Rights System. In this respect, Denmark is a member of the International Covenant on Civil and Political Rights (ICCPR) as well as a member of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). It has also been subject to both of their individual complaint mechanisms, namely the UN Human Rights Committee and the CEDAW Committee, the case law of which accordingly applies. Recently, both bodies rendered decisions in which they adopt a notion of collective harm in cases concerning indigenous communities and highlight the need for community remedies. Moreover, although Denmark is not part of the Inter-American Human Rights System, the concepts developed in the case law of the Inter-American Court of Human Rights (IACtHR/hereafter the Court) and the Inter-American Commission of Human Rights (IACHR) may clarify the wider implications of individual violations for the Inuit community as a whole and serve as inspiration for any future agreement on remedies.

86. More specifically, these human rights systems are particularly instructive and relevant for the case of Greenlandic Inuit Women because: (1) they have progressively recognized Indigenous communities as collective subjects of international law with distinct, enforceable rights; (2) they distinguish between harm to individual Indigenous community members and collective harm to the community itself, ordering different remedies accordingly; (3) and finally, because they offer valuable precedents for the Greenlandic context, particularly in addressing intersectional discrimination and providing collective reparations.

3.1. Indigenous Communities as Holders of Human Rights

87. The IACtHR acknowledges protections for Indigenous communities and peoples broadly. The Court has developed prominent case law concerning the rights of Indigenous peoples, including harm against them. One of the paradigmatic components of the Court's case law is that it provides individual protection to its members and collective protection to the community or peoples as a whole. Indigenous peoples are understood as distinct subjects of Inter-American Human Rights law and, thus, subjects of rights.

88. The IACtHR has issued several judgments concerning Indigenous peoples' rights, that paved the way towards enshrining the collective nature of human rights violations against these

1. ---

[187] V.C. v Slovakia at para.118.

communities.[188] Initially, the case law focused on property rights and the special link of Indigenous peoples with their land and the communal form of collective property.[189] Subsequently, the Court acknowledged a collective dimension of Indigenous members' right to life and their life aspirations under article 4 of the American Convention on Human Rights (ACHR/hereafter Convention), including the connection between the right to health of the individual "and the right to health of the society as a whole," which "has a collective dimension".[190]

89. In 2012, the IACtHR explicitly acknowledged Indigenous peoples as subjects of international law. Both in *Sarayaku* and *Kuna*, the IACtHR considered a breach of the rights of the Indigenous communities as a whole, rather than of its individualised members.[191]

90. The case law of the Court was consolidated in the IACtHR's *Advisory Opinion No. 22,* where the Court argued that under international law, Indigenous communities and Indigenous peoples could be understood as collective subjects of the rights enshrined within the ACHR. As discussed by the Court

> international law on Indigenous or tribal communities and peoples recognises rights to the peoples as collective subjects of international law and not only as members of such communities or peoples. In view of the fact that Indigenous or tribal communities and peoples, united by their particular ways of life and identity, exercise some rights recognised by the Convention on a collective basis.
> […]
>
> This protection means that if some of the rights of Indigenous and tribal community members are exercised jointly, the violation of these rights has a collective dimension and cannot be limited to an individual impact. Impact will then have consequences for all members of the community and not only for some individuals in a specific situation.[192]

91. In that Advisory Opinion, the IACtHR grounded its analysis in the evolving interpretation of law given mainly (1) the recognition of Articles 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which acknowledge a collective right to self-determination; and (2) the wording of ILO Convention 169 which acknowledges collective aspects of the Indigenous relation with their lands, and (3) the progressive recognition of the collective dimension of rights in national Constitutions in the Inter-American region.[193]

92. These led the Court to identify two legal consequences: Communities as a whole could be understood as victims of human rights violations, and thus, "it is not necessary for each member

1. ---

[188] *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua Merits, Reparations and Costs Series C No 79* (IACtHR); *Case of the Yakye Axa Indigenous Community v Paraguay Merits, Reparations and Costs Series C No 125* (IACtHR).
[189] *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua.* para 149.
[190] *Case of the Yakye Axa Indigenous Community v Paraguay.* para 166.
[191] *Case of Kichwa Indigenous People of Sarayaku v Ecuador Merits and Reparations Series C No 245* (IACtHR); *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v Panama Preliminary Objections, Merits, Reparations and Costs Series C No 284* (IACtHR).
[192] *Entitlement of legal entities to hold rights under the Inter-American Human Rights System (Interpretation and scope of Article 1(2), in relation to Articles 1(2), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as well as of Article 8(1)(A) and (B) of the Protocol of San Salvador) Advisory Opinion OC-22/16 Series A No 22* (IACtHR) [75].
[193] *Advisory Opinion OC-22/16*.

to appear individually for this purpose" before the Court.[194] These findings have been consistently recognised up to the present.[195] Indigenous Peoples and Communities are considered as subjects of international law, and thus, they are considered rights holders.

3.2. Collective Harm against Indigenous Communities

93. Through its case law, the IACtHR has provided how it intends to tackle the idea of collective damage. In the *Plan de Sánchez* case, where the Court held Guatemala liable for the collective harm caused against the Indigenous community as a consequence of a massacre perpetrated against the community,[196] Judge García Ramírez provided a concurring opinion, clarifying the Court's position concerning the distinct nature of individual and collective rights in cases of Indigenous communities, arguing that:

> 4. Given that the personal life of the members of the Indigenous community is closely linked to that of the community itself, both in material and spiritual aspects, the sum of the rights of these members is made up both of the faculties, freedoms or prerogatives that they possess independently of the community itself - the right to life, the right to physical integrity, for example - and of the rights that arise precisely from their belonging to the community, which are explained and exercised in function of the community, and which in such circumstances acquire their best meaning and content - the right to life, the right to physical integrity, for example - as well as by the rights that arise precisely from their membership of the community, that are explained and exercised in terms of the community, and that in such circumstances acquire their best meaning and content - the right to participate in the use and enjoyment of certain goods, the right to receive, preserve and transmit the gifts of a specific culture, also for example.
>
> 5. Neither the collective rights of the community are confused with those of its members, nor are the individual rights of the latter absorbed or summarised in the former. Each "status" retains its own entity and autonomy. Both, deeply and closely related to each other, maintain their character, are subject to protection and require specific protection measures. Thus, the recognition of each of these orders becomes relevant and even essential for the other. There is no conflict between the two, but rather concurrence and mutual dependence. Finally, collective life is installed in individual life, and the latter acquires tone and quality within the framework of collective existence. It is true that this phenomenon can be seen in many societies, perhaps in all of them, but it is also true that in some - such as the Indigenous groups of our America - it has special, more intense and decisive characteristics.[197]

94. Since then, the IACtHR has further consolidated case law acknowledging that harm against an Indigenous community as a collective is distinct to the harm caused against an individual member of the community. For instance, in the recent *Rama and Kriol* case, the Court acknowledged ten Indigenous communities as victims of breaches to political rights and cultural life. It further identified six individuals, members of the Indigenous community, as victims. The Court emphasised that "the communities and individuals indicated, as victims of

1. _____

[194] Ibid 84.
[195] *Case of the Xucuru Indigenous People and its members v Brazil Preliminary Objections, Merits, Reparations and Costs Series C No 346* (IACtHR); *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v Argentina Merits, Reparations and Costs Series C No 400* (IACtHR); *Case of the Community Garifuna of San Juan and its members v Honduras Preliminary Objections, Merits, Reparations and Costs Series C No 496* (IACtHR); *Case of the Quilombolas Communities of Alcântara v Brazil*.
[196] *Case of the Plan de Sánchez Massacre v Guatemala Reparations Series C No 116* (IACtHR) [93].
[197] *Case of the Plan de Sánchez Massacre v Guatemala*.

the breaches declared in this judgment, will be beneficiaries of the remedies issued by the Court".[198] Similarly, in *Tagaeri and Taromenane*, the IACtHR considered (1) the Indigenous peoples involved, (2) other Indigenous peoples in voluntary isolation, (3) the members of these peoples, and (4) two children identified as C. and D., members of those communities, as victims.[199] The breach, in this case, included, among others, violent interventions to the community territory, which led to breaches of the rights to collective property and self-determination, for failing to provide legal remedies for the protection of their land, and for failing to investigate the violent facts to their detriment.[200] Similar findings were held in *Kaliña and Lokono*,[201] *San Juan*,[202] *Triunfo de la Cruz*,[203] where the IACtHR identified "the community and its members" as victims. In its most recent judgment on the matter, the IACtHR went on to assess the harm to the collective *life project* ("Proyecto de vida"), as a result of institutional action associated with the impact of extractive projects on a community, racial systemic discrimination against the community as a whole, and lack of adequate domestic remedies to redress these harms.[204]

95. Grounded in the case law of the IACtHR and the Inter-American local jurisdictions, the UN Human Rights Committee has recently adopted a similar notion of collective harm in cases concerning indigenous communities, even if victims are individualised. In the recent *Maya K'iche* case, the Committee adopted the Colombian Special Jurisdiction for Peace's understanding of collective harm, identifying that breaches can lead to "individual harm with collective effect, collective harm to the ethnic identity, culture and religion, damages to their lands, and damages to political and organizational autonomy and integrity". It further described collective present damage, as well as damage to the "collective's future". The collective harms can be understood, for instance, as the degradation of indigenous identity or social cohesion between its members.[205]

96. Of particular relevance to the Greenlandic Contraception cases is the Inter American Commission's focus on Indigenous women and the collective harm they have suffered and are still suffering as a result of colonisation.

> Indigenous women in the Americas also have a common denominator: having historically faced and continuing to suffer multiple and overlapping forms of discrimination, based on factors such as their gender, ethnicity, age, disability, and/or situation of poverty, both from outside and within their own communities, or resulting from the historical and structural remnants of colonialism. All of these different layers of discrimination have increased their exposure to enduring human rights violations in every aspect of their daily lives, from their civil and political rights, to their economic, social and cultural rights, to their right to live free from violence.[206]

1. ---

[198] *Case of the Rama and Kriol Peoples, the Black Creole Indigenous Community of Bluefields et al v Nicaragua Merits, Reparations and Costs Series C No 522* (IACtHR) [466].
[199] *Case of Tagaeri and Taromenane Indigenous Peoples v Ecuador Preliminary Objection, Merits, Reparations and Costs Series C No 537* (IACtHR) [478].
[200] *Case of Tagaeri and Taromenane Indigenous Peoples v Ecuador*.
[201] *Case of the Kaliña and Lokono Peoples v Suriname*.
[202] *Case of the Community Garifuna of San Juan and its members v Honduras Preliminary Objections, Merits, Reparations and Costs Series C No 496* (IACtHR).
[203] *Case of the Community Garifuna Triunfo de la Cruz and its members v Honduras Merits, Reparations and Costs Series C No 305* (IACtHR).
[204] *Case of the Quilombolas Communities of Alcântara v Brazil.*
[205] *Members of the Maya K'iche people et al vs Guatemala* [2025] CCPR/ C/143/D/4023/2021-4032/2021 (Human Rights Committee)
[206] IACHR, 'Indigenous Women and Their Human Rights in the Americas' (2017) OEA/Ser.L/V/II. Doc. 44/17 <https://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>.

97. The Commission underlines that women from Indigenous communities "remain scarred by the effects of colonization, by lack of ownership and respect for their territories, and by forms of social and institutional racism".[207] The issue was further investigated in *British Columbia case report* in Canada.

> Before colonization, aboriginal women commanded the highest level of respect as the givers of life and keepers of the traditions and practices of the nation. Many of the Indian nations were matriarchal or semi-matriarchal. Patriarchy and male dominance were introduced through missionaries and subsequently made law through the Indian Act. Colonialism turned woman into Squaw. The Squaw is degraded and dehumanized and is the female counterpart to the Indian male savage. She has no human face; she is lustful, immoral, and dirty. This grotesque depiction of aboriginal women has left them degraded and more vulnerable to physical, verbal and sexual violence.[208]

98. The Inter-American Commission has held that massive patterns of violence against Indigenous women in British Columbia amounted to a particular form of intersectional discrimination. The IACHR documented they had their root causes in colonisation that has continued "through laws and policies such as the Indian Act and residential schools".[209] This has had a great impact on the Indigenous community and the Court then proceeded to specify remedies to redress both the individual and community harm, discussed further below.

3.3. The Peruvian Forced Sterilisation Policy

99. Three cases – *Mamerita Mestanza, Celia Ramos Durand*, and *Maria Elena Carbajal et. Al.,* provide important precedents that could be applied to understand the full implications of the Greenlandic involuntary contraception policy, including on the Indigenous community as a whole. These Peruvian cases relate to the application of a National Family Planning policy that led to numerous forced sterilisations, mostly of Indigenous and impoverished women in rural areas of Peru. The first two cases are relevant precedents from the Inter-American human rights system, whilst for the sake of completeness, the analysis includes also the recent CEDAW Committee's decision in the case of *Maria Elena Carbajal et. al*.

100. Between 1996 and 2000, Peru implemented a policy called the *Programa Nacional de Salud Reproductive y Planificación Familiar* (National Program on Reproductive Healthcare and Family Planning) with the objective that all patients in labour or having abortions leave the healthcare centres with some form of contraception. The IACHR identified that, in practice, the policy was mainly implemented to the detriment of Indigenous, impoverished and rural communities, where women were subjected to sterilisation "in exchange for food" without the healthcare system providing information on any alternative, and to the contrary, its medical personnel providing false information. The Program further established incentives for health personnel to meet these quotas. Within the first year of the policy, Peru expected to achieve the sterilisation of 150.000 women.[210] Between 1996 and 2000, they achieved over 300.000 sterilisations of women, 93% of the total interventions made in implementation of the policy.[211]

1. ---

[207] Ibid 32.
[208] IACHR, 'Missing and Murdered Indigenous Women in British Columbia, Canada' (2014) OEA/Ser.L/V/II. Doc. 30/14 para 60.
[209] IACHR, 'Missing and Murdered Indigenous Women in British Columbia, Canada'.
[210] *Celia Edith Ramos Durand y sus Familiares vs Perú* [2021] IACHR Caso 13.752, Inf No 28721.
[211] *Maria Elena Carbajal Cepeda et al vs Peru* [2024] CEDAW/C//89/D/170/2021 (CEDAW Committee).

3.3.1. The Mamérita Mestanza case

101. María Mamérita Mestanza was a rural, Indigenous Peruvian woman who was subjected to harassment by health personnel in 1996 to undergo sterilization. Ms. Mestanza was even threatened with police action because of the amount of children that she had. Under coercion, she consented to sterilization (tubal ligation) on 27 March, 1998. She presented serious complications as a consequence of the surgery, notwithstanding, she was discharged the next day. She ultimately died on 5 April 1998 due to post-operative infection.

102. The case was submitted before the IACHR. [212] In 2003, Peru signed a friendly settlement agreement, acknowledging international responsibility for breaching the rights to life, personal integrity and non-discrimination of Mamérita Mestanza (under the ACHR), as well as her right to live free from violence against women (under the Belém do Pará Convention). The remedies agreed will be discussed in the next section.

3.3.2. The Celia Ramos Durand case[213]

103. Celia Ramos was also a rural and impoverished woman with three daughters in Peru. Similar to what happened to Mamérita Mestanza, she also received recurring visits from health personnel over several weeks urging her to undergo sterilisation. On 3 July 1997, she underwent sterilisation. However, during the surgery, she suffered serious complications due to anaesthetic reactions. She ultimately died on 24 July 1997 due to brain damage associated with the complications that occurred in the surgery.

104. The IACHR found Peru liable for breaching the rights to life, personal integrity, health, private life, freedom of information, non-discrimination, judicial guarantees and judicial protection, all of them under the ACHR, and the right to live free from violence against women as established in the Belém do Pará Convention.

105. The IACHR found that the regulation and implementation of the PN was discriminatory, as it was focused specifically on women -mostly Indigenous women- of reproductive age who lived in impoverished and rural areas. It further determined, in the specific case of Celia, that (1) Peru failed to obtain informed consent, (2) the health facility where the surgery took place lacked the infrastructure and medication to ensure a proper treatment to Celia, (3) the improper conditions in which the surgery underwent led to the death of Celia Ramos. The IACHR further held Peru responsible for improperly archiving the investigation of Celia Ramos's case. The case was ultimately submitted to the IACtHR for a final judgment, which is expected to be issued by late 2025 or early 2026.

3.3.3. Maria Elena Carbajal et. al. [214]

106. The case of Maria Elena Carbajal and four other women concerned likewise the case of forced sterilisation under the Convention, as a consequence of different forms of coercion by the medical personnel. Maria Elena Carbajal, for instance, was threatened that she could only see her newborn if she agreed to be sterilised. Florentina Loayza was locked into a hospital after she sought for food that was being given away. Rosa Loarte Sobardo was intercepted by medical personnel and put to sleep for the procedure. Elena Rojas Caballero was detained along

1. ---

[212] *María Mamerita Mestanza Chávez vs Peru* [2003] IACHR Caso 12.191.
[213] *Celia Edith Ramos Durand y sus Familiares vs. Perú*.
[214] *Maria Elena Carbajal Cepeda et. al vs. Peru*.

with her sister by nurses, under the threat that otherwise she would not have access to social benefits. Finally, Gloria Basilio Huamán was harassed by nurses who picked her up, allegedly in exchange for food.

107. The CEDAW Committee issued a decision in which it determined that their cases constituted forced sterilisations that constituted a form of gender-based violence and intersectional discrimination on the grounds of sex, gender, rural origin and socioeconomic status. It further held Peru liable for failing to provide adequate investigations and reparations. The remedies ordered will be discussed in the next section.

3.4. Applying the case law to the Greenlandic Contraception Cases

108. The aforementioned case law leads to acknowledge that, particularly in the case of Indigenous peoples, arbitrary restrictions to the right of women to reproductive autonomy not only cause an individual harm to each of the persons who suffered such interferences, but also potentially constitute a collective harm to the Inuit community as a whole. The Peruvian precedents in particular are relevant to the Greenlandic cases because they provide the response from domestic and international human rights bodies to a major sterilisation policy under an international human rights framework, providing guidelines on potential elements that should be encompassed in a reparations policy.

109. As was described previously, the Peruvian sterilization policies are a result of a major State-led policy directed substantially against Indigenous, rural and impoverished women. This disproportionate and intersectional impact could arguably amount to a form of intersectional discrimination (as described by CEDAW Committee), grounded on power relations between the State and the women, who were subject to population control policies without their consent. These power relations usually have an underlying gender stereotype under which the *State knows best* how reproductive autonomy should be exercised. The impact of this policy targeted women disproportionately: over 300.000 women in Peru.

110. Although the Greenlandic examples are similar in several aspects, there are some other significant differences. The Peruvian context favoured surgical sterilisation, whilst the Greenlandic case favoured IUDs. Although the IUDs are removable, their imposition led to a considerable drop in birthrate, from 7 to 2.3 children on average and left some young victims of reproductive age infertile. On a community level, therefore, a policy (or campaign) affecting the health of numerous individual Greenlandic women and girls had important and long-term consequences on the health of the Inuit community as a whole, particularly its (future) size. This is therefore an example of individual harm with a collective effect, which may, as framed by the UN Human Rights Committee, harm the Inuit 'collective's future' by detrimentally interfering with reproduction and affecting the perpetuation of a distinct Inuit identity and culture, protected under Article 27 of the ICCPR. In light of this, the decisions of the international tribunals are not only relevant and valuable precedents to be considered in this Inquiry, but also underscore the importance of individual and collective remedies, to which we turn next.

4. Remedies

111. Article 41 of the ECHR provides that

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

112. Through its case law, the Court has interpreted this provision as focusing on compensation. As a rule, therefore, the Court in its judgments specifies only the amount of damages to be paid, adjusted to the specific individual circumstances. The other remedies are to be determined and set by states themselves, as they have better understanding of the internal needs, situation, and context. However, the Committee of Ministers (Committee) supervises the execution of judgments of the Court and thus is intended to monitor how human rights violations are redressed within the domestic legal systems. In this context, the Committee's role is also to ensure that the non-monetary remedies adopted are appropriate and able to prevent future similar violations from (re)occurring. Together, both the actions of the Court and the Committee, are intended to provide a strong system of supervision of states, to ensure human rights violations are appropriately redressed.

113. In this submission, we use the case law of the European Court of Human Rights as a guide in determining the appropriate compensation awards for pain and suffering of victims in Contraception cases. We use this as a guide to what individual applicants could expect at the international level. It is important to underline, however, that compensation at European level is merely symbolic,[215] because the Court acts as a supranational organ, only to provide redress when states have failed to do this fully or at all.[216] Respondent states are therefore expected to accurately redress the harm caused based on their own domestic law and practice. This means that compensation awards in domestic law are likely to be higher and indeed much higher, depending on the domestic practice, than the quantum awarded by the ECtHR.[217]

114. As far as non-monetary remedies are concerned, the European context gives the respondent state a lot of leeway to determine the most appropriate remedies to redress the harm caused. In this regard, the choice of the type of remedies, their scope and extent can be as extensive and broad as the state deems appropriate. It is important that victims, their representatives, civil society and other organizations are involved and actively consulted in the process of determining appropriate non-monetary remedies. This is not only expected at domestic level, but also at European and international level, where various procedures allow for information to be provided to international authorities by various stakeholders.[218] If stakeholders are to be involved even at international level and actively consulted as to the choice of remedies and the process of execution/implementation of judgments, then this applies even more at the domestic level. Together with a variety of stakeholders, the respondent state should therefore consider the full range of remedies available to redress the harm caused both to individuals and the community as a whole.

115. In this submission, we look both to the remedies adopted by states in the ECtHR precedents as well as remedies specified in the other human rights systems. In this regard, we provide a range

1. ---

[215] Fikfak V, 'Non-Pecuniary Damages before the European Court of Human Rights: Forget the Victim; It's All about the State' (2020) 33 Leiden Journal of International Law 335.
[216] Article 41, referring to partial reparation.
[217] Faulkner [2013] UKSC 23, [87].
[218] Eg Rule 9 of the Rules of the Committee of Ministers allows victims and NGOs to intervene and provide information on the choice of remedies and the execution of judgments.

of remedies that other human rights fora or indeed domestic courts have specified for similar human rights violations. These examples are especially pertinent in relation to thinking creatively about community remedies that should be provided to the Inuit community and Greenlandic society more broadly to redress the long-term and widespread consequences of the policies adopted.

4.1. Monetary remedies

4.1.1. European Court of Human Rights case law

116. The primary remedy awarded by the European Court of Human Rights for human rights violations is compensation. The Court recognises damages for both pecuniary and non-pecuniary damage. Pecuniary damage is usually proved by showing loss of livelihood and other losses suffered as a result of the violation of human rights. Given these may differ from case-to-case, we leave them aside.

117. Beyond this, the Court also awards compensation for pain and suffering. For this, the Court uses internal and unpublished scales based on previous similar cases and to ensure that the compensation is awarded on an equitable basis. Compensation levels are adjusted according to the respondent state and to ensure that the purchasing power for the victims is equal regardless of the jurisdiction they find themselves in. This means that the same violation would lead to a higher non-pecuniary award in UK or Denmark, then it would in Slovakia or Moldova.

118. In this regard, several cases could serve as a guideline. These are discussed below. A note of caution, however: since most of these cases relate to countries whose GDP is lower than Denmark (eg predominantly Slovakia, Moldova and Turkey), the quantum of the award would have to be adjusted to the difference in GDP. Namely, the European Court adjusts the quantum depending on the 'on the overall context in which the breach occurred',[219] i.e. the 'local economic circumstances'.[220] As a consequence, the 'basic award' can be increased 'on the basis of the standard of living in the country concerned.'[221] The sum is therefore adapted so that it is commensurate with the standard of living and ensures equivalent purchasing power in all countries.[222]

119. In turn, both the compensation *claimed*[223] as well as the compensation *accorded* should be considerably higher than the sums mentioned below. A study of ECtHR non-pecuniary damages, for example, showed that the rise of awards for torture is particularly striking, with quantum doubling from EUR 20,000 for countries with $4 billion GDP to EUR 40,000 for countries with $4 trillion GDP per individual and per violation of torture.[224] Only such compensation awards that are appropriate can constitute full redress of the harm caused and can preempt any future litigation, including at the European level. If the harm is domestically

1. ---

[219] *Al-Skeini and others v United Kingdom,* app.no. 55721/07, 7 July 2011, para 182.
[220] *Basarba OOD v Bulgaria*, app.no.77660/01, 20 January 2011 [26]. Rules of the Court, Practice Directions, at 60ff, available at www.echr.coe.int/Pages/home.aspx?p=basictexts/rules/practicedirections, para 2.
[221] *Apicella v Italy*, app.no. 64890/01, 29 March 2006. Note that this was an Article 6 cases in which the Court has the most structured approach.
[222] O. Ichim, *Just Satisfaction under the European Convention on Human Rights* 160 (CUP, 2015). This is consistent with the Court's assertions in *Mironovas v Lithuania*, app. No. 40828/12, 8 December 2015.
[223] As media report, currently litigation efforts are underway as are attempt to litigate or settle these claims. Wass, supra note.
[224] Fikfak V, 'Non-Pecuniary Damages before the European Court of Human Rights: Forget the Victim; It's All about the State' (2020) 33 Leiden Journal of International Law 335.

only *partially* redressed, the claims can still be taken to Strasbourg.[225] This caveat should therefore be considered as we turn to the analysis of the case law of the ECtHR.

120. In *V.C. v. Slovakia*, where the victim suffered sterilization and the Court found a violation of the substantive limb of Article 3 and Article 8 violation, the applicant was awarded EUR 31,000 in respect of non-pecuniary damage and EUR 12,000 in respect of costs and expenses. In *G.M. v The Republic of Moldova*, the Court awarded the first applicant EUR 30,000 and the second and third applicants EUR 25,000 each in respect of non-pecuniary damage. In this case, the Court found a violation of the procedural limb of Article 3, due to a lack of an effective investigation into allegations of forced abortions and *forced contraception* after rape by doctor in neuropsychiatric residential asylum of three intellectually disabled applicants, and a violation of the substantive limb of Article 3, due to State's failure to establish and apply effectively a system providing protection to intellectually disabled women in psychiatric institutions against serious breaches of their integrity. The difference in sums between applicants can be attributed to the different ages or their vulnerability: the first applicant was 19 years old at the time and was also subject to forced abortion and had an IUD inserted after, the second was 23 years old and the third was 25. Both were subject to forced abortions, but there was no evidence of forced contraception.

121. In *N.B. v Slovakia*, where the Court found a violation of Article 3 and 8 under substantive head and the applicant obtained partial redress at the domestic level, the Court awarded EUR 25,000 for non-pecuniary damage and EUR 5,000 for costs and expenses. In *I.G. and others v Slovakia*, a violation of the substantive limb of Article 3 of the Convention on account of the first and second applicants' sterilization and a procedural violation of Article 3 as well as violation of Article 8, led to an award of EUR 28,500 to the first applicant and EUR 27,000 to the second applicant in respect of non-pecuniary damage; and EUR 4,000 each for costs and expenses. The Court 'noted that the [second] applicant obtained partial redress at the domestic level.'

122. Even in cases, where no sterilization occurred but the victim had been subject to a forced gynecological examination, the awards have moved around the same level. In *Yazgül Yilmaz v Turkey*, a sixteen-year-old applicant had been taken into police custody and subject to forced gynecological examination. The case led to a violation of both substantive and procedural limbs of Article 3. The applicant was awarded EUR 23,500 in respect of non-pecuniary damage.

123. Finally, in *Y.P. v Russia*, the failure of doctors to seek and obtain express, free and informed consent for sterilisation, as required by domestic law, meant that Article 8 was violated. The Court awarded the applicant EUR 7,500 for non-pecuniary damages and EUR 1,770 in respect of costs and expenses. The compensation awards were, however, higher in the case of *Codarcea v Romania*, where Article 8 was violated due to the absence of a consent of a competent adult (in case of a minor). The Court awarded EUR 20,000 for pecuniary and non-pecuniary combined.

124. It is clear from the stated case law, that for Slovakia, Russia and Moldova, the compensation awards for similar type of claims under Article 3 and Article 8 move around EUR 25-30,000. These amounts have been consistent whether domestic redress has been provided or not. In turn, for Article 3 violations (together with Article 8) committed by a high GDP country like Denmark, the awards would likely move around EUR 50-60,000 per individual case. Any attempts to settle the cases or litigate the cases domestically should thus frame the compensation claims at this level of quantum.

1. ---

[225] Article 41 of ECHR.

125. We underline that this spectrum is an initial amount at which any discussions of individual compensation awards should start. This is especially the case since none of the precedents discussed above included a violation of Article 14 of the Convention. If, in the Contraception cases, Article 14 is also engaged, then the awards could be much higher. In *D.H. and others v The Czech Republic*, for example, the Court found a violation of Article 14 in conjunction with Art 2 Protocol 1 and awarded each of the eighteen applicants EUR 4,000 for the non-pecuniary damage suffered as a result of the humiliation and frustration caused by the indirect discrimination of which they were victims. 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 peoples. Almost 15 years ago, in *Handolsdalen Sami Village and Others v Sweden*, Judge Ziemele urged for an increase of damages award due to the (domestic) system not adequately taking into account "particular circumstances of Indigenous peoples".[226] It is likely that in 2025, such calls would be even stronger. Finally, the Court would likely note that the policies targeted Indigenous women and that this intersectionality between gender and Indigenous membership created a special type of vulnerability, which ought to be recognised and redressed separately. As those who have studied the Court's approach note, 'if the victim is particularly vulnerable …, the award will go towards the maximum limit.'[227]

126. Any compensation awards – whether before domestic courts or the ECtHR - would have to be individualized. This means that the compensation awards would be made on an individual basis, paying regard to the specific circumstances of each individual case. In particular, in individualizing the damage amounts, the ECtHR would consider the *age* of the victim at the time of the insertion of the IUD (minors would be entitled to higher awards) or other vulnerability; *type* of intervention (insertion or surgery); whether *consent* had been sought (or parents had been advised) or whether the victim has been deceived, tricked or otherwise involuntarily persuaded into the intervention (eg whether the intervention took place in school or during school hours), and the long-term damage caused to the individual (eg sterilization, ability to have children, other health issues). The Court would also consider any attempts made by the state to redress the harm caused – whether through apology, damage awards, or provision of other support.

4.1.2. Beyond the ECtHR: Monetary remedies for communitarian harm

127. It is important to underline that in jurisdictions that recognise communitarian harm stemming from individual cases of human rights violations or indeed a policy impacting the Indigenous community, courts have issued orders for the creation of "community development funds". These are entirely separate from the earlier awards in individual cases, intended to compensate for individuals' pain and suffering. Instead, the funds are intended to compensate the long-term and widespread effects of specific policies on the community as a whole. Such compensation measures require the State to create the funds, which are invested into programs to redress the harm caused. Such community funds require effective dialogue and participation of the Indigenous community to ensure adequate implementation.[228]

1. _____

[226] *Handolsdalen Sami Village and others v Sweden* (39013/04), partly dissenting opinion.
[227] Ichim, supra note.
[228] *Case of the Community Garifuna Triunfo de la Cruz and its members v Honduras. Merits, Reparations and Costs. Series C No. 305*.

128. The administration of such funds is usually exercised jointly by members of the State and the Indigenous community involved.[229] Exceptionally, the Inter-American Court has ordered the provision of a lump sum to the community, for material and immaterial damages, delivered "to the representatives of the respective Indigenous leaders".[230] Judge Sierra justified the issuance of compensation being granted through community funds in *Triunfo de la Cruz*, arguing that it benefits the government's expertise in ensuring efficiency of the fund, notwithstanding it requires that the ultimate decisions of the goals should be developed by the community itself. In such case, the IACtHR ordered Honduras to compensate the community with USD 1.500.000,00 to enhance agricultural productivity in the community, improve infrastructure, restore areas impacted by deforestation, and adopt other measures to benefit the community as agreed among the parties.

129. In previous cases, for example, the IACtHR issued in the recent *Alcantara* judgment an order for Brazil to award damages for USD 4.000.000,00 to several Quilombola communities to finance "educational, housing, water and electricity purposes, as for the construction of agriculture and sanitation infrastructure".[231] In *Rama and Kriol*, the IACtHR awarded USD 1.500.000,00 with similar purposes.[232] In *U'wa* damages to community's cosmovision and cultural identity had to be compensated by Colombia, in the amount of USD. 1.200.000,00.[233] In *Yakye Axa*, the IACtHR established a compensation of USD 950.000 with similar prospects as the previous ones, in this cases to redress breaches to social rights of the community as a consequence of breaches to their land rights.[234] It is noteworthy that, although none of these cases have facts that are similar to the Greenlandic Inuit community's situation – as they mostly concern impacts to cultural identity associated with land rights disputes, the impact to the cultural identity and discrimination that they have suffered provide common ground for the analysis.

4.2. Non-monetary remedies

130. The European Court of Human Rights rarely specifies non-monetary remedies which states have to undertake in response to a human rights violation. Instead, the majority of remedies are proposed by states themselves or taken up upon the advice of the Department of Executions at the Council of Europe, the Secretariat responsible for follow-up of the implementation of judgments, or at the suggestion of the Committee of Ministers, the organ in charge of monitoring execution. In the sections below, we introduce the measures that have been adopted by states and accepted by the Committee as appropriate and sufficient to redress the harm caused and to prevent similar violations from reoccurring in the future in cases. We refer to cases that we have identified as comparable and that have been cited earlier in this submission. These are intended as examples and for inspiration about the type of remedies that could be adopted in response to the Contraception cases.

131. In the process of determining remedies, victims and their associations must be consulted and actively participate in designing and shaping these remedies. In the European context, Rule 9

1. ---

[229] *Case of the U'wa Indigenous People and its members v Colombia. Merits, Reparations and Costs. Series C No. 530.*; *Case of the Yakye Axa Indigenous Community v Paraguay.*; *Case of the Community Garifuna Triunfo de la Cruz and its members v Honduras. Merits, Reparations and Costs. Series C No. 305.*

[230] *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v Panama.* para.247.

[231] *Case of the Quilombolas Communities of Alcântara v Brazil.*

[232] *Case of the Rama and Kriol Peoples, the Black Creole Indigenous Community of Bluefields et al v Nicaragua.*

[233] *Case of the U'wa Indigenous People and its members v Colombia.*

[234] *Case of the Yakye Axa Indigenous Community v Paraguay.*

of the Committee of Ministers allows NGOs and victims to provide information about how human rights are being redressed by the state in the execution process. This means they will be able to identify any problems or delays. As a consequence, even at domestic level, victims and their associations must be brought into the process of determining and designing these remedies, and reparations must be clearly distinct from the state's general obligations to all citizens.

4.2.1. Remedies for individual harm

132. Remedies adopted by states in the European context fall into two categories: individual measures and general measures. Under the ECHR, *individual measures* require the state to investigate specific injustice caused to the victim, open criminal proceedings into the wrongdoing and then sanction the perpetrators. In most of the cases concerning sterilisation, the Court underlined the need for the victims to have access to a remedy at home and noted in places, the failure of authorities to carry out an effective and expedient investigation. In response, in *V.C. v Slovakia*, the respondent state reported that it had amended legislation to establish an expert group to investigate unlawful sterilisations and segregation of Roma women. From this, we can conclude that an effective investigation into the human rights violations has been deemed necessary in similar cases.[235]

133. The second type of remedies are of a more *general nature* and concern the wider changes required to prevent similar violations from occurring in the future. These often require the adoption or amendments to legislation and include teaching and (re)training of personnel involved in human rights violations. In *V.C. v Slovakia* and other cases concerning sterilization policies of Roma women in Slovakia, the respondent state has enacted the Health Care Act, governing in detail the need for patient's informed consent. The legislation requires that patients be provided with information about alternative methods of contraception, planned parenthood and the medical consequences; that consent has to be written and obtained in a language the patient understands. A new Regulation was adopted in 2013 to ensure that the requirement of consent is uniformly understood by all health establishments and to unify the conduct of health professionals. In addition, the state put in place systematic and targeted training of health workers on the issue of informed consent prior to sterilisation as well as organised training of prosecutors and judges.[236]

134. Similar type of measures were discussed *G.M. v Moldova*, where the Court held, that the existing Moldovan legal framework lacks the safeguard of obtaining a valid, free and prior consent for medical interventions from intellectually disabled persons, adequate criminal legislation to dissuade the practice of non-consensual medical interventions carried out on intellectually disabled persons in general and women in particular, and other mechanisms to prevent such abuse of intellectually disabled persons in general and of women in particular. This falls short of the requirement inherent in the State's positive obligation to establish and apply effectively a system providing protection to women living in psychiatric institutions against serious breaches of their integrity. The execution of the case is still pending, however, the Committee of Ministers has underlined the need for urgent amendments to the legislative and regulatory framework, in accordance with the Court's findings. In addition, the Committee underlined that whilst waiting for the legislation, any procedures on women in the hospitals are carried out in a Convention-compliant way, providing prior and informed consent and on the

1.

[235] V.C. v Slovakia, Resolution of the Committee of Ministers, 2 April 2014, https://hudoc.exec.coe.int/eng?i=004-8255.
[236] Ibid.

basis of sufficient information on the procedure in a manner that is accessible to the patients. Finally, the need to train staff in similar medical institutions and raising awareness for persons in similar situations was underlined.[237]

135. Beyond the ECtHR, in other jurisdictions the approach to remedies in these cases has been somewhat broader. In response to the Peruvian forced sterilization policy, for example, Peru started (a) a broad criminal investigation for systematic forced sterilizations, including bringing criminal charges against former President Alberto Fujimori;[238] and (b) set up a Registry for Victims of Forced Sterilisation.[239] The aim of the register is to collect a list of victims, where sterilisation had occurred without free and informed consent and to verify their claims.[240] In addition, following a judicial decision by a domestic court, victims on the Register should also be entitled to full reparations.[241] The Fifth Constitutional Court of the Superior Court of Justice of Lima ordered the Ministry of Justice and Human Rights to implement a (c) multifaceted reparation policy. This was to include (1) symbolic reparations (public recognition, monuments), (2) health services and psychological assistance,[242] (3) and educational opportunities, in addition to economic compensation mentioned earlier and collective community reparations discussed below. In *Celia Ramos*, the Inter-American Commission extended these remedies further, insisting on comprehensive reparation for victims' families, including providing physical and mental health for the rehabilitation of family members.

136. Along similar lines, in the *Mamerita* case, the Inter-American Court of Human Rights awarded the victim compensation, and ordered Peru to provide health and educational support and to investigate and prosecute those responsible. In addition, the Court also required of Peru to make (d) legislative and policy changes, eg put in place legal and policy reforms on reproductive health and family planning, including training programs for health personnel on reproductive rights, and later in *Celia Ramos*, review policies and practices on informed consent, including the adoption of legislation, policies and directives to ensure respect for informed consent.

137. And finally, beyond the two human rights courts, in *Maria Elena*, CEDAW held Peru liable for failing to provide adequate investigations and reparations. In addition to ordering Peru to provide adequate financial compensation for the victims and psychological assistance for the five women and their families, it also insisted that Peru had to accelerate the investigations related to their cases. It further ordered structural remedies requiring Peru to investigate all forced sterilizations conducted under the sterilisation policy. The investigations therefore were not to be limited to the isolated case but had to extend to all victims on the Register.

138. The remedies imposed by the Inter-American Court of human rights or CEDAW look to be more specific than what is ordered by the European Court of Human Rights. In practice, however, the remedies adopted by states in Europe are similar. These are intended to redress

1. ---

[237] G.M. and others v Moldova, Resolution of the Committee of Ministers, 22 February 2023, https://hudoc.exec.coe.int/eng?i=004-62749.

[238] Former President Fujimori died in 2024.

[239] 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.

[240] Victims have to provide a medical document that confirms that the victim was subject to sterilisation or, at least, a diagnostic that provides evidence to presume that the person was subject to such sterilisation.

[241] *Inés Condori Anaya, María Mogollón, Félix Rojas, Horacio Pacori, Raquel Reynoso y Romy García vs Ministerio de Justicia* [2022] Quinto Juzgado Especializado en lo Constitucional, Corte Superior de Justicia de Lima, Peru 01434-2021-0-1801-JR-DC-05.

[242] Psychological assistance to the victims and their families was explicitly underlined in Maria Elena case.

the victims' harm along four different axes: justice, restitution and rehabilitation, satisfaction, and compensation.

139. Investigation, prosecution and sanction are intended to accord victims *justice*. Remedies that aim to provide *restitution* and *rehabilitation* are intended to ensure victims are able to recover from the violations suffered. In sterilisation cases, these require the provisions and access to physical and mental healthcare for the victims. This may require the creation or strengthening of the conditions of health centres, including the previously mentioned teaching and training of personnel. Remedies pursuing *satisfaction* to the victims to redress their harm can extend from acknowledgements and apologies to assurances of non-repetition. These include comprehensive reparations frameworks to address all victims and often require a new legal framework to advance reparations in all similar cases.

4.2.2. Beyond the ECtHR: Remedies for community harm

140. In this legal opinion, we provide the full range of remedies available to be adopted in this case. We do not limit ourselves to the individual cases of women affected by the involuntary contraception policy but also consider the harm caused to the community as a whole. In this context, we rely on the case law of the Inter-American Human Rights system, which awards community remedies for collective harm cause to Indigenous communities. As mentioned earlier, the Court explicitly recognises Indigenous communities as subjects of international law and remedies for harm caused to these communities. This is to be contrasted with other non-Indigenous cases of collective harm, where the Court tries to individualise the beneficiaries of remedies, as non-Indigenous communities are not recognised as collective rights holders.[243] Notwithstanding, there are exceptions in which in spite of the victims being individualised, remedies ordered by the Court have been of a collective nature. [244] In turn, the jurisprudence of collective remedies is directly relevant to our case, where Indigenous communities are directly affected and where the long-term and widespread consequences of the policies can only be remedied through a measure of a collective nature.

141. There is extensive case law suggesting that collective harms require collective remedies, in particular, where Indigenous communities are affected. In *Moiwana* the Inter-American Court of Human Rights declared Suriname liable for failure to investigate the gross human rights violations perpetrated during a massacre against the Maroon community, as well as the displacement of the community. Although it only identified the individuals identified as victims of the case, the Court acknowledged that collective remedies had to be provided to all of the community.[245] Similarly, in *Plan de Sánchez* the IACtHR acknowledged the duty to provide "other forms of reparation […] owing to the extreme gravity of the facts and the collective nature of the damage produced".[246]

142. Judges Pérez Manrique, Ferrer McGregor and Mudrovitsch elaborated in *Pérez Lucas,* building on the case law of the Colombian Constitutional Court, that collective remedies should seek to ensure that collective life projects are recognised and dignified.[247] Judge Sierra Porto, in *Triunfo de la Cruz*, elaborated in detail on the notion of collective remedies, arguing that these should not be confused with general State policies that derive from compliance with international obligations. He argued that collective remedies must respond to the collective

1.

[243] *Advisory Opinion OC-22/16*.
[244] *Case of Bedoya Lima et al. v Colombia. Merits, Reparations and Costs*.
[245] *Case of the Moiwana Community v Suriname. Preliminary Objections, Merits, Reparations and Costs*.
[246] *Case of the Plan de Sánchez Massacre v Guatemala.* para 93.
[247] *Case of Pérez Lucas et al. v Guatemala.* .

harm caused to the Indigenous community, and thus (1) must be considered as independent to the remedies granted to the individuals, (2) must address the harms caused to the Indigenous communities of a collective nature, (3) must have the purpose of protecting the customs and cultural identity of the Indigenous peoples, (4) must have a purpose associated with the strengthening of the social and economic situation of the community, and (5) requires participation of the Indigenous community in the decisions taken concerning the implementation of such remedy.[248] He further argues that these are distinct to general state policies that regard compliance with international duties towards Indigenous communities, as those provided in the 169 ILO Convention. Judge Sierra sustains that the main difference between these is that the remedy responds to the harm attributable to the State, while the policy responds to compliance with a state duty deriving from international or national human rights frameworks.[249] It seems, thus, that the latter would rather be considered a guarantee of non-recurrence rather than a collective remedy *per se*.

143. Thus, the IACtHR orders collective remedies regardless of whether the case concerned an individual victim or a collective victim in cases concerning Indigenous peoples, insofar the case identifies a collective harm against the community. The IACtHR acknowledges that individual harms against a member of an individual community may have far reaching impacts to the rest of the community.[250] In *Plan de Sánchez*, despite the victims being individual, the Court ordered development programs for the community, including

> a) study and dissemination of the Maya-Achí culture in the affected communities through the Guatemalan Academy of Mayan Languages or a similar organization; b) maintenance and improvement of the road systems between the said communities and the municipal capital of Rabinal; c) sewage system and potable water supply; d) supply of teaching personnel trained in intercultural and bilingual teaching for primary, secondary and comprehensive schooling in these communities, and e) the establishment of a health center in the village of Plan de Sánchez with adequate personnel and conditions, as well as training for the personnel of the Rabinal Municipal Health Center so that they can provide medical and psychological care to those who have been affected and who require this kind of treatment.[251]

144. More relevant to the present case in *Fernández Ortega,* the Court considered that the individual case of sexual violence perpetrated against the victim, an Indigenous woman, required a remedy with "a community scope and that [would] allow the victim to reincorporate herself into her living space and cultural identity, as well as re-establishing the fabric of the community", ordering Mexico to provide "the necessary resources for the Me'phaa Indigenous community of Barranca Tecoani to be able to establish a community center, which is set up as a women's center and in which educational activities are held on human rights and women's rights, under the responsibility and management of the women of the community, including Mrs. Fernández Ortega if she so desires".[252]

145. Like remedies for individual harm, remedies intended to redress collective harm pursue a number of aims: justice, restitution and rehabilitation, satisfaction, and compensation.

1. ---

[248] *Case of the Community Garifuna Triunfo de la Cruz and its members v Honduras. Merits, Reparations and Costs. Series C No. 305*.
[249] ibid.
[250] *Case of Fernández Ortega et al v Mexico Preliminary Objection, Merits, Reparations, and Costs Series C No 215* (IACtHR).
[251] *Case of the Plan de Sánchez Massacre v Guatemala.* para 110.
[252] *Case of Fernández Ortega et al. v Mexico. Preliminary Objection, Merits, Reparations, and Costs*. para 267.

146. *Justice* measures respond to the collective harm that impunity for human rights violations perpetrated against Indigenous peoples can create. Cases as *Moiwana, Plan de Sánchez,* or *Chichupac* include a state duty to investigate and eventually sanction the perpetrators of gross human rights violations perpetrated against them. Most of them make visible the collective implications of impunity, as they may lead to the risk, perceived or actual, that similar human rights violations may recur.[253] In *Moiwana* the collective nature of this remedy is evident, as the situation of impunity contributes negatively to their livelihood. The judgment states that:

> the ongoing impunity has a particularly severe impact upon the Moiwana villagers, as a N'djuka people. As indicated in the proven facts […], justice and collective responsibility are central precepts within traditional N'djuka society. If a community member is wronged, the next of kin – which includes all members of his or her matrilineage – are obligated to avenge the offense committed. If that relative has been killed, the N'djuka believe that his or her spirit will not be able to rest until justice has been accomplished. While the offense goes unpunished, the affronted spirit – and perhaps other ancestral spirits – may torment their living next of kin.[254]

147. *Restitution* and *rehabilitation* measures are very case-specific and respond to the collective harm identified in the judgment. In *El Mozote*, for instance, the IACtHR ordered the creation of a development program that included "(a) improvements to the public road system; (b) access to public services of water and electricity; (c) establishment of a health care center in a place accessible for most of the villages, with adequate personnel and conditions, that can provide medical, psychological or psychiatric care to the people who have been affected and who require this type of treatment […]; (d) construction of a school in a place accessible for most of the villages, and (e) construction of a center for the elderly".[255] In that case, the Court further ordered El Salvador to "provide adequate conditions" for the displaced members of the community that wish to do so to go back to their communities.[256] Further measures specified include the provisions to ensure access to physical and mental healthcare of the victims. Unlike cases of individual harm, in some collective harm cases, the IACtHR usually requires that such access to healthcare is executed through the creation or strengthening of the conditions of a health centre for the community, insofar as the human rights violation was territorially delimitated. In *Los Josefinos*, the Court ordered "to reinforce the health center located in Los Josefinos by providing it with permanent human resources qualified to offer physical, psychological and dental health care, medicines, and fully equipped ambulances".[257]

148. *Satisfaction* remedies provide a non-taxative list of alternatives in cases concerning Indigenous communities' rights. The orders tend to be quite case-specific. The IACtHR tends to order the publication of the judgment (including a publication in the native language of the community), as well as a public apology from high level state authorities in its Indigenous cases.[258] Beyond these remedies, satisfaction remedies in Indigenous cases include (1) measures directed to

1. ---

[253] *Case of the Plan de Sánchez Massacre v Guatemala.*; *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v Guatemala. Preliminary Objections, Merits, Reparations and Costs. Series C No. 328*.

[254] *Case of the Moiwana Community v Suriname. Preliminary Objections, Merits, Reparations and Costs.* para 96.

[255] *Massacres of El Mozote and surrounding areas v El Salvador. Merits, Reparations and Costs.* para 339. Also in *Case of the Yakye Axa Indigenous Community v Paraguay.*; *Case of the Sawhoyamaxa Indigenous Community v Paraguay.*; *Case of the Plan de Sánchez Massacre v Guatemala*.

[256] *Massacres of El Mozote and surrounding areas v El Salvador. Merits, Reparations and Costs*.

[257] *Case of the Village of Los Josefinos Massacre v Guatemala.* para 157.

[258] *Case of the Quilombolas Communities of Alcântara v Brazil.*; *Case of Tagaeri and Taromenane Indigenous Peoples v Ecuador.*; *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v Panama.*; *Case of the U'wa Indigenous People and its members v Colombia. Merits, Reparations and Costs. Series C No. 530*.

protect or promote the Indigenous culture or memory, or (2) measures directed to protect the life, livelihood and social rights of the community. Concerning the first type, for instance, in *Moiwana* the IACtHR ordered the construction of a monument, for the purposes of memorialisation of the massacre perpetrated against the community.[259] In *El Mozote,* the Court ordered the production of an "audiovisual documentary" on the gross human rights violations perpetrated against the victims of the affected communities.[260] Likewise, in *Patriotic Union,* the Court required the designation of a National Day for the commemoration of the victims.[261] In *Bedoya Lima* – concerning the collective dimension of free speech - the Court ordered the diffusion of a documentary concerning women journalist's rights for the purposes of building knowledge of their work.[262] More broadly, the Court ordered Guatemala to legalise the Indigenous community radio stations operating within the *Maya Kaqchikel* community, as they require it to exercise their cultural rights.[263] Finally, *in Chitay Nech* the IACtHR ordered Guatemala to place "a commemorative plaque with the name Florencio Chitay Nech and reference to the activities he carried out. This plaque will serve to raise the public conscience to avoid the repetition of facts like those that occurred in the present case, and to carry on the memory of the victim".[264]

149. As far as measures directed to protect the life, livelihood and social rights of the community, the Court usually orders development programs that may include roads, sewage, water and food, education, and the provision of health services.[265] It must be clarified that this is a distinct remedy than the compensation that must be included into the development fund, as well as from the restitution orders. Although they may serve similar purposes, compliance with this remedy is an independent duty. In *Yakye Axa* for instance, this satisfaction order required the State to adopt adequate measures to protect the life, livelihood and social rights of the community while they were returned to their ancestral lands.[266] The development fund that was ordered in such case, which has not been implemented yet, is envisioned to contribute to the development of the community once they are settled in definitive lands.

1. ---

[259] *Case of the Moiwana Community v Suriname. Preliminary Objections, Merits, Reparations and Costs*.
[260] *Massacres of El Mozote and surrounding areas v El Salvador. Merits, Reparations and Costs*.
[261] *Case of Members and Militants of the Patriotic Union v Colombia. Preliminary Objections,, Merits, Reparations and Costs. Series C No. 455*.
[262] *Case of Bedoya Lima et al. v Colombia. Merits, Reparations and Costs*.
[263] *Maya Kaqchikel Indigenous Peoples of Sumpango et al. v Guatemala. Merits, Reparations and Costs*.
[264] *Case of Chitay Nech et al v Guatemala Preliminary Objections, Merits, Reparations, and Costs Series C No 212* (IACtHR) [251].
[265] *Case of the Yakye Axa Indigenous Community v Paraguay.*; *Case of the Sawhoyamaxa Indigenous Community v Paraguay.*; *Case of the Plan de Sánchez Massacre v Guatemala.*
[266] *Case of the Yakye Axa Indigenous Community v Paraguay.*